

THE CIVIC SPACE
IN NIGERIA:
BEFORE AND
BEYOND COVID-19



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OCTOBER 2020

INTRODUCTION

In Nigeria, as is elsewhere in the world, the drivers of shrinking civic space are not static. They shift with the times. During the military regime, civil society organizations (CSOs) as well as vocal critics of government encountered heightened repression and brutality in the hands of the then ruling junta. The era was characterised by the indiscriminate arrests and incarceration of activists, the numerous incidents of extrajudicial killings—such as the state-ordered execution of Ken Saro Wiwa, or the assassination of democracy campaigner, Kudirat Abiola—or the enactment of plenteous decrees that ousted the constitution. These incidents, and many more, are sad reminders of those dark days when the country's civic space was completely closed.

The handover to democratically-elected civilian governments beginning from 1999 brought some respite, restoring the supremacy of the constitution and civic freedoms. Democracy, however, brought with it newer drivers and threats to the civic space. This time around, governmental restrictions on civic freedoms were reframed around the objective of protecting national security or national interest. The national security mantra gained more traction following the episodic skirmishes between regions and the rise of global terrorism, especially the onslaught of insurgent groups like Boko Haram in some parts of the country. Because this standard is subjective and gives state actors a wide discretion to determine what threatens national security, that discretionary power was often exercised arbitrarily in ways that narrowed the civic space.

More recently, the COVID-19 pandemic, is propelling another shift from national security to health emergency response, reconfiguring the fault lines of individual and state accountability. While it is generally agreed that coronavirus pandemic comes within the definition of a clear and present danger to public safety, entitling states to invoke derogation measures (which often restrict civil liberties) in order to avert further danger to the public, local and international monitors of the civic space have documented several incidents where repressive emergency measures have been adopted for reasons not related to containing the health crisis. This baseline report sheds some light on the historical trajectory of the Nigerian civic space, particularly before and post-COVID, highlighting the emerging constraints and disruptions to political systems, and their consequential effects on the spaces for civil society and democratic engagement in the country.

Governance History and Context of Nigeria

The area known as Nigeria, today, emerged in 1914, following Lord Frederick Lugard's amalgamation¹ of the numerous ancient civilizations in the southern and northern protectorates of Nigeria, for easy colonial administration. Last October 1², Nigeria marked the 60th anniversary of its political independence from the British colonial rule. The very first post-independence federal and regional elections of 1964 and 1965 respectively kicked off on a tumultuous note, punctuated by incidents of violence, ethnic rivalry, electoral malpractices and boycotts. A military coup in 1966 rudely interrupted that brief democratic experiment, paving the way for the culture of dialogue and compromise – which democracy represents – to disappear. In quick succession, the country witnessed coup after coup,³ dotted with very short intervals of democratic experimentation until May 1999.

In the 1960s, agriculture contributed about 70% of the Gross Domestic Product (GDP) and accounted for about 90% of foreign earnings and federal government revenue. The country produced and exported agroproduce ranging from cocoa, cotton, palm oil, palm kernel, groundnuts, and rubber. In the days of agrarian economy, the northern part of the country was

¹ Before the amalgamation, Nigeria became a British Protectorate in January 1901

² Nigeria gained independence on October 1, 1960.

³ There were coup de etats in 1975, 1976, 1983, 1985 and 1990

the leading hub of commercial agricultural production. The era of agricultural boom was short-lived in the 60s, and was brusquely replaced with crude oil in the mid-1970s. Nigeria suffered huge economic and social setbacks as a direct result of the militarization of governance. Agriculture, the mainstay of the national economy during the pre- and post-Independence era was abandoned following the oil boom of the 1970s and the enormous foreign exchange inflows that came with it. This occasioned over-dependence on oil exports while the non-oil sectors gradually slipped into extinction. Considering that the country was then still in its infancy, lacking administrative and self-governing capacities, the 1970s was primarily a period of mistakes, trial-and-error decision-making and learning-on-the-job opportunity for the political leadership. The country paid a price for this.

With a land mass of 923, 768 square kilometres and a population of more than 200 million people, Nigeria is abundantly endowed with natural resources which include reserves of crude oil and natural gas, coal, tar sands and renewable energy resources such as hydro, fuelwood, solar, wind and biomass. Following the discovery of crude oil in commercial quantities in 1956, and the commencement of oil production in 1958, oil has continued to play a major role in Nigerian economy. The production of low sulphur content, light crude oils - Antan Blend, Bonny Light, Bonny Medium, Brass Blend, Escravos Light, Forcados Blend, IMA, Odudu Blend, Pennington Light, Qua-Iboe Light and Ukpokiti⁴ make up to 85 percent of the Nigerian government's revenue and 96% of the country's export earnings.⁵ Along with the economic benefits from robust oil production also came three major problematic issues: environmental degradation, financial mismanagement, resource control politics, opening the doors to recurrent social conflicts. The impact of oil production on the environment is one of the most explosive sources of conflict in Nigeria.

Nigeria is a multicultural nation with more than 250 ethnic groups and languages. Christianity, Islam and traditional worship are the three predominant religions, with a higher concentration of Christians in the South and Muslims in the north. The plurality of cultures and religions that exists in Nigeria is so seamlessly woven into the national political and social topography to the extent that Nigerians officially identify themselves first, by their ethnic groups; secondly, by their state of origin before affirming their Nigerian nationality as a third-level form of identification. Constitutional⁶, legislative and public policy provisions legitimize this three-way identity regime initially designed to protect ethnic minorities from the threat of extinction and also prevent the predominance of persons from specific ethnic groups in political office representation. As with most multicultural societies, the country's heterogeneous trait remains both a considerable asset on one hand, and on the other, a source of persistent tension among the constituent groups. Nigeria's history is replete with episodic skirmishes and fractured relationships, strained along ethnic, cultural and religious lines. Some of the conflicts have antecedents in old animosities, but many were resource-driven, spurred by perceptions of unequal distribution of government resources.⁷

Despite having a federal structure, the constituent units lack total control of the use and management of natural resources in their domain. Instead, benefits from natural resources are centrally-controlled, and shared among states in accordance with a statutorily-defined allocation formula. The 1960 and 1963 Constitutions granted fiscal autonomy to the constituent units, but

⁴ <http://www.nnpcgroup.com/>

⁵ United States Energy Information Administration (EIA), 2013

⁶ Section 14(3) of the 1999 Constitution states that the composition of the government of the federation or any of its agencies shall be carried out in such a manner as to reflect the federal character of Nigeria; Section 147 (3) provides for indigeneity status of citizens, and as a criterion for appointing ministers into the federal cabinet.

