

CHAPTER 13

EXPANDING CIVIC SPACE IN THE INTERESTS OF RIGHTS AND DEMOCRACY IN NIGERIA

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1 Introduction

Undoubtedly, the rights to freedom of assembly and of association play a determining role in the emergence and existence of effective democratic systems as it allows for the promotion of debates and plurality. As such, it is, in many respects, a barometer of the state of basic freedoms. The rights of freedom of assembly and of association are central to democracy. Without the enjoyment of these rights and freedoms, there cannot be democracy. Similarly, you can't have democracy without strong and vibrant CSOs.¹

Civicus² identifies three interrelated rights that undergird the work of civil society anywhere – the rights to freedom of association, freedom of peaceful assembly and freedom of expression.³ These rights frame the conversation around civic space.⁴ The restrictions on civil society work can be achieved only by limiting one or more of these rights.

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1 M Kai 'Foreword' to *Protecting democracy: Reclaiming civil society space in Africa* (2011) 6, file:///C:/Users/osiwa/Downloads/protecting%20democracy.pdf (accessed 14 August 2018).

2 Civicus is a global alliance of civil society organisations and activists dedicated to strengthening citizen action and civil society throughout the world. For more on the organisation, see <https://www.civicus.org/index.php/who-we-are/about-civicus> (accessed 14 August 2018).

3 See *Civicus Monitor*, <https://monitor.civicus.org/whatis-civicspace/> (accessed 14 August 2018).

4 Civicus describes civic space in terms of the 'right to speak out, organise and take action', <https://www.civicus.org/documents/reports-and-publications/reporting-civic-space/Reporting-Civic-Space-Infographic.pdf> (accessed 20 August 2018). Consequently, shrinking civic space entails restricting the capacity of civil society to speak, organise and act in their own or other interests.

Fundamental to guaranteeing these rights is the duty of the state to protect individuals and organisations that elect to exercise any of these rights, provided they do so within the limits of the law.⁵ The duty to protect is both a negative and positive one. States ought to do nothing that prevents civil society from enjoying the rights guaranteed under domestic and international law. In addition, they ought to take steps to prevent any violation of these rights, whether by state or non-state actors.

The growing trend of restricting the ability of civil society organisations to operate⁶ is now generally referred to as ‘closing civic space’.⁷ The tendency to shut down civic space, whether gradually or swiftly, is cause for concern particularly in states that otherwise are democratic and free. Unfortunately, this could get worse before it gets better.⁸

Civil society therefore is in a self-preservation mode in many countries. Closing civic space is an existential problem that has to be taken head-on or allowed to fester at our collective peril. In this context, it is critical to ask: Why do states restrict civic space? How are the restrictions operationalised? How are civil society organisations fighting back? What strategies might civil society in Nigeria adopt to keep the civic space open and vibrant? This chapter aims to find some answers to these questions.

2 Why states restrict the civic space

Stone⁹ points to the fear of civic activism and terrorism as two of the reasons why states restrict civic space.¹⁰ In the context of restriction of foreign funding, states have often pointed to the need to protect national sovereignty and security.¹¹ In addition, a team of researchers at the

5 *Civicus Monitor* (n 4).

6 *Civicus* estimates that 109 countries have closed, repressed or obstructed civic space by February 2018. See ‘State of Civil Society Report 2018 – Year in Review: Top ten trends’ (2018) 4, https://www.civicus.org/documents/reports-and-publications/SOCS/2018/socs-2018-overview_top-ten-trends.pdf (accessed 14 August 2018).

7 A Tiersky & E Renard ‘Closing space: Restriction on civil society around the world and US responses’ *Congressional Research Service*, 8 April 2016 1, <https://fas.org/sgp/crs/misc/R44458.pdf> (accessed 14 August 2018).

8 C Walker, M Plattner & L Diamond ‘Authoritarianism goes global’ *The American Interest* 28 March 2016. See also ‘A matter of political space’ *National Democratic Institute’s Civic Update* April 2016 2, <https://www.ndi.org/sites/default/files/Issue%2050%20A%20Matter%20of%20Political%20Space.pdf> (accessed 14 August 2018).

9 Immediate past president of Open Society Foundations.

10 C Stone ‘Why the space for civic engagement is shrinking’ *Open Society Foundations Voices* 21 December 2015, <https://www.opensocietyfoundations.org/voices/why-space-civic-engagement-shrinking> (accessed 16 August 2018).

11 When President Robert Mugabe of Zimbabwe introduced a Bill to ban foreign funding of NGOs in his country, he anchored his decision on the following premise: ‘We cannot allow them to be conduits or instruments of foreign interference in our national affairs.’ See ‘Rights groups must not be banned, says Amnesty’ *IRIN* 26 July 2004, <http://www.irinnews.org/news/2004/07/26/rights-groups-must-not-be-banned-says-amnesty> (accessed 16 August 2018). Prime Minister Viktor Orban made a similar argument in the context of Hungary’s Law on the Transparency of Organisations funded from abroad, which compels NGOs receiving more than €24 000 to register as ‘civic organisations funded from abroad’. See ‘Hungary: Plans to brand NGOs have sombre echoes of Russia’s “Foreign Agents Law”’ *Amnesty International*, 7 April 2017,

Global Governance Institute of University College, London have found that states tend to crack down on civil society organisations that act as 'informal auditors' by providing information to international human rights institutions and third parties on the human rights situation in their countries.¹² The identified reasons deserve further attention.

