

The Role Of The Public And The Media In Civil Court Proceedings In Nigeria

By Sunday Bontur Lugard*

INTRODUCTION

In a participatory democracy, the roles of the public, the media and the judiciary are key to democratic sustainability. The public determines the direction of governments through elections, public protests, and acting through pressure groups, shapes governments' policies. The media usually supplies the public with the information that forms the basis of the decision on whether to support the government (including the judiciary) or not, and it also, as a primary stakeholder, either directly influences the government with its reports or opinions on government policies and laws.

Furthermore, the public and the media are generally speaking gratuitous social Ombudsman over the activities of the judiciary. They check the excesses of the judiciary and publicize their opinions on their performance – the presence of the public and the media in court, for instance, serves as a check on the likelihood of biased trials or compromise on the part of the judicial officers concerned. This helps strengthen the system or entrench the concept of accountability in the dispensation of justice.

Recognizing the key role the public and media play in upholding open justice or public civil trials, the 1999 Constitution of the Federal Republic of Nigeria (as Amended)¹ provides in section 36(3) that in the determination of a person's civil rights and obligations, such a person shall be entitled to a fair hearing within a reasonable time by a court or other tribunal constituted so as to secure its independence and impartiality and which hearing shall be held in public. The 1999 Constitution further provides concerning the freedom of the press in section 22 that the "press, radio, television and other agencies of the mass media shall at all times be free to uphold the fundamental objectives contained in this Chapter and uphold the responsibility and accountability of the Government to the people." The freedom of the press is further fortified by section 39 of the constitution which permits the establishing of any press medium for the purpose of dissemination of information and opinion, including those related to judicial proceedings.

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1 Cap. C24, Laws of the Federation of Nigeria, 2004 (hereinafter referred to as the 1999 Constitution or the Constitution).

The independence of the judiciary², press freedom³ and the freedom of speech accorded the public⁴ by the 1999 constitution are conjunctive rights and freedoms, with corresponding duties on all “rights-holders”. There can be no independent judiciary without a corresponding free press and a public that is entitled to the right to freedom of speech. The purpose of this, if exploited in relation to the attainment of justice and accountability across board, would be to establish and sustain a system of checks on the excesses of public institutions, including the judiciary. The independence of the judiciary needs to be constantly kept in check so as to protect against all acts that would amount to travesty of justice. Public access to court trials and media report of judicial proceedings give a sense of confidence to the public on the prospect of free and fair trials, especially where such proceedings are reported in the mainstream media. The public access to civil judicial proceedings and media report of same serve as a check on the likelihood of biased trials on the part of the judicial officers. Undeniably, finding an acceptable balance among free press, fair trials, and the personality interests of trial participants is a difficult task in every legal system.⁵ The three check the activities of one another, *inter se*.

THE PUBLIC AND CIVIL JUDICIAL PROCEEDINGS

The role of the public as a gratuitous ombudsman in upholding the attainment of justice in civil trials is highly influenced by their opinion of the judicial officers and system as a whole, even as the judiciary in itself requires the public goodwill to operate. Justice Frankfurter of the United States of America in his dissenting opinion in *Baker v. Carr*⁶ once identifies the ultimate source of the Court’s influence thus: “The Court’s authority—possessed of neither the purse nor the sword—ultimately rests on sustained public confidence in its moral sanction”⁷. The court in its dispensation of justice must not be oblivious of the fact that they are unelected servants of the public. Their unelected tenure is intended to shield them from avoidable political influence and the need to be “uninterested adjudicators”.

Section 36(3) of the Constitution gives the public access to judicial proceedings generally, and section 39(1) of the Constitution freedom of speech. A community reading of these constitutional rights entails the empowerment of the public to witness judicial proceedings and to also air their opinions concerning such proceedings, so long as their opinions are within the province of the law. The Nigerian public is however not able to adequately perform this role due to ignorance and poverty, and the widespread perception of corruption or compromise on the part of the judicial officers or system. The civil society

2 See sections 6 and 17(1)(e) of the 1999 Constitution.

3 See sections 22 and 39 of the 1999 Constitution.

4 See section 39(1.).

5 Giorgio Resta, “Trying Cases in the Media: A Comparative Overview” (2008) 71(31) *Law and Contemporary Problems* 65.

6 369 U.S. 186 (1962.).

7 369 U.S. 186, 267; see also Powell 1990.

(through public interest litigation) has however, stepped in, in certain instances to perform this role, sometimes in collaboration with the media.

