

EXAMINING THE RIGHT TO PROTEST IN NIGERIA: ISSUES AND CHALLENGES

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**A LONG ESSAY WRITTEN AND SUBMITTED TO THE FACULTY OF LAW,
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FOR THE AWARD OF THE DEGREE OF BACHELOR OF LAWS (LL.B) OF THE
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MARCH, 2025

CERTIFICATION

I, **Eghosa NOFE-ABU**, with Matriculation Number **LAW1906215** of the Faculty of Law, University of Benin, Benin City, hereby certify that apart from references made to the works of other people which have been duly acknowledged herein, this entire project is the product of my personal research, and it has neither in part nor in whole been presented for another degree elsewhere.

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APPROVAL

We certify that this project work was completed and written by **Eghosa NOFE-ABU**, with Matriculation Number **LAW1906215**, in partial fulfillment of the requirements for the award of the Bachelor of Laws (LLB) Degree of the University of Benin.

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DEDICATION

This research is duly dedicated to Jehovah God for his continuous love and care for me, to my loving and supportive parents Mr. and Mrs. Nofe Abu and finally to my future self that he may come to one day appreciate it as the first of many.

ACKNOWLEDGEMENT

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LIST OF ABBREVIATIONS

ACHPR	African Charter on Human and People Rights
CA	Court of Appeals
CC	Criminal Code
CFRN	Constitution of the Federal Republic of Nigeria
CPA	Criminal Procedure Act
HRLA	Human Rights Lawyers Association
ICCPR	International Covenant on Civil and Political Rights
LFN	Laws of the Federation of Nigeria
LLJR	Learned Justices of the Lower Court
LPELR	Law Pavilion Electronic Report
NCLR	National Council for Law Reporting
NWLR	Nigerian Weekly Law Reports
PA	Police Act
UDHR	Universal Declaration of Human Rights

ABSTRACT

The #EndBadGovernance protest saw once again the brutal tendencies of the Nigerian government and law enforcement. The constant violations by way of brutal crackdowns and indiscriminate headhunting pose many problems to the enjoyment of the right to protest. Protest is a core element for the existence and consolidation of democratic states. Despite the constellation of international, regional, and national legal frameworks protecting this right it is still in constant violation. The aim of this research is to enlighten readers on the makeup of the right to protest along with the inherent limitations of the right. It also seems to divulge the role of the state, law enforcement and the judiciary in the promotion and protection of this right. This research uses a doctrinal approach with an expository tone to set the pace throughout the work. It gives a historical background of protest along with the legal frameworks protecting it. This research identifies the government and the law enforcement as being instrumental in the continuous violation of this right. The study recommends that as the backbone of democracy, the right to protest should be given full attention. Particularly concerning legislations and treatises covering it. Case laws go a long way to explain how a law should be interpreted, this lends credence to the crucial role of the judiciary. The vital role of protest in society cannot be overemphasized: the right and freedom of protesters — too much or too little.

KEYWORDS: #EndBadGovernance, Democracy, Human Rights, Protest, Violence.

CHAPTER ONE

INTRODUCTION

1.1. Background to the study

Protest plays an important role in the political, economic and cultural life of our societies. Social protest is a core element for the existence and consolidation of democratic societies and as such is protected by a constellation of rights and freedoms¹. The right to protest is protected under the international and African regional human rights frameworks including the Nigerian constitution.

Since Nigeria's independence, civil activists and Union leaders have utilized civil protests in form of strikes and mass protests to make demands from the government.² They adopt it to clamour against social anomalies such as low standard of living/high cost of living, poverty, unemployment, corruption, military oppression, brutality and general maladministration³. The activists at some point suffered all manners of hardships and imprisonments, however they managed to keep protests in the consciousness of Nigerians⁴.

However, the issue remains that regardless or worse still inspite of the numerous protections ascribed to this particular right, this right is still being flagrantly violated. Sad and unfortunate as it is, it is well recognized that the Nigerian government through the security agencies are the main perpetrators of this right violation. In Nigeria, the security agents are hardly or never held

¹ Edison Lanza, *Protest and Human Rights: Standards on the rights involved in social protest and the obligations to guide the response of the state* (Office of the Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights 2019).
<<https://www.google.com/url?sa=t&source=web&rct=j&opi=89978449&url=https://www.oas.org/en/iachr/expression/publications/Protesta/ProtestHumanRights.pdf&ved=2ahUKEwjI4ZGwq9-LAxW7QUEAHSRuD-oQFnoECBYQAQ&usg=AOvVaw1Csn0nvtoflour6c58wbsU>> Accessed on 10 October 2024.

² Harri, 2014.

³ Harri, 2014; Ochi, & Mark, 2021.

⁴ Harri, 2014.

accountable or brought to justice due to the myriad of problems besetting the judicial institutions. Consequently there is an apparent lack of trust and confidence in the courts and general apathy towards the judicial process amongst Nigerians as the civil remedies in law are rarely enforced⁵

The first ever mass protest in Nigeria since its return to democracy in the 90's occurred on January 9 to January 16, 2012 dubbed "#OccupyNigeria", this was due to the increase in the pump price of Premium Motor Spirit (PMS). The second was the protest calling for the scrapping of the Special Anti-Robbery Squad (SARS) following reports of human rights abuse and cruelty to Nigerians. And most recent the #EndBadGovernment protest that was purported to run for seven days but was in reality only ran for six days. At the beginning of August this year, tens of thousands of Nigerians rose up to denounce the government in a movement that was organised under the slogans #EndBadGovernance and #EndHunger. For too long, protesters complained, Nigerians had been suffering from hunger, high petrol prices and corrupt and incompetent government⁶

Both the #EndSARS protest and the #EndBadGovernance protest while distinct in their origins and immediate objectives, share a common thread of widespread public dissatisfaction with the State of governance and the demand for systemic change. However, the response of the government has clearly been lacking, despite the so-called crackdowns and governmental reforms the core problem still remains. There have been cases of sham trials and public appeasement by way of punishing scapegoats, despite such actions the people can still see that the problems still remains. There have been numerous cases of headhunting and unconstitutional

⁵ Olufumilayo Oyelude and others, 'Security of Lives, Rights to Peaceful Assembly and the ENDSARS Protest in Nigeria', *Wakari International Studies Journal* [2023] (Vol 7)(1) 353.

⁶ Salvador Ousmane, 'Nigeria Government Unleashes Massive Repression After #EndHunger protests', Review Of African Political Economy (ROAPE), <<https://roape.net/2024/09/16/nigerian-government-unleashes-massive-repression-after-endhunger-protests/>> Accessed on 13 November 2024.

arrests including police brutality, this has led to the people being disillusioned with the government of the day. This disillusionment leads to disengagement from the political process, democracy faces its greatest threat. The reasons for this may range from a general lack of interest in the protest to a more disastrous fear of what will happen when, not if, the government intervenes. The people fearful of government interference refuse to participate in protests, this fear has cumulated into a general apathy towards the going ons of the country which is disastrous to the growth of any country.

This study seeks to examine the significant issues facing protesters and how the issues may be dealt with by understanding the right and its protections.

1.2. Statement of problem

Protesting is a fundamental right in any democratic society, serving as a crucial means for citizens to express their opinions, grievances and demands. In Nigeria, the right to protest is enshrined in the constitution and various international conventions to which Nigeria is signatory⁷.

However, what is being observed in Nigeria is far from the ideal. For instance, during the #EndBadGovernance protest, Media reports quote President Tinubu and senior administration officials labeling the protests as unwarranted and politically motivated. The Department of State Services alleged the protests are intended to undermine the government and create conditions for ‘regime change’ and will be used to incite chaos and violence. Similarly, the military warned that the protests could lead to anarchy and has promised to take proactive measures to maintain

⁷ ‘Rights of citizens to protest: extent & limits’, *Nigerian Economic Summit Group (NESG)*. <https://www.google.com/url?sa=t&source=web&rct=j&opi=89978449&url=https://nesgroup.org/download_resource_documents/Right%2520to%2520Protest_1722950957.pdf&ved=2ahUKewjQgo2Wn9-LAxW_BfsDHcagKIAQFnoECBMQAQ&usg=AOvVaw2qbWv6bnTKF6yLj6PouhUg> Accessed on 13 November 2024.

control. The police have cautioned against the protests, suggesting they could be used as a cover to unleash terror⁸.

These pre-emptive warnings are troubling, especially given the Nigerian security forces' history of violently repressing peaceful protest. The brutal crackdown of the #EndSARS protests in October 2020, when military and police officers fired on unarmed protesters, killing at least 12, remains fresh in the memory⁹. It is respectfully submitted that as our right, protest should not be repressed but instead, the cause of such repression should be looked into so that the rights of protesters are not undermined and ensure a peaceful protest.

Looking at these happenings in recent times one cannot help but ask himself; if the right to protest is one enjoyed only at the convenience of the government, is it still a right? Are the restrictions imposed by the government on the right to protest lawful and constitutional? And what might one do to solve the various challenges resulting from state repression of the right to protest?. This research seeks to examine the right to protest in Nigeria along with the issues and challenges facing protesters in an attempt to proffer an adequate if not satisfactory answer to these questions.

1.3. Aim and objectives of the study

The aim of this research is to examine the right to protest in Nigeria together with the issues inherent in this right and the challenges protesters face when exercising it. Therefore, the objectives of this research include:

- To give a clear understanding of what a right to protest entails.

⁸ (n3).

⁹ (n3).

- How the right to protest may be violated.
- To elevate the challenges facing this right in Nigeria.

1.4. Scope and limitations of the study

The study is limited only to the right to protest without an in-depth analysis of the twin rights of peaceful assemblies and expression. The study focuses on the understanding of the right to protest, the normative frameworks protecting this right, the restrictions inherent in this right, the states obligation with respect to this right and most especially the duties of the law enforcement agencies regarding the management of this right. This study also gives a brief history of protest in Nigeria and analyses two major protests in recent times; the #EndSARS protest and the #EndBadGovernance protest. It does not however provide a comprehensive analysis of the broader socio-political context in which these protest occurred.

Sad to say but this study does not offer a more targeted understanding of the challenges facing the right to protest due to its reliance on secondary sources of data including news reports, academic literature and official documents. Were a more non doctrinal approach taken with the aid of questionnaire and even opinion polls the study might have been able to close the gap occasioned by knowledge. As such while secondary data might be a great source of information it is still riddled with bias, gaps in information and even faces challenges of accessing reliable data on politically sensitive issues.

1.5. Significance of the study

This study is significant as it offers a targeted understanding of the right to protest through the study of the right itself, its restrictions and violations of the right. It takes a concerted effort to

illuminate the factors that drive protest movements and the conditions under which they can lead to a meaningful change.

The study is significant to the normal citizens of Nigerian as it reeducates them on their rights, whether or not it is enforceable, and how to protect the right. It is similarly significant to the government of the day, policy makers, activists, and scholars by analysing past shortcomings of the government in handling protest and the continual problems these shortcomings have caused. It offers a valuable lesson for future movements and for the government in addressing public grievances.

1.6. Research methodology

This research makes use of a doctrinal approach. The direct use of the constitution, statutes, and international treaties along with online sources and other secondary data among others further confirms this approach. The research takes an analytic mode of writing with an expository tone, it analyses the information and reports it as it originally was without bias.

The primary sources include case laws, the Constitution of the Federal Republic of Nigeria (1999), African Charter on Human Rights(ACHPR)[1986], Universal Declaration of Human Rights (UDHR)[1986], International Convenient on Civil and Political Rights(ICCPR)[1966] and other related statutes, while the secondary sources include books, journals, online articles, and other research materials in the library and internet that are of relevance to the study.

1.7. Chapter analysis

Chapter one entitled 'Introduction' contains the background to the study, the statement of the problem and the aim and objectives. It also examines the scope and limitations of the study,

significance, research methodology, and chapter analysis. Chapter two deals with the conceptual, theoretical framework and the literature review of other works relating to this study. Chapter three highlights various international, regional, and national instruments that provide for the right to protest. Chapter four on the other hand directly discusses the right to protest along with the state's obligations to the right to peaceful protest. It is also concerned with the violation of this right particularly the violation of the rights of protesters in past protests citing the #EndSARS and the #EndBadGovernance protests. Chapter five is the concluding part of the study with a summary of findings and viable recommendations. A practical suggestion of knowledge and areas for further studies are also included before the final conclusion of the study.

CHAPTER TWO

CONCEPTUAL, HISTORICAL FRAMEWORKS AND LITERATURE REVIEW

2.1. Conceptual clarifications

I. Democracy

‘Democracy is government of the people, by the people, for the people’ so says the great father Abraham Lincoln. Democracy is popular sovereignty.

Professor Nwabueze had the following to say about democracy:

It is a form of government which recognizes and indeed, institutionalized the people as the fountain of all powers and enable them, by means of elections at frequent interval on a universal adult franchise, to choose and mandate those to govern, a form of government on which the public good or the welfare of the people is the object

Democracy is a universally recognized ideal based on common values shared by people across the world, irrespective of cultural, political, social and economic differences¹.

The Constitution of The Federal Republic of Nigeria 1999 S.14(1)² provides: ‘The Federal Republic of Nigeria shall be a state based on the principles of democracy and social justice’

The values of freedom, respect for human rights and the principles of holding periodic and genuine elections by universal suffrage are essential elements of democracy. In turn, democracy

¹ ‘About Democracy and Human Rights’. < <https://www.ohchr.org/en/about-democracy-and-human-rights>> accessed 22 December 2024.

² The Constitution of the Federal Republic of Nigeria, 1999 as amended.

provides an environment for the protection and effective realization of human rights.³ While these characteristics may be seen as a benchmark for democracy, the institutional framework may differ from country to country.

Democracy is based on the freely expressed will of the people to determine their own political, economic, social and cultural systems and their full participation in all aspects of their lives⁴. The credibility of any democracy is its willingness to accept criticism, self correction and embrace diverse perspectives. These attributes set democracies apart from authoritarian states where challenges to the status quo are repressed⁵.

Democracy as a form of government is a universal benchmark for human rights protection; it provides an environment for the protection and effective realization of human rights⁶.

II. Rights

There exist a noticeable degree of symbiotic relation and interdependence between the development of society and the evolution of law. Worthy of note is that in every society or group, every person has and owes certain rights and duties to each other. In order to understand human rights and fundamental human rights, it is important to understand the jurisprudence of rights.

John Austin defined ‘right’ as ‘something because of which others are bound by law to do or forbear towards or in regards to him’. However, John Stuart Mill stated that the Act referred to

³ ‘Democracy and Human Rights’. <<https://www.un.org/en/global-issues/democracy#:~:text=Democracy%20and%20Human%20Rights&text=The%20values%20of%20freedom%2C%20respect,effective%20realization%20of%20human%20rights.>> Accessed on 22 December 2024.

⁴ (n7).

⁵ Democracy, Human Rights and Governance’. <<https://www.usaid.gov/democracy>> Accessed on 22 December 2024.

⁶ (n7).

by Austin must be in interest of the person who has the right. Rudolf Von Jhering on the other hand, defined 'rights' as 'legally protected interest'.

Salmond defined rights as an 'interest which is recognized and protected by a rule or justice'. This means that for a right to be termed as a legal right, it must obtain both legal protection and recognition. Holland defined it as the capacity of a man to control the actions of others with the assent and assistance of the state.

There are three main types of rights Viz Human rights, legal rights and fundamental human rights. The other types of rights include: Natural rights and moral rights.

