

CONFRONTING CLOSING CIVIC SPACES IN NIGERIA

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- *How activists are using a strategic combination of research action, social media mobilisation and cross-border networks*

ABSTRACT

The growing restrictions on free speech, association and assembly rights, including the tide of restrictive legislation, have engendered a climate of fear in Nigeria, shrinking the spaces for civic engagement. Despite this persistent and growing official intimidation, a web of actors, comprising active citizens, informal and organised groups from civil society are trudging on under great difficulties, deploying a variety of strategies to reclaim civic space and demanding greater respect for human rights and fundamental freedoms. Have these local responses and initiatives been effective? What strategies have worked for local activists and organisations? This article discusses the ways local responses can inform future strategies by human rights activists and other actors operating in the regional and international spheres.

KEYWORDS

Restrictive legislation | NGO Bill | Civil society | Civic spaces | Nigeria

1 • Introduction

Since 2015, Nigeria has witnessed a vicious crackdown on social critics, bloggers, and activists challenging impunity, official corruption and human rights abuses. A Nigerian non-governmental organisation, SPACES FOR CHANGE (S4C), has tracked 103 incidents of governmental restrictions on free speech, association, religious and assembly rights that occurred between May 2015 – May 2017.¹ This crackdown, especially targeted towards bloggers, activists and leaders of religious and indigenous movements, adds to the growing list of documented restrictions and human rights violations resulting from official behaviour. In addition, there is a tide of restrictive legislation, including the current Bill to Establish Non-Governmental Organisation (NGO) Regulatory Commission (the NGO Bill).²

These developments have engendered a climate of fear in the country, shrinking the spaces for civic engagement. Despite this persistent and growing official intimidation, a web of actors, comprising active citizens, informal and organised groups from civil society are trudging on despite considerable challenges, deploying a variety of strategies to reclaim civic space and demanding greater respect for human rights and fundamental freedoms. Have these local responses and initiatives been effective? What strategies have worked for local activists and organisations? What still needs to be done to sustain the human rights movement in the face of these threats and atmosphere of uncertainty? This article examines and analyses the strategies that have been deployed to confront the shrinking space for civic engagements in Nigeria, highlighting the different roles various actors play at different levels.

2 • Monitoring the Closing Spaces in Nigeria

Are civic spaces in Nigeria free or closed? What happens when civic spaces and civil society are closed? How are they closed? Is there a model that measures and monitors this closure? S4C searched for the answers to these questions in a recent study.³ S4C is adamant that a key strategy in fighting these restrictions is to monitor, understand and record them. This information can then be used by S4C and its partners in conjunction with other strategies that are discussed below. In developing a methodology for monitoring closing spaces for civil society in Nigeria, S4C relied on CIVICUS's five-pronged classification of civic space freedoms into open, narrowed, obstructed, repressed and closed.⁴

S4C developed the database of closing spaces in Nigeria, tracking 103 incidents. The database revealed that those targeted with excessive governmental power are usually vocal critics of the government, political opponents, leaders of religious and indigenous movements, and private actors actively using social media to expose corruption or challenge gaps in governance. On the strength of these findings, S4C's study concluded that the Nigerian civic space oscillates within CIVICUS' categories of closed, repressed and obstructed. Obstructions of this nature are reminiscent of the tactics traditionally employed by military regimes that held sway before the country returned to civilian rule

in 1999. Civilian administrations are, more and more, resorting to these tactics to crush dissent, and coerce associational and non-associational life into submission.

3 • Categories of restrictions

The tools or methods state actors often deploy to advance their clampdown operations can be grouped into three categories. The first is restrictive legislation. The second is through the overbroad application of existing laws by state agents, and the third relates to non-legal forms of restrictions, such as the deliberate use of negative rhetoric that stigmatises and smears sections of civil society.