⁷ Dr. Kayode Fayemi; Resurgent Regionalism and Democratic Development in Western Nigeria: Challenges and Prospects; 2011

this was reversed in 1966, and has remained so, till this day. Accordingly, the control and distribution of natural resource benefits has continually fanned the flames of political crisis in Nigeria. Although multinational giants such as Shell, Chevron, Mobil, Elf, Agip and Texaco, among others, have successfully effected exploration and exploitation of the Niger Delta region's wealth of natural resources for several decades, the oil-rich region remains one of the poorest and least-developed parts of the country. For the man in the Niger Delta where Nigeria's oil wealth is sourced from, the current resource-sharing arrangement is widely viewed as inequitable and inconsistent with all known rules of natural justice and good conscience. These perceptions, in no small measure add to the list of threats undermining the civic space and hindering the achievement of peaceful coexistence in Nigeria. The activities of militant and resistance movements challenging the oppressive levels of poverty and environmental degradation in the region continue to provoke tensions and contentious political debates about resource control as well as a new formula for allocating resources.

Nigerian Legal System

Nigeria's 1999 Constitution sits at the apex of all the laws in Nigeria, and to that extent, any federal, state or customary law that contravenes constitutional provisions shall be voided. Comparable to the United States, Nigeria operates federal and state legal systems. The 36 states, including the Federal Capital Territory (FCT) Abuja, make up the Nigerian federation. Legislative powers shared between federal and state governments confer authority on the federal legislature to make laws that apply throughout the entire federation while the states' houses of assemblies can make laws that apply in their respective states.

In other words, special courts (called the Federal High Court) established to enforce federal laws exercise jurisdiction throughout the entire country on a number of enumerated issues.¹ The Constitution empowers every state to establish its own sets of laws and courts to interpret and enforce them. Customary laws—such as the Sharia laws and a host of native customs—also apply in different localities with the country. Customary laws vary from place to place, especially among ethnic groups. Special courts called “Area Courts” in northern Nigeria, and “Customary Courts” in Southern Nigeria, established pursuant to the various state edicts, are empowered to administer them in accordance with the contextual peculiarities of each locality. Appeals against the decision of the customary courts lie to the Customary Courts of Appeal of various states. These federal, state and customary laws make up Nigeria's legal system.

Supreme judicial powers are vested in the appellate courts strategically spread across the six (6) geo-political zones and on the Supreme Court. Parties aggrieved by the judicial determinations at the various states' and federal courts can appeal against or approach the appellate courts for a judicial review. Except the appellate courts set aside their own decisions, or overrule themselves, their decisions, especially that of the Supreme Court are final. Consistent with the legal doctrine of stare decisis, the decisions of these higher courts bind all lower courts.

The Civic Space: Definitions and Scope Under Nigerian Law

The term, “civic space” is often used to describe those human rights which facilitate the ability of individuals and groups to participate in the polity and governance of their country. As an author explained, the civic space (that is the freedom and means to speak, access information, associate, organise, and participate in public decision-making) is essential to the healthy functioning and development of any society and is considered a precondition for accountable

governance and social justice.⁸ From this definition, it can be inferred that certain constitutionally-protected rights enable a free civic space, and those sets of rights are equally implicated when the civic space is repressed, obstructed or closed. Principal among these are rights to access information, the rights to free expression, assembly and association.

These afore-mentioned freedoms are interconnected, and fully enshrined in Chapter IV of the Nigerian 1999 Constitution (as amended). They are so interconnected that the deprivation of one is often a trigger for the violation of the other rights. Precisely because of the interconnectedness of these constitutional guarantees, they bring the civic space to life by facilitating engagement among citizens themselves and between citizens and the government. In effect, every citizen is a recognized participant in the civic space arena and can play a role in the political, economic and social life of the country. (SPACES FOR CHANGE [S4C]: 2020)⁹. The freedom of expression (protected under Section 39(1) of the 1999 Constitution of Nigeria) guarantees the right of citizens to air their views, engage in dialogues and also express dissent on any issue through any communication channel of choice. The right to access information and press freedoms are concomitant to this right. Closely intertwined with the freedom of expression are the association and assembly freedoms (Section 40 of the 1999 Constitution) which permit citizens to form and belong to any group for the propagation of their thoughts and ideas, or belong to any political party of choice, hold and disseminate political ideologies. Civic spaces are impacted when limitations are placed on citizen's rights, constraining their ability to organize, speak and assemble freely, making interaction between themselves and with other state and non-state actors difficult.

THE NIGERIAN CIVIC SPACE: LONG BEFORE COVID-19 EMERGED

Beginning from 2015 when Nigeria witnessed another democratic changeover in its political leadership, the civic space has been shrinking so rapidly, engendering a climate of fear and uncertainty in the country. (OHAERI V.I: 2017).¹⁰ As of August 2020, the database of closing civic spaces in Nigeria—www.closingspaces.org—recorded 252 incidents of crackdowns on the civic space, with the primary targets being dissenting voices, vocal critics of government, protesters, journalists, bloggers and human rights defenders challenging impunity, official corruption and human rights abuses. In particular, Dadiyata, Agba Jalingo, IG Wala, Omoyele Sowore, James Abiri, Ambrose Nwaogwugwu, Audu Maikori and many others have been arrested, forcedly kidnapped, detained, slammed with phantom charges, prosecuted and/or imprisoned. One year after, the whereabouts of popular social critic, Mr Idris, popularly known as Dadiyata,¹¹ is still unknown after he was abducted by unidentified assailants who seized him from his residence in Barnawa neighbourhood of Kaduna State.

