



CONTEMPORARY INTROSPECTION INTO PROTESTS AND ANCILLIARY ISSUES IN NIGERIA’S PLEBISCITE DEMOCRACY

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Abstract

The work lauded the role of protests in plebiscitary democracy, noting that unlike riot and unlawful assembly, it ordinarily should engender peace. The legal framework for protest such as the Constitution, the Police Act, Public Order Act, Administration of Criminal Justice Act, 2015 and other laws, were examined. The obligations of states to citizens, incidents on the streets of Nigeria, protests in other jurisdictions and assessment of the protest, were discussed. The work adopted the doctrinal category of research. Relevant concluding suggestions were made, considering the debilitating demerits and exponential advantages (at the same time) of protests in Nigeria. The work restated the constitutional right of the citizens to protest, but this must be done within the ambits of the law as excesses could lead to riot and, in a few cases, treasonable felony.

Introduction

The right to engage in protest, in a democracy, is a right that is timeless and sacrosanct. Since the creation of man, he has always

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disagreed with certain actions of the authorities that rule over his affairs. The 2024 Hunger Protests by Youths and others across the length and breadth of Nigeria towed a long established path. The present work shall conceptualize protest, riot and unlawful assembly. The legal framework for protest and other ancillary terms shall be considered. The Constitution, the Public Order Act, the Police Act, the Criminal Code, the Penal Code and the Administration of Criminal Justice Act, 2015 and laws were examined. The obligations of state to Nigerians, incidents on the streets of Nigeria, protests in other jurisdictions, assessment of the protests and conclusion were undertaken. Deliberate attempt has been made not to delve into the historical evolution of protests in Nigeria. Certain positions were taken on protests generally.

Conceptual Clarifications of Key Terms

Protest: Protest has become a key feature of democratic governance. In dictatorships, there have been protests by courageous citizens too, albeit at the risk of their lives. The *Oxford Dictionary* views protest as ‘a statement or action expressing disapproval of or objection to something’ or ‘to express an objection to what someone has said or done’ or ‘declared (something) firmly and emphatically in response to doubt or accusation’¹. Another Dictionary defined protest as ‘the act of objecting or a gesture of disapproval resigned in protest especially: a usually organized public demonstration of disapproval... a complaint, objection, or display of unwillingness usually to an idea or a course of action’²³. To protest is to demur stating pungently disapproval of the act complained of. There are different ways in which it could be exercised. It may be by walking peacefully, sitting on a particular path or road, by staying at home or by conveying some in a letter or online. In Nigeria, protest conveys forceful or peaceful demonstration, sometimes with placards, with chanting of displeasing words. The ones by certain religious sects recently turned violent, leading to the death of law enforcement officers.⁴

Riot: Riot is different from protest. While protest could end up in riot, riot is a forceful violent demonstration of disapproval or approval, exemplified by the burning of tyres, effigies, blockade of roads or other riotous acts. Riot involves ‘a violent disturbance of the peace by a crowd’, ‘an impressively large or varied display of something’. Riot is the very antithesis of peace and civility. In riot, distortions, discordance and discombobulations are witnessed. Riot invites law enforcement agencies to halt same to preserve law and order. Riot has hardly had the support of state as opposed to protests. Riot has the propensity to burgeon and overthrow the authority of state. It is thus viewed with disdain and criminalized under the Penal Code and Criminal Code, with penalties attached.⁵

Unlawful Assembly: This must also be distinguished from protest. Protest is substantially legal and permits may be given by relevant authorities. In contrast, unlawful assembly describes a group of people, sometimes two or more, whose sole interest is to disturb the peace of the public. Protest is permitted by the Constitution, unlawful assembly is not. It is unlawful *ab initio*. The aim or objective is to do something unlawful or do a lawful act, but in a violent or tumultuous manner. The Codes have used violent or tumultuous. There is a symbiosis between unlawful assembly and riot. Oftentimes than not, as a matter of fact, unlawful assembly, unless curtailed, is the early stage of riot; emotion, thereafter, reaches a crescendo with the attendant cataclysm.

