



Analysing the legal boundaries of protests and the right to life in Nigeria

Sharon Tolulope James¹, Chukwunoyenim G²

¹ Lecturer, Nigerian Law School Lagos Campus, Lagos, Nigeria

² Faculty of Law, University of Benin, Benin City, Nigeria

Abstract

The concept of human rights form the hub and nub of modern democracies under which the right to protest is submerged. As a vital component of this concept, the right to protest is guaranteed in the constitutions of most states of the world and undoubtedly Nigeria. In light of glaring violations of the right to protest, the legal system is called upon to define the boundaries of the right to protest.

While it is no doubt that a right to protest exists in Nigeria, the question that forms the core of this paper is whether an over slip of the right to protest translates to a forfeiture of the right to life?

This paper critically examines the right to life as well as the boundaries of protests in Nigeria.

Keywords: human rights, protests and right to life

Introduction

The right to freedom of association, peaceful assembly and expression constitute the right to protest ^[1]. Section 39(1) of the Constitution of the Federal Republic of Nigeria (CFRN) 1999, provides that ‘Every person shall be entitled to freedom of expression, including freedom to hold opinions and to receive and impart ideas and opinions...’ while Section 40 of Constitution of the Federal Republic of Nigeria provides that ‘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...’ From the provisions, two main elements can be distilled: “every citizen of Nigeria has a right to freely express an objection, disapproval or dissent towards an idea or action and “in furtherance, assemble freely and associate with other people for the purpose of being heard”.

When read conjunctively, the intent of the lawmakers could be deduced to be every citizen of Nigeria has the right to freely hold, and express opinions and in expressing those opinions is entitled to freely assemble and associate with other persons except in the interest of national security or public safety ^[2] so as to guard against public disorder or crime which may infringe on the freedom and rights of other citizens ^[3].

Generally, fundamental rights generally impose a corresponding duty on the state to ensure the enjoyment of such rights by the citizenry. It therefore can be inferred that the right to protest can be distilled from the constitutional right to life. Considering recent occurrences in Nigeria, the contravention of the right to protest has raised concerns as to the protection granted to this right under the constitution and whether an overstep of the set bounds constitutes an exception to the fundamental human right to life encoded in Section 33 of the Constitution of the Federal Republic of Nigeria.

This paper examines the right to protest as a necessary component of the right to life in Nigeria. It critically examines the boundaries of the right to protest vis a vis the exception to the fundamental human right to life encoded in Section 33 of the Constitution of the Federal Republic of

Nigeria. In sum, this paper analyses the protection of the right to life of protesters acting within the boundaries of the law.

The Right to Protest

Merriam Webster Dictionary ^[4] defines protest as ‘an act of objecting or a gesture of disapproval’. Protest is a type of individual or collective action aimed at expressing ideas, views, opinions or values of dissent, disagreement. It is a demonstration or rally to create awareness and influence the public opinion about certain things that are occurring in the society ^[5]. There are generally two different classes of protests namely; non-violent and violent protest. The non-violent protest entails actions by an individual or a group to enact change in a non-violent manner. On the flip side violent protests employs the use of violence, destruction and intimidation to effect the desired change. Other types of protest are; Sit-in protest, marches and rallies, posters& banner, hunger strike, flag burning, riots, looting& vandalism, bombing protest etc. Protests could take various forms which includes: the expression of social, political or cultural opinions, views, or perspectives; the vocalization of support or criticism regarding a group, party, or the government; the affirmation of identity or raising awareness about a group’s situation of discrimination and social exclusion; the reaction to a policy or the denunciation of a public problem ^[6].

The concept of the right to protest cannot be easily pinioned to a single section of the Constitution of the Federal Republic of Nigeria, it covers a plethora of rights ranging from the right to freedom of expression, peaceful assembly, dignity of human person, freedom of movement, to the right to life. Therefore, unwarranted use of force by the state during protests should be discouraged ^[7]. Legitimate resistance in the form of protest is the flip side of the human rights coin. All over the world, people have shown the willingness to fight and take matters into their hands when their interests are not protected ^[8]. In light of this, the right to life of these protesters is to be protected because the right

to peaceful assembly and association is a fundamental human right^[9].