3.1 - The Tide of Restrictive Legislation

One such restrictive legislative proposal is the NGO Bill. Replete with vague phrases framed around the objective of “national security and national interest”, the NGO Bill proposes to establish a regulatory body, the Non-Governmental Organisations Regulatory Commission of Nigeria (NGORCN). It also criminalises operating an NGO in Nigeria without registration and certification. Any certificate issued upon registration will last for a period of two years, and thereafter, subject to renewal. If the certificate is not renewed, the operations of such organisation shall be terminated and its name deleted from the register. Application to renew registration could be refused if the registering body is satisfied that the proposed activities or procedures of the applying organisation are not in the national interest.

Consistent with the NGO Bill’s fixation on national security, the lead argument in support of the Bill emphasises the need “to regulate [Civil Society Organisations (CSOs)] on matters relating to their funding, foreign affiliation and national security, and...to check any likelihood of CSOs being illegally sponsored against the interest of Nigeria.”⁵ What constitutes national security threats against the interest of Nigeria was not defined, just as the criteria for making such determinations were not stipulated. In a context where state actors have scant respect for the rule of law and democratic institutions, vague and overly-broad representations in rule books often leave ample opportunities for state misuse of power. From that vagueness springs legal uncertainty and wide discretionary power often exercised without accountability.

NGOs argue that the provisions of the NGO Bill are already covered under existing law.⁶ The functions of the NGORCN would include facilitating and coordinating the work of all national and international NGOs, maintaining a register of NGOs, receiving annual reports of NGOs, and advising the government on the activities of NGOs. The Corporate Affairs Commission and the National Planning Commission currently undertake all of these stipulated functions, including registration. For purposes of national security, the Special Control Unit Against Money Laundering (SCUML) regulates Designated Non-Financial Institutions in Nigeria, including NGOs, in line with the country’s anti-money

laundering and countering financing of terrorism regimes. Both empirical and anecdotal evidence fuel fears that another piece of legislation enacted for the regulation of NGOs in Nigeria could be hijacked and used to legitimise the tightening environment for civil society action, including the restrictions on basic freedoms of expression and assembly, persecution of political dissent, and increased surveillance of citizens.

Measures designed to counter money laundering and the financing of terrorism often provide an omnibus cover for dissembling initiatives designed to shrink civic spaces. Although unsupported by evidence, these measures tend to re-echo sentiments suggesting that NGOs are “vulnerable to terrorist abuse”⁷ or are “enablers for funding terrorist groups.” As a result, the legal regimes designed to curb anti-money laundering or for combating financing of terrorism in Nigeria, have been revised in ways that extend restrictions to NGOs.⁸

3.2 - Overbroad Application of Existing Laws

Our research has shown that constitutional provisions or distinct federal and state legislations are increasingly being interpreted so broadly and applied beyond their scope in order to justify crackdowns on civil society, including targeted attacks on activists, bloggers, and CSOs.

On 8 August 2016, Nigeria’s Economic and Financial Crimes Commission (EFCC) arrested Abubakar Sidiq Usman, a prominent blogger based on allegations of cyberstalking.⁹ Another blogger and journalist, Musa Babale Azare, was arrested on 20 August 2016, on the orders of the Bauchi Governor, Mohammed Abdullahi Abubakar.¹⁰

To justify the Abubakar Sidiq Usman and Musa Babale Azare arrests, the Cybercrime Law on cyberstalking was cited. Usman was the third blogger to be arrested since the Cybercrime Act came into force in 2015,¹¹ fuelling suspicion of a deliberate social media witch-hunt. Under the 2015 Law, cyberstalking includes the use of the internet or other electronic means to stalk or harass an individual, a group of individuals or an organisation – none of which either Usman or Azare were doing.¹² The original intention of the Cybercrime Act is to create a legal, regulatory and institutional framework for improving cybersecurity and to ensure the protection of the critical national information infrastructure. As Abubakar Sidiq Usman and Musa Babale Azare arrests demonstrate, security agencies have capitalised on this legislation to torment social critics and activists who criticise the government on social media.¹³

Apart from the 2015 Cybercrime Law, a plethora of existing laws have been excessively overstretched, threatening free speech and charging individuals with grievous offences such as terrorism, criminal defamation, treason instead of simple misdemeanours.¹⁴

Two systematic patterns of state behaviour have been observed in relation to this category. First, activists, bloggers, or group leaders affected by the state’s overbearing power often approach the courts for remedy. When John Dan Fulani, Aku Obidinma, Audu Maikori, Sheik Ibrahim El-Zakzaky, Nnamdi Kanu, to name but a few, were arrested, the court

ordered their release, and granted the reliefs sought. The second observation however, is that state actors more often than not, flagrantly flout court orders, deepening the climate of fear and repression in the country. In almost all the named cases, court orders were ignored.