¹ „Protest“ <https://www.oxfordlearnersdictionaries.com>, accessed on 8/8/24

² Protest Definition & Meaning „<https://www.merriam-webster.com>, accessed on

³ /8/2024

⁴ Two Officers Killed As Shiites Protest in Abuja“ YouTube.TVC News Nigeria, accessed on 26/2/2024; „Abuja Protest Escalates: Shiite Group Clashes with Police,...YouTube. News Central TV, accessed on 26/8/2024.

⁵ PC, CC

Legal framework for Protest/Freedom of Association in Nigeria

It is boondoggle to state that the Constitution is the grundnorm in Nigeria. The Constitution of the Federal Republic of Nigeria, 1999, as amended, provides that it is supreme and shall have binding force on all authorities and persons throughout the Federal Republic of Nigeria. It also provides that any other law that is inconsistent with it shall, to that extent of its inconsistency, be null and void.

Chapter IV of the Constitution provides for fundamental rights: right to life; right to dignity of human person; right to personal liberty; right to fair hearing; right to private and family life; right to freedom of thought, conscience and religion; right to freedom of expression and the press; right to peaceful assembly and association; right to freedom of movement; right to freedom from discrimination; and right to acquire and own immovable property anywhere in Nigeria.⁶

Nigerians exercising the right to protest on issues in Nigeria would be exercising a coterie or a phalanx of rights, such as right to life, right to dignity of the human person, right to fair hearing, right to peaceful assembly and association and right to freedom of movement. Protest demands that government grants protesters the opportunity of aiming their prayers so they could be acted upon: The demands of the protesters were:

The provisions of S.45 of the Constitution are invaluable to this discussion. The section provides thus:

Nothing in section 37, 38, 39, 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. ----

In effect, the exercise of these rights, may be curtailed in the public interest or broadly, national security or national interest. The exercise of the rights of such protesters shall aberuncate and the Constitution would not have been violated. So long as protesters undertake to be civil, to be tranquil, to be peaceful, avoid the path of combustion or cataclysm, such protests should be allowed. It is unconstitutional for governing authorities to restrict protests to a particular place such as a stadium, not demanded by the protesters, even in the absence of public disturbance to peace.⁷ It

is equally preposterous for courts to restrict the right of protesters, with rationale predicated on non-existent national security concerns. It evokes concerns of polarization of the judiciary.

The Public Order Act is also another piece of legislation that guides this discussion. It has 13 Sections. Its main objective is to repeal all public order laws in the states of the Federation and to replace them with a Federal Act, for the purpose of maintaining public order and to prohibit

⁶ SS 33 – 43

⁷ „Court Restricts Abuja Protests to MKO Abiola Stadium“ <https://www.vanguardngr.com>, accessed on 7/8/24.

the formation of quasi-military organization, regulate the use of uniforms and other matters ancillary thereto. The Act provides for the following in the sections: Power to regulate assemblies, meetings and processions; power to stop assemblies, meetings and processions; unlawful assemblies; power to issue proclamations, etc, for the preservation of public order, penalty on endeavour to break up public assembly, meeting or procession; prohibition of quasi-military organizations, flags and uniforms; offensive weapons, etc. prohibited at meetings and processions; arrest without warrant, forms, power to make regulations and issue guidelines, interpretation and short title. The law provides relevant punishments for violations of the provisions.⁷

The Police Act, 2020 is another relevant legislation in the discussion of the right to protest in a plebiscite democracy. The law shares lots of provisions with the Administration of Criminal Justice Act, 2015 and the Administration of Criminal Justice Laws of some states in Nigeria. The Provisions on the treatment of suspects humanely, examination of arrested persons, interview of suspects, confessions where volunteered, are contained in the Police Act. Also contained therein and in the other laws mentioned are, the procedure for search, arrest, detention in custody, etc. A number of protesters were arrested across the country. Others were and are detained even though some of them are juveniles. While the Police Act and the ACJA and ACJLs regulate what happens to the protesters detained, the provisions of the Childs Right Act and Law and the Children and Young Persons Laws, would have to be invoked to regulate juvenile justice. Such Young Persons, no matter the quantum of allegations, must not be tried in regular court. They must be tried in family courts or juvenile courts. Such is the complexity or the byzantine nature of the arrest of the protesters