For the purpose of this research we shall only concentrate on human rights and fundamental human rights.

Human rights are all inclusive, supreme and essential good claims, as they have a place with every individual, they are basic and fundamental to genuine living⁷. They are interdependent and indivisible, they encompass myriad facets of human existence including social, political and economic issues⁸.

The significance of human rights is that they are inherent to every human and as such are universal in nature and available to every person across borders regardless of his or her nationality. Another significance is that they create a base for the creation of other rights a person may be entitled to in his or her country.

⁷ Priya Sepaha, 'Distinction Between Fundamental Rights and Human Rights, (India, 5 November 2020). <<https://lawcolloquy.com/publications/blog/distinction-between-fundamental-rights-and-human-rights/149>> Accessed on 23 December 2024.

⁸ 'Principles of Democracy'. <<https://www.principlesofdemocracy.org/human>> Accessed on 22 December 2024.

Human Rights include rights such as right to life, liberty and security, freedom from slavery, prohibition of torture and inhuman treatment, equality, among others.

Fundamental rights on the other hand are rights guaranteed to citizens of a particular country. Fundamental rights are the rights that are conceded by an administration. These rights are granted through the country's constitution and all individuals that fall under the ward of the constitution are conceded these rights without assumption or cost of the benefit. Fundamentally, these are the rights that are granted to all subjects according to the lawful arrangement of the nation with no conditions⁹.

The provisions for fundamental rights are properly documented under Chapter IV of the 1999 constitution, contained therein include rights such as the right to life, personal liberty, freedom of expression, freedom of assembly and association, among rights.

Despite the numerous similarities between human rights and fundamental rights, there are certain features or characteristics that distinguish one from the other. In the case of *Enahoro & Ors v Abacha & Ors*,¹⁰ a distinction was properly drawn between the two terms. In that case, the court postulated that due to the development of constitutional law, differences have emerged between fundamental rights and human rights. Human rights were developed from and out of the wider concept of natural rights. They are rights which every civilized society must accept as belonging to each person as a human being. According to the court, fundamental rights remain in the realm of domestic law. They are fundamental because they have been guaranteed by the fundamental law of the country; that is, the constitution.

⁹ (n14).

¹⁰ [1998] 1 HRLRA 424.

These distinguishing characteristics are based on the legal nature and the enforceability of both rights. These differences include:

- Human rights are outlined in various international laws and global statutes such as, the International Bill of Human Rights, Tradition on the Prevention and Punishment of the Crime of Genocide and so on. On the other hand, fundamental rights are meticulously inscribed in each country's national constitution, thus they can vary from country to country.
- Fundamental rights are nation particular and are based on the standards of individual flexibility and self-assurance, alternatively human rights are universally perceived and are based in cultivated social orders and on the privilege to a stately life¹¹.
- Only governments that have ratified the relevant conventions are expected to enforce human rights treaties. International organizations however, can only recommend the legislatures to ratify such conventions and treaties but cannot take overt action to verify their implementation. On the other hand, governments and other such constituted authorities are obligated to enforce fundamental rights.

Although lawfully they are different, human rights and rights have numerous viewpoints in like manner. Basically, both go for making a lawful system in which individual and social orders can live in peace and in regard to everybody's correspondence and assorted variety¹².

III. Freedom of Expression

Freedom of expression is one of the fundamental principles of a democratic society. In this era, where it is impossible for every person to take part in the affairs of government, freedom of

¹¹ (n15).

¹² (n15).

expression enables an individual to air his/her opinion, in order to influence the act of governance¹³.

It is no wonder that the president of the International Court on human rights once remarked that:

Freedom of expression is a cornerstone upon which the very existence of a democratic society rests. It is indispensable for the formation of public opinion. It is also a condition sine qua non for the development of political parties, trade unions, scientific & cultural societies, and in general, those who wish to influence the public.

Section 39(1) of the 1999 constitution provides that: “Every person shall be entitled to freedom of expression, including freedom to hold opinions and to receive and impart ideas and information without interference”.

Taken from this subsection, ‘expression’ means a particular phrase or form of words that convey the mind or feelings of a particular person, which may be vocalized, performed or written. In the context of a guaranteed right, prerogative to express oneself in the manner aforesaid cannot be derogated from even when it is a contrary view from that which is the order of the day. It goes without saying that the Nigerian constitution is superior to any other legislation in the country and it determines in formal, emphatic and binding principles, the rights, liberties and responsibilities of both the government and the governed¹⁴.

Like every other right, the freedom of expression is not without its limitations. Under Section 39 (3), the right to freedom of expression could be restricted by a law reasonably justifiable in a democratic society, for the purpose of preventing the disclosure of information received in

¹³ Okoye Blossom Chisom, ‘Democracy and Right to Freedom of Expression: A Case Study on the Nigerian Youth Protest on Police Brutality’, *Open Journal of Political Science*, [2021] (Vol 11) No 1, 34-53.

¹⁴ Osatohanmwon Eruaga, ‘The Right to Protest: A Review of the Law and Empirics in Nigeria’ in Epiphany Azinge and Laura Ani, *Freedom of Protest* (Abuja, NIALS Press, 2013).

confidence, or for the purpose of maintaining the authority and independence of the courts. Under Section 45 (1), permissible limitations must be reasonably justifiable in a democratic society in the interest of defense, public safety, public order, public morality or public health; or for the purpose of protecting the rights and freedom of other persons.

The limitations of this right was further expounded in the case of *Aviomoh v COP & Anor*¹⁵ by Yahaya JCA when he stated thus:

The Constitution entitles a person to freedom of expression and imparting ideas and information; it is not a blanket right. It must not be utilized or invoked in such a way, that it offends public safety, order, morality and health, and it must not be injurious to the rights and freedom of other persons. Once a person lives in a community, his rights stop where the rights of the other members of the community begin. He has to behave according to the norms of that society, otherwise his conduct will be injurious to the well-being and continued existence of that community. He cannot, in the guise of exercising his freedom of expression or imparting information, trample upon the rights of other persons in the society. He must not act in such a way, that he defames their character or endanger their safety, health, order or morality.

Of course one cannot talk about the freedom of expression without discussing the freedom of the press. Freedom of the press or freedom of the media is the freedom of communication and expression through mediums including various electronic media and published materials¹⁶.

It was the press that published stories of the systematic torture of Algerians by French soldiers during the Algerian War of Independence. The press botched the presidential ambition of Garry Hart of America when his amorous past was put in the public glare. The Nigerian press was at the forefront of the opposition to the corrupt, inept, and dictatorial regime of General Ibrahim Badamosi Babangida and General Sanni Abacha. It was the alliance between the media and the

¹⁵ [2014] LPELR-23039(CA) p 15-17 paras F.

¹⁶ 'Freedom of Expression and the Press'. <<https://www.learnnigerianlaw.com/learn/human-rights/expression>> Accessed on 30 December 2024.

National Assembly that botched the ambition of former President Olusegun Obasanjo to secure a 3rd term in office through a manipulated constitutional amendment¹⁷.

Section 39(2) of the constitution provides:

Without prejudice to the generality of subsection (1) of this section, every person shall be entitled to own, establish and operate any medium for the dissemination of information, ideas and opinions: provided that no person, other than the Government of the Federation or of a State or any other person or body authorised by the President on the fulfillment of conditions laid down by an Act of the National Assembly, shall own, establish or operate a television or wireless broadcasting station for, any purpose whatsoever.

Under the constitution, the obligations of the press in the context of the fundamental objectives and directive principles of the state policy are stated in the following terms: ‘the press, radio, television and other agencies if mass media shall at all times be free to uphold the responsibility and accountability of the government to the people¹⁸,

Concerning the freedom of the press and the interpretation of S39(2), the court in the case of *Oyegbemi & Ors v AG Federation*¹⁹ had the following to say:

No person, be he an editor, reporter, or publisher of a newspaper can be compelled to disclose any source of his information for any matter published by the person and non- disclosure cannot be contempt of court. This is subject to the interest of justice, national security, public safety, order, morality, welfare of persons or prevention of disorder or crime. Consequently, the right to withhold information like all other freedoms, not absolute.

¹⁷ *ibid.*

¹⁸ *ibid.*

¹⁹ [1982] 3 NCLR 695.

S 39(2) of the constitution, has been held to also include the freedom to own and establish private schools for the exchange of ideas and the acquisition of knowledge²⁰. In the case of *Okojie v Attorney General of Lagos State*²¹ the court held that the word ‘medium’ is not limited only to Orthodox mass communication media but could reasonably include schools. Therefore, any statutory abolition of private schools would constitute a violation of the right of proprietors of these schools to freedom of expression.

According to Prof. B.O Nwabueze, free speech and free press are instruments of self-government by the people to be informed and educated about the affairs of the government. Political responsibility as a concept of democratic government requires that public opinion be one of the factors informing the actions of the government. Free speech and a free press enable; corruption, abuse of office and other official wrongdoings to be exposed.

IV. Freedom of Assembly and Association

Assembly can be defined as ‘an intentional and temporary gathering in a private or public space for a specific purpose’²². The right to freedom of assembly is a fundamental human right that allows individuals to gather peacefully for collective expression, protest or advocacy. It is one of the characteristics of democratic societies, enabling public participation in political and social issues²³.

The right to peaceful assembly protects the right of individuals and groups to meet for a common purpose or to exchange ideas and information, to express their views publicly, and to hold a

²⁰ Inegbedion NA and Odion JO, *Constitutional Law in Nigeria* (2nd edition, AMBIK PRESS, 2011).

²¹ [1981] 1 NCLR 105.

²² Study Group, 2014.

²³ ‘What is Freedom of Assembly and How Can I Identify a Breach to My Rights?’.
<https://nigeria.action4justice.org/legal_areas/freedom-of-assembly/right-to-freedom-of-assembly/#:~:text=This%20means%20that%20it%20is,or%20hold%20a%20peaceful%20protest> Accessed on 31 December 2024.

peaceful protest. The right extends to all gatherings for peaceful purpose, regardless of the degree of public support for the gathering. However, the right applies only to peaceful assemblies, not those involving violence²⁴.

Freedom of association allows any person to join a group or organization to pursue a common goal. This may be a trade union, a professional association or other organisation. The freedom of assembly and association does not only ensure the right to be part of an assembly or association, but also ensures that no one can be forced to join in²⁵.

The Section 40 of the 1999 constitution provides that generally, every person is entitled to assemble freely and associate with other persons and in particular he may form or belong to any political party, trade union or any other association for the protection of his interests. The purport of this provision is that a person is entitled to form an association or gathering in so far as such association is a ‘peaceful’ one. Thus, the keyword being peaceful, presupposes that where an association or assembly is formed for a purpose which is not peaceful, then the right accorded by the CFRN 1999 on freedom of assembly cannot be extended to such gathering or association²⁶.

A recent decision of the Federal High Court of Nigeria (May 2024) underscores the importance of the right in Nigeria and the Court’s willingness to enforce it under the constitutional provision. The decision also shows the interplay between a statutory regulator, an association and the judiciary. The case of *Dr Olusola Adeyelu vs Medical And Dental Council Of Nigeria And*

²⁴ (n2).

²⁵ ‘Freedom of Assembly and Association’. <<https://www.rights.in.ua/en/rights/freedom-of-assembly-and-association>> Accessed on 31 December 2024.

²⁶ Atoyebi O and Victor Atang, ‘ Right to Freedom of Assembly in Nigeria: An Overview’,(UK,10 October 2024). <<https://omaplex.com.ng/right-to-freedom-of-assembly-in-nigeria-an-overview/#:~:text=The%20right%20to%20freedom%20of,in%20political%20and%20social%20issues.>>> Accessed on 31 December 2024.

*Nigerian Medical Association*²⁷, was brought by Dr Adeyelu (the plaintiff), a medical doctor. The case was based on Section 40 of the Nigerian Constitution. The Nigerian Medical Association (NMA) is a longstanding association for medical doctors and dentists in Nigeria. Historically all doctors and dentists in Nigeria are members of the NMA. The plaintiff was a member of the NMA. However, the plaintiff became disillusioned with how the association was run, including the association's practice of imposing additional levies on members. The plaintiff decided to relinquish his membership of the NMA and stopped paying membership fees and levies. When the plaintiff went to renew his practicing license with the Medical and Dental Council of Nigeria (the regulator by law), the Council refused to renew the license on the ground that the plaintiff did not pay the levy prescribed by the NMA. In its judgment, the Court considered whether the membership of the NMA and the imposition of the levy are mandatory and, if so, whether this is consistent with Section 40 of the Constitution. The Court also considered whether the regulator could make membership of an association a precondition for license renewal. The Court concluded that, in view of the provision in Section 40, membership of the NMA is not compulsory and the applicant may associate or disassociate from the NMA. The Court also held that the regulator cannot indirectly enforce membership of the NMA through its practice license regime.

Like other jurisdictions, the right to freedom of association is not absolute. The right is limited under various laws, the most notorious of these laws being the Public Order Act²⁸. Section 1 of the Act states that the governor of each state is empowered to issue general licenses for the conduct of Assemblies, meetings or processions in public places. The government may also restrict the right under specific circumstances stated in the Constitution. Circumstances include

²⁷ FHC/ABJ/CS/1094/2020 Federal High Court Abuja 1 September 2020.

²⁸ Public Order Act (1979) CAP P42 Laws of the Federation of Nigeria 2004.

national security, public safety, public order, public morality and public health. In addition, the right may be restricted for the purpose of protecting the rights and freedoms of other persons²⁹.

Nigeria has a statutory framework that guarantees freedom of assembly and association which is further reinforced by regional and international conventions and treaties. Freedom of assembly and association can serve many purposes, including (but not limited to) the expression of views and the defence of common interests, celebration, commemoration, picketing and protest. The exercise of this freedom can have both symbolic and instrumental significance and can be an important strand in the maintenance and development of culture and the preservation of minority identities³⁰.

V. Freedom of Movement

The foundation of every other human right is, arguably, the right to freedom of movement. The importance of this right can be further appreciated, if one considers the fact that it makes certain other rights more meaningful. For instance, without it, the right to personal liberty, freedom of assembly and association, would be of no practical use. Also, the right to change residence or domicile would of course, be meaningless without the right to acquire property³¹.

Section 41 of the 1999 constitution provides that: “Every citizen of Nigeria is entitled to move freely throughout Nigeria and to reside in any part thereof, and no citizen of Nigeria shall be expelled from Nigeria or refused entry thereby or exit therefrom”.

²⁹ Femi Amao, ‘Navigating the Contours of the Right to Freedom of Association in Nigeria’, (Cork, 29 August 2024). <<https://blog-iacl-aicd.org/2024-posts/2024/8/29/navigating-the-contours-of-the-right-to-freedom-of-association-in-nigeria>> Accessed on 31 December 2024.

³⁰ (n31).

³¹ ‘Right to Freedom of Movement’. <<https://www.learnnigerianlaw.com/learn/constitutional-law/movement>> Accessed on 31 December 2024.

The first point of note is the opening words of the constitutional provision. It makes a clear departure from the language of the International Bill of Rights and African Charter on Human and People Right. While the former gives the right to ‘everyone’ or ‘every individual’, the Nigerian constitution gives the right to every citizen of Nigeria. The constitution contains detailed provisions on who is a citizen³².