Consistent with the increasing contraction of the spaces for civic action, Nigeria scored 36.5 score in the press freedom index for 2019, a significant decline from its 49.8 score in 2007. (Nigeria - Press Freedom Index: 2019).¹² That same year, Nigeria ranked 120 out of 180 countries reviewed

⁸ Carmen Malena, Transparency & Accountability Initiative, **Improving the Measurement of Civic Space**, 2015, <https://www.transparency-initiative.org/archive/wp-content/uploads/2015/05/TAI-Civic-Space-Study-v13-FINAL.pdf>

⁹ SPACES FOR CHANGE, **Database of Closing Civic Spaces in Nigeria: An Independent Review**, August 2020. Please see <https://spacesforchange.org/database-on-closing-civic-spaces-in-nigeria-an-independent-review/>

¹⁰ Victoria Ibezim-Ohaeri, **Confronting Closing Civic Spaces in Nigeria**, Issue 26, SUR International Journal on Human Rights, September 2017: page 1; <https://sur.conectas.org/en/confronting-closing-civic-spaces-in-nigeria/>

¹¹ Closing Spaces Database, **Allegedly Kidnapped for Talking Too Much: Nearly a Year After, Nigerian Authorities 'Unaware' of Abducted Critic, Dadiyata's Whereabouts**: <https://closingspaces.org/incident/dadiyata-nearly-a-year-after-nigerian-authorities-unaware-of-abducted-critics-whereabouts/>

¹² Nigeria - Press Freedom Index 2019

for press freedom, another dip from its 111 out of 180 ranking in 2015. Likewise, CIVICUS downgraded Nigeria from ‘obstructed’ to ‘repressed’ in its *People Power Under Attack* 2019 report.¹³ The compilation of evidence presented by the local and international civic space trackers such as the Closing Spaces Database, the Press Freedom Index and the Civicus Monitor, all point to rapidly backsliding civic freedoms in the country.

Under the military rule, journalists and activists were the major targets of government crackdowns. Advancements in digital technology have widened the umbrella of activism, allowing new entrants like bloggers, media influencers, freelance writers, including ordinary citizens to have greater access to online and offline spaces for civic action. Consequently, the internet and social media easily handed citizens a limitless tool for expression and democratic participation, expanding the civic space beyond the traditional media outlets, the streets and town halls. On the other hand, the ever-expanding spaces for citizen-state engagement also widened the dragnet of targets of governmental crackdowns. As digital technology is expanding the frontiers of civic action, so also has the scope of government restrictions widened, extending its claws to the new entrants whose actions make governments uncomfortable and subject them to greater scrutiny. [S4C:2020].¹⁴

- The nature of governmental restrictions

A study categorised governmental restrictions into three, namely: (1) restrictive legislations, (2) overbroad application of existing laws and (3) non-legal restrictions taking the form of shaming, negative labelling and including the outright proscription of the activities of targeted groups.¹⁵ The categories are not exhaustive, but have been rehashed because of the sharp distinctions drawn between the drivers and impacts of civic space contractions, shining a bright light on how unacceptable these restrictions are.

- *Restrictive legislations*

Since 2014, a tidal wave of legislations containing provisions that have enormous potential to shrink the civic space have been introduced in Nigeria’s state and federal legislatures. Notable among them are the Non-Governmental Organizations Regulatory Bill (NGO Bill),¹⁶ the Protection from Internet Falsehood and Manipulation Bill 2019¹⁷ (also known as the Social Media Bill) and National Commission for the Prohibition of Hate Speeches Bill 2019¹⁸—popularly known as the Hate Speech and Social Media Bills. The Social Media Bill sponsored by Senator Mohammed Sani seeks to prohibit the digital transmission of false statements and empowered law enforcement departments (the Nigerian Police Force) to order the internet service provider to disable access to users in the online location that false communication emanated from. Likewise, the Hate Speech sponsored by Senator Aliyu Sabi Abdullahi criminalized various form of expressions that could stir up ethnic hatred and equally make it possible to sentence to death by

¹³ CIVICUS, *People Power Under Attack*, December 2019. Please see <https://civicus.contentfiles.net/media/assets/file/GlobalReport2019.pdf>

¹⁴ SPACES FOR CHANGE, August 2020, *ibid*.

¹⁵ ¹⁵ Victoria Ibezim-Ohaeri, *Confronting Closing Civic Spaces in Nigeria*, Issue 26, SUR International Journal on Human Rights, September 2017: page 7; <https://sur.conectas.org/en/confronting-closing-civic-spaces-in-nigeria/>

¹⁶ SPACES FOR CHANGE: Legal analysis of the **Proposed Act to Establish the Civil Society Regulatory Commission and for Connected Purposes** <https://closingspaces.org/ngobill3-legal-analysis-of-the-proposed-act-to-establish-the-civil-society-regulatory-commission-and-for-connected-purposes/>

¹⁷ SPACES FOR CHANGE: Legal analysis of the **Proposed Protection from Internet Falsehoods, Manipulations and Other Related Matters Bill, 2019**: <https://closingspaces.org/legal-analysis-of-the-proposed-protection-from-internet-falsehoods-manipulations-and-other-related-matters-bill-2019/>

¹⁸ SPACES FOR CHANGE: **Factsheet: Everything You Need To Know About The Hate Speech Bill**, <https://closingspaces.org/factsheet-everything-you-need-to-know-about-the-hate-speech-bill/>

hanging anybody convicted of spreading hate speech. Following the tradition of other NGO-targeted legislative proposals, the Civil Society Regulatory Commission Bill 2020 gives 'incidental powers' to the Corporate Affairs Commission to do anything which is calculated to facilitate the performance of the Commission's functions and general duties, including without prejudice, direct specified action to be taken or direct application of a civil society's property.

At the state level, the State Houses of Assembly of the six North-east states of Adamawa, Bauchi, Borno, Yobe, Gombe and Taraba introduced a bill in November 2019, to regulate and coordinate the activities of non-governmental organisations (NGOs) in the Boko Haram-ravaged region of the country.¹⁹ Though not yet passed into law, the above draft statutes generated heated discontent across the polity, sparking protests by civil society movements determined to block their passage. The bills were resisted not only because of their inconsistency with local and international laws protecting the freedom of speech and association but also because of their potential to suppress free communication of views and limit the capability of citizens and organizations to challenge overreaching state behaviour.

Whilst the real motives driving the government's impulse to fashion restrictive regulations are certainly not disclosed, it is clear that restrictive legislations principally seek to curtail organized assemblies and dissenting voices that challenge the status quo. Since non-profit organizations (NPOs), especially the non-governmental organisations (NGOs) often take the lead in initiating and coordinating varying forms of organized dissent, that probably explains the increasing use of legislative measures to target, suppress and/or limit their activities. Particularly significant to the civil society sector are legal regimes enforced in furtherance of anti-money (AML) laundering and countering financing of terrorism (CFT) measures. AML and CFT measures derive inspiration from international financial regulations like the Financial Action Task Force ("FATF"). The Money Laundering (Prohibition) Act 2011, the Terrorism (Prevention) Act No. 10, 2011 as amended, the Special Control Unit against Money Laundering ("SCUML") Regulations 2013 and 2016, and the Central Bank of Nigeria AML/CFT Guidelines 2013 are some of the major national legislations enacted in response to FATF promptings.