Refusing to obey the orders of a properly constituted court of law has been described as a deliberate sabotage of the judiciary.¹⁵ For example, on 2 December 2016, a trial court ordered the Department of State Security (DSS)¹⁶ to release El-Zakzaky and his wife within 45 days. The court also ordered the DSS to pay a fine of NGN 25 million (around USD 70,000) each to El-Zakzaky and his wife. Seven months later, they are still in detention without a formal charge. Similarly, a 17 December 2015 court ruling that faulted the action of the State Security Service (SSS) in detaining Nnamdi Kanu for over two months, without trial, was ignored.

The fear of harassment by security agencies has ushered a new dawn of silence. Whether through arrests and prosecutions, verbal threats or arbitrary transfers of journalists, it is clear that the clampdown on social critics and activists has reached concerning levels, resulting in declining participation and engagement in media activity. Unlike the period before the 2015 general elections when the vibrancy of internet-based activism peaked, activists and bloggers are increasingly silent, and not speaking up as they used to. S4C's study established that active citizens and other civil society actors keep quiet for fear of harassments by security agencies. In addition, the mainstream media, reliant on government patronage, "looks the other way so as to operationally remain in business."¹⁷ For journalists, speaking up comes with other costs such as arbitrary transfers from one station to the other, especially to remote locations.

3.3 - Non-legal restrictions

Non-legal restrictions, including shaming activists, or labelling them in a way that increases their vulnerability to public ridicule, isolation or stigma is quite commonplace. A political support group loyal to the government labelled the activities of a social movement campaigning for the immediate rescue and safe return of Nigeria's abducted schools girls as "socio-advocacy terrorism."¹⁸ The Nigerian government labelled the Indigenous People of Biafra (IPOB) campaigning against the marginalisation and structural injustices against the people of South-Eastern region of Nigeria, and also pushing for secession of the South-East from Nigeria, as a terrorist organisation.¹⁹

Linking NGOs to acts of corruption is another strategy used to discredit activists and NGOs. Speaking recently at a high-level function, Nigeria's former finance minister Okonjo-Iweala reportedly stated that corrupt people use NGOs as a front. In a warning to global financial institutions, she noted: "You really need to identify the institutions, the people and those who are willing to work on this reform and support them. But you need to ensure you are working with the right CSOs and NGOs. We have a joke in my country that you can have NGIs [Non-governmental individuals] instead of NGOs."²⁰ Linking NGOs to corrupt activities is one of the principal reasons advanced by the proponents of the NGO Bill.

The deliberate use of negative rhetoric often stigmatises activists, and smears sections of civil society. The consequence is the declining public trust and confidence in that person so labelled, and by implication, the civil society as a whole.

4 • Reclaiming civic space in Nigeria: What has worked?

Wary about the persisting climate of fear and the potential harm to campaigners, activists and practitioners are innovating in terms of strategy, building new constituencies of stakeholders while forging alliances with a variety of actors, locally and internationally.

Digital Activism: Blogger-NGO Collaborations: Thanks to the advancements in digital technology, messages now travel faster, across greater distances, especially through the use of social networks, such as Facebook, Twitter, and YouTube. With the speed of dissemination that these social networks offer, public pressure may be activated and amplified with limited resources. Thanks to their strong online presence and huge following, bloggers typically command the traffic needed to disseminate information to wider audiences. They can sensationalise any topic or make any issue go viral within minutes. Leveraging these advances in technology, collaborations between bloggers and NGOs are popular in Nigeria. In May 2016, this sort of collaborative action made it possible for NGOs, bloggers and other active citizens to successfully block the Bill Prohibiting Frivolous Petitions (popularly known as the anti-Social Media Bill).²¹ The Bill was designed to regulate communications and use of the social media. Had it been passed, the bill would have required citizens to depose affidavits in law courts²² before posting any statement on social media regarding the activities of the government or its officials.

