

THE CONSTITUTIONALITY AND SCOPE OF A RIGHT TO PEACEFUL PROTEST UNDER THE CONSTITUTION OF THE FEDERAL REPUBLIC OF NIGERIA 1999*

Abstract

The right to peacefully protest is a right guaranteed and protected by both national and international law¹. Often associated with challenging a dominant view, idea or decision in a society, group or institution by presenting a varying or dissenting opinion, it provides an opportunity for unfettered public expression mostly by a minority or the less powerful. As such, it has been instrumental to the development and growth of true democracies around the world. The Nigerian constitution makes provision for the protection of fundamental human rights in its Chapter IV, wherein the rights to freedom of expression and of the press and rights to free assembly and association are enshrined. These rights are not absolute; thus, section 45 of the constitution provides that nothing in the above provisions shall invalidate any law that is reasonably justified in a democratic society in the interest of defence, public safety, public order, public morality or public health or for the purpose of protecting the rights and freedom of others and persons. Corollary to the above, it is a fundamental right of persons to be allowed to express themselves and to assemble and associate freely. This certainly would include right to protest peacefully which is intrinsically tied to the constitutionally guaranteed right of freedom of expression, assembly and association. However, it continues to linger whether there are limitations to the right to peaceful protest by virtue of Section 45 of the constitution, and to what extent are the said limitations, if any. To provide answers to the above, this paper will look into the legal modalities for engaging in a peaceful protest in Nigeria and we use doctrinal method and NALT guidelines as tools.

Keywords: Peaceful Protest, Riot, Constitution, Rule of Law.

1. Introduction

Generally, protests are simply the right to gather and express a public disapproval, objection or dissent towards a decision, position, act, idea, or conduct.² It could be written, spoken, virtual or remote (as in the use of social media), symbolic (through art, music and other public forms of communications, etc.) Basically, a protest is simply summed up as the right to voice out one's dissent of a thing through every conceivable communicable means possible. The Oxford Learners' Dictionary describes it as 'to say or do something to show that you disagree with something or think it is bad, especially publicly'.³ This is diametrically opposite to 'riot' which is a violent public disturbance. That is to say, while protesting is a right enshrined in the constitution, rioting is a crime. The 1999 Constitution of the Federal Republic of Nigeria (as amended) (CFRN) backs the right to protest under sections 39 and 40 where it provides for – Right to freedom of expression and the Rights to free assembly and association. Section 39 of the CFRN provides that every person shall be entitled to the freedom of expression, including freedom to hold opinions and to receive and impart ideas and information without interference. The section further provides however, that this provision is subject to any law 'reasonably justifiable' in a democratic society regarding the prevention of confidential disclosures and information; maintaining the authority and independence of Nigerian Courts; regulating television, wireless broadcasting, telephony communications and exhibition of cinematographs and films; imposing restrictions on person holding public office at the State or Federal level, members of the armed forces, the Nigerian Police and security agencies.

2. Right to Protest in Nigeria

Section 40 provides that every person shall be entitled to freely associate with others, by way of a political party, trade union or any other association for the protection of his interest, provided that same shall not derogate from the powers of the Independent National Electoral Commission (INEC) with respect to political parties not recognized by INEC. Clearly, there is the obvious intention to guard and protect the liberty for one to freely express oneself through lawful means, in support or against an idea, position or conduct, by the CFRN, and same has received wide judicial concurrence by Nigerian Courts.⁴ The Courts are also in agreement that said rights are not absolute or open-ended, as there are qualifications attached them, both specifically and generally⁵. The right to freely associate and assemble is reechoed in the case of *Abubakar v. A.G of the Federation*⁶ where it was held that the Vice-President of Nigeria enjoys the right to peaceful assembly and association and is at liberty to exercise same at will. The African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act⁷ (ACHPR Act) also provides some support to the right to protest wherein it specifically provided in Articles 9, 10, 11 -that every individual shall have the right to receive information; right to express and disseminate his opinions within the law; right to free association within the bounds of law; and the right to assemble freely with others. This much is guarded by the CFRN and the ACHPR Act.