The right to freedom of movement connotes that every citizen has such rights as:

- Freedom to move freely throughout Nigeria
- Freedom to reside in any part of Nigeria
- The right not to be expelled from Nigeria
- The right not to be refused entry into Nigeria
- Right not to be refused exit from Nigeria.

The freedom to reside anywhere necessarily carries with it, the right to be entitled to all the rights and privileges guaranteed by the federal government to every citizen. The state may however in consideration of the multi ethnic nature of the nation, reserve the rights and privileges to prescribe a minimum period of residency after which a citizen can take advantage of certain privileges accorded to citizens of that state as long as such prescriptions are not excessive and do not extend to fundamental human rights³³.

The scope of the right to freedom of movement has been made provided for in several judicial lacuna. The Supreme Court while interpreting section 38 of the 1979 Constitution of Nigeria

³² Chijoke Emeka, ‘The Right to Freedom of Movement in Nigeria’, *Auxano Law Journal*, [2020] (Vol 1) ALJ(5) 80-108.

³³ (n41).

which is the same as section 41 of the 1999 Constitution of Nigeria in the case of *Director SSS v. Agbakoba*³⁴ put the position of the law briefly thus:

The right to freedom of movement guaranteed by the section 38(1) By the constitution of the Federal Republic of Nigeria 1979 (as amended) in section 38(1) thereof every citizen of Nigeria is entitled to move freely and reside freely in any part of Nigeria and no citizen of Nigeria should be expelled from the country or prevented from leaving the country. These provisions of section 38(1) (supra) look absolute but for qualification by section 41(1) of the same constitution which provides 41(1) Nothing in section 34, 35, 36 , as amended ,37 and 38 are of this constitution shall invalidate any law that is reasonably justifiable in a democratic society.

The right to freedom of movement like all other right is not absolute and has several constitutionally recognized restrictions. These restrictions are provided for in the Nigerian constitution.

Section 41(2)(a) of the 1999 constitution is a limitation on the right to exit from Nigeria and would for example justify the judicial seizure of an accused person's passport while he is undergoing trial or a convict undergoing punishment or their incarceration within Nigeria. Thus where a citizen is standing trial for a crime for which he has been charged, there can be a constitutionally permissible derogation from his fundamental right to leave Nigeria³⁵.

There is a further restriction of the right under S.45(1) of the Constitution. Thus, where the movement of persons could result in public unrest or disorder or the infringement of the rights of other persons, the law will not hesitate in obstructing the freedom of movement of the person in

³⁴ [1999] 3 NWLR (pt 595) 3 40.

³⁵ (n42).

question. Also note that it is the Courts that determine whether or not a law is reasonably justifiable³⁶

VI. Public Opinion

Public opinion is the aggregation of individual views that represent the feelings that people hold on an issue at a given point in time. Not all people have opinions on all topics, and therefore another way to define public opinion is to say that it represents the views of ordinary citizens that they are willing to express openly³⁷.

Public opinion has been notoriously difficult to define, such that there is no single accepted definition of it. However various scholars have in a word or two clarified this concept.

Key Jnr famously defined public opinion as those held by private person's which, government find it prudent to heed³⁸. In a question on what constitutes a public opinion if the government does not find it prudent to heed a particular opinion held by the public Biereenu-Nnabugwu (2014) reiterated that public opinion is a complex collection of views of many different people. It centers on what people think or their response to particular questions or public issues. The concept of public opinion focuses on the aggregate of individual attitudes or beliefs held by the adult population which are expressed or known. In this sense, it does not only represent the views of the people on any issue of general interest, but also the fact that such views are expressed³⁹.

³⁶ (n41).

³⁷ 'What is Public Opinion and Where Does it Come From'. <<https://openstax.org/books/introduction-political-science/pages/5-4-what-is-public-opinion-and-where-does-it-come-from>> Accessed on 24 December 2024.

³⁸ Key, 1961 cited in Robert and Tedin, 2011.

³⁹ Chidozie Beneath Obiorah and others, 'Public Opinion and Public Policy', *SocialScientia Journal of the Social Sciences and Humanities*, [2023] (Vol 8) No 4.

According to Bianco and Canon (2013), public opinion is defined as being ‘the aggregate of public attitudes or beliefs about government or policies⁴⁰. Meanwhile, Thomas Magstadt (2016) is of the opinion that in democracy, public opinion attains legitimacy from the fact that government is responsible to its voters. He stated further that polls showing a clear preference or dramatic shift in public opinion can influence decisions, actions and policies of government officials hence all government make some effort to assess and analyze public opinion⁴¹. In democratic states, public opinion on a variety of issues is gauged and discussed freely, and efforts to identify the majority opinion on any particular issue are undertaken not only by public agencies but also by political parties and candidates, the media, various private organizations and research institutes, and inquiring scholars⁴².

Conclusively, public opinion is not the unanimous opinion but there is a general agreement on the issue. It may change with the circumstances, time, and new information. Public opinion is logical and considered view of a section of society. It is not always political, it can be social and economic. It reflects diversity of opinion, no fixed territory or area for public opinion and ensures democratic communication.

2.2. Historical Foundation

Agitations, protests and confrontations of any kind have always been part and parcel of the Nigerian system. Way before the country got her independence in 1960, during the colonial era

⁴⁰ Bianco and Canon, 2013.

⁴¹ Magstadt, 2006: 317.

⁴² Magstadt, 2006: 317.

and till now; these actions have either led to a definite change in the system or further sparked a bigger chain of reactions⁴³.

Nigeria today is marked by the emergence in various epochs of civilisations, kingdoms, states and empires, as well as a caliphate and colonial rule, before the founding of the Nigeria Nation-State in 1914 and its subsequent independence in 1960. Protests have repeatedly motivated positive social change. Through protesting, individuals and groups express disagreement, opinions and objections to government actions or inactions⁴⁴.

Precolonial Nigeria, during the days of empires and kingdoms, witnessed uprisings or 'protest'. For instance, the old Oyo empire under the Alaafin of Oyo, which controlled vast regions of today's Southwestern Nigeria, was a powerful monarchy. However, the system of government rested on the 'Ogboni' to avoid excesses by the Alaafin. The 'Ogboni' was the third organ of government of the Oyo empire; in the Yoruba political system, it played the judicial role and was made up of prominent diviners. The 'Ogboni' played this role to the extent that when an Alaafin flouted the separation of power in the palace, he was sent a calabash, essentially an order to commit suicide.

British Administration in Nigeria did not formally begin 1861, the year that Lagos was ceded to the crown. Since the establishment of British administration in Nigeria, Western economic forces have profoundly changed both the structure of traditional Nigerian societies and the perspectives of Nigerian peoples. The tempo and character of the changes created situations and attitudes that

⁴³ Oludamola Adebawale, 'History of Protests in Nigeria: Reactions and Consequences' *The Guardian Newspaper*, (Nigeria, 25 October 2020). <<https://guardian.ng/life/history-of-protests-in-nigeria-reactions-and-consequences-2/>> Accessed on 24 December 2024.

⁴⁴ Oyebamiji Usman Adesoji, 'Protest in the History of Nigeria', (Nigeria, 2 September 2024). <<https://qiraatafrican.com/en/13161/protest-in-the-political-history-of-nigeria/>> Accessed on 24 December 2024.

have predisposed many Nigerians to racial consciousness and nationalist activity. The leaders and most of the active supporters of the Nigerian nationalist movement came from the ranks of those who had been most strongly affected by Western influences, and in particular from the Western-educated, English-speaking minority⁴⁵.

Early nationalists tended to ignore Nigeria as the focus of patriotism; rather, the common denominator was based on a newly assertive ethnic consciousness, particularly Yoruba and Igbo. Despite their acceptance of European and North American influences, the nationalists were critical of colonialism for its failure to appreciate the antiquity of indigenous cultures. They wanted self-government, charging that only colonial rule prevented the unshackling of progressive forces in Africa⁴⁶

Protests in Nigeria, however, took a new dimension circa 1900 when the masses, who were disgruntled over a government policy, took to the streets to make their grievances known. A new problem required a more proactive approach⁴⁷

Civil protests occurred in Nigeria in the 1990's prior to the fourth Republic. Mass demonstrations against military regimes were organized by civil society organizations and social activists⁴⁸. Social and human rights activists like Gani Fawehinmi, Beko Ransome-Kuti and Femi Falana organized protests under the banner of civil society groups like the Campaign for Democracy (CD) during the military tyrannies of General Ibrahim Babangida and General Sani Abacha. The likes of Afrobeat icon Fela Anikulapo Kuti uses music as a form of protest against

⁴⁵ ibid.

⁴⁶ ibid.

⁴⁷ (n48).

⁴⁸ Harri, 2014.

societal injustices, corruption and oppressive government policies⁴⁹. The activists at some point suffered all manner of hardships and imprisonments, however, they managed to keep protests in the consciousness of Nigerians⁵⁰.

Women in the Eastern region of colonial Nigeria stood their grounds and kicked against the intolerable tax levy imposed by the colonial government. This was between 1925-1930. Prior to this time, protest of this kind was unheard of. As a result, many women were assaulted, beaten and arrested. More worrisome was that scores of women were killed at the Opobo riverbank, a stone's throw from Ikot-Abasi, in today's Akwa Ibom State. As soon as the protest started, news soon got to Aba on the 6th of December 1929. It was while in Aba the protest got its name from (Aba Women's Riot). Simultaneously, the entire Eastern region was engulfed by protests ably led by women⁵¹.

In Midsummer of October 1946, the Abeokuta Ladies Club under the leadership of Madame Olufunmilayo Ransome-Kuti submitted a list of demands to the Alake of Egbaland, Oba Sir Ladapo Ademola II and one of their demands was the abolition of tax on women in Abeokuta amongst other issues around their welfare. Their demands were ignored; Madame Olufunmilayo was arrested and fined 3000 Pounds or risk going to prison⁵².

On November 29th 1947, she led a protest of 10,000 women to the palace of the Alake of Egbaland. They camped around the palace for more than two days, sleeping, cooking and conducting all their affairs around the palace grounds. The Pressure was so huge on the colonial

⁴⁹ Harri, 2014.

⁵⁰ Harri, 2014.

⁵¹ (n48).

⁵² (n48).

government that they had to abolish the tax laws and the Alake of Egbaland abdicated the throne on 3rd of January 1949⁵³.

The success of the Egba women's revolt was motivated by the teachings of one woman named Alimotu Pelewura. Alimotu herself had her share on the fight for a better life for women in Lagos. It was a fight against taxation of women; mostly market women in Lagos. It is on records that the protest was massive. In all, over 7,000 women were in attendance at the Glover Hall on Broad Street. Their protest got support from the nationalist Herbert Macaulay who was a close ally of Alimotu. The exploits of Alimotu Pelewura gave a sense of direction, hope and belonging to women and had their demands met⁵⁴.

This is not forgetting the exploits of Pa Michael Imodu who led one of the biggest union strikes in the history of Nigeria. While the protest took it heavy tolls, the country was shut down for over four days⁵⁵.

More recently are protests that have demanded improved welfare, against oppressive regimes and basically for a fair right to life, right to be heard and right to basic amenities⁵⁶.

The SAP Riots of 1989, the infamous "Ali Must Go" crisis that rocked the country in 1978. The slogan "Ali Must Go" was adopted against the then Federal Commissioner of Education Col. Ahmadu Ali during the General Olusegun Obasanjo military regime. Let's not forget that scores of students lost their lives during the protest that started when the Federal Government increased the meal ticket of students in tertiary institutions from 50 Kobo to 1.50 Kobo and then to N2.00⁵⁷.

⁵³ (n48).

⁵⁴ (n48).

⁵⁵ (n48).

⁵⁶ (n48).

⁵⁷ (n48).

The protests had Akintunde Ojo; a student of Architecture at the University of Lagos killed. Also in the fracas that ensued, eight students of the Ahmadu Bello University, Zaria, were sent to their early graves by the army. The protest was led by the late Segun Okeowo, the National President of Nigerian Union of Students. Segun Okeowo passed on January 28th, 2014 at 73⁵⁸.

The June 12 protests against the Military regime of General Sani Abacha had scores of people killed; students inclusive. The journey for a better Nigeria it seems would be forged through the series of agitations⁵⁹.

The aptly named June 12 protest of 1993 was such a tragedy that it was deemed to go down in history as the height of injustice and corruption in the political sphere of Nigeria. The protest occurred as a result of the annulment of the June 12, 1993 Presidential elections by Ibrahim Babangida. Protests over the June 12 injustice and state brutality were climaxed by the assassination of Abiola's wife Kudirat, in June 1996 and the mysterious death in detention of Abiola himself on July 7, 1998. While it is true that Nigeria's political landscape has been dominated by repulsive inter/intragroup struggle for elite positions right from the period of the decolonization till date, the events that surrounded the truncated Third Republic (June 12, 1993 presidential election) clearly demonstrated that ethnic factors remained the most potent threat not only to democracy but also to the continuous survival of the Nigerian Federation.⁶⁰

In the period between its independence in 1960 and 1998, Nigeria had, in terms of heads of State, two elected, one appointed, one military successor and 7 [coups d'état] powers. In the year 1999, Nigeria adopted an new constitution with democracy as its system. This signified Nigeria's return to civilian rule and as such this constitution guarantees fundamental human rights for all citizens.

⁵⁸ (n48).

⁵⁹ (n48).

⁶⁰ (n51).

The first ever mass protest in Nigeria since its return to democracy in the 90's occurred on January 2 to January 14, 2012 was dubbed "#OccupyNigeria". On January 1, 2012, former President Goodluck Jonathan abruptly ended fuel subsidies, sparking the Occupy Nigeria protest. Occupy Nigeria was an anti-subsidy removal campaign, which was later propagated to unseat Jonathan and his People's Democratic Party (PDP). It was also one of the corridors through which the ruling All Progressives Congress (APC) was installed. Similarly, it led to the reinstatement of the subsidy and a review of the federal government's spending⁶¹.

The new constitution with all its provisions for fundamental human rights and guarantees did not stop the constant violation of these rights by the Nigerian government.

Nigerian youths embarked on peaceful protest tagged #EndSARS to demand the disbandment of the Special Anti-Robbery Squad (SARS) unit, as well as, other reforms in the Nigerian Police Force (NPF). What started out as a peaceful demonstration by thousands of youths, degenerated into chaos after the protests were hijacked by hoodlums. The hijacked protest is now characterized by the heavy presence of security personnel on the streets of Lagos, mob attacks on security personnel, killings, and vandalization of public and private properties⁶².

Oct. 20, 2020, will forever be known as Black Tuesday in Nigeria. In a darkness broken only by the blue light of cell-phone screens, the sound of gunshots rang out as the army and police allegedly fired into a crowd of young people who had gathered at Lagos's Lekki toll gate to protest against the now disbanded Special Anti-Robbery Squad (SARS), a notoriously abusive arm of the police. The massacre at Lekki punctuated more than two weeks of protest of police brutality in Nigeria. The hash tag #EndSARS began trending (again) on social media on Oct. 4.

⁶¹ (n51).

⁶² (n65).

