

IDENTIFYING CAUSES FOR CONGESTION IN NIGERIA'S COURTS VIA NON-PARTICIPANT OBSERVATION: A CASE STUDY OF BRASS HIGH COURT, BAYELSA STATE, NIGERIA

Jude Cocodia

ABSTRACT

The judiciary plays an indispensable role in preserving of rights of citizens and the stability of society. Despite these important roles, the judicial process is often painstakingly slow and leaves much to be desired. This has made many people shy of using the courts, for, as the saying goes, *justice delayed is justice denied*. This paper, using the non-participant method of observation, sets about identifying reasons for this juridical lethargy with the Brass Division High Court, Bayelsa State, Nigeria as a case study. It becomes evident that unlike their counterparts overseeing urban divisions, courts overseeing rural divisions often experience a low traffic of cases, yet, like the former, the judicial process is still slow. Noting too that the communities that comprise the Brass division have been peaceful and stable, this paper seriously prods the hypothesis (at least for rural areas) that societies where the courts are ineffective are relatively unsafe.

INTRODUCTION

This paper attempts to adduce some reasons on why the judicial process in Nigeria is unhealthily slow. In carrying out this quest, the non-participation observation technique of data collection was adopted. In its application of this method of observation, this paper highlights the strengths and weaknesses of this mode of research.

In order to get a vivid grasp of the problem at hand, this paper attempts to present the role of the judiciary and the courts in society. This presentation is based on the premise that the judiciary and the courts assist in no small measure in giving sanity to society through the protection of citizens, interpretation of the law and as a constitutional check on the powers of the other arms of government. In view of these very important roles, its

tedious, time-consuming litigation process becomes a little of an irony. It is believed that the cumbersome nature of the court process, especially in Nigeria, makes the judiciary quite ineffective.

While this paper does not intend to pass judgment on the court system in Nigeria, the essence of this research which is embedded in the research technique adopted is to assess if there are reasons, outside legal technicalities that contribute to the delay in the delivery of justice.

To enable an accurate interpretation/analysis of the data collected from the Brass High Court via the non-participant observation, the documentary observation and informal interview methods were also adopted to augment the accuracy of the technique of the former.

OBSERVATION IN RESEARCH

The term research simply means to search again. A more elucidating perception of the term as it relates to academics and the quest for knowledge is provided by Slessinger and Stephenson when they posit that research involves “the manipulation of things, concepts or symbols for the purpose of generalizing to extend, correct or verify knowledge, whether that knowledge aids in construction of theory or in the practice of an art”. (In Encyclopedia of Social Sciences, 1980:330)

The conducting of research in the social sciences has led to the development of different research types and methodologies among which is the non-participant observation method which is one of the two forms of research based on observation (the other being participant observation).

The term *observation* generally implies the act of seeing or watching something happen. By watching something take place either in an involved capacity or not, the on-looker is already an observer. Hence observation is known to be the oldest method of data collection known to man. But as a means of gathering data in research, observation is much more than mere noticing or watching the unfolding of a phenomenon. As a scientific means of gathering data, it can be defined as “a purposefully planned and systematically executed act of watching the occurrence of events, activities and behaviours which constitute the subject or focus of research or study.” (Obasi, 1999:168). In other words, “a scientific observation is one that is directed to achieve a

research purpose as well as executed logically towards achieving this purpose.” (ibid). Anikpo (op.cit.) notes however, that observation is reputed to be the most difficult means of data collection. For this reason, researchers are advised to determine which of the two observation methods best suits the aim and structure of the research before embarking on the research project. Okwandu (2004:151) holds that the researcher “should determine the location, venue or site of the observation” as well as “agree on what will be observed.” In line with these positions, this paper assesses if the level of utilization of the courts contributes to the stability of society.