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¹See <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N05/502/66/PDF/N0550266.pdf?OpenElement> - United Nations Resolution, 'Human Rights Council', A/RES/60/251, 15th March 2006. In 2013, the Human Rights Council adopted a resolution on 'The Promotion and protection of human rights in the context of peaceful protests' which encouraged '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'. See also Human Rights Council, Resolution 22/10, 21 March 2013.

²Francis L. F. LEE, 'Triggering the Protest Paradigm: Examining Factors Affecting News Coverage of Protests', *International Journal of Communication* 8 (2014), pp. 2725-2746

³*Oxford Learners' Dictionary* - https://www.oxfordlearnersdictionaries.com/definition/english/protest_2 Accessed 13- 11- 2020

⁴See the case of *Okafor & Ors v. Ntoka & Ors* (2017) LPELR-42794(CA); *Din v. African Newspapers of Nig Ltd* (1990) LPELR-947 (SC)

⁵See *Okafor & Ors v Ntoka & Ors (Supra)*; *Din v African Newspapers of Nig. Ltd (Supra)*. These rights are specifically qualified under their respective sections under the CFRN and generally under section 45 of the CFRN. Being the 'Derogation Section', section 45 of the Constitution provides that nothing in section 37-41 of the CFRN shall invalidate any other law 'reasonably justified' in a democratic society in the interest of defense, public safety, public order, public morality, public health, and for the purpose of protecting the rights and freedoms of other persons.

⁶(2007) LPELR-3718(CA).

⁷*Laws of the Federation*, Cap A9 2004

Suffice it to say that a combination of the above provisions of the CFRN and ACHPR Act go to guarantee the right to freedom of expression and peaceful assembly, and by extension, the right to protest under Nigeria law, subject to the various qualifications earlier highlighted. It is also gleaned that these rights are further qualified by the derogatory section of the CFRN – Section 45 which posits that the rights enjoyed under Section 37-41 of the Constitution is subject to the certain interests including – defense, public safety, public morality, public health, public order, and the protection of the rights and freedom of others in the society.

3. Limitations to the Right to Peaceful Protest in Nigeria

In addressing this part, we make bold to say that there is really no requirement in law for a permission to freely and lawfully protest in any part of Nigeria, as same is constitutionally guaranteed. In other words, it is fundamental right for a Nigerian to freely express, disseminate and propagate the opinions, ideas and dissents in a peaceful and lawful manner. To this extent, the Public Order Act⁸ (POA) comes into question as it is the law that specifically provides for the modalities for public gatherings, meetings, proper and peaceful public assemblies, processions, etc. To begin, section 12 of POA defines ‘Public Meetings’ as - any assembly in a place of public resort and any assembly which the public or any section thereof is permitted to attend, whether on payment or otherwise, including any assembly in a place of public resort for the propagation of any religion or belief whatsoever of a religious or anti-religious nature but, notwithstanding any other provision of this Act, does not include- (a) any regular religious service conducted in a mosque, church or any building or other structure customarily used for lawful worship of any description; (b) any charitable, social or sporting gatherings; (c) any meeting convened by a department of any government in the Federation or any other body established by law for its own purposes; or (d) any lawful public entertainment. Same section provides that ‘Public Procession’ means ‘a procession in a place of public resort.’ While ‘Assembly’ means ‘a meeting of five or more persons’.