2.1 The fear of civic activism

The fear of civic activism is real – particularly in a context where civil society played a critical role in seeing off the military.¹³ Often, civic activism advances political action that challenges the *status quo*. It therefore is not surprising that governments and individuals who prefer to maintain the *status quo* will be uncomfortable allowing civil society to organise.

In the battle to push the military out of government in Nigeria, the year 1993 was a turning point. It was the year – after failed promises – that President Ibrahim Babangida agreed to conduct national elections to end his eight-year rule. Just when Nigerians thought the transition had been successfully concluded, Mr Babangida annulled the election described by many as the 'freest and fairest' elections Nigeria has conducted to date.¹⁴ Fortunately, Nigerian civil society rose to the challenge and called out fellow citizens to protest against tyranny.¹⁵ The protests did not end military rule but they forced the hands of the junta to hand over power to a hurriedly-assembled interim national government led by Chief Ernest Shonekan.

<https://www.amnesty.org/en/latest/news/2017/04/hungary-plan-to-brand-ngos-has-sombre-echoes-of-russias-foreign-agents-law/> (accessed 16 August 2018).

- 12 See KM Bakke, NJ Mitchell & H Smidt 'When states crack down on human rights defenders' *UCL Working Paper* (unpublished) presented on 9 May 2017 at the Workshop on State Restrictions on Civil Society and the Free Flow of Information hosted by the Global Governance Institute of University College, London, cited in J Kreienkamp 'Responding to the global crackdown on civil society' *Global Governance Institute Policy Brief*, September 2017 3–6, <https://www.ucl.ac.uk/global-governance/downloads/policybriefs/policy-brief-civil-society> (accessed 16 August 2018).
- 13 Falode makes the point that '[i]n the military era, CSGs (civil society groups) were a constant thorn in the sides of successive military administrations'. See AJ Falode 'Civil society groups (CSGs) and the democratisation process in Nigeria, 1960-2007' (2016) 71 *International Letters of Social and Humanistic Sciences* 14, https://www.ssoar.info/ssoar/bitstream/handle/document/55713/ssoar-ilshs-2016-71-falode-Civil_Society_Groups_CSGs_and.pdf?sequence=1 (accessed 20 August 2018).
- 14 *The Guardian* editorial team confirms that the 12 June 1993 election was 'adjudged the freest and fairest in the history of Nigeria'. See 'June 12, 1993: 25 years after' *The Guardian Editorial* 12 June 2018, <https://guardian.ng/opinion/june-12-1993-25-years-after/> (accessed 20 August 2018).
- 15 *AllAfrica.com* describes the civic mobilisation that attended the annulment in the following words: 'The cancellation galvanised disparate pressure groups, labour unions and ethnic organisations from all over Nigeria. From the south west to the south east; from the far north to the central region, protests spread across the entire nation, defying the usual ethnic divisions.' 'Nigeria: Eight years on: Memories of '93 election still burn bright' 13 June 2001, <https://allafrica.com/stories/200106130001.html> (accessed 20 August 2018).

Post-military era, civil society has also played a key role in resisting attempts to impose unfavourable policies on citizens. One example is the protests that attended the January 2012 removal of subsidy on Premium Motor Spirit (PMS) by President Goodluck Jonathan.¹⁶ A more recent example is the developing story in Imo State (South-East Nigeria) where the governor, Rochas Okorocha, has resolved to install his son-in-law as his successor in office.¹⁷ Expectedly, this has galvanised some elements within civil society to challenge the personalisation of public office. In response, the state government is using state apparatus to make organising against arbitrariness more difficult than necessary.¹⁸

As demonstrated above, government has come to recognise that civil society has the capacity to mobilise and organise. To undermine this capacity and therefore make it more difficult to be held accountable, government is deploying several tactics and strategies¹⁹ to shut down opposition – real and imagined.

2.2 The threat of terrorism

Terrorism is a real threat to national security in Nigeria.²⁰ Boko Haram has wreaked incalculable damage on the country's infrastructure and people.²¹ Nonetheless, using terrorism as an excuse to clamp down on civil society is akin to seeking a scapegoat to escape accountability for resources deployed to fighting terrorism. Given latter-day revelations about the mismanagement of resources earmarked for the fight against terrorism by

16 'Nigeria fuel price protests turn violent' *Aljazeera* 4 January 2012, <https://www.aljazeera.com/news/africa/2012/01/20121313585591893.html> (accessed 20 August 2018); C Oluocha 'Nigerian fuel price protests grow on second day' *Reuters* 10 January 2012, <https://www.reuters.com/article/ozatp-nigeria-strike-idAFJ0E80900A20120110> (accessed 20 August 2018).

17 A Uneze 'Okorocha's wife, son-in-law fingered in plot to impeach Imo Deputy Governor', <https://www.thisdaylive.com/index.php/2018/02/17/okorochas-wife-son-in-law-fingered-in-plot-to-impeach-imo-deputy-gov/> (accessed 24 August 2018).