The immediate trigger was a video that showed a SARS officer shooting a young motorist in Ughelli, in Delta state, then pushing his body out of the car and driving off with the dead man's Lexus SUV. Within days, crowds of young people gathered in Nigerian cities to demand the abolition of SARS. This year's protests follow on previous activism and government announcements that SARS would be demobilized in 2014, 2015 and 2017. And yet, SARS officers continued to act with impunity, committing armed robberies, rapes, other acts of torture and extrajudicial killings like the one in Delta State. On Oct. 11, leaders announced that SARS would be disbanded, but crowds of protesters grew bigger—even in the face of violence and intimidation. Since the protests began, estimates are that at least 100 individuals have allegedly lost their lives; 48 of whom were killed on Black Tuesday alone⁶³

The last and most recent protest happened from August 1 to 7, 2024 following the most recent change of government. The Nationwide protest was over the rising cost of living since the beginning of President Bola Ahmed Tinubu's administration in May 2023. The protest was driven by multiple factors, including the high cost of living, a recent fuel price hike, worsening economic conditions, and dissatisfaction with government policies. Also, protesters rallied under the hashtag #EndBadGovernance, demanding not just economic relief but also transparency, accountability, and good governance. Organisers of the protests are calling for the reversal of the fuel price hike, the restoration of affordable electricity tariffs, and the reduction of import duties to their previous rates⁶⁴.

Throughout its history, protests in Nigeria have been a powerful tool for citizens to express dissent and demand change, often leading to significant political and social outcomes. Protest

⁶³ (n65).

⁶⁴ (n51) .

participants constitute a diverse set of individuals who are representatives of Nigeria's population and come from a variety of backgrounds, for this reason their reasons for joining may not be necessarily homogeneous but what is admirable is still their desire to see a wrong corrected, the laws followed and the constitution upheld.

2.3. Literature Review

As the topic of protest is one of such sensitive importance it is not an exaggeration to say that the topic has been examined almost exhaustively. Human rights activists, lawyers and policy maker's have at least delved into this topic, it is one that faces major obstruction with seemingly no visible solution. It is for this reason that this research topic is coined 'Examining the right to protest in Nigeria: issues and challenges'.

A search on this topic will reveal numerous journal articles, online write-ups/publications and even newspaper reports. The sources may even include statues and Acts with some judicial decisions on the issue. Most notable is the review of human rights situation in Nigeria, the general acceptance of protest as a fundamental right and the criticism of government on their attitude towards protest. Most of the sources analyze the End SARS protest as evidence of the government's attitude.

Everyone must be able to express their grievances or aspirations in a peaceful manner, including through public protests without fear of reprisals or of being intimidated, harassed, injured, sexually assaulted, beaten, arbitrarily arrested and detained, tortured, killed or subjected to enforced disappearance⁶⁵.

The above was stated in the preamble for the Human Rights Council Resolution 22/10. This is a very thoughtful and thorough provision that stresses the importance of public opinion Viz protest

⁶⁵ A/HRC/RES/23/10.

amidst consequences. It is a right that ought to be enjoyed by the citizenry but the reality is far from the object especially in Nigeria.

It is no surprise that Olufumilayo Oyelude⁶⁶ and Ors in their article stated “Every country has a constitution in which human rights are enshrined, but it appears that even with the constitution stipulating such rights, human rights are questionable”. Clearly enshrined in the constitution are rights such as: the right to life⁶⁷, respect for the dignity of person⁶⁸, personal liberty⁶⁹, fair hearing⁷⁰, freedom of thought, conscience and religion⁷¹, freedom of expression⁷², freedom of assembly and association⁷³, among other rights. These fundamental rights are guaranteed to all citizens of the country and any case of infringement ought to be dealt with strictly. The reality however, is that more often than not these rights are regularly violated with little to no reprisals. In this article, they investigated the effect of the constitutional right to freedom of assembly and association on the security of lives in Nigeria using the End SARS protest as a case study. The End SARS protest, such a Black Tuesday event, highlight the inadequacies of the government and even goes a long way to identify the government itself as the chief source of these right violations. They thereafter concluded that it was the inability of the government and its various agencies to secure the fundamental human rights of each individual in its jurisdiction leading to the violations of such human right.

⁶⁶ (n2).

⁶⁷ Section 33 CFRN 1999, as amended.

⁶⁸ Section 34 CFRN 1999, as amended.

⁶⁹ Section 35 CFRN 1999, as amended.

⁷⁰ Section 36 CFRN 1999, as amended.

⁷¹ Section 38 CFRN 1999, as amended.

⁷² Section 39 CFRN 1999, as amended.

⁷³ Section 40 CFRN 1999, as amended.

Okoye Blossom Chisom⁷⁴ readily remarked that: “Amongst different varieties of governments or regimes, democratic government is the greatest upholder and respecter of human rights. As such, expression of human rights blossoms most in a democratic setting.”

However, he was also quick to criticize that such protection is unusually absent in Nigeria. He stated: “Citizens are now restricted from having peaceful protests on the streets, at worst cases military men are alleged to start shooting at unarmed citizens if by any means the rulers of the nation feels threatened by the protesters, which in most cases such allegations are also denied by them.”

He berated that the immunity clause⁷⁵ of the 1999 constitution is an aberration on real democratic practice forsaking the accountability for their actions and inactions during their tenure. In his paper, he advocated for the right of citizens to freely express their dissatisfaction or disapproval of governmental decisions or actions through peaceful protest.

Chris Kwaja⁷⁶ in his article on the impact of protest on election in Nigeria stated thus: “At the core of the protests and public dissatisfaction is a demand for greater transparency and accountability from the government”. In this article he expands on the issue of the growing disillusionment of the Nigerian youths to democracy. The attitude of the government and particularly the brutal crackdowns on protest movements have done little to endear the youths to democracy. This disillusionment has manifested itself as political apathy, there exist a growing discontentment with democracy with many ignorantly clamoring for military regime. He

⁷⁴ (n22).

⁷⁵ Section 308 CFRN 1999, as amended.

⁷⁶ Chris Kwaja, ‘Nigeria at a Crossroads: Navigating Protests Amidst Elections ‘, (Yola, 1 October 2024). <<https://www.usip.org/publications/2024/10/nigeria-crossroads-navigating-protests-amid-elections>> Accessed on 13 November 2024.

concludes that only by tackling pivotal moments like protest and local elections can the government address the root cause of public discontent.

Farouk Ibrahim Bibi-Farouk⁷⁷ in his paper questioned if street protests and demonstrations contradict the provisions in Nigeria laws thereby creating a legal and political lacuna that seems to deny citizens the right to civil disobedience.

“Nigeria has politicized the right to protest and demonstration [...] A rally, demonstration or march will be treated adversely by the governor or the police if it threatens the ruling party or regime”. The contrasted the case of *All Nigeria People’ Party v Inspector-General of Police*⁷⁸ with the *Dr Lewis Chukwuma v The Commissioner of Police*⁷⁹ case and aptly identified the Public Order Act as one of the hindrance to the legal provision for protest. He endeavoured that importance should be placed on laws that creates a balance between various provisions so as to guarantee democratic rights for protest, demonstrations and peaceful assembly. He concludes with a sharp remark on the ambiviancy of the Nigerian courts that allow the police to cherry pick which permission to issue and which not to.

Gadzama Christopher Linus and ors⁸⁰ in their research stated:

The social contract under which democratic governance is predicated has largely vested governance on the people and allocated exercise of day to day administration of governance on elected individuals. This delegation of powers does not divest the people of their right to express displeasures on reproachable policies exacted by those to whom power has been entrusted.

⁷⁷ Farouk Ibrahim Bibi-Farouk, ‘Street Protests, Demonstrations and Democracy: An Interrogation of the Legality of the Public Order Act in Nigeria’, *Journal of Public Discourse*, [2024] (Vol 2) (3) No 1, 192-205.

⁷⁸ [2007] LLJR-CA.

⁷⁹ [2005] 8 NWLR (pt 927) 278.

⁸⁰ Gadzama Christopher Linus and others, ‘Protesters’ Right in Nigeria's Constitutional Democracy’, *FUWJSS*, [2024] (Vol 1) No 1, 336-352.

They draw attention to the judiciary's crucial role in defending constitutional rights as well as Nigerian individuals tenacious efforts to exercise their fundamental freedoms in the face of obstacles. The paper concludes that protest is a constitutionally recognized human right and all institutions of government should ensure its enforcement.

Each researcher may seem to be distinct and separate from the other but all is not as it may seem. While Olufumilayo Oyelude focused on the security of lives in Nigeria, Okoye Blossom Chisom on democracy, Chris Kwaja with election, Farouk Ibrahim Bibi-Farouk on the interrogation on the legality of the Public Order Act and Gadzama Christopher Linus on constitutional democracy what really binds them is their focus on the facilitation of the right to protest as the core element of their respective research.

Each researcher provide their own take on the topic of protest without being too especial. The topics of security of lives, democracy and elections are just some of the ways protest affect the country and each writer explored the topics splendidly with particular criticism towards the government for their attitude.

This research work is of an expository nature and as such mainly relies on the research articles written by these reverend scholars. While our conclusions may differ in the long run, it is with these research that I shape my thoughts.

CHAPTER THREE

INTERNATIONAL AND REGIONAL NORMATIVE FRAMEWORKS ON THE RIGHT TO PROTEST

3.1. Introduction

Protests serve as a vital mechanism for holding leaders accountable and ensuring that government actions reflect the will and needs of the people. History has shown that protests can lead to significant changes in government policies, processes and practices, highlighting the power of collective action to address grievances and promote good governance¹.

The provision and protection of the right to protest is very fundamental in a democratic society. The government and the citizens have clear roles to play in its protection. It is the primary responsibility of the state to prevent the overburdening of this right by undue restrictions that do not allow for the enjoyment of this time. This responsibility of the government comes with a counter obligation on the part of the citizen to ensure that his or her right is exercised appropriately and in accordance with the law².

It is for this reason that on the importance of protest, the Secretary General of the United Nations observes in the document ‘The Highest Aspirations. A Call to Action for Human Rights’:

Society is stronger and more resilient when women and men can participate actively in political, economic and social life and contribute to the creation of the policies that affect their lives,

¹ ‘The Right to Peaceful Protest: A Pillar of Democratic Governance as Constitutionally Guaranteed’, (Abuja, 29 July 2024). <[https://eic.ng/the-right-to-peaceful-protest/#:~:text=Protesting%20is%20a%20legitimate%20form%20of%20expression,and%20Nigeria's%201999%20Constitution%20\(as%20amended\)%2C%20among](https://eic.ng/the-right-to-peaceful-protest/#:~:text=Protesting%20is%20a%20legitimate%20form%20of%20expression,and%20Nigeria's%201999%20Constitution%20(as%20amended)%2C%20among)> Accessed on 9 February 2025.

² ‘Right to Protest: Organizing and Participating in Rallies or Protests’. <https://nigeria.action4justice.org/legal_areas/freedom-of-assembly/protection-of-the-right-to-freedom-of-assembly/> Accessed on 24 December 2024.

especially when they have the possibility to access information, dialogue, express their opinions... However, in too many places, the space allocated for this participation is shrinking. There are more and more repressive laws, that impose greater restrictions on freedoms of expression, assembly and association³.

The right to protest is a basic human right arising out of a number of recognized human rights. While no human rights instruments or national constitution grants the absolute right to protest, such right to protest is an expression of the right to freedom of assembly, the right to freedom of association and the freedom of speech⁴.

Therefore, rather than being codified under a single law or treaty, the right to protest is protected under international human rights law by provisions guaranteeing each of these distinct yet mutually reinforcing rights. Taken together they provide protestors with comprehensive protection⁵.

3.2. International provisions

I. Universal Declaration of Human Rights (UDHR) [1948]⁶

The Universal Declaration of Human Rights (UDHR) is a document that acts like a global road map for freedom and equality – protecting the rights of every individual, everywhere. It was the first time countries agreed on the freedoms and rights that deserve universal protection in order for every individual to live their lives freely, equ--ally and in dignity.

³ United Nations, 2020a, p9.

⁴ Adegoke A. Olanrewaju 'Right to Protest and Right to Strike: An Overview' in Epiphany Azinge and Laura Ani (eds) 'Freedom of Protest' (Abuja, NIALS Press, 2013).

⁵ 'Protect the Protest', *Amnesty International*. <[⁶ United Nations General Assembly, Universal Declaration of Human Rights\(UDHR\), UN Doc A/RES/3/217A \(10 December 1948\).](https://www.amnesty.org/en/what-we-do/freedom-of-expression/protest/#:~:text=Driven%20by%20creativity%20and%20a,and%20acts%20of%20civil%20disobedience.> Accessed on 24 December 2024.</p></div><div data-bbox=)

The UDHR was adopted by the newly established United Nations on 10 December 1948, in response to the ‘barbarous acts which [...] outraged the conscience of mankind’ during the Second World War. Its adoption recognized human rights to be the foundation for freedom, justice and peace.

Work on the UDHR began in 1946, with a drafting committee composed of representatives of a wide variety of countries, including the USA, Lebanon and China. The drafting committee was later enlarged to include representatives of Australia, Chile, France, the Soviet Union and the United Kingdom, allowing the document to benefit from contributions of states from all regions, and their diverse religious, political and cultural contexts. The UDHR was then discussed by all members of the UN Commission on Human Rights and finally adopted by the General Assembly in 1948⁷.

Thus, for the first time in history, human rights were assembled and codified into a single document. The Member States, or sovereign states that are members of the United Nations, came together in agreement to protect and promote these rights. As consequence, the rights have shaped constitutional laws and democratic norms around the world, such as the Human Rights Act of 1998 in Britain and the Civil Rights Act of 1964 in the United States⁸.

The UDHR is a statement of principles, not a treaty as such no country has signed or ratified it. Nigeria has neither signed nor ratified it, however it has signed and ratified several other human rights treaties that are based on the UDHR.

⁷ ‘Universal Declaration of Human Rights’, *Amnesty International*. <<https://www.amnesty.org/en/what-we-do/universal-declaration-of-human-rights/>> Accessed on 9th February 2025.

⁸ ‘History of the Universal Declaration of Human Rights’, *UAB Institute for Human Rights Blog*, (10 December 2018). <<https://sites.uab.edu/humanrights/2018/12/10/the-history-of-the-universal-declaration-of-human-rights/>> Accessed on 9th February 2025.

Article 19⁹ of the UDHR makes provision for the right to freedom of expression, stating thus: “Everyone has the right to freedom of opinion and expression: this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers”

Article 20¹⁰ on the other hand guarantees the right to protest by safeguarding the right to freedom of assembly and association:-

1. “Everyone has the right to freedom of peaceful assembly and association.
2. - No one may be compelled to belong to an association”.

The Universal Declaration of Human Rights, is a non-binding declaration but remains highly persuasive nonetheless. It lays down the foundation for the legal framework of the right to protest in the international community.

II. International Covenant on Civil and Political Rights (ICCPR) [1966]¹¹

According to a World Health Organization fact sheet, “even before the adoption of the Universal Declaration on Human Rights in 1948 (at the time a non-legally binding document), broad agreement existed that the rights which were to be enshrined in the Declaration were to be transformed into legally binding obligations through the negotiation of one or more treaties. In 1966, two separate treaties, covering almost entirely all the rights enshrined in the Universal Declaration of Human Rights were adopted after approximately 20 years of negotiations: one for civil and political rights, the International Covenant on Civil and Political Rights (ICCPR), and one for economic, social and cultural rights, the International Covenant on Economic, Social and

⁹ United Nations General Assembly, UDHR, UN Doc A/RES/3/217A (10 December 1948)art 19.

¹⁰ United Nations General Assembly, UDHR, UN Doc A/RES/3/217A (10 December 1948)art 20.