⁷ See Public Order Act – Nigerian Legislation <https://www.commonlii.org>, accessed on 8/8/2024; „The Constitutionality fo the Public Order Act in a..“ www.ganjii.com, accessed on 7/8/2024; S. Ekiwenze, „Public-order-state-security-and-democracy“ <https://coou.edu.ng>, accessed on 8/7/2024; „The Right of Peaceful Assembly in Nigeria“ <https://www.rightofassembly.info>, accessed on 5/7/24; „Right to Protest. Organizing and Participating in Rallies or...“ <https://nigeria.action4justice.org>, accessed on 8/8/2024 in the End Bad Governance Protests. Section 44 of the Criminal Code Law of Lagos State, provides that:

(1) Where (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, 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, they are an unlawful assemble.

The section is relevant in cases where protesters abandoned their commitment to peace and proceeded, as it were, to destroy the peace of Lagos State and destroy private or public properties and cause unnecessary melee.⁸ Section 69 of the Criminal Code, applicable generally to States in Southern Nigeria, used instead of (2) two or more persons ‘three or more

⁸ Sections 44(1) CC Law, Lagos State and S.70, C.C.

persons'. The punishment of one year is found in both the Lagos Law and the Criminal Code. Once protesters go outside peaceful protest and turn violent, their assembly becomes unlawful, as enshrined in the Constitution. Indeed as Alubo contended, 'the number of persons that could constitute an unlawful assembly increased under the Penal Code'⁹ Section 100 of the Penal Code provides elaborately as follows: An Assembly of five or more persons is designated an Unlawful Assembly if the common object of the persons comprising the Assembly is – (a) to overawe by criminal force or show of force the Government or the Government of the Federation of his Lawful Powers; or (b) to resist the execution of any law or of any legal process; or (c) to commit any mischief or

criminal trespass or other offence of any kind whatsoever or (d) by means of criminal force or show of criminal force or to enforce any right or supposed right, or (e) by means of criminal force or show of criminal force to compel any persons to do what he is not legally bound to do or omit to do what he is legally elicited to do.

The conducts of protesters (adults and young persons) in the Northern part of the country in the month of August 1 – 6th, 2024, offends the provisions of the Penal Code¹⁰. We should also add the legal framework for riot closely allied to 'unlawful assembly' is the offence of riot. When people who unlawfully assemble together being to act in a disorderly manner to do as to disturb the peace, the assembly is called a riot and the persons are said to be involved in a riot¹¹. Section 69 of the Criminal Code criminalises riot. Section 45(2) CC, Lagos State, criminalizes Riot and makes it punishable for three years. We should state that riot can stand on its own and it must not be an offshoot of unlawful assembly. In other words, the people need not assemble unlawfully to riot. A peaceful assembly can go straight into rioting. Days ago, the words of the Chief of Defence Staff, General Musa, to some of the protesters in some of the states in Northern Nigeria, where rioting were instructive when he said they were rioting. Section 105 of the PC provides that 'whenever force or violence is used by an unlawful assembly or by any member thereof, in prosecution of the common object of such assembly, every member of such assembly is guilty of the offence of rioting. Alubo notes that 'Rioting requires the use of force by the unlawful assembly and is punishable with a term which would extend to three years. If a rioter is armed with a deadly weapon or with a weapon, the punishment shall extend to five years or with fine or both.¹²

The provisions of the Penal Code and Criminal Code may be relevant to this discussion. Section 37 of the Criminal Code provides that where a person conspires with any person, either within or without Nigeria to levy war against the state, he is guilty of treason. This is the case when a foreigner is conscripted to levy war. A variant of this is the use of Foreign Flag such as the Russian Flag by some protesters in some states in Northern Nigeria that has forced the Russian Embassy to react, noting that its only primary obligation is to facilitate exchanges and visas

⁹ Alphonsus Okoh Alubo, *Modern Nigerian Criminal Law* (5th edn, University of Jos Press Ltd, 2019) 522

¹⁰ The authors note that most of the states have their own Penal Codes now. See generally *Ogenyi v IGP* (1987) NRNLR 140.