NON-PARTICIPANT OBSERVATION

The non-participant observation of which Osemwota (in Osemwota et al 2006:157) opines that “under this kind of observation, the observer is concealed, i.e. he does not reveal himself to the group, event or situation that he is observing” was deemed suitable for this paper. Under this method, one watches or observes a phenomenon in which he is not taking part in the action. He contends further that “this method of data collection is generally employed when the researcher does not want to be seen to observe or interview for fear of probably changing the behaviour of the persons he is trying to study.” (ibid). Herein lies one of the strengths of this method, for as Obasi (op.cit.:171) notes, “since those being observed may not know that someone is observing them, problems associated with participant observation such as hypocrisy, disguise and pretence among others would be reduced.” As such, the researcher captures the activities in their natural and normal occurrence. Another major advantage of this method is its ability of obtaining information on an event, phenomenon or behaviour as it occurs rather than through the indirect or secondary accounts of informants.

One weakness attached to this mode of research is the limitation of access to what can be fully observed, since as a non-participant observer, he observes only those activities he has opportunity to watch. This handicap hinders the ability of the researcher to give a full and accurate analysis of the event. Hence Anikpo warns of the results arising from this method being sometimes inaccurate. To compensate for this deficiency however, Osemwota (op.cit) advocates the use of multiple methods “with one measure serving as a check on the accuracy of the other.” To complement the non-participant technique

adopted for this paper therefore, *documentary observations* as well as *informal interviews* were used.

While not losing focus of this paper, but for clarity's sake, a brief definition of *documentary observation* is here provided. Osemwota (ibid:137) explains that documentary observation refers to "obtaining data for research purposes from public and private documents.... Most of these documents contain factual information compiled in a variety of ways and used by organizations to record the development and implementation of decisions and activities that are central to their functions. For example, police, court and prison records."

JUDICIARY, THE COURTS AND SOCIETY

Michael Corbett, reputed to be one of the greatest Chief Justices of South Africa posited that "the executive might transgress, the legislature might become unruly but it has always been the judiciary that has stood the test of time by standing firm on the side of truth and justice." (cf. Masunda, 2009:1)

The judiciary's foremost role as the third branch of government is to defend and uphold the constitution and assure the rule of law prevails. "Under this general duty and mandate, the work of the judiciary reflects to some extent the level of a court's jurisdiction." (Ladner, 2000:1). A pervasive element in the judiciary's role at every level is the protection of each person's constitutional, human, civil and legal rights. The judiciary also has an essential role in protecting citizens from each other's wrong doing, protecting the weak from the strong and the powerless from the powerful. Moreover, the judiciary plays a crucial role in securing domestic tranquility by providing a structured institutionalized form for the resolution of discord and dispute and the vindication of civil and criminal wrongdoing. The judiciary exercises these roles and stamps its authority through the courts.

The court provides the framework within which individuals will get protection, redress and resolution of disputes and conflicts that cannot be effectively and peacefully settled elsewhere. In the intense clamour of competing interests, a court's role is to be a fair,

firm and calm advocate, not for one side or the other, but for the law and justice. When a court responsively punishes wrongs, protect rights and resolves discord by thoughtful, independent and unbiased application of laws, “the justice system secures the freedoms, tranquility and equality that foster a social environment wherein man’s highest aspirations and evolution can be realized.” (ibid). To this end, Theodore Roosevelt declares; “The decision of the courts on economic and social systems ‘create’ for the peaceful progress of ‘citizens’ during the twentieth century.” (in Obaseki, 1990:1). With the judiciary being the third arm of government, and drawing from the above discussion, the courts therefore cannot be removed from governance.

The High Court is an arbiter on matters of both common law and statutory interpretation throughout the state. It also undertakes the more general responsibility of interpretation of the constitution. The court ought to be routinely involved in the identification and interpretation of common law, its occasional refinement, and eventually, its adaptation in light of changed and compelling circumstances. Craven (2007:2) points out that “the constitutional role of the High Court ... has two aspects ‘of which’ the courts’ first and primary role as a constitutional judiciary is to maintain the federal balance.” Wade (1989:77-79) comments that courts strike a balance between efficient government on the one hand and the protection of the citizens against misgovernment of the other. The courts therefore are bent on preserving good governance, which is hinged largely on rule of law, liberty and equality. These concepts “together represent the troika that is universally accepted now as the index of a civil society.” (Sabharwal, 2005:2).