¹¹ International Covenant on Civil and Political Rights (ICCPR), 1966.

Cultural Rights (ICESCR).” Together, the Universal Declaration on Human Rights, the ICCPR and the ICESCR, are sometimes referred to as the International Bill of Human Rights¹².

Article 21¹³ of this treaty provides:

The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (order public), the protection of public health or morals or the protection of the rights and freedoms of others.

The effect of recognition of the right to protest and its subsequent protection by the ICCPR is such that all member state that ratifies the treaty has a legally binding obligation to do same in their respective countries.

Nigeria's ratification of this treaty on the 29th of July 1993, means that Nigeria has explicitly accepted obligations with regard to the protection and enforcement of these rights provided for in the international treaty.

Nigeria is not a party to the First Optional Protocol to the ICCPR, which allows individuals to petition the Human Rights Committee if they believe the State has violated their human rights as protected under the Covenant¹⁴.

3.3. Regional Provision

¹² ‘History of the International Covenant on Civil and Political Rights’, (10 November 2015). <<https://humanrightscommitments.ca/2015/11/history-of-the-international-covenant-on-civil-and-political-rights/>> Accessed on 11 February 2025.

¹³ ICCPR, art 21,(1966).

¹⁴ ‘The Right of Peaceful Protest’. <<https://www.rightofassembly.info/country/nigeria#>> Accessed on 24 December 2024.

I. African Charter on Human Rights (ACHPR) [1986]¹⁵

The African Charter on Human and Peoples' Rights (ACHPR), which was proposed in 1979, adopted in 1981 and came into effect in 1986, was the first non-Western declaration of human rights and the first official statement of an African human rights perspective. With Africa largely absent in 1948 when the Universal Declaration of Human Rights (UDHR) was adopted, it stands in stark historical reproach to the Western conception of universal human rights as a pivotal document in the decolonisation of the continent¹⁶.

Article 11¹⁷ provides as follows: “Every individual shall have the right to assemble freely with others. The exercise of this right shall be subject only to necessary restrictions provided for by law in particular those enacted in the interest of national security, the safety, health, ethics and rights and freedoms of others.”

Nigeria ratified the treaty in 1983 in accordance with Section 12(1) of the then 1979 constitution of Nigeria which provided that: ‘No treaty between the Federation and any other country shall have the force of law except to the extent to which any such treaty has been enacted into law by the National assembly’. It thus become a domestic law by virtue of the ‘The African Charter on Human and Peoples’ Rights (Ratification and Enforcement) Act¹⁸.

¹⁵ Organization of African Unity (OAU), African Charter on Human and Peoples' Rights (“Banjul Charter”), CAB/LEG/67/3 rev. 5, 21 ILM 58 (1982).

¹⁶ Nat Rubner, ‘The African Charter on Human and Peoples' Rights Volume 1: Political, Intellectual and Cultural Origins’, (London, August 2023). <[¹⁷ African Union \(1981\), ACHPR art 11.](https://boydellandbrewer.com/9781847013538/the-african-charter-on-human-and-peoples-rights-volume-1/#:~:text=The%20African%20Charter%20on%20Human%20and%20Peoples%20Rights%20(ACHPR),it%20should%20therefore%20be%20understood.>” Accessed on 11 February 2025.</p></div><div data-bbox=)

¹⁸ Chudi Nelson Ojukwu, ‘Enforcement of the African Charter on Human and Peoples' Rights as a domestic law in Nigeria’, *International Legal Practitioner*, [2000]. <[41](https://heinonline.org/HOL/LandingPage?handle=hein.journals/ilp25&div=48&id=&page=>” Accessed on 13 February 2025.</p></div><div data-bbox=)

Nigeria is a state party to the 1998 Protocol on the African Court on Human and Peoples' Rights, but has not allowed the right of petition to the Court by individuals and non-governmental organizations¹⁹.

3.4. National Provisions

I. The Constitution of the Federal Republic of Nigeria (CFRN) [1999]

The apex document of any country is the constitution which is the foundational legal document that outlines the structure of the government, the rights of the citizens and the division of power within a nation. Nigeria is no different, with the 1999 constitution serving as the authority on all legal matters.

On May 5, 1999, the military leadership of Nigeria promulgated Decree No 24 of 1999 as the constitutional basis for a return to civilian rule. The process began in 1998, when the military regime (which had taken power by coup under General Abacha in 1993) responded to continued local and international pressure (including threats of tightened sanctions) by promising to introduce economic liberalization and political reform. Elections for a National Assembly were held on April 25th and the political parties then selected Abacha as the sole candidate for an upcoming presidential election. The leader died on June 8th, however, and his chief of staff, General Abubakar was appointed the next day. Abubakar immediately released major political prisoners, dissolved the existing electoral commission and political parties, and declared the previous elections of local leaders to be void. He invited applications for new political parties and provisionally approved 9 of the 26 proposals received²⁰.

¹⁹ (n95).

²⁰ 'Nigeria 1999'. <<https://pcwcr.princeton.edu/reports/nigeria1999.html>> Accessed on 13 February 2025.

On September 7, General Abubakar announced his intention to transition toward civilian rule by revisiting a draft constitution developed in 1995. The ruling council appointed 25 experts (academics, lawyers, and retired officers) to a Constitutional Debate Coordinating Committee to take recommendations for revising the 1995 document. The committee began work on November 11 and the draft in question was published in major newspapers two days later. Public hearings were organized in 10 cities, to take opinions from 10 specially created zones. Several workshops were held, and over 405 memoranda were received in a period of less than 2 months. Respondents objected that the conference that drafted this document was unrepresentative, since voting for the 273 elected members had been marred by boycotts and cynicism to include only 400,000 voters. The committee concluded that the document lacked credibility as a means to introduce democratic reforms. Their report, submitted to government on December 30th, recommended a reversion to the 1979 constitution (with minor amendments)²¹.

The ruling council continued to focus on the 1995 constitution, however, and delivered these on February 2nd, to the Federal Ministry of Justice who was to complete the draft. Meanwhile, elections were held to appoint leaders to the 774 local government councils (on December 5th), members of the National Assembly (on February 20), and a new president, (on February 27th). For president, 62.8% of the estimated 40 million voted for General Obasanjo, who had presided during the development of the 1979 election. The new officials were to take power at the end of May, when the new constitution would come into force. On March 20th, the Ministry of Justice delivered its draft of the constitution back to the ruling council, but the official document was not released. Five versions of the 1995 constitution were circulating, and there was considerable confusion as to which draft was under consideration by the ruling council. The council

²¹ *ibid.*

announced in early April that the final version would not be released until its last day in power, May 28, 1999. On May 5th, the leaders issued a decree that reinstated the constitution of 1979 with “some amendments” but did not identify what these might be. The final document integrated some provisions from the 1989 constitution and provided immunity for the military leadership against prosecution for actions while running the country. The new constitution entered into force on May 31, 1999²².

On the legal framework for the right to protest, the constitution provides the various fundamental rights that make up this right. These rights are documented under Chapter IV of the 1999 constitution titled Fundamental Rights.

Section 39(1) of the 1999 constitution provides: “Every person shall be entitled to freedom of expression, including freedom to hold opinions and to receive and impart ideas and information without interference”.

Sub (2) continues:

Without prejudice to the generality of subsection (1) of this section, every person shall be entitled to own, establish and operate any medium for the dissemination of information, ideas and opinions:

Provided that no person, other than the Government of the Federation or of a State or any other person or body authorised by the President on the fulfilment of conditions laid down by an Act of the National Assembly, shall own, establish or operate a television or wireless broadcasting station for, any purpose whatsoever.

This purport of this section is the recognition, protection and advancement of the freedom of expression.

²² *ibid.*

Section 40 provides for the freedom of assembly and association stating thus:

Every person shall be entitled to assemble freely and associate with other persons, and in particular he may form or belong to any political party, trade union or any other association for the protection of his interests:

Provided that the provisions of this section shall not derogate from the powers conferred by this Constitution on the Independent National Electoral Commission with respect to political parties to which that Commission does not accord recognition.

Meanwhile, as one of the rights that constitutes the right to protest, the right to freedom movement is also aptly protected in Section 41(1) of the constitution: “Every citizen of Nigeria is entitled to move freely throughout Nigeria and to reside in any part thereof, and no citizen of Nigeria shall be expelled from Nigeria or refused entry thereby or exit therefrom”.

The rights to freedom of expression, freedom of assembly and association and the freedom of movement are fundamental rights and as fundamental rights they are rights granted to all subjects according to the lawful arrangement of the nation. The constituted authorities are obligated to enforce these rights.

CHAPTER FOUR

PROTEST IN NIGERIA

4.1 Introduction

Protest¹ springs from deep feelings²). It is the public expression of disagreement, discontentment or disapproval with a law, policy or situation of things. There is no fixed measure for the approbation and disapprobation of a law or policy so therefore, protest remains heralded as the aggregate of individual attitudes or beliefs held by the population.

The black Law Dictionary³ defines protest as:

“A formal declaration made by a person interested or concerned in some act about to be done, or already performed, whereby he expresses his dissent or disapproval, or affirms the act against his will. The object of such a declaration is generally to save some right which would be lost to him if his implied assent could be made out, or to exonerate himself from some responsibility which would attach to him unless he expressly negatived his assent”.

Historically, protests have often inspired positive social change and improved protection of human rights, and they continue to help define and protect civic space in all parts of the world. Protests encourage the development of an engaged and informed citizenry and strengthen representative democracy by enabling direct participation in public affairs.

¹ Notwithstanding any other definitions, for the purpose of this research, protest has been defined to include any form of online and offline acts of civil disobedience from strikes, marches, vigils, sit-ins, boycotting, lock-outs, picketing among others.

² Hoffman, 2017.

³ Black's Law Dictionary, 4th ed, West Group, 2011, ISBN 0-314-27544-4.

They enable individuals and groups to express dissent and grievances, to share views and opinions, to expose flaws in governance and to publicly demand that the authorities and other powerful entities rectify problems and are accountable for their actions.

This is especially important for those whose interests are otherwise poorly represented or marginalized⁴.

The aim of peaceful protests is to generate dialogue with ultimate aim of having government abandon a previously held anti people position or reverse an unpopular law. This has been seen to work in instances around the world where concessions are made⁵.

Protest has always been a veritable tool in the hands of aggrieved persons to demonstrate their acceptance of a policy or agenda of the government, management of an organization, or political heads of a community⁶.

4.2. Protest as a Right

The right or freedom to protest is a democratic right⁷. Although there is no express provision in any legislation granting the Nigerian citizen a right to protest, the right has become recognized in our legal jurisprudence as an evolved right that of necessity flows from the existence of certain fundamental rights as entrenched in our constitution⁸ especially—the freedom of expression, assembly and association— that in conjunction, configure what can effectively be considered the right to protest.

⁴ Article 19 on the Right to Protest: Principles on the protection of human rights in protests.

⁵ Adebayo Okeowo, 'Challenges to Peaceful Protest in Nigeria: The Use of Force', *Pretoria Student Law Review*, [2015] 9, 1-8.

⁶ Chizoba Ada Okeke, 'Limits to Freedom of Protest' in Epiphany Azinge and Laura Ani 'Freedom of Protest' (Abuja NIALS Press, 2013).

⁷ (n23).

⁸ (n23).

The 1999 constitution of Nigeria being the apex document, an authority on all legal matters provides for the rights that constitutes the right to protest.

Section 39 provides: “Every person shall be entitled to freedom of expression, including freedom to hold opinions and to receive and impart ideas and information without interference”.

Sub (2) continues:

Without prejudice to the generality of subsection (1) of this section, every person shall be entitled to own, establish and operate any medium for the dissemination of information, ideas and opinions:

Provided that no person, other than the Government of the Federation or of a State or any other person or body authorised by the President on the fulfilment of conditions laid down by an Act of the National Assembly, shall own, establish or operate a television or wireless broadcasting station for, any purpose whatsoever.

Section 40 also provides:

Every person shall be entitled to assemble freely and associate with other persons, and in particular he may form or belong to any political party, trade union or any other association for the protection of his interests:

Provided that the provisions of this section shall not derogate from the powers conferred by this Constitution on the Independent National Electoral Commission with respect to political parties to which that Commission does not accord recognition.

Going further Section 41 states: “Every citizen of Nigeria is entitled to move freely throughout Nigeria and to reside in any part thereof, and no citizen of Nigeria shall be expelled from Nigeria or refused entry thereby or exit therefrom”.

The right to protest is one arising from a plethora of other rights most especially the fundamental rights of expression, assembly and association and movement codified in Section's 39, 40 and 41

respectively. Since the right to protest in Nigeria is derivable from these fundamental rights enshrined in the constitution, it has now been regarded as a fundamental right too. Freedom to speak one's mind and by extension to protest is now an inherent quality of the type of society contemplated by the constitution as a whole⁹.

The constitution jealously guards the rights of its citizens by providing that only laws that are justifiable in the interest of defense, public safety, public order, public morality or public health or for the purpose of protecting the rights and freedom of the other person or a properly declared state of emergency can restrict the rights guaranteed¹⁰. These laws collectively are known as the derogation principle.

4.2.1. The right to participate in protest without prior authorization

The exercise of the right of freedom of assembly through protest is one that should not be subjected to government authorization or excessive requirements that make it cumbersome to carry out. Requirements underlying the prohibition or limitation of a meeting or demonstration such as police permit are not compatible with freedom of assembly.

Prior notice, generally justified by states on the basis of the need to provide greater protection to a demonstration cannot and should not function as a covert authorization mechanism. The practice of prior notice has led to the paradoxical situation where the oppressed and disapproving masses take permission to show their disapproval from the oppressors themselves. What really stops the oppressors from denying such permission? Nothing!!

⁹ (n23).

¹⁰ (n23).

The question of whether prior authorization is needed in order to participate in a protest is one that always remains at the front of every protestors mind. An answer to this question was however provided in the landmark case of All Nigeria People' Party v Inspector-General of Police¹¹.

In order to protest the rigging of the 2003 elections, the All Nigeria Peoples' Party had asked the Inspector-General of Police to grant police permits to its members so they could stage unification rallies around the nation. The police chief denied the request without providing an explanation. The rallies were organized by the ANPP. General Muhammadu Buhari, the party's presidential candidate, and other ANPP leaders attended the first rally, which took place in Kano on September 22, 2003. The police forcefully broke up the event since the organizers did not have a police permission.

The pertinent question that needed to be resolved was whether a permission was required in order to participate in a rally or protest in accordance with Section 1(1)(2) of the Public Order Act. To ensure clarity, a summary of these parts will be provided. The Governor of each state was given the authority by Section 1 of the Act to oversee the conduct of all assemblies, gatherings, and processions on state owned roadways or in public resort areas, as well as to determine the path and timing of any procession. Flowing from Section 2, unless the assembly, meeting, or procession is authorized by a general license granted under subsection (3) of this section, the person wishing to organize, collect, or form any assembly, meeting, or procession in

¹¹ (n80).

any public road or place of public resort must first apply for a license to the Governor, preferably within 48 hours of the event¹².

It is clear from the foregoing that the Police Order's provisions conflict with those of the Constitution. According to the Supremacy Clause found in Section 1(3) of the Constitution, the Constitution will take precedence over any other legislation and that other law will be void to the extent of its conflict with the provisions of the Constitution (in this case, the Police Order Act)¹³.