¹¹ Alubo (n.55) . See also S. 45 CC, Lagos State

¹² Ibid. See S. 107 PC, too.

between Nigerians and Russians. The Protestors openly called for military takeover in the Palace of the Sultan of Sokoto.¹³ The Penal Code provides ‘Whoever levies War Against the sovereign in order to intimidate or overawe the President is said to commit treason’ Section 411 PC provides that: ‘Whoever commits treason shall be punished with death and whoever attempts or abet treason shall be punished with imprisonment for life or for any less term or with fine or with both’. Would being in possession of a foreign flag and urging Russia to take over, be adjudged treasonable’. Section 1(3) of the CFRN, provides that ‘the Federal Republic of Nigeria, shall not be governed, nor shall any person or group of persons, take control of the government of Nigeria or any part of thereof, except in accordance with the provisions of this constitution’. Section 2(1) of the CFRN also provides that ‘Nigeria is one indissoluble and indissoluble sovereign state to be known by the name of the Federal Republic of Nigeria; ‘When sovereignty of a country is debauched, is treason, not orchestrated’?¹⁴¹⁵

Obligations Of States To Nigerians

The obligations of state to citizens by the different organs of government (Executive, Legislature and Judicial) are stated in Chapter II of the Constitution.¹⁶ The provisions are elaborate and they can be found under different sub-heads: Political Objectives, Economic Objectives, Social Objectives, Educational Objectives, Foreign Policy Objectives, Environmental Objectives, etc. S. 16(2) on Economic Objectives ought to be exhibited. It states that:

- (2) The state shall direct its policy towards ensuring-
 - (a) The promotion of a planned and balanced economic development;
 - (b) That the material resources of the nation are harnessed and distributed as best as possible to serve the common good;
 - (c) That the economic system is not operated in such a manner as to permit the concentration of wealth or the means of production and exchange in the hands of few individuals or of a group; and
 - (d) That suitable and adequate shelter, suitable and adequate food, reasonable minimum living wage, old age care and persons and unemployment, sick benefits and welfare of the disabled are provided for all citizens.

A major thrust of the plank on which the protest was held across the country touches on the sub-section above, dealing with the cascading standard of living, absence of food, removal of fuel subsidy with comportment consequences for the masses. The chapter is however made non-justiceable, that is, government cannot be sued for derogations therefor, as they are merely aspirations or goals for state to ascend. Undoubtedly, efforts to mitigate the prescriptions of the constitutions have been made by ECOWAS Courts in a number of salutary decisions and at

¹³ Suji Ayodele „Protest“ that „Restructured“ Nigerian ss. Tuesday Flat Out, *Nigerian Tribune* 6 August, 2024.

¹⁴ See *Uwazurike v AGF* (2013) JELF 359 40 (SC) *Dokubo v FRN* (2007) 12 NWLR (Pt

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¹⁶ S. 13-24, CTFN, 1999 (As Amended)

least by the Nigerian Supreme Court. That section has still not been taken out of the Constitution. It is also salutary that government has not denied its obligations to Nigerians, even as the speech by the President to addressing the issue has infuriated and exasperated several people and groups.¹⁷

The responsibility of government to the people is humongous and enormous. Section 14(2)(b) of the CFRN, 1999 (Amended), states that ‘the Security and welfare of the people shall be the primary purpose of Government. If the people do not have requisite welfare, then government should not exist.