Domestic efforts to comply with international standards like the FATF may have opened the door for human rights abuses, by providing governments with security-based grounds to crush dissent and impose restrictions on civil society.²⁰ Along this line, state actors have occasionally quoted AML and CFT refrains in their altercations with local and international NGOs. AML/CFT buzzwords have also been advanced to support the closure of humanitarian organizations after linking their operations with terrorism. For instance, Action Against Hunger's main offices in Borno and Yobe States²¹, north-eastern Nigeria was closed on September 18, 2019, following an accusation of "aiding and abetting" Boko Haram, a terrorist organization. The National Risk Assessment (NRA) (completed in 2016) identified Designated Non-Financial Businesses and Institutions (DNFIs), of which NPOs are a subset, as being amongst those sectors most vulnerable to money laundering (ML) and terrorist financing (TF). This postulation strives to lay the foundation for the imposition of stringent regulatory controls on the activities of NPOs. Despite the surging restrictions, so few national level activists and organizations are aware of the FATF,

¹⁹ See Borno State Agency for Coordination of Sustainable Development and Humanitarian Response Bill

²⁰ See Closing Spaces Database: AML/CFT category, <https://closingspaces.org/category/anti-money-laundering-counter-financing-of-terrorism/>

²¹ Action Against Hunger, **Nigeria: Following Forced Closure Of Offices in Borno and Yobe States, Action Against Hunger Strongly Rejects Accusations of Supporting Terrorist Groups**: <https://www.actionagainsthunger.org/story/nigeria-borno-yobe-action-against-hunger-strongly-rejects-accusations-of-supporting-terrorist-groups>

let alone know how compliance or instrumentalization of FATF by states fosters over-regulation, whether unintentional or spurious. (OHAERI V.I:2020).²²

- *Overbroad application of existing laws*

Under the second category, certain state and federal laws have been applied so broadly beyond the original intendment of the law in order to justify crackdowns on civil society or to suppress criticisms directed against those in power. (OHAERI V.I: 2017).²³ Here, existing laws are interpreted and enforced in a manner that casts the net so wide to catch all possible offenders of serious and not-so-serious misdemeanours. For instance, Nigeria's 2015 Cybercrime Law was enacted to create a legal, regulatory and institutional framework for improving cybersecurity and to ensure the protection of the critical national information infrastructure. State officials invoked this law to legitimize the arrests of Abubakar Sidiq Usman²⁴ and Musa Babale Azare in 2016. More recently, Joseph Odok²⁵, Ambrose Nwaogwugwu²⁶ and Emperor Ogbonna²⁷ were charged with terrorism on account of Facebook posts that were critical of state executives. In all of these cases, state prosecutors relied on the provisions of the Cybercrimes (Prohibition etc.) Act of 2015.

Overwhelming evidence from the Closing Spaces Database shows that bloggers and active citizens are the primary targets of the overbroad application of existing regulations. A lot of the charges of terrorism and cyberstalking brought pursuant to the federal cybercrimes legislation are linked to commentary posted on social media. With astonishing consistency, the Department of State Security (DSS) is the chief state actor using the cybercrime law as a weapon to facilitate the arrest and prosecution of vocal critics, bloggers and social media commentators. The growing body of evidence linking social media commentary and state persecution corroborates Closing Spaces Database' analytics which found that the freedom of expression—comprising press freedom (63 incidents) and the freedom of speech (53 incidents)—bear the highest share of repressive activities in the Nigerian civic environment (SPACES FOR CHANGE [S4C]: 2020).²⁸ The increasing use of the cybercrime law as a weapon to target critics is a plausible pointer to the actual motivation for the unrelenting official attempts to introduce legislations that have such sweep to regulate the social media and civil society groups.

²² Victoria Ibezim-Ohaeri, **FATF and Civic Space: Lessons from Nigeria**, NPO Coalition on FATF, July 2020:

<https://fatfplatform.org/stories/fatf-and-civic-space-lessons-from-nigeria/>

²³ Victoria Ibezim-Ohaeri, **Confronting Closing Civic Spaces in Nigeria**, Issue 26, SUR International Journal on Human Rights, September 2017: page 1; <https://sur.conectas.org/en/confronting-closing-civic-spaces-in-nigeria/>

²⁴ BBC: **Nigeria Anger Over Blogger Abubakar Sidiq Usman's Arrest**, 9 August 2016,

<https://www.bbc.com/news/world-africa-37024062>

²⁵ Closing Spaces Database, **Nigerian Lawyer Slammed with Terrorism Charges for Criticising State Governor**, Please see: <https://closingspaces.org/incident/nigerian-lawyer-slammed-with-terrorism-charges-for-criticising-state-governor/>

²⁶ Closing Spaces Database, **At Last, PDP New Media DG, Nwaogwugwu Granted Bail In High Court**,

<https://closingspaces.org/incident/at-last-pdp-new-media-dg-nwaogwugwu-granted-bail-in-high-court/>

²⁷ TV360: **70 Days in Custody; The Case of Emperor Ogbonna**, <https://www.youtube.com/watch?v=-7A1hPYzCOY&feature=youtu.be>

²⁸ SPACES FOR CHANGE, **Database of Closing Civic Spaces in Nigeria: An Independent Review, August 2020**. Please see <https://spacesforchange.org/database-on-closing-civic-spaces-in-nigeria-an-independent-review/>

- *Non-legal restrictions*

This category of restrictions usually takes the form of shaming, negative labelling and including the outright proscription of the activities of targeted activists and groups. In July 2019, a federal court granted the government's request to proscribe the Islamic Movement of Nigeria (IMN) and label them a "terrorist" organisation.²⁹ IMN members have continued to protest the prolonged incarceration of their leader since 2015 despite several court orders for his release. In the same vein, the government proscribed the non-violent secessionist campaigns of the Indigenous People of Biafra, IPOB. Hundreds of their members have been allegedly killed by security forces and their leader, Nnamdi Kanu, forced into exile. The proscription of the Indigenous People of Biafra and the Islamic Movement of Nigeria as terrorist organizations underscores the governments revulsion toward organized dissent powered by religious and ethnic inclinations. Proscribing the activities of these groups for the most part, lays the foundation for plastering terrorist labels on them, thereby emboldening state actors to clamp down harder on their activities.