Section 40 of the Constitution of the Federal Republic of Nigeria provides:

“Every person shall be entitled to assemble freely and associate with other persons, and he may form or belong to any political party, trade union 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.”

Internationally, several treaties have been signed to protect the right to protest. They include: The African Charter on Human and People’s Right, the Universal Declaration on human rights^[10]. Arising from the need to make states accountable for their respective human rights obligations, the United Nations adopted two binding human rights instruments i.e. the International Covenant on Economic and Social Cultural Rights (CESCR) and the International Covenant on Civil and Political Right. (ICCPR)^[11].

The African Charter on Human and Peoples Right provides that ‘every individual shall have the right to assemble freely with others’ with a proviso that it may be restricted in the interest of the public^[12].’ The Universal Declaration of Human Rights, which is globally recognized as a persuasive authority, lays down the right to freedom of peaceful assembly and association^[13]. The International Covenant on Civil and Political Rights in article 21 also states that ‘the right of peaceful assembly shall be recognized’ and sets the conditions upon which the right may be restricted.

It is the right of every citizen (s) to freely assemble and associate in so far as it does not infringe on another’s enjoyment of same right. It appears that court has further construed the right to freedom of association to entail more than the literal interpretation that has always been perceived to be the import of Section 40 of the Constitution of the Federal Republic of Nigeria. In the case of A.G Federation v. Abubakar^[14] the issue of the right to disassociate from an assembly arose as an offshoot of the right to peaceful assembly. it was held thus:

Under the provisions of the Constitution of the Federal Republic of Nigeria, 1999, it will operate illegality, injustice and unconstitutionality to refuse or deny a citizen of the country to opt out, join, belong to any political party, trade union or any other association for the protection of his interest, except where, in case of political parties, the National Electoral Commission (NEC) or (INEC) or as the name may suggest has not recognize the party.

The learned Judge in his reasoning stretched the traditional thoughts on the freedom of association to entail freedom to leave an association at any time and for any reason without being curtailed by any person or authority. It is interesting how the courts have widely construed this right to cater for this type of situations. It only goes to show the sacred nature of the fundamental rights. This begs the question of what are fundamental rights?

Merriam Webster defines: fundamental right as ‘a right that is considered by a court to be explicitly or implicitly expressed in a constitution.’ Fundamental Rights are a group of rights that have been recognized by the Supreme Court as requiring a high degree of protection from government encroachment^[15]. Fundamental rights are types of human

rights that are enshrined or incorporated in national constitutions as constitutional guarantees. Their incorporation elevates them from the status of enforceable rights to enforceable non-rights, thereby assuring their primacy among municipal laws of a country. This category of rights are above ordinary right or other types of human rights that are not so enshrined or incorporated as fundamental objectives in Chapter II of the Constitution of the Federal Republic of Nigeria.

Jurisprudence on the Right to Protest

Notwithstanding, the recognition of the right to protest under international law, this right is not absolute^[16]. In line with the authority of Article 21 of the International Covenant on Civil and Political Rights the right to protest can be limited through statutes which are in ‘conformity with the law, necessary in a democratic state, national security or public safety or public order, the protection of public health or morals or the protection of rights and freedom of others’. However, under the African Charter on Human and Peoples Right there is no clear derogation of the right to protest. Since local statutes provides for certain derogation from the right to protest there is a controversy as to the statute that ought to be considered supreme^[17].

Section 12(1) of Constitution of the Federal Republic of Nigeria 1999, as amended provides 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.’

In the case of Chief Gani Fawehinmi v. General Sani Abacha & ors, the respondent was arrested at his residence without the production of a warrant. The respondent was later detained without being informed of the offence for which he was charged. The respondent then proceeded to institute an action in court relying on Article 4, 5,6 and 12 of the African Charter on Human and Peoples Rights (Ratification and Enforcement) Act^[18]. The court was faced with considering the issue of supremacy of a local statute over the African Charter on Human and People’s Right. The court held thus:

The African Charter contained in Cap 10 of the Laws of the Federation is supreme to the Decrees of the Federal Military Government... it is common place that no government will be allowed to contract out by local legislation, its international obligations. That notwithstanding the fact that Cap 10 was promulgated by the National Assembly in 1983. It is legislation with international flavour and the ouster clauses contained in Decree No. 102 of 1994 cannot operate to affect it.