18 At the time of writing, 112 women have been arrested and remanded in Owerri prisons (Imo State) for protesting against the disappearance of Nnamdi Kanu, leader of the proscribed Indigenous Peoples of Biafra (IPOB). See E Onyeji 'Over 100 IPOB women remanded after protests', <https://www.premiumtimesng.com/regional/ssouth-east/280945-over-100-ipob-women-remanded-after-protest.html> (accessed 24 August 2018). For more on the IPOB crackdown, see 'Nigeria: At least 150 pro-Biafra activists killed in chilling crackdown' *Amnesty International report*, 24 November 2016, <https://www.amnesty.org/en/latest/news/2016/11/peaceful-pro-biafra-activists-killed-in-chilling-crackdown/> (accessed 24 August 2018).

19 Including NGO laws restricting access to funding, prescribing periodic registration and criminalising non-profit work. Other strategies include establishing governmental NGOs that essentially act as mouth pieces for the government, thereby diluting the impact of NGO work.

20 G Mohammed & M Abdullahi 'Terrorism and national security issues in Nigeria' *University of Maiduguri paper*, <http://www.unimaid.edu.ng/oer/Journals-oer/Social/General/Paper%20C%204.pdf> (accessed 24 August 2018).

21 For a reflection on the impact of the Boko Haram insurgency and armed conflict in Nigeria, see M Omilusi 'The Multi-dimensional impact of insurgency and armed conflicts on Nigeria' (2016) 16 *Global Journal of Human-Social Science*, <https://socialscienceresearch.org/index.php/GJHSS/article/download/1781/1722/> (accessed 24 August 2018).

appointees of the executive and the apparent slow pace of action geared towards bringing them to justice,²² it does appear that government is not as keen to set an example with alleged corrupt officials as it would have us believe.

To be clear, participating in or supporting terrorism is a crime under Nigerian law²³ and there are clear provisions in the relevant laws as to punishment for these crimes.²⁴ So rather than speculate or make unproven allegations, the relevant authorities might wish to test the efficacy of the laws in a court - if only to demonstrate some commitment to the rule of law.

2.3 Protection of national security and sovereignty

This 'justification' for restricting civic space is particularly interesting because 'the interest of national security' could be an acceptable limitation on the right to freedom of association. Fortunately, there is some guidance as to the test to be applied in reaching a determination that this limitation has been clearly established. Article 22 of the International Covenant on Civil and Political Rights (ICCPR) provides:²⁵

No restriction may be placed on the exercise of this right (freedom of association with others) other than those which are prescribed by law and which are necessary in a democratic society in the interest of national security or public safety, public order, the protection of public health or morals or the protection of the rights or freedoms of others. This article shall not prevent the imposition of lawful restrictions on members of the armed forces and of the police in their exercise of this right.

This is similar to the provisions of section 45 of the 1999 Constitution.²⁶

22 Colonel Sambo Dasuki, former National Security Adviser, has been in detention awaiting conclusion of trial since 2015. Arrested and detained for allegedly embezzling \$2 billion earmarked for arms purchase during the administration of former President Goodluck Jonathan, Sambo's trial is yet to be concluded at the time of writing. See 'Nigeria's Dasuki arrested over \$2b arms fraud' *BBC News* 1 December 2015, <https://www.bbc.com/news/world-africa-34973872> (accessed 25 August 2018). Although the courts on several occasions have granted Dasuki bail, the federal government has refused to release him on bail. See I Nnochiri 'Breaking: Court orders FG to release ex NSA, Dasuki forthwith' *Vanguard* 2 July 2018, <https://www.vanguardngr.com/2018/07/breaking-court-orders-fg-release-ex-nsa-dasuki-forthwith/> (accessed 25 August 2018).

23 Sec 2(c) of the Terrorism (Prevention) (Amendment) Act 2013 lists acts and omissions considered offences within the framework of terrorism prevention. See <http://placng.org/wp/wp-content/uploads/2018/02/Terrorism-Prevention-Amendment-Act-2013.pdf> (accessed 25 August 2018).

24 Sec 2(c) prescribes punishment to a 'maximum of death sentence'.

25 Art 22 of the International Covenant on Civil and Political Rights, <https://www.ohchr.org/Documents/ProfessionalInterest/ccpr.pdf> (accessed 25 August 2018). Nigeria has ratified this international treaty and therefore is bound by its provisions.

26 Sec 45(1) provides: 'Nothing in sections 37, 38, 39, 40 and 41 of this Constitution shall invalidate any law that is reasonably justifiable in a democratic society (a) in the interest of defence, public safety, public order, public morality or public health or (b) for the purpose of protecting the rights and freedoms of other persons', <http://www.nigeria-law.org/ConstitutionOfTheFederalRepublicOfNigeria.htm> (accessed

Nonetheless, a generalised concern about protection of national security and sovereignty is a bit difficult to understand in a context such as Nigeria where, on the one hand, government relies on international aid to meet some of its obligations and, on the other, it seeks to limit access to international funding for civil society. Surely if international support could undermine national security and sovereignty with respect to civil society, it should also have the capacity to do same with respect to government. Besides, states such as Nigeria have taken leadership in overriding the national sovereignty exemption when other states, such as The Gambia, violated sub-regional norms.²⁷ Therefore, it makes sense to expect Nigeria to take steps to respect national, regional and international norms within its borders.