Negative rhetoric has also been used to stifle political opposition, stigmatise activists and to smear sections of civil society. For instance, the Closing Spaces Database records 16 incidents of perceived politically-motivated attacks and prosecutions on opposition politicians (and their family members and allies), underscoring how political differences have become another driver of closing civic space in Nigeria. The Nigerian government arraigned popular politician, social critic and member of the opposition political party, Dino Melaye, twelve times in one year for a number of offences ranging from murder, corruption, and for some other unclear reasons. Similarly, myriad of objections have trailed the recent amendment of the Companies and Allied Matters Act, CAMA. Christian leaders and other vocal critics of the amended legislation have been accused of being corrupt and fearing accountability.³⁰ Attacks of this nature unleashed on opposition political leaders and civil society actors have the effect of delegitimizing their agitations for good governance, mobilizing public hatred toward them or to increase their vulnerability to stigma and ridicule. Another consequence is declining public trust and confidence in that person so labelled, and by implication, the civil society as a whole.³¹

COVID-19 AND THE CIVIC SPACE IN NIGERIA

No country in the world expected the pandemic and the resulting health crisis. The sudden outbreak of the scourge forced countries, including Nigeria, to take charge and make difficult choices to contain disease spread. Emergency regulations were hurriedly passed across Nigerian states and at the federal level which severely limited certain rights and freedoms. Lagos State, for instance, enacted the Lagos State Infectious Diseases (Emergency Prevention) Regulations 2020 on the 27th day of March 2020, while the Federal Government passed the COVID-19 Regulations 2020 three days later. Calls for the repeal of the outdated legislations like the Federal Quarantine Act culminated in the introduction of two proposed federal statutes sharing substantially similar provisions, called National Emergency Health Bill, and the Control of Infectious Diseases Bill. Although the two bills aim to enlarge governmental powers to manage and control the spread of infectious diseases like COVID-19, the restrictive nature of some of the

²⁹ Aljazeera News, **Nigeria to Label Shia Group a 'Terrorist Organisation**, 27 Jul 2019, <https://www.aljazeera.com/news/2019/07/nigeria-label-shia-group-terrorist-organisation-190727172937653.html>

³⁰ THISDAYLIVE, **Fearing Accountability, CAN Steps Up Agitation against CAMA, September 2, 2020:** <https://www.thisdaylive.com/index.php/2020/09/02/fearing-accountability-can-steps-up-agitation-against-cama/>

³¹ Ohaeri V, SUR Journal, *ibid*.

provisions provoked public outrage, with many groups³² denouncing their frightening implications for civil liberties.

The flurry of regulations enacted in the wake of the pandemic stipulated adherence to lockdowns, social distancing and other health and safety protocols. Compared to countries in the global north, the lockdown measures appear to have been successful in keeping coronavirus infections and death rates low. While some states adopted harsher methods to enforce the containment measures, some others embraced less stringent means to enhance compliance. The Database of Closing Civic Spaces tracked numerous incidents of high-handedness or the use of disproportionate force against civilians (leading to injury and deaths) by security operatives enforcing the lockdown measures. Corroborating the above records, a press statement of the National Human Rights Commission (NHRC)³³, also reported 11 deaths resulting from extra-judicial killings in different parts of the country. Out of the 11 deaths, the Nigeria Police Force was responsible for 7 deaths. Other types of violations recorded within the period include 34 incidents of torture, inhumane and degrading treatment, 14 incidents of violation of right to freedom of movement, unlawful arrest and detention, 11 incidents of seizure/confiscation of properties and 19 incidents of extortion. Again, the Nigeria Police Force accounted for 59.6% of the total cases of violations.

For countries like Mali, Chad, Nigeria and Niger in the Sahel region, the pandemic appeared to have exacerbated existing security challenges. The endemic conflict not only left many in need of humanitarian aid, but also caused governments to take measures that limited humanitarian agencies from operating freely in those areas, preventing help from reaching those in critical need. Skirmishes in Southern Kaduna between Christian farmer-minorities and the pastoralist Muslims escalated, leaving fatalities on both sides. Perception is growing that COVID-19 and the associated 24hour curfew might be preventing attacked communities from organizing themselves to repel attacks. Security agents have also been blamed for their gross inaction and slow response to security emergencies.

By authorizing security operatives to use force, including military action,³⁴ to enforce the emergency measures, state actors are ostensibly treating the pandemic—not just as a public health crisis—but as a security issue. Though this approach provides the speed and toughness needed to take decisions, the securitization of emergency measures has far-reaching implications for the civic space. For many citizens, the appearance of police and army patrols roaming the streets, mounting roadblocks and checkpoints, prohibiting inter-state travels, banning public protests and gatherings, plus the unprecedented number of arrests and detentions of citizens recorded, are reminiscent of the military regimes of the 80s and 90s when the civic space was completely closed. The repressive effects on the civic space are also magnifying other unintended consequences of the COVID-19 emergency responses such as income losses, job losses, hunger, unemployment, insecurity and homelessness. The brewing tension between COVID-19 responses and constitutionally-protected civil liberties have led

³² Fund for Global Human Rights: **Nigerian Civil Society Pushes Back On Draconian Disease Bill**, May 2020: <https://globalhumanrights.org/blogs/nigerian-civil-society-pushes-back-on-draconian-disease-bill/>

³³ National Human Rights Commission press release: **Report of Alleged Human Rights Violations Recorded Between 13th April to 4th May, 2020 Following the Extension of the Lockdown Period**, May 2020: <https://www.nigerianrights.gov.ng/nhrc-media/press-release/104-report-of-alleged-human-rights-violations-recorded-between-13th-april-to-4th-may-2020-following-the-extension-of-the-lockdown-period.html>

³⁴ Kanayo Umeh, The Guardian, **Military on Lockdown: We'll Use Minimum Necessary Force in Enforcement**, April 2020: <https://guardian.ng/news/military-on-lockdown-well-use-minimum-necessary-force-in-enforcement/>

commentators³⁵ and groups to conclude that the disease containment measures are reinforcing fears of deliberate governmental clampdowns on civic freedoms using COVID-19 as an excuse [S4C:2020].³⁶