From the dictum above, the courts’ reasoning could be rationalized on the basis that the Decrees are municipal laws and such could not override the provisions guaranteeing fundamental rights in Chapter IV of the Constitution of the Federal Republic of Nigeria 1999, as amended. The Supreme court held that where, a treaty is enacted into law by the National Assembly, as was the case with the African Charter which is incorporated into our domestic law. By the domestication of the African Charter on Human and People’s Right, the treaty becomes binding and our courts must give effect to it like all other laws falling within the judicial power of the Courts^[19]. Subsequently, the African Charter on Human and People’s Right is a part of the laws of Nigeria, the Apex Court held that ‘like all other laws the Courts must uphold it’. However, on the question of the

hierarchy of statutes, the Apex court held that the Constitution of the Federal Republic of Nigeria 1999 is superior to the African Charter on Human and People's Right. It further noted that its international flavour does not prevent the National Assembly, from removing it from the body of Nigerian municipal laws by simply repealing the African Charter on Human and People's Right.

Notwithstanding what has been said above, if there is a conflict between the African Charter on Human and People's Right Act and another statute, its provisions will prevail over those of that other statute because it is presumed that the legislature does not intend to breach an international obligation. This is the import in the case of *Oshevire v. British Caledonian Airways* ^[20], where the court held that any domestic legislation in conflict with international conventions is void. The line of thought of the judge in this case was intended to protect the fundamental human rights generally against the uncensored powers of the military government at that time. This shows that all times the balance of probability in court will always tilt to protecting the fundamental human rights of the citizens.

Derogation from the Right to Protest in Nigeria

Various laws that seek to protect this right also lay down certain circumstances in which this right can be limited. It is important to note that while the aforementioned instruments provide for the right to protest, while limiting the scope of this right. In *Sea Trucks (Nig) Ltd v. Phyne*, the Court of Appeal held that the phrase, 'for the protection of his interests' in subsection (1) does not give the citizen an unrestrained freedom to join any association. It is not a freedom at large but rather, it is one that is certainly restrictive. If it were the intention of the makers of the Constitution to make the right of association unfettered and unrestrained, it would have used the words 'of his own choice' Else it would be prone to arbitrariness and riotous situations thereby giving rise to mutiny ^[21]. The proviso expressly excludes the powers of the Independent National Electoral Commission with respect to unregistered political parties.

With the recent move for better governance, citizens in their numbers keep converging frequently to with the intention of protesting in order to change government decisions. Subsequently several issues have ranging on administrative restrictions to the right to protest has arisen in Nigeria. In the case of *Inspector General of Police v. All Nigerian Peoples' Party and Others* ^[22] the issue of licence as a requirement for the exercise of the right of peaceful assembly arose the court upheld the express right of Nigerians to protest without any permit.

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.

This section raises the issue as to what constitutes public safety, public order, public morality or public health that could warrant the deprivation of 'fundamental rights'?

Duty of the State to Guarantee the Right to 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 constitution.

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 regimes. The waves of protest in recent times all over the world, and the use of law enforcement agencies to suppress such assemblies re-enforces the need for a closer examination of the position of the international human right on this issue. The right to protest imposes a corresponding duty to respect the fundamental human right especially the right to life.

Section 33(1) of the Constitution of the Federal Republic of Nigeria provides:

Every person has a right to life, and no one shall be deprived intentionally of his life, save in execution of the sentence of a court in respect of a criminal offence of which he has already been found guilty in Nigeria.

According to Heyns:

the right to life has two components. The first and material component is that every person has a right to be free from the arbitrary deprivation of life: it places certain limitations on the use of force. The second and more procedural component is the requirement of proper investigation and accountability where there is reason to believe that an arbitrary deprivation of life may have taken place ^[23].