THE JUDICIARY IN NIGERIA

In a democratic system of government the three arms of government are the legislative, executive and the judiciary. In assessing the relationship between these three arms, Olatokunbo (2008:157) opines that, the judiciary, though “the third arm of government, it is by no means the weakest of the three arms of government.” Corroborating this claim, Awogu (1992:68) posits that “in a democratic system of government, the three arms of government are the legislative, executive and the judiciary – all these being equal and co-ordinate.”

Each of the three arms of government, therefore, has vital role to play in the society to achieve this purpose. This is done by the legislature through the exercise of its

legislative powers, by the executive through the exercise of its executive powers and by the judiciary through the exercise of the judicial powers vested in it. The judicial powers, opines Obaseki (1994:7), “are expressly vested in the courts. Sub sections (1) and (2) of section 6 of the 1979 Constitution expressly provides that; (1) the judicial powers of the federation shall be vested in the courts... (2) the judicial powers of a state shall be vested in the courts....”

In Nigeria, the judiciary exists at two levels of court systems: the Federal Courts – which are basically the appellate courts and the courts with jurisdiction over matters contained in the exclusive list while the state courts exercise other judicial powers not covered by the Federal courts.

The provisions of the 1999 Constitution laid down provisions for the establishment and powers of these courts in Nigeria. The judicial institutions include;

The Supreme Court

The Court of Appeal

The Federal High Court

The High Court of Federal Capital Territory Abuja

The High Court of a State

The National Industrial Court

The Sharia Court of Appeal of the FCT Abuja

The Sharia Court of Appeal of a State

The Customary Court of Appeal of the FCT

The Customary Court of Appeal of a State.

Such other courts as may be authorized by law to exercise jurisdiction at first instance or on appeal on matters with respect to which a House of Assembly may make laws.

The Courts as listed above, explains Olatokunbo (2008:158), “represents in a strict sense what may be regarded as the Nigerian judiciary based on the constitutional provisions.” He contends that the powers conferred on the courts (the judiciary) under the 1999 Constitution include the following:

- To hear and determine all disputes involving citizens

- To hear and determine disputes involving citizens and non-citizens with jurisdiction)
- To hear and determine all disputed cases involving citizens and government and agencies of government. (cf. Olatokunbo, 2008:158).

In view of the above analysis, the courts apparently stand at the centre of the judicial process. With the political transformation of the Nigerian State from regions to states, the implication now is that, each state has its own high court. As a result, there are thirty-six state High Courts in Nigeria. To this, Odinaku (in Onyekpere, 1996:21) notes that “each of the states is a distinct legal system Each legal system is serviced by its own system of courts.” Otteh (1995:6) posits further, “each state is at liberty to constitute divisions of its High Court. The judicial divisions are for administrative convenience”.

Despite the judicial divisions for administrative convenience, the Nigerian judiciary is plagued by certain teething problems. In Nigeria, Agbede (2005) argues, a major problem is the fact that a substantial proportion of the common law in practice here are no longer in use in England from where we inherited them due to their out-datedness. He referred to this as an awkward situation compounded by the fact that “the Nigerian courts have not effected significant adaptation of the rules of English common law and equity as otherwise demanded by the reality of the Nigerian social condition.” The technical setbacks arising thereof from this state of affairs, have contributed in making the courts in Nigeria slow in the dispensation of cases. Consequently, “the protection, security and facilities offered to the citizens by the law become undependable and lawlessness becomes the order of the day.” (ibid)