- *Patterns of COVID-19 restrictions on the civic space*

From the above, three notable patterns of exploitation of emergency powers have been observed. The first is the securitization of health emergency responses. The shoot-at-sight directives to security operatives to shoot any person that tries to escape from quarantine and isolation centers,³⁷ deploying maximum force including military action to enforce compliance with safety protocols—such as wearing of face masks, social distancing and ban on public gatherings—compounded by the overzealous conduct of security forces during the lockdown evince how securitized emergency measures are causing unwarranted fatalities, violating human rights and shrinking the civic space. The spikes in arrests, extortions and detentions further establish that police officers discountenanced official directives barring them from detaining suspects for minor offences during the lockdown. The enforcement of public safety measures by security forces have inadvertently aided the increase of wrongful arrests, detention of citizens, including denying victims the right to legal representation, timely and fair hearing and ultimately, access to justice.

Although the government is incrementally easing the lockdown measures, the sledgehammer approach adopted by law enforcement agents are also propelling limitations on free speech and free assemblies. These limitations have stretched from the arrests of journalists over their journalistic duties to the victimization of citizens for engaging in sensitive rhetoric. A case in point is the continued detention of popular Nigerian atheist, Mubarak Bala, a prominent humanist and atheist. Since his arrest in April, he is still being held on account of a Facebook post where he stated his reservations about Prophet Muhammad. Harsher policing operations also resulted in the arrest of over 40 #RevolutionNow protesters demanding good governance in the country.

The second pattern of misuse of emergency powers manifests in the form of executive and regulatory overreach. The pandemic provided a trigger for the tidal wave of hastily-enacted health regulations containing numerous provisions that restrict civic freedoms and narrow the space for civic action. Critical policy decisions were hurriedly made with very minimal consultation and involvement of the civil society and other critical sectors. Without such broad consultation, the disparate health needs, prejudices and biases prevalent in a multi-cultural, multi-ethnic and plural environment, are often overlooked. Not only that, whilst border and airspace closures fall within the realm of federal jurisdiction, numerous state governors closed their states' waterways, air and land borders, which includes prohibition of inter-state/inter-town travels, except for essential services. In other words, state governors were invoking the doctrine of necessity to exercise powers ungranted by the constitution in the name of containing the spread of coronavirus.³⁸ Travel and movement bans particularly interfered with the organisation of public demonstrations and also hampered the ability of lawyers to provide legal services for clients in faraway locations and

³⁵ Victoria Ibezim-Ohaeri, **COVID-19: The Legality and Limits of the President's Emergency Powers**, Premium Times, March 2020: <https://opinion.premiumtimesng.com/2020/03/30/covid-19-the-legality-and-limits-of-the-presidents-emergency-powers-by-victoria-ibezim-ohaeri/>

³⁶ SPACES FOR CHANGE, **COVID-19, Human Rights and the Civic Space in Nigeria**, March 2020: <https://spacesforchange.org/covid-19-human-rights-and-the-civic-space/>

³⁷ Nnamdi Akpa, The Guardian, **Umahi Orders Shoot on Sight of Escapees from Isolation Centres**, March 2020, <https://guardian.ng/news/umahi-orders-shoot-on-sight-of-escapees-from-isolation-centres/>

³⁸ SPACES FOR CHANGE, **COVID-19, Human Rights and the Civic Space**: *ibid*

informal communities. These approaches adopted by state governors across the country fuel fears that emergency measures are being repurposed to further close space for civil society.

The third trend to note is the political friction arising from the conflicting regulations enacted at the federal and state levels for the handling of the pandemic³⁹ with the result that citizens and corporate entities adhering to federal regulations have been found to be acting in contravention of state regulations. Scores have been arrested, detained and prosecuted⁴⁰ despite these contradictions. Nothing illustrates the state-federal regulatory divergence more than the Rivers State Government versus Caverton and Exxon Mobil saga. Paragraph 8 of Rivers State Quarantine (Coronavirus and Infectious Diseases) Regulation, 2020 suspends flight operations and prohibits persons landing at the airports in the state to transit into or through the state to any neighbouring state. Relying on the essential service exemptions granted to petroleum distribution and retail companies under Regulation 1(6) of the Federal COVID-19 Regulations 2020, the Caverton Group, a private helicopter service company that renders flight support to oil companies obtained a counter approval from the federal aviation minister to fly passengers engaged in essential services in the oil and gas industry. Caverton's pilots and passengers were arrested and remanded in custody when they flew into the airport in River State in contravention of the state's COVID-19 regulations. Where more than one law governs a violation, it occasions jurisdiction cherry-picking and confusion regarding which law should be applied to defaulters. Also, the multiplicity of regulations emboldens state and federal actors to cast their nets so wide to catch more defaulters of COVID-19 regulations, increasing their eligibility for harsher punishment.

- **Civil Society Responses to Shrinking Civic Space in Nigeria**

Across the globe, the work of charities, non-governmental organizations (NGOs), and humanitarian groups—all often regarded as non-profit organizations (NPOs)—have gained tremendous traction over time and space. In Nigeria, NPOs form part of the broader civil society, operating in various forms such as social movements, student unions and nationalists engaged in pro-independence struggles. They carry out different kinds of good works, with their activities reaching millions of people, particularly in the areas of education, health, security, agriculture, policy formulation, democracy, governance, gender rights, public rights advocacy, and so forth. (SPACES FOR CHANGE: 2019).⁴¹ So huge is the non-profit sector that it garnered over \$13.85 Billion in foreign financial inflows to the Nigerian economy between 2015 and 2016.⁴²

Non-profit entities in Nigeria operate mainly as local or international non-governmental organization (INGOs), depending on the nature of their registration, the scale and reach of their operations and the type of work they engage in. Foreign non-profit organizations, mainly comprising the INGOs are mandated to register with the Federal Ministry of Budget and National Planning (FMBNP). On the other hand, national level organizations mainly register with the

³⁹ Kelvin Ebiri, The Guardian, **Wike, FG Disagree Over Arrest of Carveton Pilots, Passengers**, April 2020: <https://guardian.ng/news/wike-fg-disagree-over-arrest-of-carveton-pilots-passengers/>

⁴⁰ Cletus Ukpung, **Premium Times, Arrested Pilots Remanded in Port Harcourt Prison**, April 2020, <https://www.premiumtimesng.com/regional/south-south-regional/386675-arrested-pilots-remanded-in-port-harcourt-prison.html>

⁴¹ SPACES FOR CHANGE, **Unpacking the Official Construction of Risks and Vulnerabilities for the Third Sector in Nigeria**, March 2019, page 8, <https://spacesforchange.org/unpacking-the-official-construction-of-risks-and-vulnerabilities-for-the-third-sector-in-nigeria/>

⁴² Bamaga Bello, **The Challenges of Regulating NPOs for AML/CFT Compliance**: A presentation made at the GIABA Regional Workshop on the Development of Effective Frameworks and Structure to fight against ML/TF through Non- profit Organizations (NPOs) from 4th – 6th April, 2018 at Abuja, Nigeria. Bamaga Bello, FNIM was then the Director of the Special Control Unit against Money Laundering, pg 4.