In dismissing the contention of the Police the trial court Judge, Honourable Justice Chinyere stated inter alia:

In my view, the provision in section 40 of the Constitution is clear, direct and unambiguous. It is formulated and designed to confer on every person the right to assemble freely and associate with other persons. I am therefore persuaded by the argument of Mr. Falana that by the combined effect of sections 39 and 40 of the 1999 Constitution as well as Article 11 of the African Charter on Human and Peoples' Rights, the right to assemble freely cannot be violated without violating the fundamental right to peaceful assembly and association. I agree with Mr. Falana that violation can only be done by the procedure permitted by law, under section 45 of the Constitution, in which case there must be a state of emergency properly declared before these rights can be violated.

I also agree with Mr. Falana that the criminal law is there to take care if protesters resort to violence in the course of demonstration and that once the rights are exercised peacefully, they cannot be taken away.

The Public Order Act so far as it affects the right of citizens to assemble freely and associate with others, the sum of which is the right to hold rallies or processions or demonstration is an aberration to a democratic society. It is inconsistent with the provisions of the 1999 Constitution. In particular, sections

¹² (n82).

¹³ (n82).

1(2),(3),(4),(5) and (6), 2, 3 and 4 are inconsistent with the fundamental rights provisions in the 1999 Constitution and to the extent of their inconsistency, they are void. I hereby so declare.”

After declaring the provisions of the Public Order Act which require police permit for public meetings and rallies illegal and unconstitutional the Federal High Court proceeded to grant the following reliefs:

“1. A DECLARATION that the requirement of police permit or other authority for the holding of rallies or processions in Nigeria is illegal and unconstitutional as it violates section 40 of the 1999 Constitution and Article 11 of the African Charter on Human and Peoples’ Rights (Ratification and Enforcement) Act (Cap 10) Laws of the Federation of Nigeria, 1990.

2. A DECLARATION that the provisions of the Public Order Act (Cap 382) Laws of the Federation of Nigeria, 1990 which require police permit or any other authority for the holding of rallies or processions in any part of Nigeria is illegal and unconstitutional as they contravene section 40 of the 1999 Constitution and Article 7 of the African Charter on Human and Peoples’ Rights (Ratification and Enforcement) Act (Cap 10) Laws of the Federation of Nigeria, 1990.

3. A DECLARATION that the Defendant is not competent under the Public Order Act (Cap 382) Laws of the Federation of Nigeria, 1990 or under any law whatever to issue or grant permit for the holding of rallies or processions in any part of Nigeria.

4. AN ORDER OF PERPETUAL INJUNCTION restraining the Defendant (the Inspector-General of Police) whether by himself, his agents, privies and servants from further preventing the Plaintiffs and other aggrieved citizens of Nigeria from organizing or convening peaceful assemblies, meetings and rallies against unpopular government measures and policies.”

Completely dissatisfied with the judgment of the Federal High Court on the issuance of police permit the Inspector-General of Police appealed to the Court of Appeal. Upon hearing the case

the Justices of the Court of Appeal unanimously affirmed the judgment of the Federal High Court.

On the fundamental right of Nigerian citizens to assemble freely and protest without licence or permit Adekeye JCA proceeded to hold as follows:

The power given to the Governor of a State to issue permit under Public Order Act cannot be used to attain unconstitutional result of deprivation or right to freedom of speech and freedom of assembly.

The right to demonstrate and the right to protest on matters of public concern are rights which are in the public interest and that which individuals must possess and which they should exercise without impediment as long as no wrongful act is done...

Public Order Act should be promulgated to compliment sections 39 and 40 of the Constitution in context and not to stifle or cripple it. A rally or placard carrying demonstration has become a form of expression of views on current issues affecting government and the governed in a sovereign state. It is a tread recognized and deeply entrenched in the system of governance in civilized countries – it will not only be primitive but also retrogressive if Nigeria continues to require a pass to hold a rally. We must borrow a leaf from those who have trekked the rugged path of democracy and are now reaping the dividend of their experience.

In the light of the foregoing, it is submitted, without any fear of contradiction that the power to issue licence or permit for holding public meetings, assemblies and processions was never vested in Inspector-General of Police and Police Commissioners but in the State Governors. Police permit which is a relic of colonialism has been annulled on the ground of its inconsistency with the provisions of the Constitution and the African Charter on Human and Peoples' Rights on freedom of assembly, association and expression. To that extent, the disruption of public

meetings and rallies by the police and other security agencies ought to be resisted by Nigerians as it is illegal and contemptuous¹⁴.

4.2.2. The right to choose the content and message of the protest

The freedom of expression, particularly that of speech, being a constituent of the right to protest guarantees the enjoyment of this right. The right to choose the content and message of the protest is such that all types of speech is permissible. Also contemplated within this right is the permission of all types of ideas and information including favourable, inoffensive and offensive, shocking or unpleasant. No expressive speech is excluded from public debate.

Freedom of expression within the framework of social protests must be guaranteed not only in terms of the dissemination of ideas and information received favorably or considered inoffensive or neutral, but also in terms of those that offend, shock, disturb, are unpleasant, or disturb the State or any sector of the population because of the type of complaint they involve¹⁵.

This general presumption of coverage of all expressive speech is explained by the State's primary duty of content neutrality and, as a consequence, by the necessity to guarantee that, in principle, there are no persons, groups, ideas or means of expression excluded a priori from public debate¹⁶.

Without prejudice to the presumption of ab initio coverage, there are certain types of speech which, by virtue of express prohibitions embodied in international human rights law¹⁷, do not

¹⁴ 'Police Permit Not Required for Rallies in Nigeria, by Femi Falana', *Premium Times*, (Nigeria , 23 January 2014). <<https://www.premiumtimesng.com/opinion/153860-police-permit-required-rallies-nigeria.html?tztc=1>> Accessed on 13 February 2025.

¹⁵ (n1).

¹⁶ (n1).

¹⁷ (n1).

enjoy protection under Section 39 of the Nigerian constitution within the framework of a social protest.

The freedom of expression does not allow speeches that promote violence, incite hatred or directly threaten individual or public safety. Also, such speech cannot advocate harmful actions or spread dangerous misinformation.

Any restriction on the right to freedom of expression must be in accordance with law which is reasonably and such law must have the objective of achieving any of the purposes set out in either Section 39(3) or Section 45(1) of the 1999 constitution¹⁸.

4.2.3. The right to choose the time and place of the protest

Protests are indispensable for democratic consolidation and therefore constitute as legitimate a use of public space as any other. Thus, they cannot be suppressed as a way of guaranteeing other more routine uses of these spaces, such as commercial activity or the circulation of persons and vehicles¹⁹.

The United Nations Rights Council 38th Resolution on the Promotion and Protection of Human Rights²⁰ during peaceful protest contemplates this right in its principles.

Principle 8 enables everyone the freedom to choose the location of a protest, and the location chosen should be considered integral to its expressive purpose. States should ensure that protests are allowed in all public places, including places that are privately owned, but are functionally

¹⁸ (n25).

¹⁹ (n1).

²⁰ UN Human Rights Council (38th Sess: 2018: Geneva): The Promotion and Protection of Human Rights in the Context of Peaceful Protest.

public and must equally ensure that protests can take place within sight and sound of their object or targeted audience.

States also should deploy adequate resources to ensure counter-protests within sight and sound of the other, do not lead to disorder. That potential disorder arising from disagreement or tension between opposing groups should not be used to justify the imposition of restrictions on the protest.

State should also refrain from imposing restrictions on online protests seeing that Internet is a quasi-public place that is routinely used for public purposes.

On the other hand, Principle 9 provides among others for the duration of a protest. The president or any public officer is not in a position to determine the duration of protest or to adjudge whether or not protest demands have been met or not. It is the right of protesters themselves to do so²¹.

Nigeria is a signatory state under the United Nations and as such is obligated to promote and protect this right.

4.2.4. The right to choose the mode of protest; scope of the provision on ‘peaceful protest’

The right to choose the mode of protest is one envisioned and protected under the right to freedom of expression. By virtue of this provision there shall be no restriction on the mode used by protesters to express their dissatisfaction with the law, policy or situation. Protestors are

²¹ Kingson Uwandu, ‘The Right of Citizens to Protest’, (29 October 2020). <<https://blueprint.ng/the-right-of-citizens-to-protest/>> Accessed on 14 February 2025.

therefore free to utilize any mode of protest that will best air their grievances without undue restrictions from the state. Forms of protest as sit-ins, boycotting and even strike may be employed by the protestors as they see fit.

States have a duty to take the necessary measures to prevent acts of violence, to ensure the safety of persons, including demonstrators, and to maintain public order. Violent actions by demonstrators or third parties that pose a certain risk to the life or physical integrity of persons who may or may not be involved in the protest obliges the State to take action to prevent and avoid such occurrences, limiting the protest rights of perpetrators of violence²².

However, contemplated within the International Covenant on Civil and Political Rights (ICCPR), African Charter on Human and Peoples' Rights (ACHPR) and the Nigerian Constitution is the provision for 'peaceful protest'. Every protest is deemed peaceful, and if intelligence indicates otherwise, it is the role of the appropriate government agencies to identify such saboteurs and arrest them immediately²³.

For the right of freedom of assembly and association, importance is placed on the word 'peaceful' and as such any assembly outside this for any purpose is an unlawful assembly and as such it contravenes the statutory provisions of S40 of the constitution. Section 69 of the Criminal Code²⁴ defines the term 'unlawful assembly':

When three or more persons, with intent to carry out some common purpose, assemble in such a manner or, being assembled, conduct themselves in such a manner, as to cause persons in the neighbourhood to fear on reasonable grounds that the persons so assembled will tumultuously disturb the peace, or will by such

²² (n1).

²³ (n83).

²⁴ Criminal Code (1916) CAP C38 LFN 2010.

assembly needlessly and without any reasonable occasion provoke other persons tumultuously to disturb the peace, they are an unlawful assembly.

Further provision is made in Section 88 of the Criminal Code which states:

Any persons who assemble together, to the number of three or more, under any of the following circumstances-

(a) bearing or wearing or having amongst them any firearms, bows and arrows, spear, sword, knife, or other offensive weapon; or

(b) publicly exhibiting any banner, emblem or symbol, the displaying of which is calculated to promote animosity between persons of different religious faiths or different factions, or

(c) being accompanied by any music, beating of drums, or other noise calculated to promote such animosity; and, being so assembled, join in any parade or procession for the purpose of celebrating or commemorating any festival, anniversary, or event, relating to or connected with any religious or other distinction or difference between persons residing in Nigeria or of demonstrating any such religious or other distinction or difference, are guilty of an offence.

However, it is important to highlight that the violent behavior of some people does not allow us to establish that the meeting as a whole is not peaceful, since this behavior cannot be attributed to other people. This was also the position of the court in the case of *Ogeanyi v Inspector General of Police*, where it was stated that an original assembly may be lawful but then degenerate into an unlawful purpose. Where the gathering is not for a common purpose, any ensuing affray does not necessarily make it unlawful²⁵.

Likewise, in the event that an assembly turns violent, the loss of the protection guaranteed by the right to freedom of peaceful assembly does not imply the disappearance of the State's duty to guarantee the protection of other rights. In this regard, the special rapporteur on the rights to

²⁵ 'Right to Peaceful Assembly'. <<https://www.learnnigerianlaw.com/learn/constitutional-law/peaceful-assembly>> Accessed on 31 December 2024.

freedom of peaceful assembly and association and the special rapporteur on extrajudicial, summary or arbitrary executions maintain that, although “the participants in an assembly do not act peacefully and, as a result, they lose the right of peaceful assembly, they retain all other rights, subject to normal limitations. Therefore, no assembly should be considered unprotected²⁶.”

4.3. State's obligation to guarantee the right to peaceful protest

A combined reading of Section 45 alongside section 1(3) of the Constitution of the Federal Republic of Nigeria which provides that ‘if any law is inconsistent with the provisions of this constitution, this constitution shall prevail, that other law shall to the extent of the inconsistency be void’. This section appreciates the fact that the national assembly can make a law limiting the scope of the human rights however, whatsoever new legislation must not be inconsistent with the constitution²⁷.

The crux of the discussion is aimed at determining the level of compliance of Nigeria’s use of force laws in the context of suppressing a protest with that of International human right regimes²⁸.

The United Nations Rights Council 38th Resolution on the Promotion and Protection of Human Rights through paragraphs 9 and 11, the resolution especially makes strong statements against the use of force:

Paras 9. Urges all States to avoid using force during peaceful protests, and to ensure that, where force is absolutely necessary, no one is subject to excessive or indiscriminate use of force.

²⁶ United Nations, 2016, par. 9.

²⁷ Sharon Tolulope James and Chukwunoyenim G, ‘Analysing the Legal Boundaries of Protests and the Right to Life in Nigeria’, *International Journal of Law*, [2022] (Vol 8) (6), 37-41.

²⁸ *ibid.*

Paras 11. Affirms that nothing can ever justify “shoot to kill” practices as well as indiscriminate use of lethal force against a crowd, acts which are unlawful under international human rights law.

The resolution goes further under paragraph 10 to call on states to ensure that their domestic laws are in tandem with international standards. It also urges states to abide by the applicable principles of law enforcement in relation to proportionality in order to ensure that lethal force is only deployed in the face of an imminent threat to life.

The General Comment²⁹ stresses that states have a positive obligation to facilitate peaceful assemblies. This includes ensuring safety, providing necessary infrastructure, and taking measures to prevent disruptions from counter-demonstrators or hostile forces. States must also protect participants from undue interference and refrain from imposing arbitrary restrictions. States must also ensure that laws governing assemblies do not unduly restrict the right. Furthermore, States should provide adequate protection for participants against violence or intimidation as well as facilitate peaceful assemblies through appropriate measures.

It can therefore be concluded that the duties of the state in as much as it has to do with the guarantee of the right to protest includes but not limited to; permitting protest, protecting protesters, investigating abuses and ensuring accountability.

The noncompliance with its legal obligation has led to series of disastrous decisions by the government. With the states dogged stance in this matter the ordinary citizens have virtually no avenue to seek redress.

4.3.1. Derogations on the right to protest

²⁹ General Comment No 37 (2020), on the right of peaceful assembly (Article 21): United Nations Human Rights Committee.(paras 31 -35).

The right to protest is not absolute. Like every other right, the right to protest even when exercised peacefully and unarmed could infringe upon the rights of other people. This necessitates the derogation of this right.

Contemplated within the International Covenant on Civil and Political Rights (ICCPR), the African Charter on Human and Peoples' Rights (ACHPR), and the Nigerian Constitution are various restrictions or limitations which are collectively known as derogation principles, on the right to protest, these restrictions or limitations seek to curtail the unbridled enjoyment of this right.

No limitation can be applied in a discriminatory manner and as explicitly mentioned in General Comment No. 37, all restrictions on participation in peaceful assembly must be based on “a differentiated or individualized evaluation of the conduct of the participants and the assembly in question”, so it can be presumed that the general prohibition of all forms of peaceful assembly represents a disproportionate measure³⁰.

According to Article 21 of the ICCPR, the rights may be curtailed by laws that “conform to law, necessary in a democratic state, national security or public safety, public order, the protection of public health or morals, or the protection of other people's rights and freedoms.” According to Article 4 of the ICCPR, it may also be validly derogated from in situations of national crises. The right to peaceful assembly and other rights can therefore be severely affected by national legislation that authorities can use to restrict this freedom³¹.