Section 1(1) of the POA empowers the Governor of a State to direct the conduct of all public assemblies, meetings and processions on public roads or place of public resorts and to prescribe the route and times by which these processions may occur. Section 1(2 & 3) further makes it mandatory for individuals and groups to first seek and obtain the Governor’s approval 48 hours prior, and if the governor is satisfied that the public assembly, meeting or procession is not likely to cause breach of peace, he shall direct any superior police officer to issue a license not less than 24 hours thereto, specifying the names of the licensee and defining to the conditions for the said public meeting, assembly or procession thereof. However, the position of the law today is that the above provisions of the POA is contradictory to the Constitution of the Federal Republic of Nigeria as it violates the fundamental rights settled in sections 39 and 40 of the CFRN. Hence, the said provisions are null and void to the extent of its inconsistency going by the provisions of section 1(3) of the CFRN.⁹In the Appellate Court case of *I.G.P. v. A.N.P.P.*¹⁰, per Adekeye JCA, Court held that the Public Order Act specifically violates the Constitution and as such, it is null and void to the extent of that inconsistency. The Court further stated that the Constitution should be interpreted in such a manner as to satisfy the yearnings of the Nigerian society. Since the CFRN is superior to other legislations in the country and any legislation which is inconsistent with the Constitution would be rendered inoperative to the extent of such inconsistency, hence the relevant sections of the Public Order Act are inconsistent with the Constitution, the Court further posited.¹¹ In the words of Adekeye, JCA;

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 trend recognized and deeply entrenched in the system of government 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 a nutshell, as the *grundnorm* of the land¹², going by the direct and explicit provisions of the CFRN in *sections 39 and 40*, the law in Nigeria as at today is that there are no special permissions or extraneous legal requirements for the conduct of a peaceful protest, save that same must not fall under qualifications in section 45 of the CFRN and shall defer to other qualifying conditions individually attached to the rights in *sections 39 and 40*.

4. When Protest Leads to a Breach of Peace

What then happens when a protest or public demonstration leads to a breach of peace or the infringement of the rights of others? In response to this issue, it is best to place this side by side with the powers of the police to act in compliance with their mandate under section 4 of the Police Act? The Court in *IGP v ANPP (Supra)*, held that the police have no powers to stop or restrict the fundamental rights of Nigerians to freedom of expression and assembly once those rights are exercised within the ambit of the law. However, the Court continues, if any demonstration breaches any law in the course of exercising the freedom of expression and assembly, the Criminal Code is there to take care of such infraction. That is to say, in the course of a public demonstration or protest, where protesters become belligerent, cause illegal blockades, or begin to engage in the destruction of properties, theft, riots and other criminal acts, the police have the right under section 4 and 24 of the Police Act to intervene. Section 4 of the Police Act provides for its general duties, to wit –

The police shall be employed for the prevention and detection of crime, the apprehension of offenders, the preservation of law and order, the protection of life and property and the due enforcement of all laws and regulations with which they are directly charged, and shall perform such military duties within or outside Nigeria as may be required of them by, or under the authority of this or any other Act.

⁸ Cap 382 Laws of the Federation 2004

⁹ Section 1(3) of the CFRN provides that ‘if any other law is inconsistent with the provisions of this Constitution, this Constitution shall prevail, and that other law shall, to the extent of the inconsistency, be void.’

¹⁰(2007) 18 NWLR (Pt. 1066) 457 at 499 - 500, paras. F - B: (CA)

¹¹ See also *Osho v. Phillips* (1972) 4 SC 259; *A.-G., Abia State v. A.-G., Federation* (2002) 6 NWLR (Pt. 763) Pg. 264; *Ifegwu v. FRN* (2001) 13 NWLR (Pt. 729) pg 103; *Ikine v. Edjerode* (2001) 18 NWLR (Pt. 745)pg. 446.

¹² *F.R.N. v. IFEGWU* (2003) 15 NWLR (PT.842)113; *A.-G. Abia State v. A.G. Federation* (2002) 6 NWLR (Pt.763)264; *Abacha v. Fawehimmi* (2000) 6 NWLR (Pt.660) 228