The Nigerian public's primarily duty as a social barometer for the assessment of the performance of the judiciary fosters the attainment of impartial decisions, and the public's perception in relation to the independence and impartiality of the judiciary goes a long way in determining the performance of its social role as witness to the dispensation of justice or ombudsman in judicial proceedings. The public's view of the judiciary in Nigeria shapes its opinion on the nature and outcome of civil trials, especially where a particular matter is between an ordinary citizen and private actors that wield profound political or economic clouts like international oil companies (IOCs) or the political class, and government agencies. For instance, in cases between the IOCs and their host communities that border on violation of environmental rights in the Niger Delta region of Nigeria, it has been established that the ordinary citizen's confidence in the judiciary's capacity to deliver justice has been eroded due to:

- a. legal technicalities that end in lengthy trials and unfavourable outcomes⁸;
- b. corruption by judicial officers and other stakeholders in the administration of civil justice system⁹.
- c. inadequate compensation regime, the penalty for petroleum pollution assessment system in Nigeria, in comparative terms, does not fall in line with the current global trend that mainstreams the internationalization of the cost of pollution based on the polluter pays principle¹⁰.
- d. narrow access to justice on environmental matters through the strict application of the principle of *locus standi*. The case of *Centre for Oil Pollution Watch v. Nigerian National Petroleum Corporation*¹¹ clearly demonstrates the literal interpretation of the concept of *locus standi* such that a concerned NGO lost out in its attempt to seek legal remedy on behalf of local communities which became victims of devastating incidences of oil pollution from the facilities of the government owned NNPC.
- e. The scientific basis for proof of environmental damage¹² and high cost of procuring scientific evidence and investigation reports, among others.

8 The case of *Shell Petroleum Development Company of Nigeria Limited v. Anaro* best captures this concern as it took over thirty years to determine the rights of the parties finally. The total damages of N30 million awarded the parties does not amount to much considering inflation and the cost of litigation.

9 Enofe, A. O., Ezeani, B.O., Eichie, O.M, (2015) 1(8) "Perceptions of Corruption in the Nigerian Judiciary" 86-87.

10 Lugard, SB, "Petroleum Pollution and the Environmental Rights Question in the Oil-Bearing States of Nigeria" (University of Jos doctoral thesis, 2018).

11 (Supra).

12 See Uwais, M., former chief Justice of Nigeria in his paper presented at the Global Judges Symposium on Sustainable Development and the Role of Law, titled "Recent Development in Nigeria Strengthening Legal and Institutional Framework for promoting Environmental Management", held in Johannesburg, South Africa, 18-20 August, 2002, cited in Ogbodo, S.G, The Role Of The

The result of this public disaffection with the judicial system in the country, especially in relation to environmental rights violations in the Niger Delta has resulted in the offshore outsourcing of legal remedies as it is evident in the below cases that were instituted in US, UK and the Netherlands concerning petroleum pollution in the Niger Delta: *Wiwa v. Royal Dutch Petroleum Co.*¹³, *Kiobel v. Royal Dutch Petroleum Co.*¹⁴, and the British High Court decision in *Emere Godwin Bebe Okpabi & Ors v. Royal Dutch Shell Plc & Anor*¹⁵. This sort of situation has made the public hold a negative view of the judicial system and hence lost interest in observing civil judicial proceedings except they are parties to a suit.

Unlike Nigeria, in jurisdictions like the United States of America, public opinion might sometimes influence the decisions of the judiciary on issues in the public domain, especially where their nomination or election is based on their political or ideological leanings. This is more eminent where some of the judges are elected. The situation in Nigeria is slightly different as public opinion does not influence, to a reasonable level, the decisions of judicial authorities concerning issues brought before them for determination. The public's negative view of judicial proceedings may border on the official mystification of its operations in order to obscure the prospect for justice, and corrupt practices by the judicial officers and court officials. This lack of confidence in the judicial system is mainly caused by corrupt judicial system, and to a great extent, by their lack of understanding of the workings of this third arm of government.

The sort of influence that the public has on judicial decisions in the US may not be so obviously found in Nigeria, especially in superior courts of records. A glaring example is the case of Attorney General of the Federation v. Attorney General of Abia State & 35 Ors¹⁶ where the Supreme Court gave its judgement endorsing "onshore/offshore" dichotomy on petroleum derivation revenue, despite public opinion to the contrary. It only took the intervention of the National Assembly which promulgated the Revenue Allocation (Abolition of Dichotomy in the Application of the Principle of Derivation) Act¹⁷ to reverse the policy directive set by the apex court in Nigeria on the non-entitlement of littoral oil producing states to 13% derivation revenue from oil drilled offshore their territories.