Another problem which has militated against the speedy dispensation of justice by the courts in Nigeria is the congestion of cases in courts. Congestion occurs when cases are filed at a rate far in excess of what judges in the courts jurisdiction can dispose of within a reasonable time (i.e. two years). As such, the congestion of pending cases is bound to build up. As noted by Obaseki (1994:9), “congestion tends to defeat the objective of the Rule of Law and deprive litigants of fundamental right of fair hearing within a reasonable time. It effectively delays justice in the courts and constitutes a clog in the wheel of the administration of justice.” Of major importance to the crux of this research is the fact,

which Obaseki notes further, that “there are more litigations in the centres of civilization and commerce.” (ibid). The implication here is that the more urban a centre is, the greater the number of litigations filed in the courts, which implies a higher possibility of congestion and of course, delayed justice. If this is the case with urban centres, why then do courts overseeing rural areas in Nigeria also experience congestion of cases and delay in the dispensation of justice still?

Investigating the question raised above necessitates that attention would now be turned to the Brass Division High Court. But first, it would only be proper to have a glimpse at the place known as Brass.

BRASS COMMUNITIES

The name ‘Brass’ was coined around 1565, when the first Portuguese traders came to the Brass river with their vessels full of merchandise. In their commercial relations with the people, they were astonished to find a group of people who were firm bargainers. These people while transacting business with their customers would repeatedly use the word *brassin* (meaning *leave it* in the Nembe dialect) which invariably indicated a decision not to receive lower prices. The white traders, in a derogatory sense then, came to refer to these natives as the *Brassin* people. Later, the word was shortened to Brass, a name that was later attached to the name of their commercial city – Twon, hence it became known as Twon-Brass. The area known as Brass Local Government Area comprised the Nembe, Ogbia, Epie-Atissa and Eastern Ijaw clans. The Local Government reform of 1976 divided the then Rivers State into ten local government areas, one of which was Brass Local Government with the headquarters at Nembe. In 1991, Brass Local Government was further split in two, giving rise to Ogbia Local Government. Then again in 1996, with the creation of Bayelsa State by the Sani Abacha regime, Nembe Local Government was cut out of Brass. This split ensured that the headquarters of Brass Local Government was now Twon-Brass. Administratively, the present Brass Local Government Area is composed of ten wards with about one hundred and twelve towns and villages. The major groups of the area are; Twon-Brass, Akassa, Okpoama, Ewoama, Odioama, Beletieama, Laima, Diema, Fantuo, Eguema, Igbabeleu and Ibidi. The Local Government is blessed with a lot of oil wells and is also home to a crude oil export terminal. Presently the National Liquified Natural Gas (NLNG)

is also situated in Brass and is operational alongside other Multinational Oil Companies (MNOCs)

THE JUDICIARY AND RIVERINE RURAL AREAS: THE BRASS EXPERIENCE

The arguments presented in this paper prior to this section, are to espouse the importance of the judiciary in the making of a civil and secure society. This argument might tempt one into the converse and quite logical hypothesis that since men are by nature greedy, well populated areas where the Courts are minimally utilized, are bound to be uncivil and tense. Ascertaining either of these positions as they relate to riverine areas prompted my being a non-participant observer of court proceedings in the Brass Division High Court situated in Yenagoa (the Bayelsa State Capital) on a three times a week basis for a period of six months (two quarters) from January to June 2009. The prior conception here was that, Twon-Brass and its surrounding communities, being far from the centre of political and judicial administration, being fairly populated, accessed only by water (the sea) and boasting a hub of oil exploration activities, it would definitely be a prime spot for the breakdown of law and order considering recent happenings of restiveness in the Niger Delta. Consequently, it would be expected that the Brass Division High Court would daily be flooded with litigations as inhabitants within the area would seek the use of the courts to protect their right to life and property or law enforcement agents arraigning miscreants on a regular basis for disturbing the peace.

Contrary to the above expectation, the period of observation showed that cases were slow in coming to the High Court and much fewer cases still reached the final stage of adjudication. Of the cases brought forward too, civil cases (such as breach of contract) far outweighed criminal cases. Presented here is the '*Quarterly Return*' of the cases from April 2008 – March 2009 (i.e., Return for four quarters).