Corporate Affairs Commission, CAC, either as incorporated trustees or companies limited by guarantee. Some others operating at the grassroots register as community-based organizations at the state and local government levels.⁴³

Long before COVID-19, civil society actors deployed a wide range of strategies to confront the upswing in governmental restrictions on human and corporate freedoms. At the time, state actors often justified restrictions on the civic space, citing national interest or national security reasons. The result was the exercise of governmental power in ways that considerably repressed human freedoms and contracted the spaces for civic engagement, resulting in many arrests, detentions and prosecutions. Groups like Spaces for Change (S4C) and the Policy and Legal Advocacy Center (PLAC) take the lead in patrolling and analysing legislations with restrictive elements to gauge their consistency with national interest considerations. Because understanding the provisions of the proposed restrictive statutes is necessary to empower advocates to push back and confront the restrictions headlong, S4C and PLAC routinely leverage on their convening power to sensitize and galvanize civil society advocates to interrogate legislative prescriptions considered too restrictive.

Collaborative initiatives were also popular. For instance, the Action Group on Free Civic Space built solidarity to ensure that government regulations (framed around national security, anti-money laundering (AML) and countering terrorism financing (CFT)) do not shrink civic space. Within a short time, the coalition grew in strength in numbers, shared expertise and research and built capacity amongst individual activists/bloggers, and created good working relationships with national and international AML/CFT regulators.⁴⁴ The Civil Society Situation Room⁴⁵ has been conducting training sessions for civil society groups and election observers, increasing their ability to monitor violations of electoral guidelines, incident reporting on election days, as well as how to use the deployment and observation checklists. In this way, citizens' rights to associate and assembly freely, as well as participate in political governance processes are continuously checked and monitored for restrictions.

Other examples of collaborative civil society responses to push back on restrictions on the civic space are chronicled below:

Timeline of restrictive triggers and collaborative responses:⁴⁶

- **2015** – Anti-Social Media Bill is proposed by the government; an informal network of CSOs respond collectively – *the Bill is defeated*
- **2016** – NGO Bill is tabled by the government; an informal network collaborates again via research and advocacy; *the Bill is defeated*
- **2016/17/18** - Anti-money laundering measures are used to target activists and CSOs; direct engagement is required with regulators, and collaboration begins to crystallise around this work

⁴³ SPACES FOR CHANGE, March 2019, *ibid*.

⁴⁴ International Civil Society Center (ICSC), Spaces for Change: From informal networks and collaboration to the Action Group for Free Civic Space in Nigeria, 2019, page 1: <https://icscentre.org/2020/04/22/from-informal-networks-and-collaboration-to-the-action-group-for-free-civic-space/>

⁴⁵ Nigerian Civil Society Situation Room: **Situation Room Prepares Observers for Bayelsa and Kogi Governorships**, September 2019: https://www.placng.org/situation_room/sr/situation-room-prepares-observers-for-bayelsa-and-kogi-governorships/

⁴⁶ International Civil Society Center (ICSC), *ibid* at page 1

→ **2019** - The scheduling of a national evaluation on AML/CFT measures triggers the need for a sector-wide response from civil society, and the Action Group formalises to carry out this work.

Knowledge-sharing initiatives like the Closing Spaces Database provide the raw material and evidence actors need to frame and inform their strategies and interventions. The database has been tracking and documenting crackdowns on the civic space in Nigeria and West Africa. It began by tracking incidents in Nigeria from 2015, and extended coverage to the West African sub-region in 2017. The database represents the first step in combating restrictions on the civic space, by identifying and demonstrating the manner, tactics, and extent state actors and their collaborators are limiting civic expression and participation in governance.

- **How Civil Society Actors Responded to COVID-19 Shocks on the Civic Space**

- *Digital assemblies*

For the civil society community, the pandemic-induced disruptions to the traditional forms of organizing equally brought many positives. The Coronavirus may have interfered with the organisation of public demonstrations, street actions and formal events such as conferences, workshops and seminars, but civil society actors and activists adapted to the disruptions by leveraging on advancements in digital technology to achieve their social justice agendas. Some organizations are taking advantage of internet trends and hashtags to raise public awareness, converge for digital protests, demand action on issues and speak truth to authorities. For instance, Twitter-fuelled protests against the intimidation of a female rape victim spurred a wide range of discourse online and offline, forcing authorities to intervene and probe the rape allegation involving a celebrity. Almost 15,000 individuals signed a petition demanding the United Nations to strip the popular singer of his ambassadorship endorsement, signalling **cancel culture** as a developing form of protest on social media.

Subsequent events demonstrate that the cancel culture has come to stay, and now forms an integral part of civic space activism in Nigeria. In August, a fierce Twitter campaign triggered the disinvitation of Kaduna Governor El-Rufai as a keynote speaker at the 60th Annual General Conference of the Nigerian Bar Association (NBA), the statutory body of all lawyers called to practice law in Nigeria. Within hours the campaign kicked off on social media, no fewer than 3,000 lawyers⁴⁷ signed the petition asking the NBA to withdraw the invitation. The campaign came on the heels of the governor's odious human rights records and notoriety for disobedience to court orders, coupled with his alleged poor handling of the unceasing bloodletting in Southern Kaduna. Tensions over land rights and religious differences between agrarian and pastoral communities, Muslim and non-Muslim populations, form the major background of the seasonal conflicts in Southern Kaduna that have spanned several decades. However, a fresh and ongoing wave of violence amid the pandemic is fuelling new conversations about the perceived bias of the Kaduna State government against the Christian minority populations in the region, including the complacency and complicity of both the Federal and State government in responding to the humanitarian crisis resulting in hundreds of deaths, loss of properties and mass displacements of thousands of natives.