Nigerian Judiciary In The Environmental Protection Against Oil Pollution: Is It Active Enough? <<http://www.nigerianlawguru.com/articles/environmental%20law/THE%20ROLE%20OF%20THE%20NIGERIAN%20JUDICIARY%20IN%20THE%20ENVIRONMENTAL%20PROTECTION%20AGAINST%20OIL%20POLLUTION,%20IS%20IT%20ACTIVE%20ENOUGH.pdf>> accessed 7 March 2017.

13 226 F.3d 88 (2d Cir. 2000), cert. denied, 532 U.S. 941 cited in Fellmeth, A.X., "Wiwa v. Royal Dutch Petroleum Co.: A New Standard for the Enforcement of International Law in U.S. Courts?" (2002) 5(1) *Yale Human Rights and Development Journal* 241.

14 (2013) 133 S. Ct. 1659.

15 Case No: [2015] EWHC HT-2015-000241 & HT-2015-000430 <<http://www.leighday.co.uk/LeighDay/media/LeighDay/documents/Corporate%20accountability/Judgment-26-Jan-17-FINAL.pdf>> accessed 7 April 2017.

16 (2001) 11 NWLR 689.

17 Cap AS7, 2004.

The role of the public generally in civil judicial proceedings in Nigeria borders on checkmating and exposing acts of compromise and other excesses of judicial officers. This is usually undertaken in collaboration with civil societies, or done by such societies as the official representatives of public good or mores. Since the judiciary, as it was pointed out by Justice Franfurter, derives its authority from “sustained public confidence in its moral sanction”, knows it has the herculean duty of not just doing justice in all cases, but making sure that justice is seen to be done or else it continues to lose the confidence of the public that usually stands in its support against the dominant influence of the elected branches of government.

THE MEDIA AND CIVIL JUDICIAL PROCEEDINGS

The definition of the media used to be simple; it merely referred to what we term as the mainstream media today – the print and electronic media. However, the social disruption caused by the internet has led to the emergence of the “social media” as a more accessible source of information, education and entertainment, especially among the youth. This being the case, this work includes this variant of the media in considering the role of the media in civil proceedings in Nigeria.

The “New” Media and the Courts

In Nigeria, the media is much more involved in civil proceedings than the members of the public generally. The media is the most visible non-party stakeholder in civil trials in the country. They relate information to the public on goings-on concerning civil trials, sometimes real time information as the courts’ proceedings are on-going. Sahara Reporters, Premium Times, and The Cable, among others play this high premium social responsibility.

The social media is one medium for the proper reporting of judicial proceedings that the Nigerian court system has not fully exploited in order to reach the public with correct and easily appreciable information regarding civil trials and their outcomes or judgements. For instance, a survey by this writer found out that the Nigerian Supreme Court has no Twitter account, unlike other Supreme Courts of other countries like India, US, and Canada, among others. However, the Nigerian Court of Appeal has a Twitter Account (but with only 4 followers, this researcher became the fifth). It has no record of a tweet at all, much less a reply.). A couple of High Courts have Facebook accounts: the Federal High Court, High Court of the FCT, Plateau State High Court, etc. The problem however is with poor contents or the total lack of contents in these courts’ social media accounts. This means the social media is not being properly engaged by the Nigerian judicial system as a platform for the dissemination of credible information concerning ongoing trials in general and civil trials in particular. This is an opportunity that can be exploited for the betterment of public-judiciary relationship as it has been done in other climes like US and India. Already, there is a disconnect between the public’s idea of justice and courts’ version of same, as shown in

their judgements, hence the need to educate the public on their *modus operandi* and the basis for some of their key judgements.

The most important benefit of the social media is in promoting public understanding of the courts, which are “institution[s] that inevitably decide things in ways the public doesn’t like.”¹⁸ The public does not care to know the rationale for some of the court’s decision and how decisions are reached. Therefore, where the judgements of courts don’t fit their idea of justice, there is the assumption that the court system was compromised. The purposeful use of social media can help address some of these preconceived views of the judiciary as being corrupt and unlikely to grant “justice” to an underprivileged person as conceived in the open parlance.

