DOI: https://doi.org/10.68193/jilj.2023.zwz3umbz

JOURNAL OF INTERNATIONAL LAW AND JURISPRUDENCE
A Publication of the
Department of International Law and Jurisprudence,
Faculty of Law, University of Jos,
Jos, Nigeria.
JILJ Vol. 8, No. 1, 2023.

ASSESSING THE RIGHT TO PROTEST UNDER THE NIGERIAN LAW

Ernest Ogwashi Ugbejeh, Ph.D*
Grace Dallong-Opadotun**

ABSTRACT

Protest is one of the potent means of drawing the attention of the government and demanding a reflection of the yearnings and aspirations of the people in her policies. In Nigeria, the right to protest of any Nigerian is guaranteed and protected under the international law and Section 40 of the 1999 Constitution of Federal Republic of Nigeria (as amended). Guaranteeing the right to protest is subject to the general restriction placed by section 45 of the Constitution. Public Order Act is one of the laws in Nigeria regulating protests but its provision has raised controversies over the requirement of permit before gathering for protest march. The Public Order Act curbs on the enjoyment of the right enshrined in section 40 of the 1999 Constitution, as such, the Act cannot be said to be reasonably justifiable in a democratic society as to make it come under the exception of section 45 of the Constitution. This article examines the concept of protests,

*Ernest Ogwashi Ugbejeh, Ph. D Faculty of Law, National Open University of Nigeria.
**Grace Dallong-Opadotun, Faculty of Law, National Open University of Nigeria

cases of protests in Nigeria, the legal framework for protests, right to protest in Nigeria and whether police permit is required before embarking on a protest march in Nigeria.

1. INTRODUCTION

The saying 'life does not give one what he or she desires but what one places demand on' is not only a truism but underscores the essence of protest in any society. Most times, the policy of government or an organisation may not reflect the wishes and desires of the masses or majority. Thus, one of the potent means of drawing the attention of the government and demanding a reflection of the yearnings and aspirations of the people in her policies is protest. It plays an important part in the civil, political, economic, social and cultural life of all societies.[1]

Historically, protests have often inspired positive social changes 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. 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 marginalized.

It is a means of compelling the government to revert unpopular policy. However, it is not every government that recognises and respects this right where it exists. Governments around the world, too often, treat protests as either an inconvenience to be controlled or a threat to be extinguished.[2] Nigerians have experienced decades of systematic human rights violations under successive governments, both during the military rule from 1966 to 1999, and the civilian rule from 1979 till date.[3] These periods were characterized by the suppression of dissent as individuals,

---

[1] The Right to Protest: Principles on the Protection the Protection Of Human Rights in Protests, 2016 <www.article19.org> Accessed 3rd April, 2023.

[2] Ibid.

[3] Human Rights Watch, Testing Democracy: Political Violence in Nigeria December, 2003, Vol.15, No. 19(A).

groups, human rights and pro-democracy activists as well as journalists were arrested and persecuted.

Furthermore, there is the challenge of lack of understanding which manifest in the following ways. Firstly, some protesters do not understand the limit of their right to protest and whether there is a legal requirement of obtaining permit from the police before gathering for protest in Nigeria. Secondly, students in tertiary institutions in Nigeria, see protest as a means of causing gridlock, wanton destruction of properties and causing other unlawful activities. Thirdly, the police have a misconception of what a protest means and their roles during protest. There had been cases of, assaults, brutalities, use of tear gas, live bullet and other harmful attacks on peaceful protesters by the police and other law enforcement agents in Nigeria as will be seen in this paper.

Public Order Act[4] is one of the laws in Nigeria regulating protests but its provision has raised controversies over the requirement of permit before gathering for protest march. Relying on this law, the police continue to insist on the need to first obtain permit from them before any gathering for protest.

All the issues identified above shall be the thrust of this paper. In this endeavour, the paper examines the concept of protests, cases of protests in Nigeria, the legal framework for protests, right to protest in Nigeria and whether police permit is required before embarking on a protest march in Nigeria.

2. DEFINITION OF PROTEST

The concept of protest has been variously defined. The *Free Legal Dictionary* defines protest as 'a formal declaration whereby a person expresses a personal objection or disapproval of an act'.[5] Protest has been defined as 'an action by a group of people to show their negative or positive viewpoint regarding a public issue'.[6] A protest is:

> A formal declaration made by a person interested or concerned in some act about to be done, or already performed, and in relation thereto, whereby he expresses his

[4] Public Order Act Cap P42, Law of the Federation of Nigeria, 2004.

[5] Legal Dictionary available at <https://legal-dictionary.thefreedictionary.com/protest> Accessed 24 April, 2023.