- *Incident tracking and analysis:*

⁴⁷ Innocent Anaba, **NBA NEC Withdraws El-Rufai's Invitation to Speak at Conference**, August 2020, Vanguard Newspapers: Read more at: <https://www.vanguardngr.com/2020/08/nba-nec-withdraws-el-rufais-invitation-to-speak-at-conference/>

For some other organizations, the pandemic presented an opportunity to scale up the tracking and documentation of atrocities and violations of civic freedoms. For instance, both the Closing Spaces Database and the NHRC documented numerous incidents of violations perpetrated by the Nigerian Police Force enforcing COVID-19 lockdown measures. Global Rights⁴⁸ tracking of casualties of conflicts, violent clashes and extrajudicial killings also heightened the tracking of violence-related deaths across the country. The evidence generated from these knowledge-building initiatives served as springboards engendering other forms of policy and advocacy action. For instance, prompted by S4C's petition,⁴⁹ based on its incident tracking, the National Human Rights Commission launched an investigation into a killing of a civilian by military officers enforcing the lockdown in Delta State.

- *Collaborative initiatives*

The pandemic also forced changes in the way civil society actors work in terms of strategy and results. The organizations taking on civic space issues sometimes work in silos, and reinvent the wheel. The movement restrictions necessitated rights groups, active citizens and activists to expand on new strategies, working more collaboratively and maximizing scale of impact. In a concerted effort to ensure that restrictive emergency measures are not exploited to clamp down on civil liberties, six member organizations of the Action Group on Free Civic Space—namely Spaces for Change (S4C), CLEEN Foundation, NOPRIN Foundation, Rule of Law and Accountability Advocacy Center (RULAAC), JDPC Gowon Estate and the Network of Pro Bono Lawyers of Nigeria—launched Legal Helplines⁵⁰ to offer free legal services to persons whose rights are violated as a result of the COVID-19 lockdown measures in Nigeria. The legal departments of the six organizations teamed up, combined their legal resources to build a pool of attorneys ready to intervene and secure justice for the aggrieved.

The Action Group's team of lawyers received complaints of human rights violations arising from the lockdown measures from any part of the country and provided free legal services, including securing police bails, providing on-the-spot legal advice, free legal representation in courts, and petitioning agencies and institutions responsible for redressing wrongs. With each group playing different roles according to their areas of strength, this allowed 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.

- *North-south exchanges*

In particular, the pandemic brought to the fore, the imperativeness of locally-rooted responses during a health emergency. Distrust of government authority in some countries means there is also a credibility gap that could inhibit state-led prevention and mitigation. Local groups earn deep community trust, which means they can assist populations that governments may not be able to effectively reach.⁵¹ Leveraging on the trust and strong presence of local actors at the frontlines,

⁴⁸ Global Rights, **Mass Atrocities Casualties Tracking**, 2019 Report: <https://drive.google.com/file/d/1OICbaCOg-z5tQqXIUaxEHNkPIIcojV2/view>

⁴⁹ Mr. Joseph Pessu's killing: Petition reference number is NHRC/M/V/2020/005/

⁵⁰ SPACES FOR CHANGE, **Civil Society Groups Launch Legal Helplines (08145000093 & 07039855775) to Combat COVID-19-linked Human Rights Abuses in Nigeria**, April 2020: <https://spacesforchange.org/civil-society-groups-launch-legal-helplines-08145000093-07039855775-to-combat-covid-19-linked-human-rights-abuses-in-nigeria/>

⁵¹ Regan Ralph, **OPINION: Community Activists and Action Are Key to the COVID-19 Response**; Thomas Reuters Foundation blog, April 2020, <https://news.trust.org/item/20200406145330-k91hc>

synergies and cross country collaborations between organizations in the global north and south gained ground during the pandemic. Synergies developed including support for national organizations transcends financial support, but also encompasses other in-kind currency such as research partnerships, capacity-building, technical assistance, solidarity, amplification of local voices through news/report mentions, speaking engagements, co-convenings and so forth. The deepening of connections and exchanges between actors across jurisdictions not only expanded opportunities for southern perspectives to be reflected in global discussions affecting the civic space, but also enabled them to contribute to high-level dialogues with both intergovernmental and supranational traits.⁵²

- *New entrants in the civic space arena*

The emergence of new, active actors on the civic space arena is a very interesting dimension to the current realities unleashed by the pandemic. Prominent on this list are health workers, lawyers and medical associations, teachers' unions, senior judicial officers, pensioners, state attorney generals, corporate establishments and many more. With this new trend, activism is no longer the exclusive reserve of civil society and media advocates, but a wider group of private actors and associational bodies campaigning extensively online and offline against varying injustices and restrictions, including demanding better welfare for their members. In April, health professionals in Akwa-Ibom State, clashed with the state government, demanding improvements in healthcare infrastructure in the state, and the welfare of medical personnels. Just weeks ago, the Nigeria Bar Association bowed to social media pressure and waded into the case of Yahaya Sharif-Aminu, the Kano singer recently sentenced to death by the Kano Upper Sharia Court for blasphemy. He has been denied access to his lawyers, preventing him from appealing the death sentence within the statutory time allowed by law. The significant increase in citizen and mass-based actions and the growing culture of digitivism in Nigeria reflect the shared aspirations of citizens to keep the civic space free from obstructions, and ensure all duty-bearers are held accountable.

CONCLUSION:

While COVID19 has birthed a number of challenges, it has also influenced civil society organisations to revise and develop more inclusive strategies, programming, and campaigns that deliver maximum impacts in light of pandemic realities. The use of powerful instruments like the social media platforms and conventional media to share, popularize, and discuss key advocacy messages have helped to put pressure on authorities to do what is right. Policies and statutory proposals considered by the parliament at this time are now being closely monitored, scrutinized, analysed and explained to public at greater speed and less cost. Besides that, the move by civil society organisations to adopt cross collaboration as a method for demanding accountability from the government is also paying off. All of these point to a collective will and resilience on the ground to tackle the crackdowns heads on, no matter the odds.

⁵² Victoria Ibezim-Ohaeri, Presentation at SANE virtual Exchange held on July 8, 2020 organized by ICSC.

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