The Mainstream Media and Judiciary

Rebecca Kourlis contends that a positive public view of the judiciary, including its civil proceedings, might “trickle up” impact on funding for the courts but more important, “a citizenry that believes in courts, believes the courts are fair and that anybody gets a fair shake who walks through the [courthouse] door.”¹⁹ A positive public view of the judiciary is key to gaining public support and confidence. The mainstream media plays a great role in furnishing the public with the information necessary for public perception on the judiciary and its civil proceedings.

The media performs the following roles:

- a. Gatekeepers of the free-way or toll-way to justice. Qualified privilege for reporting court proceedings exonerates them from any liability for defamation, hence empowers them to investigate judicial proceedings and report events that happen in court.
- b. Whistle blower: Public informant on goings-on in the courts and the system as it affects the judiciary and the public.
- c. Voice of the judiciary. Where the courts are not properly funded as evident in lack of modern tools like teleprompter, public address system, security of judges and litigants in and around the court premises, remuneration, courtroom structure, etc – for instance, it was reported in the mainstream print media that Imo State Government of Nigeria has not paid judicial officers for 16 months.²⁰ This drew public sympathy towards the judges and has the potential to ignite public action that could compel the executive to pay these judges.

18 The “New Media ” and the Courts: Journalists and Judges Consider Communications By and About Courts in the Internet Era (2009) Rehnquist Center, university of Arizona 10.

19 Ibid at 12.

20 Thisday Newspaper – 5 January 2018.

The importance of a proactive media in judicial proceedings

- a. Report (awareness about public rights and responsibilities)
- b. Enhances public confidence in the judicial system
- c. Accountability by the judicial system to the public.

In Nigeria, the courts don't allow the coverage of their trials on camera. The cameras usually cover the courtroom before the commencement of the trial. There is a bill before the National Assembly seeking to mandate the live coverage and video recording of judicial proceedings in the country as it is the case in South Africa, New Zealand, etc. This is long overdue as it makes judicial accountability even more visible to the public. Some judges nurse the fear that when their faces are easily recognizable in public, it might have implications for their personal safety. I think this assumption is unfounded as there isn't such level of vulnerability recorded in the climes where live coverage of judicial proceedings are permitted, and besides that, the security around them can always be enhanced.

Besides the constitutionally carved out duties for the public and the media regarding civil proceedings, there are also social and moral duties that they both play in upholding the independence judiciary, yet making accountability by this arm of government, especially in Nigeria necessary.

STRIKING A BALANCE BETWEEN PUBLIC PARTICIPATION, FREE PRESS; AND FAIR TRIAL IN THE ATTAINMENT OF JUSTICE IN CIVIL TRIALS

The media (press or the fourth estate of the realm) is a major stakeholder in any democratic society that promotes the rule of law and transparent governance. A free press is a sine qua non for the realization of just and fair judicial proceedings in a burgeoning democracy like Nigeria's. However, this must be balanced against the fair transmission or reportage of judicial proceedings in general, and civil proceedings in particular.

Two schools of thought address this concern: the partnership and restricted models.

The first model (partnership model) is based upon the idea that the free press and the unimpeded administration of justice are not per se conflicting ideals, but are rather mutually supportive.²¹ Legal reporting, in particular, is highly valued since it increases public confidence in the law and enhances deterrence of deviant behaviors, especially in criminal matters. Moreover, it is beneficial to democracy because it provides an external check on police, prosecutorial, and judicial authorities and guards against miscarriages of justice. Therefore, any interference with media freedom to access, report, and comment upon ongoing trials is prima facie unlawful. Almost completely banned are prior restraints, though the court may order limitations on the extrajudicial speech of trial participants. If an irresponsible piece of journalism results in prejudice to the proceedings, the legal system does not provide for a strong and effective set of sanctions against the parties responsible for the wrongdoing. Restrictive contempt of court laws are generally considered incompatible with

21 Eric Barendt, *Freedom of Speech* 312 (2005) 322-323.

the constitutional guarantee of free speech. Even defamation law is media friendly, making it difficult for affected parties to recover from media organizations for unfair or biased coverage. To sum up, this model grants wide immunity to the press and resorts only to procedural devices aimed at neutralizing the effect of prejudicial publicity. Among the most common are *voir dire*, special jury instructions, sequestration, postponement, change of venue, and reversal of conviction on appeal.²²

The restricted model focuses on the balance between the right to freedom of the press and the right to privacy and security. Restriction on press reportage of civil proceedings may be limited to a few circumstances, including:

- a. Evidence of witnesses in security-related trials where open trial may portend danger for national security or safety of a section of the society.
- b. The safety of witnesses, there may be imposed a restriction on coverage of certain proceedings.
- c. Trials of juveniles.
- d. Copyright issues and confidential information which are key to innovation and creativity in business, among others.