To avail anyone the defence of protection of national security and sovereignty has to be underpinned by good faith adherence to the rule of law rather than the whim of men. It is in this context that we find the statement of Nigeria's President Muhammadu Buhari at the opening of the 2018 conference of the Nigerian Bar Association rather disturbing. In the widely-circulated statement, Buhari suggested:²⁸

[The] rule of law must be subject to the supremacy of the nation's security and national interest. Our apex court has had cause to adopt a position on this issue in this regard and it is now a matter of judicial recognition that; where national security and public interest are threatened or there is a likelihood of their being threatened, the individual rights of those allegedly responsible must take second place, in favour of the greater good of society.

The statement is disturbing for two main reasons. The first relates to the meaning ascribed to the term 'rule of law', which appears to conflict with its conventional meaning. The United Nations (UN), for example, describes the term as a

principle of governance in which all persons, institutions and entities, public and private, including the state itself are accountable to laws that are publicly promulgated, equally enforced, and independently adjudicated, and which

- 25 August 2018).
- 27 ECOWAS Protocol A/SP1/12/01 on Democracy and Good Governance Supplementary to the Protocol Relating to the Mechanism for Conflict Prevention, Management, Resolution, Peacekeeping and Security prescribes 'zero tolerance for power obtained or maintained by unconstitutional means'. In line with this provision, Nigeria authorised the deployment of an 800-strong troop to join their Senegalese counterparts in invading The Gambia in the event that then President Yahyeh Jammeh did not leave office following his defeat at the 2016 general elections of that country. See O Ibe 'Saving The Gambia: Why ECOWAS must not relent in showing Jammeh the way out' *Pambazuka* 19 January 2017, <https://www.pambazuka.org/democracy-governance/saving-gambia-why-ecowas-must-not-relent-showing-jammeh-way-out> (accessed 25 August 2018). See also L Burke & C Freeman 'Gambia crisis: Everything you need to know about the battle to remove Yahya Jammeh' *The Telegraph* 20 January 2017, <https://www.telegraph.co.uk/news/2017/01/18/gambia-crisis-everything-need-know-battle-remove-president-yahya/> (accessed 25 August 2018).
- 28 'Address by his excellency, Muhammadu Buhari, President, Federal Republic of Nigeria at the Opening Ceremony of the 2018 Nigerian Bar Association Annual General Conference – Abuja, 26 August 2018', <http://www.nan.ng/news/buharis-address-at-2018-nba-annual-general-conference/> (accessed 27 August 2018).

are consistent with international human rights norms and standards. It requires, as well, measures to ensure adherence to the principles of supremacy of law, equality before the law, accountability to the law, separation of powers, participation in decision making, legal certainty, avoidance of arbitrariness and procedural and legal transparency.²⁹

The second reason is that the statement was made to an association which prides itself as ‘promoting the rule of law’.³⁰ Unfortunately, on this occasion the Bar Association failed to stand up for and promote the rule of law.³¹

2.4 Discouraging ‘informal auditors’

Several actors within civil society provide alternative views on the state of human rights within their spheres of influence to international human rights institutions and therefore provide the tools with which these international human rights institutions engage states in tough conversations about their obligations to citizens and the international community.

One clear example is the opportunity provided within the framework of the state reporting mechanism of the African Commission on Human and Peoples’ Rights (African Commission).³² Within that framework, states are required to report on steps taken to promote human and peoples’ rights in their territories biennially. While many states are in default of this obligation,³³ those that show up often have to answer difficult questions – some of which emanate from the work of civil society.

The state reporting mechanism and civil society statements sometimes

29 Report of the Secretary-General: The rule of law and transitional justice in conflict and post-conflict societies (S/2004/616), <https://www.un.org/ruleoflaw/what-is-the-rule-of-law/> (accessed 27 August 2018).

30 The motto of the Nigerian Bar Association is ‘promoting the rule of law’, <http://www.nigerianbar.org.ng/index.php/aboutus> (accessed 27 August 2018).

31 Odinkalu confirms this in his post-election article stated: ‘Fittingly, President Buhari chose Mr Mahmoud’s valedictory bar conference to underscore the irrelevance of the NBA he’d led, telling the lawyers gathered for the conference that the rule of law was subject to the President’s thumb. A bar that was neither new nor brave offered him enthusiastic applause instead of a telling off,’ C Odinkalu ‘The unravelling of the “brave new bar” – How the NBA elections were corrupted and rigged’ *The Cable* 28 August 2018, <https://www.thecable.ng/unraveling-brave-new-bar-nba-elections-corrupted-rigged> (accessed 28 August 2018).

32 The African Commission on Human and Peoples’ Rights was established by the Organisation of African Unity (predecessor to the African Union) pursuant to art 30 of the African Charter on Human and Peoples’ Rights to ‘promote human and peoples’ rights and ensure their protection in Africa’. See African Charter on Human and Peoples’ Rights, http://www.achpr.org/files/instruments/achpr/banjul_charter.pdf (accessed 25 August 2018).