³⁰ United Nations, 2020b, para. 38.

³¹ (n79).

At its 55th session in 2014, the African Commission issued a resolution on the right to peaceful demonstration in recognition of the need to address the threat that many state parties pose to this right. The resolution declares, “(T)he Commission condemns serious limitations on fundamental rights and freedoms imposed by some states, particularly the freedom of expression and the rights to information and peaceful assembly³²” To this extent none of the Charter's rights may be waived, according to the law³³.

While some authors consider the African Charter's lack of a derogation clause to be a fundamental omission, others see it as a positive step. Some have even argued that since the Charter does not have a derogation provision, all of its rights now have the status of “*regional jus cogens*.” Numerous decisions by the African Commission have upheld the principle that the Charter forbids derogations, including in times of conflict³⁴.

If a state cannot demonstrate that a restriction or rule is “necessary,” it may fail to explain the limitation of this right protected by domestic law. This is because the claw-back clause does not give states a pass from their commitments under the Charter. The Commission's ruling in the case of Civil Liberty Organization v Nigeria, which deals with the government's takeover of the Nigerian Bar Association's structures, is in line with the notion that regulatory authorities shouldn't ignore constitutional provisions in order to minimize rights protected by the constitution and international agreements³⁵. Therefore, any restriction that violates global human rights norms will fall short of the African Charter's threshold for permissible restrictions³⁶.

³² Olutola, 2020.

³³ (n79).

³⁴ Olutola, 2020.

³⁵ Olutola, 2020.

³⁶ (n79).

On the other hand, the Nigerian constitution also provides for the derogation of the right to protest. Within the contemplation of the rights to freedom of expression, assembly and association, and movement, there are equivalent restrictions to the exercise of these rights.

For the provision of the restriction on the freedom of expression, Section 39(3) CFRN provides:

Nothing in this section shall invalidate any law that is reasonably justifiable on a democratic society -

(a). For the purpose of preventing the disclosure of information received in confidence, maintaining the authority and independence of courts or regulating telephone, wireless broadcasting, television or the exhibition of cinematograph films, or

(b). Imposing restrictions upon persons holding office under the government of the federation or of a state, members of the armed forces of the federation or members of the Nigerian Police force or other government security services or agencies established by law.

By virtue of this Section, a person's right to freedom of expression may be restricted in the exercise of state privilege, for official secrets, situations of contempt of court and perjury.

The proviso to Section 40 on the right to freedom of assembly and association gives a statement that: "Provided that the provisions of this section shall not derogate from the powers conferred by this Constitution on the Independent National Electoral Commission with respect to political parties to which that Commission does not accord recognition"

Additionally on the restrictions to the freedom of movement, Section 41(2) of the 1999 constitution states:

Nothing in subsection (1) of this section shall invalidate any law that is reasonably justifiable in a democratic society-

(a) imposing restrictions on the residence or movement of any person who has committed or is reasonably suspected to have committed a criminal offence in order to prevent him from leaving Nigeria; or

(b) providing for the removal of any person from Nigeria to any other country to:-

(i) be tried outside Nigeria for any criminal offence, or

(ii) undergo imprisonment outside Nigeria in execution of the sentence of a court of law in respect of a criminal offence of which he has been found guilty:

Provided that there is reciprocal agreement between Nigeria and such other country in relation to such matter.

Another exception is to be found in section 45 of the Constitution of the Federal Republic of Nigeria which provides:

Nothing in sections 37, 38, 40, 41 of this constitution shall invalidate any law that is reasonably justifiable in a democratic society

(a). in the interest of defence, public safety, public order, public morality or public health; or

(b). for the purpose of protecting the rights and freedom of other persons.

It is also worth remembering that there are rights that do not allow derogation under any conditions and as such cannot be suspended even in exceptional situations. These include some rights directly related to the management of protests, such as the right to life; the right not to be subjected to torture, cruel, inhuman or degrading treatment or punishment; the right not to be sentenced to a more severe penalty under retroactive criminal legislation; the right to be

recognized as a person before the law, and the right to freedom of thought conscience and religion³⁷.

4.3.2. Law enforcement duties regarding the management of protest

The focus of the government and law enforcement agencies regarding the management of protest must be on guaranteeing and facilitating the realization of the rights manifest under it. It is of importance then that law enforcement agencies play a guarantee and facilitation role in accordance with the provisions established in international, regional and national law.

As highlighted in General Comment No 37, the state is responsible for the actions of law enforcement. Therefore, the accountability of officials regarding their actions in peaceful [protest] must be promoted³⁸.

The duties of the law enforcement agencies include:

- Plan surveillance activities,
- Preparation of contingency plans,
- Dialogue and communication,
- Limitation of the use of force,
- Exceptional use of less-lethal weapons,
- Maximum restriction in the use of firearms,
- Limitation of control measures,
- Protection of anonymity and privacy.

³⁷ Emmanuele Sapienza and others, 'Protest, Human Rights and Conflict Prevention: Proposals to Rethink the Models of State Response to Social Mobilization', *UNDP Latin America and the Caribbean Policy Document Series*, [2024] No 49.

³⁸ *ibid.*

Among these duties, there are however some that have been subject to much controversy especially in Nigeria. This controversy exists in the form of Nigeria's noncompliance with international standards.

I. The Use of Force

International legal rules

Under international law, the duty of the state and its law enforcement agencies is to facilitate the enjoyment of the right to peaceful assembly.

Law enforcement officers have the obligation to exhaust non-violent means and to provide prior warning in the event that the use of force is necessary. Furthermore, any use of force “must conform to the fundamental principles of legality, necessity, proportionality, precaution and non-discrimination³⁹”.

According to the 1990 United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials⁴⁰: “In the dispersal of assemblies that are unlawful but non-violent, law enforcement officials shall avoid the use of force or, where that is not practicable, shall restrict such force to the minimum extent necessary”.

All force used by police and other law enforcement agencies must be necessary for a legitimate law enforcement purpose and proportionate to that purpose⁴¹.

National legislation

³⁹ General Comment No 37, paras 78 and 79.

⁴⁰ ST/HR/1/Rev. 6 (Vol 1/Pt1).

⁴¹ (n95).

Section 102 of the 1960 Criminal Procedure Code⁴² (applicable in the northern states) permits the use of force by police officers to disperse unlawful assemblies or riots. The extent of the force allowed to achieve this is, however, not defined⁴³.

Section 73 of the 1916 Criminal Code (as amended); generally applicable in the southern states) allows "all such force as is reasonably necessary" to overcome resistance to dispersal.

II. The Use of firearms

International legal rules

Firearms are not appropriate tools for policing gatherings and should never be used to disperse participants. Its use "by law enforcement officials in the context of gatherings should be limited to specific individuals in circumstances where it is strictly necessary to address an imminent threat of death or serious injury. Given the threat to life that these weapons pose, this minimum threshold should also apply to rubber-coated metal bullets⁴⁴".

According to the 1990 United Nations Basic Principles, in the dispersal of violent assemblies, a law enforcement official may only use a firearm against a specific individual where this is necessary to confront an imminent threat of death or serious injury or a grave and proximate threat to life⁴⁵.

⁴² Criminal Procedure Act, Cap C41 LFN, 2004.

⁴³ (n95).

⁴⁴ General Comment No 37, para 88.

⁴⁵ (n95).

National legislation

Section 73 of the 1916 criminal code holds that a police officer dispersing an unlawful assembly or riot: “shall not be liable in any criminal or civil proceeding for having, by the use of such (reasonably necessary) force, caused harm or death to any person”.

Police Force Order 237⁴⁶, titled Rules of Guidance in the Use of Firearms by the Police, stipulates as follows:

A police officer may use firearms when ‘necessary to disperse rioters or to prevent them from committing serious offences against life and property’. Further, 12 or more people must remain riotously assembled beyond a reasonable time after the reading of the proclamation before the use of firearms can be justified.

Paragraph 6 of the Order provides:

Fire should be directed at the knees of the rioters. Any ringleaders at the forefront of the mob should be singled out and fired on. Only the absolute minimum number of rounds necessary to suppress the riot should be used. NEVER UNDER ANY CIRCUMSTANCES WILL WARNING SHOTS BE FIRED OVER THE HEAD OF RIOTERS.

These Provisions do not comply with international law. Nigeria's noncompliance is nothing but a smear to its own hypocritical ratification of the international treaties. This double standard has led to the existing situation in Nigeria concerning the government and law enforcement agencies attitude to protest.

⁴⁶ Police Act, Cap P19 LFN, 2004.

4.4. Violation of the right to protest

“Democracy admits of dissent, protest, marches, rallies and demonstrations. However, true democracy ensures that these are done responsibly and peacefully without violence, destruction or even unduly disturbing any citizen and with the guidance and control of law enforcement agencies”. This was part of the content of the Independence Day Anniversary speech by former President Olusegun Obasanjo delivered on the 1st of October 2005.

Protest is an invaluable way to speak truth to power. Throughout history, protests have been the driving force behind some of the most powerful social movements, exposing injustice and abuse, demanding accountability and inspiring people to keep hoping for a better future⁴⁷.

Unfortunately, these precious rights are under attack and must be protected from those who are afraid of change and want to keep us divided. Governments and others with power are constantly finding new ways to suppress protests and silence critical voices. Global trends towards the militarization of police, the increase in the misuse of force by police at protests and shrinking civic space mean that it is becoming more difficult to stay safe while making your voice heard⁴⁸.

Nigeria has experienced a complicated interplay of political, social, and legal factors in recent years, which has shaped the country's freedom of expression and protest rights. Proposals for laws and policies: laws pertaining to hate speech and social media. Nigeria's government has introduced measures to control online speech in response to the growing use of social media for mobilization. There has been much discussion and controversy about the proposed Social Media and Hate Speech laws. If these legislations are enacted, according to their opponents, they might be used to restrict free speech and silence opposition. A number of states established judicial

⁴⁷ (n86).

⁴⁸ (n86).

panels to look into allegations of police brutality and violations of human rights after the #EndSARS rallies. These tribunals have given victims a forum to pursue justice and have made numerous reform recommendations. Nevertheless, putting these suggestions into practice continues to be difficult⁴⁹.

Between 2017 and 2020, there were mass protests against police brutality and impunity in Nigeria. Amnesty International notes that there is abundant evidence of police torture of civilians, denying people arrested by the police access to the justice system, the partiality of the judges when administering justice, the inability of the police to address the complaints of the arrested and extrajudicial killings. Worse still, the relevant authorities refused to investigate and bring to book the police officers who perpetrate these ‘crimes’ against the people⁵⁰.

Isa Sanusi, Director Amnesty International Nigeria, commented on the #endbadgovernance protest:

The Nigerian authorities must end their repressive approach to peaceful protests and listen to critics, as the country faces its worst economic crisis in three decades. Yesterday, people that turned out to peacefully protest were met with unnecessary and excessive use of tear gas and arbitrary arrests, especially in Abuja. Heavily armed security personnel barricaded spaces used for protests in many cities. Protest organizers were also arrested in Kano and Plateau. What happened on 1 October shows the Nigerian authorities are not relenting in their crackdown on dissent. Five protest organizers arrested in Kano are still held in an unknown location in Abuja, without access to lawyers or family, in utter disregard for their human rights⁵¹.

⁴⁹ (n82).

⁵⁰ Amnesty International, 2020.

⁵¹ Nigeria : Police Used Excessive Force to Violently Quash #EndBadGovernance Protest’ *Amnesty International*, (29 November 2024). <<https://www.amnesty.org/en/latest/news/2024/10/nigeria-repression-of-peaceful-protest-must-end/>> Accessed on 14 February 2025.

The continuous violation of the right to protest only foreshadows the brutal and continuous crackdowns by the government. On this head, one cannot help but lament on the worsening situation in the country with seemingly no hope in sight. What then can one do in the face of these violations.

4.4.1. #EndBadGovernance protest

The protest widely known by the hashtags #EndBadGovernance or #EndBadGovernanceInNigeria or #HungerProtest, took place from 1-10 August 2024. These protests were driven by widespread economic hardship, including the removal of fuel subsidies, staggering inflation, and the rising cost of living. Upon assuming office President Bola Tinubu unveiled chaotic economic policies that drove millions of people to the brink of starvation. While the government promised to mitigate the economic hardship, in reality, life is only getting harder for the majority of the people. Where palliatives were provided to mitigate the hardship, sharing them was marred by corruption and mismanagement⁵².

Thousands of Nigerians took to the streets in major cities like Lagos, Abuja, Kano, and Port Harcourt during the hunger demonstrations, which started on August 10, 2024. In order to represent the emptiness in their stomachs and the lack of government action, protesters held banners, posters, and empty plates⁵³. They called for better food availability and security, lower food costs, more agricultural investment, efficient social welfare programs, accountability, and sound governance. Leaders of the protests gave the government a memo with their main demands and suggestions: put policies in place to lower food inflation, boost financing for rural development and agriculture, create a national food reserve, fortify social safety nets like cash

⁵² 'Bloody August: Nigeria' Government's Violent Crackdown on #EndBadGovernance Protest', *Amnesty International*, [2024].

⁵³ Olanrewaju, 2024.

transfers and food assistance programs, and guarantee accountability and transparency in government⁵⁴.

The Nigerian authorities employed several tactics to stop the protests, including public statements and veiled threats by security agencies and government officials. Weeks ahead of the protests, authorities worked hard to undermine it. President Bola Tinubu, traditional and religious leaders tried directly and indirectly to dissuade people from participating in the protest. Authorities also obtained several *ex-parte* court orders to restrict access to protest venues, especially in Lagos and Abuja. Protesters were, however, determined to proceed with the protest⁵⁵.

The position of top office holders and law enforcement agencies concerning the protests across Nigeria soon became a subject of discussion within civil society. Some Nigerians called out Senate President Godswill Akpabio for his insensitivity to the suffering of Nigerians after he taunted the protesters by saying that “those who want to protest can protest, but we will be here eating”. Amnesty International Nigeria admonished the senate president for his remarks, which it said were inconsiderate and rash, adding that mocking people advocating for good governance is unsatisfactory. After all, the reality for a large number of Nigerians is extreme hunger and poverty as a result of economic inequality and a lack of accountability in governance⁵⁶.

Nigerian police used excessive force against protesters during the nationwide #EndBadGovernance demonstrations between 1-10 August, killing at least 24 people in the states

⁵⁴ (n82).

⁵⁵ (n147).

⁵⁶ Angela Odah, ‘Nigeria’s Fight to #EndBadGovernance’, *Rosa Luxemburg Stiftung*, (26 August 2024). <<https://www.rosalux.de/en/news/id/52443/nigerias-fight-to-endbadgovernance>> Accessed on 23 February 2025.

of: Borno, Kaduna, Kano, Katsina, Jigawa and Niger, Amnesty International said in a briefing. Those killed included 20 young people, an older person and two children⁵⁷.

In all cases the victims were shot by the police, firing live ammunition at close range often at the head or torso, suggesting that officers were shooting to kill. Two survivors suffered injuries after being shot by police in the arm and legs, others were suffocated by the indiscriminate use of tear gas⁵⁸.

Those who showed support for the protests on social media were attacked and many were arbitrary arrested either by the police or the Department of State Services (DSS). Khalid Aminu was arrested by the DSS in Kaduna. He told Amnesty International that he was tortured for 60 days. He said that the DSS operatives started beating him and other protesters with sticks and iron cables. Michael Adamoye (widely known as Lenin) was detained for two months for being part of the protest in Abuja⁵⁹.