Cases	Cases Brought Forward From Last Quarter	Cases Assigned in Period Under Review	Total of 1 & 2	Number of Judgements Given in Period Under Review	No of Cases Struck Out in Period Under Review	Total No of Cases Disposed During Period Under Review	Cases Pending at the End of Period Under Review
Civil	24	17	41	6	12	18	23
Criminal	4	2	6	1	2	3	3

Motion	3	12	15	9	2	11	4
Total	31	31	62	16	16	32	30

Quarterly Return of Cases Disposed of From April 2008-March 2009

Courtesy, Brass Division High Court, Yenagoa, Bayelsa State

The above table corroborates conclusions derived from the observation carried out that High Courts of rural riverine divisions experience a low traffic of cases. In a whole year which comprises of four quarters (Jan-March, April-June, July-Sept and October-December), only thirty one fresh cases were filed in the Brass High Court. This is an equivalent of eight cases per quarter (approximately 3 cases per month). Unconcluded cases inherited from previous quarters totaled thirty one, thereby bringing the total number of cases treated during the period to sixty two. Of this number as much as sixteen cases were struck out. This number accounts for about a quarter of total cases heard during the period. Another sixteen cases were adjudicated/had judgements passed. Thus, of the sixty two cases heard during the one year period, thirty two cases (roughly half the number) were concluded, leaving another thirty pending to be transferred into the next quarter.

The Brass High Court was in session every working day of the week (i.e. Monday to Friday). Being unable to record and present daily proceedings, I deemed it necessary to document just the major events, especially as they relate to the issues of this research. Consequently, the following data summarizes monthly happenings at the Brass High Court for the months of January – June 2009.

	January	February	March	April	May	June
EVENT	No case was filed since the judge was away on election tribunal matters.	6 fresh cases were filed of which 5 were civil and 1 was a criminal case.	3 cases were filed, all of which were civil	Just 2 criminal cases were filed this month.	2 civil cases were filed.	4 cases were filed. 3 civil and 1 criminal.

EVENT		3 cases were adjourned due to the absence of interpreters and 4 cases due to the litigants absence.	Absence of litigants and at other times, defendants, stalled proceedings of 6 cases	2 of the deferred cases were as a result of the absence of informed elders on chieftaincy matters. Disputing Parties were absent twice.	2 cases were adjourned due to lack of interpreters and one due to the absence of informed elders.	4 cases were adjourned due to the absence of contending parties
EVENT	No case was adjudicated this month.	A Civil case was decided while another was struck out since contending parties were absent for the umpteenth time.	No judgement passed. 2 cases were struck out.	2 Civil cases had judgement passed.	A Civil and a Criminal each had judgement passed. A case was struck out,	No judgement was passed. 2 cases were struck out. Parties claimed to have reached an out of court settlement.

Notes on Proceedings at Brass High Court from Jan-June 2009

METHODOLOGY OF STUDY AND FACILITATION OF DATA:

Witnessing, or rather being an observing non-influencing factor in unfolding events is one of the great advantages of non-participant observation which was adopted in this research. The data gathered supports the claim that the judicial process in Nigeria is painstakingly slow. This seems likely considering the fact that thirty two out of sixty two cases were concluded within a year (i.e. between 2 and 3 cases per month) that found approximately eight cases filed in 3 months. Further investigations however revealed

that there were factors which could not be captured by observation that were responsible for this state of affairs.

For example, to ensure data collected from observation was accurate, the non-participant observation technique had to be supplemented with *documentary observation* which according to Osemwota (in Osemwota et al, 1996:136) “refers to obtaining data for research purposes from public and private documents ... Most of these records contain factual information ... and used by organizations to record the development and implementation of decisions and activities that are central to their functions.” This supplementary technique prompted acquisition of the table above. It would not be out of place to state here too that my regular appearance at court proceedings for the six months of observation facilitated a cordial relationship with the court staff such that they were willing to provide relevant information. This development of trust set the stage for the use of another data gathering technique.