33 Art 62 of the African Charter provides for the state reporting obligation. Of the 54 state parties to the African Charter, only 9 states (Angola, Botswana, Democratic Republic of Congo, Eritrea, Mauritania, Niger, Nigeria, Rwanda and Togo) are up to date with their reporting obligations. Nineteen states have one or two reports outstanding; 20 states have three or more reports outstanding and six (Comoros, Equatorial Guinea, Guinea Bissau, São Tomé and Príncipe, Somalia and South Sudan) have never submitted a report. For a full breakdown of states’ performance with respect to reporting obligations, see <http://www.achpr.org/states/> (accessed 25 August 2018).

trigger heated exchanges which a few states would rather avoid. Expectedly, this could breed bad blood between civil society and government and sometimes between government and its personnel. In one interesting example, Mr Bukhari Bello, former executive secretary of Nigeria's National Human Rights Commission, lost his job for deprecating African leaders seeking to elongate their terms in office.³⁴

The civil society and national governments' uneasy relationship replicates itself at other levels – sub-regionally (with the Economic Community of West African States) (ECOWAS) and globally (at the UN). Within the UN the Universal Periodic Review (UPR) mechanism³⁵ is an accountability framework that provides civil society an opportunity to evaluate the state of human rights. Although they do not necessarily have a voice during the formal review meeting, their reports form an integral part of the examination of state reports and could be referenced when reviewing states in the peer exchanges that characterise this mechanism.

3 Manifestations of restricting civic space in Nigeria

The restriction of civic space in Nigeria takes different forms. The more obvious manifestations of this phenomenon are the attempt to enact an NGO law; the restrictions on public protests, particularly by individuals and organisations perceived as not supportive of the government in power, and the crackdown on the media through harassment, threats of arrest or arrest, and so forth. The subtler manifestations include the establishment of pro-government NGOs (often referred to as governmental non-governmental organisations (GONGOs)). In this part we reflect on the more obvious manifestations. It is important to note that this list is non-exhaustive.

3.1 NGO Bill

In an earlier article³⁶ it was opined that Nigeria's NGO Bill³⁷ was designed to 'control rather than regulate NGOs'.³⁸ This conclusion is premised on several provisions of the Bill. In the first place, the Bill subjects

34 See 'Nigeria: Defending human rights: Not everywhere, not every right' *International Fact-Finding Mission Report*, FIDH/OMCT and Frontline, April 2010 17, http://www.omct.org/files/2010/05/20688/nigeria_mission_report.pdf (accessed August 2018).

35 For more on the *UN Universal Periodic Review*, see <https://www.ohchr.org/en/hrbodies/upr/pages/UPRMain.aspx> (accessed 25 August 2018).

36 S Ibe 'Reflections on Nigeria's NGO Bill' *The Sheet* 6 October 2017, <https://thesheet.ng/ts-columnist-reflections-on-nigerias-ngo-bill-stanley-ibe-read/> (accessed 25 August 2018).

37 Non-Governmental Organisations Regulatory Commission of Nigeria (Estd etc) Bill, 2016 (NGO Bill), https://media.premiumtimesng.com/wp-content/files/2017/09/watermarked_NGO-Bill-Copy.pdf (accessed 25 August 2017).

38 Ibe (n 36).

NGOs to a licensing regime that confers legal personality³⁹ contrary to the legal framework for NGOs, which makes these organisations legal persons upon registration. Second, it confers appellate jurisdiction on the Attorney-General of Nigeria⁴⁰ with respect to negative decisions on annual renewal of licences for NGOs. In an environment where the Attorney-General is appointed by the President⁴¹ and often beholden to the ruling party, it is easy to see how this power could be manipulated or abused for political gains. Third, and fundamentally, the Bill establishes a new commission⁴² to 'regulate' NGOs – raising fundamental questions about existing institutions, including the Corporate Affairs Commission⁴³ and what difference, if any, a new institution would make.

Writing on the capricious provisions of the NGO Bill, Odinkalu⁴⁴ calls attention to provisions requiring NGOs to submit reports of their funding sources and expenditure patterns to the Commission.⁴⁵ Significantly, the Bill expects NGOs to seek and receive approval from the Commission before spending their funds.⁴⁶ A failure to comply with this provision amounts to a crime under the Bill. Interestingly, no individual or organisation might proceed against the Commission without the authorisation of the Attorney-General of the Federation, who also hears final appeals made against the decision of the Commission.

The Bill also proposes a Voluntary Code of Conduct for NGOs⁴⁷ to be adopted by the first 100 NGOs to be licensed.⁴⁸ This is problematic in more ways than one. If it is voluntary, why is government interested in who produces it or how it is produced? The second problem relates to why the draftsmen think that a Nigeria National Council for Voluntary

39 Sec 13(5).

40 Sec 21(1).

41 F Okoye 'Nigeria's chief law officer: Political loyalty vs public interest' *Vanguard Law and Human Rights* 12 August 2010, <https://www.vanguardngr.com/2010/08/nigeria%E2%80%99s-chief-law-officer-political-loyalty-vs-public-interest/> (accessed 25 August 2018).

42 Entirely appointed by the President, the 19-member governing board of the Non-Governmental Organisations Regulatory Commission of Nigeria has a mandate to license NGOs for a two-year period subject to renewal. Fundamentally, no NGO can operate without a licence issued by the board of this Commission.