Further to its stated mandate above, the police may engage with and arrest persons (or in this case, protesters) who may choose to detract from the purpose of their protest to perpetrate criminal activities, cause harm to others and infringe on the rights of others. Perhaps adding flesh to the qualification attached to the rights to freedom of expression and right to assemble enshrined in the derogatory section of the CFRN being section 45 – which states that said rights shall not invalidate any other law ‘reasonably justified’ in a democratic society in the interest of defense, public safety, public order, public morality, public health, and for the purpose of protecting the rights and freedoms of other persons. After all, the doctrine of human rights aims at identifying the fundamental prerequisites for each human being leading a minimally good life, hence, one’s right ends when another’s begin.¹³ To this extent, the powers of the police to arrest under section 24 of the Police Act come into play. The Section provides inter alia that pursuant to the Criminal Code, it shall be lawful for any police officer and any person whom he may call to his assistance, to arrest without warrant in a case where any person is found (or is reasonably suspected of) committing any felony, misdemeanour or simple offence or breach of peace. However, this section will not apply to offences which it is specifically provided that an offender be arrested with a warrant¹⁴.

The right to protest as earlier stated is certainly not absolute as same should be exercised with due consideration to: the protection of the rights and freedoms of other persons; public interest; public order; public health; public morality; and the various criminal laws in Nigeria. This is where the police as the primary law enforcement agencies of State comes in. Blockades of public roads and pathways, for example, relate to the infringement of the constitutionally guaranteed right to movement enshrined in section 41 of the CFRN which generally provides that every person is entitled to move freely throughout Nigeria. Eso, JSC (as he then was), opined in the Supreme Court case of *Saude v Abdullahi* that – ‘Fundamental Rights are important and they are not just mere rights...they belong to the citizen. These rights have always existed’. Therefore, just as protesters have the right to protest, there is the need not to interfere with rights of others to move freely. In any case, illegal blockades could also constitute ‘Public Nuisance’¹⁵. Furthermore, Section 234 of the Criminal Code¹⁶- categorically states that- Any person who obstructs any highway, by any permanent work or erection thereon or injury thereto, which renders the highway less commodious to the public than it would otherwise be; or prevents the public from having access to any part of a highway by an excessive and unreasonable temporary use thereof,...as to prevent the public from using and enjoying it securely; ... or omits to discharge any legal duty, which act or omission obstructs or causes inconvenience or damage to the public in the exercise of rights common to the public, is guilty of a misdemeanor and is liable to imprisonment for two years. Also, section 10 (4) of the Federal Road Safety Commission (Establishment) Act 2007, empowers the Federal Road Safety Corps to arrest and prosecute any person reasonably suspected of obstructing any section of the road with vehicles or in any other way that may affect free flow of traffic. There is therefore a need to be careful enough to avoid degeneration into a riot or breach of peace while exercising one’s right to protest. Section 44 of the Criminal Code of Lagos State states: When two (2) 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 disturb the peace, or will by such assembly provoke other persons to disturb the peace, they are an unlawful assembly.... It is immaterial that the original assembling was lawful... Any person who takes part in an unlawful assembly is guilty of a misdemeanour, and is liable on conviction to imprisonment for one (1) year. Section 45 of the Criminal Code of Lagos State also provides: When persons who unlawfully assemble together begin to act in a disorderly manner as to disturb the peace, the assembly is called a riot, and the persons assembled are said to be involved in a riot. (2) Any person who takes part in a riot commits a felony and is liable on conviction to imprisonment for three (3) years. All these point to the possible infringement on the rights and freedom and interests of others, and the propensity to degenerate into crime, easily occasioned by the general right to protest in Nigeria. These possible infringements present as limitations to the right to protest in Nigeria. To this extent, the right to protest may be enjoyed in fair consideration of the rights, interests and freedom of others to enjoy their various constitutionally guaranteed right and the prevention of crime, as the police may be invited to intervene otherwise, in light of section 45 of the CFRN. Quite Instructive as well is the decision of the Supreme Court of India on the 7th of October 2020 in Civil Appeal No: 3282 of 2020 - *Amit Sahni v Commissioner of Police Ors* where it categorically held that expression of dissent such as protests should be organized at designated places without causing inconvenience to the public at large¹⁷. The India Apex Court in striking a balance between the democratic right to protest and the right of others to public roads, per Justices Sanjay Kishan Kaul, Aniruddha Bose and Krishna Murari stated that democracy and dissents go hand-in-hand, but demonstrations which cause blockade of public ways cause a great inconvenience and an infringement on the rights of others, and such be discouraged.