“People in Nigeria witnessed unbelievable lawlessness as security personnel fired live ammunition at peaceful protests. The death toll could be higher than 24 because of the authorities’ desperate efforts to cover up the atrocities. Peaceful protest over government policies is now a matter of life and death in Nigeria,” said Isa Sanusi, Director of Amnesty International Nigeria.

In a press statement, the Nigerian Police gave an account of the first two days of the protest, disputing a publicized report by Amnesty International that 13 people had lost their lives. The police also denied Amnesty International’s claim that “security personnel deliberately employed

⁵⁷ (n146).

⁵⁸ *ibid.*

⁵⁹ *ibid.*

tactics designed to kill while managing gatherings and used firearms as a tactical tool for protest management⁶⁰”.

In their report, the police confirmed that in “the first two days ... four individuals lost their lives and 34 were severely injured in a terrorist attack by suspected Boko Haram/ISWAP elements who infiltrated the crowd of protesters and detonated an Improvised Explosive Device (IED)” in Borno State. The police statement also reported another incident in which a car ran into protesters, killing two civilians, likewise in Borno State. There was also a reported death of one person in Kebbi State, where a local vigilante shot into a crowd that attempted to loot a supermarket. The police claimed that a total of seven deaths were recorded during the protest⁶¹.

However, unofficial and independent accounts of the casualties exceeded even the figures given by Amnesty International. Reports by G4S, an independent security firm, alleged that the death toll on day one of the protest was 21, with 175 injured. Over 1,154 arrests were made across the country. Curfews were declared in the North East states of Yobe and Borno, as well as Kano State, the “Centre of commerce” in the North West zone. Cases of violence were reported in 17 states: Abuja, Adamawa, Bauchi, Bayelsa, Cross River, Gombe, Kaduna, Kano, Katsina, Kebbi, Lagos, Osun, Niger, Rivers, Zamfara, Borno, and Yobe. However, peaceful protest was also recorded in Plateau, Taraba, Delta, Edo, Benue, and Nassarawa⁶².

There was a heavy security presence during the protests. The government deployed the army, police, and the Department of Security Services to major protest sites. Security forces used tear gas, water cannons, and live ammunition to disperse the protest leading to violence and arrests. At least 24 protesters were killed, several persons were injured and over 1,200 protesters were

⁶⁰ (n150).

⁶¹ (n150).

⁶² (n150).

arrested, including activists and journalists. Some protesters including minors have been charged with serious offences, including treason, and if found guilty could face the death penalty⁶³.

The protests that swept across Nigeria in the summer of 2024, whether you choose to call them “Days of Rage”, “Hunger Protest”, or the “#EndBadGovernance Movement,” formally ended on Saturday, August 10, 2024. The final three days of the demonstrations were somber, dedicated to mourning and honouring the brave souls who lost their lives in the struggle⁶⁴. As one reflects on these events one cannot help but question; was the objective of the protest achieved in the end? What really is the aftermath of these 10 days?.

In a broadcast on the nationwide protest, President Bola Ahmed Tinubu stated that he was saddened by the killing of citizens in Borno, Jigawa, Kano, Kaduna and other states, as well as the destruction of property. In his 38-point speech, he gave an overview of the policies and achievements of his administration⁶⁵.

He upheld his decision to end fuel subsidies and reform the foreign exchange system, which he noted had curbed decades of maladministration. He stated that his administration was committed to building 100,000 houses in three years to boost the housing sector under its city renewal and estate development project. He added that his administration had major ongoing infrastructural projects, such as the Lagos-Calabar Coastal Highway and the Sokoto-Badagry Coastal Highway. He also highlighted an increase in oil production to 1.61 million barrels per day and an increased

⁶³ (n147).

⁶⁴ Adeyinka Salami, ‘Takeaways from the #EndBadGovernance Protest, *This Day*. <<https://www.thisdaylive.com/index.php/2024/08/13/takeaways-from-the-endbadgovernance-protest/?amp>> Accessed on 23 February 2025.

⁶⁵ (n150).

interest in the sector among investors. He concluded by urging the security agencies to continue to maintain law and order and the protesters to stop the protests and allow room for dialogue⁶⁶.

In a statement dated August 4, 2024, the Police Public Relations Officer (PPRO) for the Niger State Police Command, Wasiu Abiodun, claimed: “There was no life lost [...] The police did not kill any protester.”

The Nigeria Police Force’s denial of the killing of protesters is a disturbing trend that undermines trust, perpetuates impunity, and exacerbates the cycle of violence. Despite overwhelming evidence, including eyewitness accounts, videos, and photographs, the police have consistently denied involvement in the killings, dismissing them as “fake news” or attributing them to “unknown gunmen.” For example, Niger State Commissioner of Police, CP Shawulu Danmamman, was in Tafa LGA Secretariat for an on-the-spot assessment, after which he moved to Suleja Area Command⁶⁷. While taking a tour of the affected area, he stated that: “I did not see or receive any report of the killing of protesters in the Tafa and Suleja areas... security agencies responded, made arrests, and dispersed the hoodlums, but there was no loss of life, and violent protesters were dispersed with minimum force.”

The state tortured dozens and hundreds remain in detention. Some are being held well beyond the constitutional limit of 48 hours before going to court. The High Court in Abuja gave the police a further 60 days for holding over 70 young men from Kano. They are accused of waving Russian flags, that became the symbol of resistance in Kano. This is clearly not illegal in Nigeria⁶⁸.

⁶⁶ (n150).

⁶⁷ (n147).

⁶⁸ (n3).

The denial by the police is an attempt to conceal the truth, avoid accountability, and maintain a veneer of innocence. The denial further erodes trust between law enforcement institutions and the public, making it harder to build cooperation and address security challenges. It emboldens perpetrators, perpetuating a culture of impunity and encouraging further human rights abuses⁶⁹.

On 24 August, a court granted an order to the police to hold 124 arrested protesters for 60 days pending the conclusion of the investigation and filing of charges, in clear contravention of the Administration of Criminal Justice Act. The Act provides that pretrial detention orders should not exceed 14 days, following which another application by the police can be made for 14 more days, stating why an extension is necessary. Following the order, all the arrested 124 protesters, including children, were transferred from police custody to correctional centers⁷⁰.

These cited cases of violations are simply one of many in the whole debacle that is the #EndBadGovernance protest. In the aftermath of these violations one cannot help but recall the earlier question raised; was the objective of this protest achieved in the end? A mere recall of President Tinubu's speech and his clear refusal to give in to the protest demands would surely lead one to answer that no! The objective was not achieved. However, this is far from the truth. The objective was achieved but not in the most obvious of ways.

It is important to recognise that many young Nigerians understand the necessity of removing fuel subsidies, as part of a broader strategy to revive an economy that has long been on life support. However, they also acknowledge the profound failures in the Government's design and implementation of this policy – failures that have led to severe economic dislocation, affecting both the rich and the poor. The protests, therefore, were not simply about reversing a single

⁶⁹ (n147).

⁷⁰ (n147).

policy, but about highlighting the broader inefficiencies that have characterised the current administration's approach to governance⁷¹.

The #EndBadGovernance protests succeeded in doing what few movements in recent memory have: they shone a glaring spotlight on the deep and pervasive discontent, with the current administration's handling of the economy and governance more broadly. The protests delivered a clear and unequivocal message: the issues of corruption, the need for governance reform, and the demand for higher-quality leadership can no longer be ignored. The Government's ineffectiveness in engaging with young people and the broader citizenry was laid bare for all to see, highlighting a significant disconnect between the rulers and the ruled. This disconnect is not new, but the protests brought it into sharp relief, galvanising public opinion against poor governance and demanding greater accountability from those in power⁷².

The aftermath of the #EndBadGovernance protest still reverberates till date. This protest like every other protest seeks to express the collective disagreement of the citizenry. One can only hope that there come a time when these violations would be nothing but a cruel history in Nigeria's steady growth. In the meantime one can only do their best to advise the government to heed these grievances.

⁷¹ (n158).

⁷² (n158).

CHAPTER FIVE

SUMMARY OF FINDINGS, RECOMMENDATION CONCLUSION

5.1. Summary of Findings

In my quest to examine and diagnose the issues and challenges facing the right to protest I indeed gained a lot from this research. Some of these gains include:

Submerged in Nigeria's history is the right to protest. This history now a pathway of bones has laid a sturdy foundation for the continuation of this right in Nigeria. From Precolonial Nigeria till date this tradition still remains.

The right to protest is not an alien right. It is a right that has been and still is being recognized and protected by a bulwark of treatises, statutes and laws. It is provided for under the Universal Declaration of Human Rights (UDHR) [1948], the International Covenant on Civil and Political Rights (ICCPR) [1966], the African Charter on Human and Peoples' Rights (ACHPR) [1986], and the foremost document in Nigeria; the 1999 Constitution.

As a right made up of a cumulation of several other rights, especially the fundamental rights of expression, assembly and association, and the facilitative right of movement, the right of protest enjoys the same status as a fundamental right.

For the promotion and protection of the right to protest, every state machinery has a role to play. The state for example has such duties as; permitting protest, protecting protesters, investigating abuses and ensuring accountability. However the crucial role of the Judiciary in the interpretation of the workings of the law cannot be overemphasized as it furthers the protection of the right.

Spectacular as this right may seem, it is not absolute. It possesses specific restrictions known as ‘Derogations’ which are contemplated within every treaty, statute or law protecting this right.

Unfortunately though it may be, fingers are pointing at the state and law enforcement agents as the chief culprit in the crime of violation of the right to protest. As brutal as the crackdowns, the spirit of the people still continues to fight. A lit candle in the pathway that we are creating.

These findings form the basis for my recommendations.

5.2. Recommendations

- I. The Nigerian government should promptly ratify international principles and put an end to their hypocritical stance. For instance, Nigeria is not a party to the First Optional Protocol to the ICCPR, which allows individuals to petition the Human Rights Committee if they believe the State has violated their human rights as protected under the Covenant⁷³, similarly, although Nigeria is a state party to the 1998 Protocol on the African Court on Human and Peoples’ Rights, it has not allowed the right of petition to the Court by individuals and non-governmental organizations⁷⁴. Prompt ratification will go a long way to help in the protection and promotion of the right to protest.
- II. The Judiciary should take a stronger stance especially in the interpretation of statutes and the enforcement afterwards. The cases of ANPP v IGP and Dr Lewis Chukwuma v COP are perfect examples of this situation. Because of the ambiviancy of the Nigerian courts in dealing with the aftermath, the judgement of the court is now one that can be cherry picked by the police. Because of the differing judgements, the police believe that they can pick one judgement over the other and have done so for quite sometime. If the Judiciary

⁷³ (n95).

⁷⁴ (n95).

had stepped out to offer clarity on the judgements the situation might not have deteriorate till this extent.

- III. An investigation should be launched into the activities of the National Assembly. The National Assembly has shown an increasingly disappointing trend in recent times. The Public Order Act for all intents and purposes has been deemed to be inconsistent with the Nigerian constitution and by virtue of this unconstitutional. However, the National Assembly has kept silent on this matter and even refuse to repeal this Act leading to the continuous nuisance caused by its provisions. More strangely is their choice on bill to pass into law, for instance the Cybercrime Act which is nothing more that a clothed violation of our right to freedom of expression. One can only ponder on what went on in the minds of our dear senators as they passed the bill into law.
- IV. The object of the Police Order Act, Criminal Procedure Code and the Criminal Code ought to be looked into and amended in order that they reach international standards instead of the ambiguous state it currently is.
- V. There exist a social contract between the government and the citizens; the citizens vest considerable power into the hands of the government and in return the government serves the needs of the people. This accountability is what the government of Nigeria lacks; a bcreach in the social contract. Is it any surprise that the citizens choose to come out en mass to show their accumulated displeasure. The government should strive to listen to the people's concerns rather than repressing them with brutal crackdowns and violence, the citizens constitute the bedrock of democracy.

5.3. Contribution to Knowledge

The topic of the right to protest is one that can never be deemed over thrashed. As a topic that touches every aspect of our social and political rights, discussions on the right to protest are seemingly endless. This research contributes to the existing awareness of the right to protest. It offers a critical analysis of the constituents of the right, its promotion and of course, its derogation.

Additionally, the research analyses the duties of the state and law enforcement with a view to show their shortcomings. The study of the #EndBadGovernance is simply an icing on the cake to show the continuous and ongoing violations of the right. It also serves as a wake up call to those slumbering on their right because protest is not just something you hear about in history but something that still follows us today. We have seen and we have heard what our right to protest is.

While this research does not profer a one-size-fits all solution, it highlights the role each person plays in the elevation of this violation and the eventual change in attitude to protest.

4.4. Areas for Further Research

Veritable research should be directed into key areas such as;

- I. The enactment of legislation that seeks to silence and contain the express right to freedom of opinion. The provision of the Cybercrime Act is a prime example.
- II. The enhancement of legal protections for protesters including the economic and social support systems.
- III. The training of law enforcement agencies on international standards including crowd control and crowd facilitation.

These are the areas that I feel needs to be looked into for further research as it may bring some unexpected gains.

5.5. Conclusion

The nature of the right to protest is one that most clearly evidences the aggregated opinion of the citizens at a time. Protest participants come from and constitute a diverse set of individuals who are representatives of Nigeria's population. The issues and challenges these participants have to face in the ordinary enjoyment of their fundamental rights leave much to be desired. This research has shed a touch light on these issues with the aim of enlightening people on their rights and the obligations owed to them.

The right to protest is the ability of anyone to express their grievances and aspirations without fear of reprisals or repression. For one to understand or comprehend the issues and challenges facing this right one must have a clear understanding of the right to protest and what is covered in its ambit.

Inspite the legal frameworks protecting this right it can definitely be claimed that it is one of the most violated fundamental right. The blame for this can be attributed to the fact that contrary to regular procedures for the ratification of international treaties, Nigeria has shown a distinct trend in selecting only what the top brass of government deems suitable for the government and abandoning the ones that relates to the protection of the rights of ordinary citizens. This has been shown in Nigeria' refusal to ratify the First Optional Protocol of the ICCPR which allows individuals to petition the Human Rights Committee if they believe the State has violated their human rights as protected under the Covenant. These frameworks from top international treaties to ordinary statutes leave exploitable gaps which had and continues to be exploited by those in

power. The happenings of the #EndSARS and the #EndBadGovernance protest lend credence to this observation.

These observations form the basis of the recommendations to address the lapses of the government. What must be understood is that the situation in Nigeria is an exception and not the norm. There are several countries that have updated their laws to cater to the facilitation and promotion of the right to protest. The occurrences of governmental repression and law enforcement brutality is reprehensible and ought not to be accepted.

In conclusion, addressing the ideas and challenges is not only about understanding the right a person has but also the duties owed to them in order that they may be alert in cases of breach. A perfect workable solution is one that still eludes me but I believe that only through the understanding of the key roles of each person Viz the state, law enforcement, the judiciary and even the protesters, can a real solution be sought to combat this menace. I have and will continue to lament my inability to take a non doctrinal approach to this research at it might have been a better gauge on the opinions of the population and may even provide workable solutions to this issue. The right to protest is one of the backbones of any democracy and is an inherent quality of the type of society contemplated by the constitution. Nigeria must move towards better promotion and facilitation policies in order that these travesties do not continue.

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