43 The Corporate Affairs Commission registers most NGOs under Part C of the Companies and Allied Matters Act. There are elaborate provisions on registration and regulation requirements from secs 590-612 of the Act. See <http://www.placng.org/lawsofnigeria/laws/C20.pdf> (accessed 25 August 2018).

44 C Odinkalu 'Nigeria's toxic NGO Bill' *Vanguard* 26 July 2017, <https://www.vanguardngr.com/2017/07/nigerias-toxic-ngo-regulation-bill/> (accessed 25 August 2018).

45 n 43.

46 Sec 25(1)(c) NGO Bill.

47 Sec 36(1).

48 Sec 38.

Agencies⁴⁹ is the appropriate platform to ‘operate’ this voluntary code.

Despite government’s best efforts, and thanks to the concerted challenge by civil society, the NGO Bill failed to garner the required votes to proceed to the next legislative process. Although the attempt failed, it is likely to be resurrected in another form, given that there are two complementary Bills⁵⁰ under consideration by the federal Parliament.

3.2 Protest restrictions

The poster child for government’s protest restrictions is the #BringBackOurGirls campaign. Following the abduction of 276 girls from a high school in Chibok, Borno State (North-East Nigeria) on 23 April 2014, a number of Nigerian activists, including former Education Minister and former World Bank Vice-President, Obiageli Ezekwesili, began a series of protests to draw attention to and demand the rescue of the girls by the Goodluck Jonathan government. At some point during the campaign, they resorted to using Abuja’s Unity Fountain for their daily ‘sit-outs’. They have similar outings in different parts of the country.⁵¹ Throughout the administration of Goodluck Jonathan, the group had unrestricted use of Unity Fountain. Indeed, in the first two years of Muhammadu Buhari, they could still use the facility. Regrettably, the current government decided to stop the activists from using the site for no legal reason.⁵² Incidentally, the crackdown on #BringBackOurGirls activists coincided with that on another movement #FreeElZarzaky.

The campaign to free Sheik Ibrahim El Zarzaky, leader of the Islamic Movement of Nigeria (IMN), began shortly after he was arrested and detained in December 2015 by the Nigerian government. IMN was alleged to have obstructed the convoy of the chief of army staff (head of Nigeria’s army) in Zaria, Kaduna State, leading to the exchange of

49 Sec 35(1).

50 The Nigeria Agency for Foreign Assistance Bill, 2015 aims to establish the Nigerian Agency for Foreign Assistance with the mandate to ‘manage and coordinate all foreign assistance in Nigeria’. The Improved Aid Effectiveness, Accountability and Cooperation for Donor Recipients Bill, 2016 provides a framework for ‘timely publication, transparent reporting, and disclosure by all donor and development partners of application of donor funds in Nigeria’. See ‘Civic Freedom Monitor: Nigeria. International Centre for Non-Profit Law’, <http://www.icnl.org/research/monitor/nigeria.html> (accessed 25 August 2018).

51 The campaign website <http://www.bringbackourgirls.ng/> suggests that the Abuja Unity Fountain family met daily until the police clampdown. There are weekly meetings in Ejigbo and Ikoyi (Lagos State) and Osogbo (Osun State).

52 On 13 April 2018 Mr Sadiq Bello, commissioner of police responsible for Abuja, told Premium Times that he had placed ‘an indefinite ban on daily sit-outs at Unity Fountain by pro-democracy and good governance advocates across Abuja’, suggesting that he considered the sit-outs and protests as constituting a ‘public nuisance’. Interestingly, the ban does not appear to affect pro-government protesters. See S Ogunidipe ‘Nigeria police go dictatorial, ban rallies at Unity Fountain; say activists constitute ‘nuisance’ *Premium Times* 13 April 2018, <https://www.premiumtimesng.com/news/headlines/264935-nigeria-police-go-dictatorial-ban-rallies-at-unity-fountain-say-activists-constitute-nuisance.html> (accessed 25 August 2018).

gunfire and a crackdown on the group, resulting in the death of over 300 IMN members.⁵³ Although there have been several court orders granting El-Zarzaky bail, at the time of writing he remains in detention.⁵⁴ When it appeared that their protests in Kaduna were not receiving the required attention, IMN members shifted to Abuja and naturally found a home at the Unity Fountain. Unfortunately, they were kicked out of the fountain on the same day as the #BringBackOurGirls movement.

A final example of restrictions on citizens' protests is the #ResumeorResign group – a campaign designed to compel President Buhari to return to Nigeria and resume his duties after several weeks of absence on alleged medical grounds – faced similar opposition from the Nigerian police force. On 7 August 2017 protesters led by popular musician and activist, Charly Boy, began occupying Unity Fountain to demand a return to duties or resignation on account of the President's 92 day-long absence from duties. They could only do this for one day. By 8 August 2017 a combined team of armed police officers forcibly dispersed the protesters.

3.3 Clampdown on the media

The media is critical to sustaining democracy and defending the rights of citizens anywhere in the world. In the struggle to enthrone democracy, several journalists suffered at the hands of the military junta.⁵⁵ At the dawn of democracy, the media may have heaved a sigh of relief. However, recent events suggest that the struggle is far from over. Journalists such as Tony

53 <https://www.premiumtimesng.com/news/headlines/264935-nigeria-police-go-dictatorial-ban-rallies-at-unity-fountain-say-activists-constitute-nuisance.html> (accessed 25 August 2018). E Okakwu 'Again, Shiites protest in Abuja, demand El-Zarzaky's release' *Premium Times* 16 July 2018, <https://www.premiumtimesng.com/news/top-news/276696-again-shiites-protest-in-abuja-demand-el-zakzakys-release.html> (accessed 25 August 2018).

