



Lawyers Alert

COMPLICITY OF NIGERIA'S JUDICIARY IN SHRINKING CIVIC SPACE

Nigeria's shrinking civic space has been a matter of discourse without abatement for years now. The Nigerian Judiciary is gradually now it seems also now stifling the Civil Society sector via dismissal of suits instituted to challenge irregularities identified both in the letter of the law and in the action or management of state affairs by agents of government. This is evident in the courts' awarding of outrageous sums as cost in suits brought by Civil Society Organizations in the interpretation of laws or public impact litigation.

The court is said to be the last hope of the common man. A legal system that is perceived as compromised, engenders chaos not just for the so-called common man but also within the civic space as a whole. Recent judgments by courts in matters of public litigation has in the recent past experienced slap backs on by the courts through striking them and award of outrageous costs against NGOs.

These acts have an adverse effect on the democratic participation of citizens through Civil Society groups. The ripple effect of this is the negative on the attainment of international development interventions such as the Sustainable Development Goals (SDGs).

As the third arm of the government, the judiciary is critical to the mental, physical and psychological well-being of Nigerians. Its role in the closing of civic space is therefore, harder to swallow.

In true comprehension of the subject matter, there is a need to unpack what the term "Civic Space" means. Civic space is used to describe a set of universally-accepted rules which allow people to organize, participate, and communicate with each other freely and without hindrance, thereby influencing political and social structures around them. "Civil Society" gained traction as a sphere of autonomy separate from the state and frequently opposed to the state. Over time, it became the common denominator for a range of social spaces and associations of citizens that were neither part of state institutions nor part of the business world nor the family.

Following this interpretation, "civic space" is said to accommodate several aspects of democracy, as well as effective participation of citizens in the process of governance. By this definition, the state owes citizens a duty to protect and respect their fundamental right to associate, assemble peacefully and express

views and opinions freely. The term “free” in this context pertains to an absence of obstruction to or hindrance from speaking/acting in a way a citizen believes in that is not in violation of the human rights of another.

Anti-NGO laws, arbitrary inspections, harassment, and criminalization all strike at the roots of civic space and constitute a wide shift from democracy.

In the Belgrade, Serbia Civil Society Summit which took place from April 8 to April 11, 2019 the Belgrade Call to Action was adopted. It tasks UN Member States to, amongst other things, take action to reverse the shrinking of civic space. The situation in Nigeria has spurred local and international concern, with lectures, trainings, advocacy visits, etc. carried out for members of the Civil Society space and to various offices of the Nigerian government.

According to the United Nations Office of the High Commission, “the notion of shrinking civic space is subjective with different meanings and interpretations depending on the context and views of the individual. To some it is about closing of space, to some it is limited engagement or obstructed action...”

“Shrinking of civic space” is defined variously as:

- A violation of human rights.
- Decreasing working environment.
- Denial/suppression of public freedoms, undue restrictions
- Inability to express oneself without ridicule, disdain and condemnation: Individual self-agency.
- Lack of freedom to challenge and express differences of opinion
- Silencing of voices and state capture and limiting citizens engagement
- Intimidation of human rights defenders
- Lack of freedom to challenge and express differences of opinion

It is evident that a closure of civic space leads to

1. Violation of the rights of Nigerian citizens
2. Tampering with democracy
3. Lawlessness

HOW NIGERIAN COURTS HAVE AIDED THE SHRINKING OF CIVIC SPACE/HUMAN RIGHTS/ACCESS TO JUSTICE

In the matter of fundamental human rights enforcement vis-à-vis locus standi of the Civil Society in enforcing this cause, the Fundamental Rights Enforcement Procedure Rules was instituted to curb human rights infractions that presented alongside the challenges of the issue of locus standi for Civil Society actors. The provisions of these are in themselves taken to be sufficient in addressing issues

of Strategic Impact Litigation relating to human rights cases brought by Civil Society Organizations.

Nigerian courts have by their actions, however, denied the relevance or existence of these Rules by continuously making contradicting pronouncements.

It would be assumed that Nigeria, having experienced 5 constitutions with provisions for human rights, would have established a judiciary conversant with and not opposed to the protection of rights. Human rights exist partly to allay the fears of minorities whose human rights are threatened by the majority. The Commission that was set up to look into the threatened rights of minorities recommended far-reaching provisions for the fundamental rights of Nigerian citizens which were considered in the formulation of the Fundamental Rights Enforcement Procedure Rules, 2009.

Furthermore, the restrictions around locus standi hinder access to justice. Access to justice is the right of citizens to have their grievances addressed by a court of competent jurisdiction. The principle of locus standi was developed basically to embolden citizens to engage in the enforcement of laws, as well as to regulate frivolous institution of actions by persons or groups with no interest in a case, thereby constituting a nuisance in courts.

However, where a Civil Society Organisation meets necessary requirements that afford it locus standi, would there still be need for a court to strike out or dismiss such a case? A list of instances of such strike outs is presented below.