S4C regularly collaborates with bloggers to humanise difficult research questions around the threats to civic spaces and crowdsource responses from a wide spectrum of stakeholders. Sometimes, a staff member of the organisation with a large following on social media leads the debate on their personal timeline. Sometimes, they identify other popular bloggers or social media personalities who can do so. One significant outcome of the NGO-blogger collaboration is that such campaigns generate the intense social pressure needed to counter official narratives and spur public resistance. Whether it is the NGO expert analysing the restrictive provisions of a legislative proposal, or the blogger tweeting about the salient findings in the NGO report, different actors play uniquely-disparate roles, but sharing creative responsibility and working together towards a common goal.

This relationship between NGOs and bloggers is mutually-beneficial. When bloggers or activists get into trouble as result of their activities in cyberspace, NGOs undertake advocacy, including litigation campaigns, to mount pressure on authorities in order to secure their freedom. Activists, including religious leaders, have also benefitted from the legal representation offered by NGOs. Gloria Ballason, an activist from Kaduna state, was represented by 36 prominent lawyers mainly drawn the civil society, in a lawsuit challenging

the Kaduna State Governor, Nasir El Rufai, for violating her right to free speech. Similarly, when another blogger was arrested and detained on the basis of a Twitter post, an activist provided legal services and secured judicial victory on his behalf.²³

Constant vigilance of policy and legislative proposals: NGOs like S4C also lead research and policy interrogation initiatives in Nigeria. This must be combined with media and community advocacy strategies aimed at communicating, as early as possible, legislative proposals that would threaten civic space. It is important to note that legislative proposals designed to shrink the civic space are not always explicitly evident. The titles may be confusing or the hurtful provisions surreptitiously inserted in obscure sections of the bill. They may also be framed in agreeable semantic language. For instance, the Bill to Prohibit Frivolous Petitions was the full title of the regulatory framework designed to control dissent on social media. The restrictive nature of the bill is only detectable through constant vigilance and policy analysis. When restrictions are embodied in legal frameworks, it is always easier to detect, challenge and possibly defeat. This is because the legislative process requires lawmakers to conduct public hearings and stakeholder engagements before parliamentary assent can be secured. Civil society actors can take advantage of the public hearing stage to make inputs and mobilise joint action against offensive legislative proposals. In March 2016, Nigeria's Senate Committee on Judiciary, Human Rights and Legal Matters conducted a public hearing on the Anti-Social Media Bill with a view to soliciting stakeholders' views of the propriety of regulating social media use in Nigeria. Activists maximised that window of opportunity to mobilise resistance against the Bill, which led to its withdrawal.²⁴

Other forms of legal and non-legal restrictions are more difficult to notice and counter. For instance, restrictive regulations could manifest in a variety of forms, including ministerial regulations, codes of corporate governance or internal policy directives, all of which have the possibility of obstructing civic engagement. The public usually becomes aware only once the directives or regulations have become operative. The only recourse available to affected groups is either social pressure, or a judicial review to try and invalidate the regulations or directives. In November 2016, the Nigerian Communication Commission directed telecommunications operators to hike data tariffs by 200 percent.²⁵ Although the government claimed the hike was designed to protect the smaller telecommunications operators, there were speculations that the directive was a subtle ploy to limit access to the internet and effectively reduce the level of criticism against the government on online platforms. Following considerable social pressure, the directive was suspended.

