

LAWYERS ALERT STRATEGIC IMPACT LITIGATION MOVEMENT

Background

Strategic litigation is potentially a powerful engine of social change. Lawyers Alert strategic impact litigation movement seeks to bring cases before the court with the explicit aim of positively affecting persons beyond the individual complainants. It helps in expanding the frontiers of Law. Lawyers Alert has a mandate to advance equal access to justice and promote and protect the rights of vulnerable groups, especially women through engagement with the instrument of law. In the past 19 years, Lawyers Alert has used the courts to seek remedies for a series of violations and infractions on human rights mainly in Nigeria by way of Strategic Impact Litigations. On the background that strategic litigation is most effective in ensuring long-lasting changes, we have fully applied the instrument of law to expand the legal system and the frontiers of law.

Vagrancy Laws and Petty Offences

Lawyers Alert in line with its mandate and movement on decriminalization of vagrancy laws and petty offences in Nigeria filed an action in **LA V Federal Republic of Nigeria** before the Community Court of ECOWAS in Abuja, FCT. By the action, Lawyers Alert seeks the interpretation of Sections 405, 406, and 407 of the Penal Code of Nigeria, Cap. 89, Laws of Northern Nigeria, 1963 and seeks the court's pronouncement on the sections as vagrancy laws that should have no place in our statute books. The suit further seeks the court determination of the compatibility of the aforesaid sections with the African Charter on Human and People's Rights (ACHPR) and other International Human Rights Instruments applicable in Nigeria. Whichever way the judgment goes, a positive outcome will go a long way to strengthening the position of the vulnerable populations. It is even more strategic that the matter is being heard by the Community Court of ECOWAS. A positive outcome will definitely impact the lives of every vulnerable person and help to decriminalize certain vagrancy laws.

In the case of **LA V Abuja Environmental Protection Board (AEPB) & 2 Ors**, Lawyers Alert recently instituted an action against the Abuja Environmental Protection Board and 3 Others. The action hinges on the incessant reports on violations of rights of women by the Abuja Environmental board (AEPB) and its cohorts. The suit seeks the interpretation of sections 6 and 35 of the AEPB Act and a declaration that the provisions of sections 6 and 35 of the Abuja

Environmental Protection Board Act, 1997 or any other provision for that matter do not give the AEPB powers to arrest women suspected to be Sex Workers. This suit further seeks a declaration that the functions of The Abuja Environmental Protection Board (AEPB) do not include the harassment, arrest and raid of women in Abuja. It is believed that the suit will broaden the frontiers of the law by seeking decriminalization of petty offences in the context of female sex workers in Nigeria and protect the rights of women from violations.

Sexual and Reproductive Health and Right

In 2018, the capacity of forty-five (45) lawyers was built on strategic impact litigation using international standards. These lawyers are sharing lessons with other colleagues on strategic impact litigation & pushing the frontiers of SRHR in Nigeria. These lawyers are also enhancing access to justice by working with small and medium-sized organizations that link victims of SRHR violations to the lawyers for free legal services.

Further to the above and in furtherance to its SRHR movement, the case of **Lawyers Alert V Minister of Health & 2 Ors** was instituted by Lawyers Alert. The action, amongst other reliefs, addresses the issue of the Minister's non-compliance with the provisions of section 3 (1) and 15 (2) of the National Health Act, 2015 which mandates the Minister in consultation with the National Health Council to make prescriptions as to the category of persons who may be exempted from making payment for services received from public health facilities. It is believed that the right and access to free medical care is a fundamental right by virtue of Article 16 of the African Charter on People's Rights and needs to be enforced. The action seeks to ensure that persons in need of medical care are given free medical care.

Another action illustrating the potential of strategic litigation in the SRHR movement in Nigeria is the case of **Lawyers Alert V Federal University of Makurdi** instituted by Lawyers Alert before the Federal High Court in Makurdi, Benue State. The action, amongst other reliefs, sought to determine the question whether the University of Agriculture, Makurdi Clinic's act of refusing to administer medical treatment to the victims of the accident on campus for the reason that they were unable to produce the 1st respondent's identity cards, leading to the death of some of them. Lawyers Alert contended that the Act of the learning institution contravenes Section 20 of the National Health Act, 2014 and amounts to a violation of their right to life and access to medical care as enshrined in the Constitution of the Federal Republic of Nigeria, 1999.