1. Lawyers Alert, a human rights NGO, has on several occasions instituted civil actions on behalf of the public. These actions have been geared towards either changing laws that are inconsistent with the well-being of citizens or correcting the attitude of the Nigerian government which sometimes violates the rights of Nigerian citizens.

Notably, in the case of Lawyers Alert against the Attorney General of the Federation which bordered on the latter's non-compliance with its obligation to ensure compliance with the HIV and AIDS (Anti-Discrimination) Act, 2014, the matter which was instituted by the former at the National Industrial Court of Nigeria was heard and dismissed and a cost of three hundred thousand naira (N300,000) awarded against Lawyers Alert for reasons such as incorrect citation of a section of the law and lack of cause of action.

In analyzing this decision, it is evident that courts have turned against Civil Society. An example in proof of this is a provision of the same law that the courts are meant to interpret stating that an incorrect citation of a law cannot alone make a case incompetent except for where it fundamentally affects the case. In the instant case, the court processes

contained the appropriate citation of same law though the law was wrongly cited twice. Not only was Lawyers Alert's case dismissed, but a hefty amount was awarded against same as cost for daring to protect the lives of Persons Living With HIV and fighting the discrimination of same at workplaces.

2. Another case for examination is the case of Lawyers Alert against the Federal University of Agriculture, Makurdi (FUAM) & 1Or. In a fundamental rights enforcement action instituted at the Federal High Court Holding at Makurdi, Lawyers Alert made a case for the violation of the right to life of some students by the school clinic that refused treating students involved in a fatal accident on the school premises. The refusal was based on the accident victims inability to produce clinic cards, this, despite pleas and evidence by other students showing that the victims were students of the university. The victims died. The case was struck out for lack of jurisdiction.

According to the trial judge, a Federal High Court does not have the jurisdiction to try fundamental human rights enforcement actions even if the Federal Government is a party in the matter. Whereas, sections 251 (1) paragraphs p, q, r, s and section 252 (1 & 2) state as follows:

(p) the administration or the management and control of the Federal Government or any of its agencies;

(q) subject to the provisions of this Constitution, the operation and interpretation of this Constitution in so far as it affects the Federal Government or any of its agencies;

(r) any action or proceeding for a declaration or injunction affecting the validity of any executive or administrative action or decision by the Federal Government or any of its agencies; and

(s) such other jurisdiction civil or criminal and whether to the exclusion of any other court or not as may be conferred upon it by an Act of the National Assembly:

Provided that nothing in the provisions of paragraphs (p), (q) and (r) of this subsection shall prevent a person from seeking redress against the Federal Government or any of its agencies in an action for damages, injunction or specific performance where the action is based on any enactment, law or equity.

252. (1) For the purpose of exercising any jurisdiction conferred upon it by this Constitution or as may be conferred by an Act of the National

Assembly, the Federal High Court shall have all the powers of the High Court of a state.

(2) Notwithstanding subsection (1) of this section, the National Assembly may by law make provisions conferring upon the Federal high Court powers additional to those conferred by this section as may appear necessary or desirable for enabling the Court more effectively to exercise its jurisdiction.

Also, Order 11 Rule 1 of the Fundamental Rights Enforcement Procedure Rules, 2009 states as follows:

Any person who alleges that any of the Fundamental Rights provided for in the Constitution or African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act and to which he is entitled, has been, is being, or is likely to be infringed upon, may apply to the Court in the State where the infringement occurs or is likely to occur, for redress. The word "Court" in this law is interpreted by the same law to mean a Federal High Court or the High Court of a State or the High Court of the Federal Capital Territory.

3. In yet another instance, an NGO, Centre for Oil Pollution Watch, commenced an action (as Plaintiff) at the Federal High Court, Lagos, against the Nigerian National Petroleum Corporation (NNPC) sued as Defendant over an alleged oil spillage in Acha Community of Isukwuato Local Government Area of Abia State. NNPC filed a defense in which it raised a preliminary point of law, challenging the *locus standi* (right to sue) of the NGO to commence the action and prayed the court to strike out the suit. The trial court upheld the contention of the defendant that the plaintiff had no locus to commence the action and struck out the suit. The Court of Appeal dismissed the appeal filed by the NGO. Still aggrieved, the NGO approached the Supreme Court.

The Supreme Court then invited some 'Friends of the Court' (*amici curiae*) to assist in determining the issue of whether the NGO has a right to institute the action. In determining the case, the Court held that the Plaintiff had the locus to institute the action.

CONCLUSION

The cases mentioned above are just a few instances where Civil Society Organizations have encountered stumbling blocks in defending the rights of Nigerian citizens and fighting for the less privileged. In the third case, trial and appeal courts had determined the case, without good cause, against an NGO

that was fighting for the welfare of Nigerian citizens. The Supreme Court's intervention overturned the prior judgments.

Critical evaluation of the cases above show how far Nigerian courts have gone in stifling the civic space.

In conclusion therefore, it would seem that not only is the government bent on thwarting genuine efforts of the Civil Society at improving the lot of citizens, the courts are also working closely with the state to the down Civil Society's efforts at bringing justice closer to the poor and marginalized. This is a situation that can only be described as inimical to development.