Research Advocacy & Partnerships: Restrictive legislation can provide a rallying point for revolutionary sentiments and for concerned or potentially affected stakeholders to initiate joint action for confronting the crackdowns head on. Organisations with strong research capabilities like S4C have conducted research that examined the link between the Financial Action Task Force (FATF) Recommendation 8 and restrictions on civic freedoms in Nigeria.²⁶ The research presented the evidence needed to counter the official

justifications for the restrictions on civic spaces. Research findings must be disseminated in a targeted fashion to diverse stakeholders. For example, S4C's research findings have been published in national newspapers, reaching the wider public.²⁷ In recognition of its strong research base on closing spaces, S4C is regularly invited to speak at high-level panels or to present expert commentary on issues affecting the civic space in both the national electronic and print media.²⁸ S4C research data and reports have also been presented at local and international events, including national outreaches to decision-makers. For example, in August 2017 USAID's Strengthening Advocacy and Civic Engagement programme supported Nigeria's federal legislative committee on Civil Societies and Development to convene an Interactive Technical Session on the NGO Bill. S4C staff were among the expert panel invited to engage the federal lawmakers and make specific policy recommendations on effective strategies for better regulation of the NGO sector.

With each group playing different roles according to their areas of strength, this allows for the complementarity of skills, and for deepening the bonds of solidarity among local stakeholders as they maximise the use of existing spaces to organise and collectively respond to threats. Accordingly, while S4C conducts the research, other organisations have either used, or relied on S4C's research information in their public outreach in order to inform their constituencies and empower members of their networks. Drawing from S4C's research, the Catholic Justice, Development and Peace Commission, in October 2017, convened a seminar to understand how Nigeria's anti-money laundering and combatting the financing of terrorism regimes impact religious groups and activities. In sum, some NGOs have stronger ties with decision-makers. Some others have stronger presence on the social media, just as many other have the capacity to engage harder-to-reach groups and communities. All of these roles are different, but important in actualising the shared goal of reclaiming the civic space.

Cross-border Coordination: Coordination between actors across countries is another strategy that has helped to facilitate a cross-issue learning exchange between organisations in the Global North and the Global South. The Fund for Global Human Rights supported the European Center for Non-Profit Law (ECNL) to deliver technical assistance to S4C. This support enabled S4C to strengthen its expertise in non-profit legal research and advocacy, and to develop skills, relationships and synergies needed to address issues around resisting the closing spaces more effectively in the local and regional context. In addition, this cross-border coordination provided the leverage for local and regional actors to contribute meaningfully in global discourse and agenda-setting for reversing the trend of closing civil society space. Through this exchange, S4C has gained deep insights into the successful strategies that have worked in other contexts.

5 • Conclusion

Spaces for civic engagement are crucial to democracy and civil society operations. Whether these spaces exist online or offline, they are increasingly transforming into catalysts for social

and political change. With corresponding pace, governments are proposing or adopting measures designed to restrict these spaces, with implications on fundamental freedoms, particularly the rights of free expression, public assembly, conscience and thought. Civic spaces have as a result, come under serious scrutiny and harassment by government authorities, making it difficult for civil society groups to carry out their advocacy or charitable operations. However, civil society actors, including active citizens, are pushing back, responding to these threats in diverse ways. While efforts aimed at challenging civic space restrictions have recorded significant successes, huge gaps remain. We must continue to be active and contribute to an ever vigilant civic community that is always ready to ask questions, demand answers and hold the government accountable at all times.

NOTES

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12 • According to the Cybercrime Act, 2015, Section 15(1), "Any person who, by means of a public communications network persistently sends a message or other matter that: (a) is grossly offensive or of an indecent, obscene or menacing character or causes any such message or matter to be so sent; or (b) he knows to be false, for the purpose of causing annoyance, inconvenience or needless anxiety to another or causes such a message to be sent; commits an offence under this Act and shall be liable on conviction to a fine of not less than N2,000,000.00 or imprisonment for a term of not less than one year or to both fine and imprisonment."

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the country dominated by the Igbo ethnic group. His radio broadcasts champion the campaign for an independent state of Biafra. Before he was released on April 28, 2017, Kanu spent close to two years in detention, and was slammed with a six-count charge, containing allegations of treasonable felony, maintaining an unlawful society and illegal possession of items, among others. The IPOB has no record of violence, and has never resorted to armed conflict or rebellion. Other Biafra activists detained together with Nnamdi Kanu continue to languish in prison custody.

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