The Judge in her ruling analyzed the fact of the case and relief sought while making reference to judicial authorities and declined jurisdiction to entertain the matter. Although the suit did not explicitly turn out as anticipated, it, however, recorded a positive move and clarified certain rights while seeking medical care in similar situations.

Rights of Female Sex Workers (FSW)

Lawyers Alert over the years has been actively involved in advocacy and provisions of legal services to ensure the rights of FSW are not violated. In line with its activism on FSW, LA handled the case of **Constance Nkwocha & 15 Ors. v. Minister of the Federal Capital Territory & 5 Ors.** Before the institution of the action in court, it was reported that the respondents in the action stormed a suburb in the Federal Capital Territory (FCT), Abuja, at about 11 pm, breaking into the apartment of 52 women, unlawfully searching them and their rooms, arresting, torturing and detaining them at Old Parade Ground, Area 10, Garki, Abuja. The women were detained pending the arrival of a mobile court judge who tried them for a criminal offence they did not know about. Lawyers Alert intervened in the matter and filed a fundamental right action on their behalf before the Federal High Court for the enforcement of their fundamental rights. The case turned out in favour of the Plaintiffs and also pronounced heavily on their rights as enshrined in the constitution of Nigeria.

Similarly, in the cases of **Blessing Nnaji V, the Minister of FCT &12 Ors, Mirabel Ibe V the Minister of FCT &12 Ors, Joy Moses V the Minister of FCT &12 Ors, Blessing Sam V the Minister of FCT &12 Ors, Mirabel Ojimba V the Minister of FCT &12 Ors, and Loveth Iyoko V the Minister of FCT &12 Ors;** the rights of FSW were addressed. The women in the aforementioned suits were harassed, humiliated and arrested on allegations, among others, that they were offering their bodies as articles. Lawyers Alert alongside other human rights international organizations as The Open Society Initiative for West Africa, the United Nations, Amnesty International, and over 30 local organizations got involved and filed actions at the Federal High Court, Abuja, against the authorities involved. Judgment was delivered in favour of the women (Applicants) in all the actions filed. Besides, decisions that have far-reaching implications for the rights of women and even other citizens were reached by the court. The outcomes of the actions could be said to be victories for human rights.

Furthermore, the case of **Lawyers Alert V Government of Borno State & Anor** challenged the executive directive of the Government in Borno state to demolish properties of Maiduguri residents purportedly occupied by FSW. Lawyers Alert contended that the action of the Government to demolish the properties was made in bad faith, ultra vires and unconstitutional, contrary to sections 43 and 44 of the Constitution of the Federal Republic of Nigeria. The issue of fundamental matter was heard by the court and although the decision of the court did not favour the Applicant, the action created a lot of awareness on the issue of the alleged demolition and the constitutional rights of persons in that regard.

Anonymity Order

Lawyers Alert obtained an Anonymity Order in the case **Mr. X v. Mr. Jakobus Brink & 3 Ors** for the Plaintiff in recognition of his rights to confidentiality and privacy. By this order, a Plaintiff in an action is granted leave to sue in a pseudo name, thereby concealing his/her real name. The essence of this order is to protect the identity of the one concerned. The same order has been obtained in the cases of **Miss. X. v Teene Todds Day Care Pre-School & 2 Ors** and that of **Miss A v. Federal Medical Centre & 1 Or.** both at the National Industrial Court sitting in Abuja. The order has also come with the privilege of court proceedings being held in privacy. It is a means of balancing the right of a person to privacy with the justice principle of fair hearing.

Discrimination on Account of HIV/AIDS

In pursuit of its objective of promoting the rights of vulnerable groups, including Persons Living with HIV/AIDS (PLWHA); Lawyers Alert instituted an action in **LA v. Attorney General (AG) and Ors** to compel the Federal AG to ensure that employers of labour adopt and register their HIV and AIDS Workplace Policies with the Ministry of Labour. The provisions of the HIV/AIDS (Anti-discrimination) Act, 2014 were enacted to make provision for the prevention by all employers of labour of HIV/AIDS-Based discrimination suffered in the workplace. The court heard the action and judgment was delivered on the 26th of Sept 2018 prohibiting employers from coercing perspective employees to undergo HIV\testing and that dismissing employees on the basis of their perceived or actual HIV status is unlawful and discriminatory. Although the action failed at the National Industrial Court for want of jurisdiction, the suit has, however, incited a constructive national conversation on the issue of discrimination on the basis of HIV/AIDS and all forms of victimization in the workplace.