This means that the duty of the state exceeds the mere obligation not to arbitrarily kill protesters through its agents, rather it must ensure their protection from non-state actors, and where death or violation occurs, the failure of state to take proactive actions against such perpetrators amounts to breach of its obligations under international human rights law ^[24].

Section 33(2) of the Constitution of the Federal Republic of Nigeria provides:

A person shall not be regarded as having being deprived of his life in contravention of this section, if he dies as a result of the use, to such extent and in such circumstance as are permitted by law, of such force as is reasonably necessary-

- a. For the defence of any person from unlawful violence or for the defence of property
- b. In order to effect lawful arrest or to prevent the escape of a person lawfully detained
- c. For the purpose of suppressing a riot, insurrection or mutiny.

It can be inferred from the wordings of this section that, the occurrence of any of the situations as provided under the subsections negates the existence of any right.

Inclusive Approach to Interpreting the Right to Life

The right to life has far reaching effects and should be made absolute. The Nigerian legal system is yet to fully understand the progress made by international courts in the realistic application to the right of life. While not abandoning its negative connotation, should death occur, the courts lean heavily on the positive components of the right

by reading it along with the positive duties of the state [25].

In the case of *Velasquez- Rodriguez v. Honduras*, the court held that the right to life implies a corresponding duty on the part of the State to take cogent steps to prevent situations that could result in the violation of that right [26]. If there is a right to life then by implication a right to demonstrate when life is being threatened should be enclosed in the right to life else it becomes an empty right. Similarly, at the Inter-American Court of Human Rights, in the case of *Street Children* it was held that:

The right to life is a fundamental human right, and the exercise of this right is essential for the exercise of all other human rights. If it is not respected, all rights lack meaning... In essence, the fundamental right to life includes, not only the right of every human being not to be deprived of his life arbitrarily, but also the right that he will not be prevented from having access to the conditions that guarantee a dignified existence. States have the obligation to guarantee the creation of the conditions required in order that violations of this basic right do not occur [27].

The danger in the prevailing approach in Nigeria is that it practically render the right to life meaningless by allowing events that denigrate right to continue and thereby overwhelm the right to life. In its true sense, the right to life covers any thing and circumstance that has the immediate or remote ability to cause death. It covers failure to provide adequate security for protesters, failure to remove corrupt leaders, stealing of money appropriated for making basic amenities in the state. It appears that few Nigerian Judges also hold the same view. In the case of *Jonah Gbemre v. Shell Petroleum Development Corporation of Nigeria Limited (Shell & Nigeria National Petroleum Corporation (NNPC))*, the plaintiff sued Shell Nigeria, NNPC and the Attorney General of the Federation, seeking a declaration that the rights to life and dignity of human person included the right to clean, poison-free, pollution-free and healthy environment. The Federal High Court declared that the actions of the 1st and 2nd respondent in continued gas flaring in the course of their oil exploration and production activities in the applicant's community was in violation of the fundamental right to life (including healthy environment) and dignity of human persons guaranteed by the Constitution and the African Charter.

Fundamental Human Rights like the right to expression, the right to peaceful assembly and association, fair hearing, religion, dignity, appertain to individuals as living beings and are fundamental to the enjoyment and preservation of life. These rights cumulate in the package wrapped as the right to life.

Conclusion

This paper has analysed the right to life in relation to the right to protest under the Nigerian judicial system and on the international landscape. The right to life covers anything and circumstance that has the immediate or remote ability to cause death. It covers failure to provide adequate security for protesters, failure to remove corrupt leaders, stealing of money appropriated for making basic amenities in the state. This paper argues that section 33(2) of the Constitution of the Federal Republic of Nigeria which provides grounds for the derogation of the right to life is inconsistent with the true meaning of right to life provide for in subsection 1 of Section 33.

This paper recommends that Section 33 of the Constitution of the Federal Republic of Nigeria should be reviewed. The derogations to the right to life should be removed as it is inconsistent with the true meaning of right to life.

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