The role of the media has been hampered to an extent by issues bordering on sub judice and defamation trials.

Sub judice and contempt proceedings. *Sub judice*, a Latin expression referring to a matter being “[B]efore the court or judge for determination”. It means that when a legal matter or controversy has come under the jurisdiction of a court (*sub judice*), nobody, including the press and other media should interfere by publication or public clamor with the court’s proper handling of the proceeding.²³ The rule applies where court proceedings are ongoing, and through all stages of appeal until the matter is completed. It may also apply where court proceedings have not yet been started, but are imminent.²⁴

The *sub judice* rule restricts comments and disclosures pertaining to judicial proceedings to avoid prejudging the issue, influencing the court, or obstructing the administration of justice.²⁵

As highlighted in criminal cases, the *sub judice* rule prevents the possibility of undue influence that could prejudice the accused person’s constitutional right to a fair trial. The principal purpose of the *sub judice* rule is to preserve the impartiality of the judicial system by protecting it from undue influence by published materials or public clamor.

22 Giorgio Resta, “Trying Cases in the Media: A Comparative Overview” (2008) 71(31) *Law and Contemporary Problems* 35-36.

23 The Judicial Right To Know Act, S. 1357, 14th Cong., cited in THE SUB JUDICE RULE Rule 13.02.

24 Ibid.

25 Lejano vs. People, G.R. No. 176389 (December 14, 2010). Separate Opinion of J. Brion., cited *ibid*.

The rationale for the rule, to the Court, had been stated thus: –

*It is a traditional conviction of civilized society everywhere that courts and juries, in the decision of issues of fact and law should be immune from every extraneous influence; that facts should be decided upon evidence produced in court; and that the determination of such facts should be uninfluenced by bias, prejudice or sympathies.*²⁶

The Nigerian courts do not readily wield the big stick concerning contempt regarding inappropriate comments on matters that are considered *sub judice*.

RECOMMENDATIONS

- a. The judiciary should adopt a new public relations approach. They need to educate the public through the engagement of public relations officers who are lawyers or properly trained in the law who would simply court judgements for reporters, upload such simplified summary on their websites, etc. the public ignorance or misinformation on the nature and exercise of judicial powers in civil proceedings is not peculiar to Nigeria. The League of Women Voters' Zaida Arguedas said the public does not have enough information about the three branches of government, especially about state and local courts. It is "hard to assume we will have a knowledgeable citizenry that will be ready to defend the courts if they don't appreciate the value of the courts and what they have to defend."²⁷ They need to know that what the courts dispense is justice according to law. They only interpret laws made by the other organs of government. They only declare their actions or null and void through judicial reviews. If there are bad laws, they should be ascribed to the parliament and not the judiciary. They need to also know that most courts operate based on set precedents by higher courts. They do not have the powers to deviate from such established authorities.
- b. There should be a cut down in time spent in determining cases generally. Attempts have been made in the criminal justice sector, but much is still left undone regarding civil trials.
- c. There must be an intentional balancing act between the law concerning defamation (as a private legal remedy) and contempt of court *ex facie curae* (as a criminal law remedy) for publishing sensational or sensitive information that could prejudice the outcome of the trial.
- d. Similarly, court reporters should be trained on the basic law regarding defamation, and contempt of court for commenting excessively on issues that are *sub judice*. Alternatively, all reports of judicial proceeding and the like should be vetted by the in-house legal practitioners of the media organizations or their private solicitors.

²⁶ Ibid.

²⁷ John Basten, "Court and Media Relationships" National Judicial College, Beijing, Conference - 30 October to 4 November 2005 COURT AND MEDIA RELATIONSHIPS 12.

CONCLUSION

The public and the media play a great role in checkmating judicial proceedings in Nigeria with a view to guaranteeing free and fair judgements. The public sometimes plays this role through organized pressure groups in the form of NGOs. The NGOs, collaborating with the media are the key public watchmen in civil proceedings in the country. This noble role would be better undertaken if the media is permitted to carry out live broadcast of total coverage of civil judicial proceedings in the country as it is the case in other jurisdictions like South Africa, Australia, among other. The bill at the National Assembly with sets out to make it mandatory for willing media organizations to cover judicial proceedings in the country is therefore a welcome development.

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