Incidents on the Streets of Nigeria

It is axiomatic to state that, largely the protests were of August 110, 2024 was peaceful in Southern states of Nigeria. In Igbo land, the overt protests, were largely not witnessed, but like we noted, protests, need not be overt. It might be ‘stay at home’. Eastern Nigeria, for some of other reasons, adopted the sit-at-home genre of protest. In Northern Nigerian, (Kano, Kaduna, Jigawa, Katsina, Borno, Yobe, Plateau), the protests turned violent and curfew had to be imposed. In Kano, shops were looted and places (Including places of worship torched), over 326 persons, were arrested in Kano alone: In other places, party offices were burnt.¹⁸ In other states, unscrupulous persons exploited the Nation Wide protests to unleash terror on innocent citizens as criminal elements used daggers, machetes and other dangerous weapons, even as they broke into shops and restaurants in a place like Jos, the Plateau State capital.¹⁹ In other Northern States Capital and some major towns, the story is the same. Governments were caught flatfooted. The security agencies, wary of shooting protestors (including children), allowed protestors to have a field day: looting, breaking concrete slabs for metals, breaking into shops and taking whatever they could lay their hands on. The Governors of states that supported the ‘Peaceful’ protests hitherto recanted and declared the protesters *persona non grata*. The rest is history, as the protesters melted away gradually, leaving the debris and the aftermath for government to take stock of and repair. Private persons, too, have been left to take care of themselves. Are protesters urged to do all that they can do? Is there no limit to protests? Are protestors empowered to do as they wished? The authorities, had admonished at the beginning of the protest, that people could protest, so long as they did so peacefully and caused no damage to public and private facilities. While that substantially held in some Southern States, the states of the North, exempted themselves, as urchins and louts took over, removing zinc sheets from roof, for sale obviously. As the dust fell on the protests, the Director of State Services grilled

¹⁷ End Bad Governance „Stakeholders knock Tinubu’s speech as organizes Intensify.....“ *Daily Post Nigeria*, 4th August, 2024; „PDP: Tinubu’s Speech on #End Bad Governance Protest did no ... *The Cable*, 4th August, 2024, „Tinubu’s Speech Did Not Address Our Demands” – Protesters” *The Guardian Nigeria*, 5th August, 2024.

¹⁸ Abubakar Maccido „Why DI „Hunger Protests” turn violent for Northern Nigeria” BBC News Kano, *BBC News PIDGIN* rombbc.com,

¹⁹ Text of Speech by the Plateau State Governor, Caleb Mutfwang, declaring 24 hours curfew in Jos North and Bukuru metropolis, August, 2024. In Kaduna, in a Bizarre and appalling one, Riots in Kaduna stole a Police Armoured Personnel carriers (APC) and they drive it with scores of urchins on it as they blared the sirens

certain Nigerians and Foreign nationals,²⁰ as the protesters declare 3 days for fallen Martyrs²⁰. As at the end of August, 2024, there are scores of protesters in ²²custody against whom charges have not been brought.

Protesters in Other Jurisdictions

Protests are regular occurrences in a state like the USA. It is the right of the people to protest, over almost everything under the Sun. In May 2020, there were protests over George Floyd's killing in several cities in the USA.²³ Some of the biggest protests in the USA could be said to be the following: 'George Floyd Protests/United States Racial Unrest [15m to 26 million]; Earth Day (20m), 2017 Women's March *3,300,000 to 5,600,000+, March for our lives *1,200,000 to 2,000,000+'.²⁴ Protests in the USA have arisen as a result of demands for Jobs and Freedom.²⁵ The history of protests in the USA started as far back as 1688, when a group of workers in Germantown, Pennsylvania created the first written protest against slavery in the new world.²⁶ This article must state the date of the first protests by Blacks in America. That was on July, 28, 1917, which has been christened Silent Protest Parade' on Fifth Avenue in New York.²⁷²⁸ Protests continued in the USA against electronics allegedly stole, against abortion, for abortion, etc. Protest is a culture in the West.

In Kenya, in 2024, there were massive unprecedented protests in Kenya. The protests were triggered by controversial proposed tax hikes. It has since metastasized into something monstrous and colossal. It started on the 18/6/24 and by 25/6/24 it had become violent and uncontrollable. Police Barricades were broken down and the precincts of parliaments, were stormed. The Kenyan Police have been brutal in its responses. The world was non-plussed and bemused. Protestors mobilized to reject the Finance Bill, which sought to cut subsidies, even on fuel.²⁹ The parallels between Kenya and Nigeria are striking. While the Nigerian protest did not degenerate to the Kenya cataclysmic one, the Kenya one set a record for its longevity and gale of destruction.