However, it is pertinent to note that in the exercise of its mandate and powers under in the Police Act, the police must not misuse its powers by, for example – openly shooting at defaulting protesters or using unreasonable force to engage or suppress them during the course of the carrying out of their duty, as this will not be supported by law. In *Luna V. Commissioner of Police Rivers State Police Command & Ors (2010) LPELR-8642(CA)*, the Court of Appeal stated thus –

...notwithstanding the power of the Police as spelt in sections 4 and 24 of the Police Act, where this power is improperly used, the court can stop the use of the power for that improper purpose, as that would no longer be covered by section 35(1) (c) of the Constitution. In other words, an order restraining the Police from arresting on some particular improper occasion or for some particular improper purpose may be made by the court.

¹³See the cases of *Salihu v. Gana & Ors (2014) LPELR-23069(CA)* and *Hassan Vs Economic and Financial Crimes Commission (2014) 1 NWLR (Pt 1389) 607*.

¹⁴ See Section 24 (2) of the Police Act

¹⁵ Public Nuisance is the is an act or omission which is an interference with, disturbance of or annoyance to, a person in the exercise or enjoyment of (a) a right belonging to him as a member of the public. See *Obasa v. Savage (1931) 10 NLR 104*

¹⁶ CAP C38, Laws of the Federation of Nigeria 2004

¹⁷The Times of India, ‘Protesters Can’t Block Roads or Public Spaces, rules Supreme Court’ dated October 8, 2020 – Available at: <https://timesofindia.indiatimes.com/india/protesters-cant-block-roads-or-public-spaces-rules-sc/articleshow/78544230.cms> Accessed 18-11-2020

The above is the clear position of the law. See also the case of *Mitin V. C.O.P Bayelsa State & Ors*¹⁸ where it was similarly held that the police must be cautious in the exercise of their powers to arrest and detain in view of the right to personal liberty enshrined in section 35(1) of the CFRN.

5. Conclusion

In general, there are no specific legal requirements or procedure for conducting a protest in Nigeria as same is duly enshrined and protected by the Constitution. That being said, the said protest which in effect translates to the right and liberty to gather publicly to express one's self in response of an idea, conduct, decision or position, is to be exercised within the ambit of the law – so it does not contravene any other law 'reasonably justified' in a democratic society in the interest of defense, public safety, public order, public morality, public health, and for the purpose of protecting the rights and freedoms of other persons. Hence, the right to protest being a constitutional right freely enjoyed by all does not need any permit or license, as the case maybe, from any authority. However, same must be exercised within the statutory limits so as not to infringe on the rights of others or engender degeneration to crime in the process. In Nigeria, there is the need to emphasize that while persons are by right entitled to protest, such protest should be peaceful and should not infringe upon the rights of others who themselves are entitled to as much basic/fundamental rights as the protesters. Anything to the contrary will invite the hands of law enforcement agencies like the police to act within its statutory mandates under section 4 and 24 of the Police Act. On the other hand, the State and the police should clearly distinguish a protest from a riot and respect the constitutional rights of its citizens to protest as they strive to maintain public peace and order. Again, protesters should express themselves without overreaching constitutional rights of other persons. Where this is breached, every effort should be made towards order amicable resolution, and where that fails, the rule of law should set in. But in all cases, there should be reasonable consideration towards the mitigation of human rights violations. Finally, the National Human Rights Commission and other Human Right Institutions should organize seminars and workshops for law enforcement agencies particularly the police to educate them on the differences between the right to protest and what constitutes riots and violent demonstrations that are not allowed by law. This will help the rule of law to grow stronger in Nigeria.

¹⁸(2017) LPELR-43064(CA),