One of the landmark cases in the Lawyers Alert campaign against HIV/AIDS discrimination in the case of **Mr. X v. Mr. Jakobus Brink & 3 Ors.** In the aforementioned case, Lawyers Alert partnered the Southern Africa Litigation Centre, SALC. The case was to seek justice for Mr. X based on his loss of employment owing to his HIV status. Mr. X was compelled by his employers to undergo a medical test which test revealed that he was HIV positive and based on the results, his employers terminated his employment. Owing to this, Mr. X contacted Lawyers Alert and a suit was filed against his employers. This case was heard and determined at the National Industrial Court and Judgment was delivered on the 26th of September 2018. The judgment of the court prohibits employers from coercing prospective employees to undergo HIV testing and that dismissing employees on the basis of their perceived or actual HIV status is unlawful and discriminatory. The court further awarded monetary damages to the total sum of 4,200,000 nairas (11,500 USD). An anonymity order was also obtained in this action. The court pronouncement, in this case, has been instrumental on the issue of HIV discrimination, especially at the workplace.

Similarly, in the case of **Miss. X. v Teene Todds Day Care Pre-School & 2 Ors**, a trained and experienced nurse, heard of a vacancy for a staff nurse put up by Teene Todds Day Care Pre-school, in the Federal Capital Territory (FCT) and applied for the job. She got an offer letter which she accepted and submitted at the office of the Director. Miss X was later shown an official document that mandated her to disclose her status. In compliance, Miss X told the Director she is HIV+. Owing to this self-disclosure, Miss X's appointment was summarily terminated and humiliated and thrown out of the school premises so as not to infect pupils or discourage parents from dropping off kids in the school. Lawyers Alert, in a bid to resolve the matter amicably out of court, wrote a letter on behalf of Miss X to the establishment, asking the school to apologize to Miss X and to pay her compensation, with no positive response. Consequently, Lawyers Alert filed an action in court against the school on behalf of Miss X for discrimination and for unlawful termination of her employment.

Locus Standi

The issue of locus standi has been one of the major challenges of strategic impact litigation in Nigeria. Lawyers Alert obtained a landmark judgment expanding the frontiers of locus standi in Nigeria in the case **LA V Hon. Minister of the Federal Capital Territory & 4 ORS.** The action was instituted by the organization to enforce the rights of some women who were being incessantly arrested at night by agents of the respondents on suspicion of

being prostitutes. At the hearing of the suit, 1st Respondent raised so much issue with locus standi as Lawyers Alert sued to enforce the rights of those who are victims of the arrests. Parties argued their various positions but in the end, the court decided in favour of the Plaintiff and held that it has the locus to sue the way it did.

Social Issues

Some proceedings have also been undertaken by Lawyers Alert to address social issues. **In the case of LA V. Abuja Electricity Distribution Company**, AEDC was sued for negligence and failing to take adequate and practical steps and care to ensure the safe, sound and efficient distribution of electricity. This action is meant for the court to compel the company to be more responsible. Furthermore, in the case **of LA V. Benue State Government** Lawyers Alert filed an action against the Benue state government which had earlier imposed a ban on the use of motorcycles in a part of the state. In the course of enforcing the ban, security agencies confiscated motorcycles and destroyed same. Pained by the actions of the security agencies, Lawyers Alert approached the court to seek the court's pronouncement on the propriety or otherwise of the ban and its enforcement. These cases are still pending before the court and it is believed that the outcome of the cases will lead to a new order of positive social changes.

Conclusion

Lawyers Alert has used the law to advance human rights and equality or to raise matters of broad public concern via strategic impact litigation. The use of the law to advance human rights and equality, or to raise matters of broad public concern has become an instrument of social change and to advance the frontiers of the law. For Lawyers Alert, litigation is an under-appreciated tool of empowerment and social change that donors, governments, and civil society advocates should exploit more and more skillfully to prompt and/or expedite the provision of protection and remedies and make jurisprudence ever more accommodating of human rights.

Although the issue of locus standi has remained the major clog in the wheel of the progress of most SIL filed by Lawyers Alert, the organization remains relentless in ensuring that the frontiers of law regarding human rights issues are expanded and the rights of vulnerable groups in the society are protected.