Assessment of the Protests

It is not within the purview of this work to assess the success or otherwise of the protests. That is left to the organizers of the protest. It would however be out of place not to discuss some of the responses to the protests. With the accusations and counteraccusations of 'alleged

²⁰ „DSS Grills 7 Arrested Polish nationals over protests in Kano“ *Vanguard News*,

²¹ /8/2024

²² „End Bad Governance: Protesters Declare 3 Day mourning for Fallen Martyrs“ *Premium Times Nigeria* 7/8/24.

²³ Sam Jones „Demonstrations and Political Violence in America: New Data for Summer 2020“ *adedata.com*, accessed on 7/8/2024.

²⁴ List of Protests and Demonstrators in the USA BY Size“ <https://en.wikipedia.org>, accessed on 7/8/24

²⁵ “20 of the most famous protests in U.S. History“ <https://www.freedomforum.org>, accessed on 7/8/24.

²⁶ „Famous Protests in US History and their Impacts – WNCT“ <https://www.wnct.com>, accessed on 7/8/24.

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²⁸ NAACP Silent Protest Parade, Fifth Avenue, New York City“ <https://beineck.library.yale.edu>, accessed on 7/8/24.

²⁹ Merun Elias „What is Behind Kenya's Protest Movement?“ www.crisisgroup.org, accessed on 5/8/2024.

sponsorship' of the Protests, even in the absence of evidence, Senior Government Officials have engaged in macabre dance of the absurd genre. There have been accusations against the extant Senator, representing Federal Capital Territory, Abuja³⁰ (accusations that could be defamatory, if unproven). The DSS has invited and arrested individuals accused of sponsoring the protests. The entire Northern Nigerian has been accused of allowing too many children to be birthed by their parents, beyond the number they could comfortably cater for. The Security Forces have also accused some of the participants of treason. That must be proved beyond reasonable doubt by the prosecution. Ours is an adversarial system. He, who asserts, must prove. The accusations against the North have unleashed soul-searching and deep introspection.³¹ We should add that the ugly twists to the 2024 Protest is that, much as the protesters observed that the President's address on the matter, was hollow and vacuous, the conduct of the protest and the assessment before it, has exacerbated ethnic tensions. The Igbo Tribe, has been pilloried by Yoruba Ethnic group for being unsupportive of President Ahmed Bola Tinubu and so 'Must all leave or exit from the South-West, including Lagos, in a month. The other regions have impeached or impugned the Igbo Ethnic group for its treachery pulling back from the protests and not participating, after allegedly encouraging others. The factual basis for some of these proclamations and allegations, are hard to find. It is believed that some prominent politicians may be under investigation for their alleged role in the use of Russian Flags in the protests in some parts of Northern Nigeria Youth waving the flags chanted 'Tinubu Yaa'so'ka, muna so soja', meaning 'Tinubu step down, we want soldiers'³²

Conclusion

Is there a right to protest in Nigeria? Yes. Is it guaranteed by the Constitution? Yes. Can it be capriciously or whimsically curtailed on the flimsy excuse that time is not auspicious or there is likely to be a breach of public peace, even where there is genuine likelihood of none? No. The judicial masturbation, restricting protestors to particular sports in particular town, I submit, is a judicial overreach, which should not be encouraged in a democratic Nigeria. The courts, must not make orders that they cannot enforce. Protesters disregarded such orders and there are no consequences. The right to freedom of association and assembly and other miscellaneous rights in Chapter IV of the Constitution are inalienable. When they can be curtailed, is specified by the Constitution. Where Protesters, move beyond the guaranteed rights into criminality, riot, unlawful assembly and treasonable acts, they act without the force of Law and must be held accountable.

Tomorrow, there may be other legal protests in Nigeria. There may be protest too that may be illegal *ab initio*. A protest planned to force a tribe out of lands, supposedly belonging to an ethnic group, is incurably illegal and void.

³⁰ Tahir Ibrahim Tahir „Arewa's Final warning"

³¹ Lasisis Olagunju „Protestors of the North" Monday Luies, *Nigerian Tribune* 5, August 2024; Shehu Sani „The North; After Blaming Others Lets Probe Ourselves" *Daily Post.ng*, accessed on 5/8/24.

³² FG Probes for Northern Political Bigwigs Over Russian Flag". *Osun Defender*, 8 August, 2024.