54 C Asadu 'Shi'tes cry out: El-Zarzaky will go blind unless something drastic is done' *The Cable* 24 March 2018, <https://www.thecable.ng/el-zakzak-y-will-go-blind-except-something-drastic-done-shiites-cry> (accessed 25 August 2018).

55 Tunde Thompson and Nduka Irabor of *The Guardian* were jailed for publishing diplomatic postings too early. Dele Giwa, editor of *Newswatch*, died in an explosion shortly after receiving a parcel bomb in his home in Lagos. A few journalists – including Chirs Anyanwu and Kunle Ajibade – received long jail terms for allegedly participating in a coup. For a reflection on the struggles of journalists during the military era, see A Adeniyi 'Media, military and democratic struggles in Nigeria: Tensions and contentions' (2016) 47 *New Media and Mass Communications* 16.

Ezimakor,⁵⁶ Musa Kirshi,⁵⁷ Lekan Adetayo⁵⁸ and Samuel Ogundipe⁵⁹ have had unpleasant experiences with the state in the line of duty. In a rather extreme case, Jones Abiri was detained awaiting trial by the Department of State Services (DSS) for two years.⁶⁰

Media houses are not left out of the clampdown. In March 2018 a number of news platforms⁶¹ were barred from covering a presidential trip to Benue State for no legal reason. Restrictions on media freedom reflect a difficult environment for critical voices and reinforces the shrinking civic space.

4 Strategies for expanding the civic spaces

In this part we reflect on ideas that civil society could use to expand the civic space or, as framed in the alternative, to prevent further restrictions wherever possible. There are several possibilities but we are limited by

- 56 Tony is Abuja bureau chief of *Daily Independent*. In February 2018 he honored an invitation by the Department of State Services and was detained for seven days. He was released after a series of protests by the #ourmumudondo movement led by popular musician and activist, Charly Boy. See O Richards 'DSS releases Daily Independent's Abuja bureau chief, Tony Ezimakor' *The Guardian* 8 March 2018, <https://guardian.ng/news/dss-releases-daily-independents-abuja-bureau-chief-tony-ezimakor/> (accessed 27 August 2018).
- 57 Musa Abdullahi Krishi, House of Representatives correspondent of *Daily Trust* was arrested while on official duty in the National Assembly on 13 March 2018. He was allegedly driven to Kano State for interrogation over a paid advertisement in the newspaper. He was released on the same day. See A Abuh 'Police release detained Daily Trust reporter, Abdullahi Musa Krishi' *The Guardian* 14 March 2018, <https://guardian.ng/news/police-release-detained-daily-trust-reporter-abdullahi-musa-krishi/> (accessed 27 August 2018).
- 58 On 24 April 2017 Bashir Abubakar, President Muhammadu Buhari's chief security officer, expelled Lekan Adetayo, state house correspondent for *Punch* Newspapers, from the presidential villa for authoring two articles on the health status of the President. See S Tukur 'Villa expulsion: Punch newspapers demand apology from Buhari's CSO, Presidency' *Premium Times* 25 April 2017, <https://www.premiumtimesng.com/news/headlines/229596-villa-expulsion-punch-newspapers-demands-apology-buharis-cso-presidency.html> (accessed 27 August 2018).
- 59 Samuel Ogundipe, security correspondent with *Premium Times*, was detained at a police station in Abuja on 14 August, 2018 following his article on a leaked memo on the invasion of the National Assembly by officers of the Department of State Services (DSS). He was charged with stealing the memo but regained his freedom on 17 August 2018 after meeting bail conditions set by an Abuja magistrate's court. See A Owoseye 'Premium Times journalist, Samuel Ogundipe, granted bail, released' *Premium Times* 17 August 2018, <https://www.premiumtimesng.com/news/headlines/280538-breaking-premium-times-journalist-samuel-ogundipe-granted-bail-released.html> (accessed 27 August 2018).
- 60 In July 2016 officials of the Department of State Services arrested Jones Abiri, a journalist and publisher of *The Source Weekly* outside his office. He was detained without trial for two years. The DSS charged him with 'militancy' before an Abuja magistrate's court in July 2018. The court released him on bail on 15 August 2018. See E Okakwu 'Why SSS linked me to militants – Journalist Jones Abiri' *Premium Times* 24 August 2018, <https://www.premiumtimesng.com/news/headlines/280538-breaking-premium-times-journalist-samuel-ogundipe-granted-bail-released.html> (accessed 27 August 2018).
- 61 *New Telegraph*, *Punch*, *The Nation*, *ThisDay*, *Tribune* and *Vanguard* fall into this category. See J Charles 'Presidency bars Punch, others from covering Buhari's Benue visit'. *The Punch* 13 March 2018, <https://punchng.com/presidency-bars-punch-others-from-covering-buharis-benue-visit/> (accessed 27 August 2018).

space to consider only five, namely, litigation, legal empowerment, coalition building, research and documentation as well as accountability.