In her study of *trust* Sonnenwald (2003) examined affective and cognitive trust. While the former relates to interpersonal bonds among individuals and institutions, the latter concentrates on judgements about a person’s ability to execute a task effectively. While the trust built in the course of this research falls into the former group, Pettigrew (1999) encourages the adoption of strategies to decrease the effect of the observer on the participants. Hence she combined observation with interviews which had the effect of consolidating relationships and increasing trust.

In this same vein, informal interviews were conducted which highlighted external factors that greatly influence the data in the table above. An understanding of these factors redresses the conception (i.e. slow disposal of cases) derived from the table at face value. Relying on observation alone would have made it difficult to identify and analyze these factors.

For example, there was the general consensus among court staff that the poor patronage of the Brass High Court situated in Yenagoa, the Bayelsa State capital is due to the following reasons:

- Effective communal and extended family systems which ensure that crimes are often concealed as the inhabitants of the Communities would rather handle these cases themselves than hand over their kin to the authorities.
- The lack of roads is another major contributory factor as the only access to most of the Brass communities is by sea. This factor seriously handicaps law enforcement officials and makes it difficult for cases, especially criminal ones, to be effectively pursued and brought to court.

More often than not, when cases are struck out of court, it is because of lack of evidence. But in the case of the Brass High Court, the majority of the sixteen cases struck out (in the table above) were more out of litigants abandoning the case all together. This is not surprising when one considers that these rural people and meagre earners have to pay close to N4,000 in transport costs to get to the courts in Yenagoa. Thus a round trip for court sessions costs about N8,000. This excludes legal/lawyers' fees, transportation of the witness(es) and other such costs, all of which are borne by the litigants.

The interviews conducted also explain the slow pace of proceedings and justifies trends which were noticed during observation. According to Justice Cocodia, Judge of the Brass Division High Court, cases are often civil bordering on *land disputes* and *chieftaincy* where facts are from oral history. This takes time due to the language barrier between the Judge and the witness(es). Getting the witness and the interpreter (who is most often needed), makes the process longer. This unfortunately is a regular occurrence which is due to the high rate of illiteracy known in the area.

Finally, while the result of the observation of this research definitely points to a lethargic influence of the judiciary in Brass, it is surprising to note that life in the area has been peaceful. This scenario questions the arguments presented in this paper on the *role of the judiciary in society*. This latter piece of information therefore implies that what a society most needs to keep the peace and protect the rights of its citizens are effective social and communal safeguards, over and above an effective judiciary.

An analysis of the data presented in this paper exposes some of the disadvantages of the non-participant observation technique at research. External events or factors which greatly affect court proceedings could not be captured by the non-participant observation method hence the supplementary use of other research techniques such as *documentary observation* and *informal interview*. Despite these lapses in the non-participant observation method, Cooper et al (2004:2) note that though “non-participant observation study has limited amounts of time and preparation, nonetheless, it has valuable application for those conducting research within working environments over a short time.”

CONCLUSION

Non-participant observation is certainly a useful technique of research. Adopted as the methodology for this paper, its strengths and weaknesses were exposed as well as a case presented for why it is the most apt methodology for use under certain research conditions such as this one. Among the strengths highlighted, were the eradication of pretence among the persons or phenomenon under study and the fact that the researcher gets first hand information since he is the one observing. However, when we consider the saying that *things are not always what they seem*, the conclusions drawn from non-participant observation could be misleading if there are variables connected with the study that are beyond observation. This problem becomes more complicated most especially when identifying and understanding of these variables could change the perception of the research result.

In view of the scope of this paper, the importance and efficacy of the judiciary in society was scrutinized. A general consensus (also highlighted in this paper) is that an effective judiciary transposes to a civil society, and conversely, a society where the judiciary is found wanting is replete with strife. While it can be argued, as portrayed in the earlier sections of this paper, that the judiciary, and by extension the courts are needed to protect rights and enhance peace and stability in society, observation of proceedings at the Brass High court which shows very low patronage, questions this assertion as further investigations revealed Brass and its neighbouring communities to be peaceful and stable.

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