4.1 Litigation

President Buhari's recent statement on the primacy of national security over the rule of law⁶² dramatises the need to have a shared understanding of concepts. His policy statement helps to explain why certain state actors act in the way that they do.⁶³ Given the position he has taken, it is imperative to litigate the topic. A clear direction from the courts in the land will hopefully provide the required framework to engage on violations in the context of the preservation of national security. Beyond this question, there are other questions that demand judicial intervention. One is the quest by security forces and the police to extract 'sources' from journalists contrary to the ethics of that profession. Challenging this new method of interrogation could make the difference between journalists getting the right information from reliable sources and meeting dead-ends in their search for truth. Civil society might also wish to challenge arbitrary arrest of activists and journalists simply for doing their jobs.

4.2 Legal empowerment

Legal empowerment aims to make 'the protections of the law accessible to ordinary people'.⁶⁴ Given the sheer scale of the problem of shrinking civic space, it is necessary to take the message to people in their communities. The Imo state women who got arrested and detained⁶⁵ while trying to protest against the continued detention of their sons and wards in the context of the proscription of the Indigenous Peoples of Biafra (IPOB) ought to have recourse in community organising⁶⁶ for change. Training

62 n 29.

63 Eg, the Attorney-General of the Federation, Abubakar Malami, recently responded to questions about the government's apparent refusal to obey several court decisions releasing former national security adviser, Sambo Dasuki. In his words: 'So you have to look at it from this perspective. If the issue about an individual coincides with that which affects the people of a nation and you are now saying the government did not obey a court order that infringes on a single person's rights. Remember we are talking about a person who was instrumental to the deaths of over one hundred thousand people. Are you saying that the right of one person is more important than the rights of 100 000 who lost their lives?' See E Okakwu 'Why Nigerian government can't release Dasuki – Attorney-General Malami' *Premium Times* 19 July 2018, <https://www.premiumtimesng.com/news/headlines/277085-why-nigerian-govt-cant-release-dasuki-attorney-general-malami.html> (accessed 27 August 2018).

64 Open Society Justice Initiative and Public Health Programme 'What is legal empowerment', <https://www.opensocietyfoundations.org/projects/legal-empowerment/why-legal-empowerment> (accessed 27 August 2018).

65 n 19.

66 Community organisers describe community organising as 'the work of bringing people together to take action around their common concerns and overcome social injustice', <https://www.organisers.org.uk/what-community-organising> (accessed 27 August 2018).

and deploying community-based paralegals to their communities could help channel their energies into other activities that call their leaders to account for the prolonged detention of their children and wards. The community organising effort should not be perceived as an alternative to litigation challenging prolonged detention. Rather, it should be considered as complementary to litigation.

4.3 Coalition building

Litigation and legal empowerment cannot produce enduring results unless they incorporate a component on building strong coalitions of like-minded people. To return to the example of the Imo women, they might probably still remain in prison but for the effort of civil society activists, lawyers and journalists, who took appropriate steps within their spheres of influence to ensure the release of the women.⁶⁷ In the context of shrinking civic space, coalition building has got to be deliberate and carefully thought through. It is difficult to survive the onslaught in a shrinking civic space standing alone. Alongside coalition building, groups need to consider establishing support networks for practitioners who become victims of any of the manifestations of shrinking civic space.

4.4 Research and documentation

Understanding what exists in the field is critical to avoiding past mistakes and preparing for the future. It is now fairly clear that many states around the world are reading from the same play book on shrinking civic space. Therefore, it is important to document patterns and experiences from within and beyond Nigeria for posterity. Research is also necessary to test some assumptions. The idea that concepts are fairly settled may no longer be true in today's world, so it helps to challenge our assumptions and formulate new theories that conform with current realities.

4.5 Creating mechanisms for internal accountability

Civil society needs to take initiative with respect to keeping the civic space open. The idea that civil society has to be controlled by all means is somewhat premised on the partly true premise that there are no universally accepted standards for guiding the affairs of civil society practitioners. Rather than wait for government to issue policies, it might help for civil

67 Amnesty International in their response to the release of the women made the point that '[f]reedom for #Owerri women came thanks to resilience of many activists, civil society organisations and pro bono lawyers'. See 'IPOB: Court frees over 100 protesting women arrested by police in Imo' *Channels TV* 24 August 2018, <https://www.channelstv.com/2018/08/24/court-frees-114-women-arrested-by-police-in-imo/> (accessed 27 August 2018).

society in Nigeria to consider formulating a set of minimum standards.⁶⁸ This could begin with a discussion about the state of civil society and the need to prepare for a future that could become decidedly more difficult.

5 Conclusion

Although Nigerian civil society faces tough times ahead, it has the capacity to survive these. Experience from the military era confirms that strategy, partnerships, outreach and communications are essential tools of trade in challenging times. As civil society confronts a deepening atmosphere of restrictions, it needs to take heed to some of the suggestions offered in this chapter to stay afloat. Staying afloat is important not only for civil society but also for sustaining Nigeria's democratic experiment and, more importantly, promoting and protecting the rights and freedoms of ordinary Nigerians.

68 These standards could extend to complying with annual reporting obligations as required under the Companies and Allied Matters Act as well as mandatory audit.