[6] ibid.

> dissent or disapproval, or affirms the act to be done against his will or convictions, the object being 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 negative his assent to or voluntary participation in the act.[7]

Also, protest has been defined as individual or collective expression of oppositional, dissenting, reactive or responsive views, values or interests.[8] Therefore, a protest may encompass the following:

a. Individual or collective actions, as well as spontaneous or simultaneous protests in the manner, form, and for the duration of one's choosing, including through the use of digital technologies;
b. Individual or collective expression relating to any cause or issue;
c. Actions targeting any audience, including public authorities, private entities or individuals, or the general public;
d. Conduct or expression that may annoy or give offence to people who are opposed to ideas or claims that a protest is seeking to promote, or conduct that temporarily hinders, impedes or obstructs the activities of third parties;
e. Actions in any location, including public or privately owned places, as well as online;
f. Actions involving various decrees and methods of organizing, including where there is no clear organizational structure, hierarchy or pre-determined form or duration of protest.

2.1 Types of Protest

The different types of protest deducible from the above definitions include: (1) Peaceful protest (2) Violent protest (3) Online protest and (4) Street protest. This classification is based on conduct of the protesters and the means of expressing the protests.

a. Peaceful protest: This is nonviolent protest

b. Violent protest: This a protest that is not peaceful

---

[7] *Black's Law Dictionary* Free Online Legal Dictionary 2nd Ed, <https://thelawdictionary.org/> Accessed 23 April, 2023.

[8]

c. Online protest: This refers to a protest that takes place using the internet as a tool and/or platform for the action. The protesters express the opinion, dissent or grievance via the internet. This is becoming popular because of the increasing wave of telecommunication and internet.

d. Street protest: This type of protest ordinarily consists of walking in a mass march formation and either beginning with or meeting at a designated endpoint, or rally, to hear speakers.[9]

3. CASES OF PROTESTS IN NIGERIA

Protest in Nigeria is as old as the nation. There had been protests both under the military and civilian regimes. The events in Nigeria, under the civilian regime and in particularly under the present administration have raised question as to the existence and protection of right to protest in Nigeria. Some of these events are chronicled bellow.

i. Arrest of All Nigeria Peoples Party (ANPP) supporters for organizing a protest at the U.S Embassy: On 7th July, 2003. The Police raided the ANPP office in Abuja, arrested several people and later released them. According to the Police, the reason for their arrest was because they organised protest at the U.S Embassy on July 3.[10] The Police also tried to prevent the ANPP in Kano from organizing rallies and other public events on the ground that they did not have police authorization.[11]

ii. Also in Kano, on July 1, 2003, twenty-five people were arrested as crowds gathered for a rally organized by the Buhari organization, the campaign organization of Muhammadu Buhari who was the presidential candidate during the elections, on the basis that the rally had not been granted permission prior authorisation.[12]

iii. In 2003, the police severely beat several journalists and arrested at least two during a large and peaceful protest rally addressed by the Nigeria Labour Congress president, Adams Oshiomhole in the federal

---

[9]Street Protest Law and Legal Definition, US Legal Inc., <https://definitions.uslegal.com/s/street-protest/> Accessed 23 April, 2023.

[10]*Human Rights Watch Report*, December 2003 Vol.15.No.19(A)

[11] See Falana, F. 'The Legal Right of Nigerians to Protest Against Government' available at <https://www.vanguardngr.com/2017/02/the-legal-right-of-nigerians-to-protest-against-government/> Accessed 17th April, 2023.

[12] Ibid.

capital, Abuja.[13] The same day, policemen assaulted George Oshodi, a photographer, working for a news agency, Associated Press (AP), who was taking photographs of the rally.[14] Two reporters working for the Vanguard Newspaper, Funmi Komolafe and Rotimi Ajayi were also beaten by the police the same day. Funmi Komolafe was arrested by the police, and Ola Awoniyi, a journalist working for AFP who had asked the police why they had arrested Funmi Komolafe was also arrested.[15]

iv. On 2nd July, 2003, students organised two large protests in the city of Port Harcourt, a minimum of two people were shot dead in the process of dispersing the protesters on Aba express road, Port Harcourt. Those who died after being hit by stray bullets as police shot at the crowds include Chisa Nwoko, a government traffic warden and Izuchukwu Nzenwefe, a trader who was shot in front of his shop the area where protesters had gathered. It was also reported that two secondary school students were shot dead during the protests. The same day, several students were also beaten by police and arrested in a protest on Ikwerre Road.[16]

v. On 7th July, 2003, one week into a strike, the protests showed no sign of dying down. According to report between six to sixteen people were shot dead by the police in several different locations of Lagos. Some of the victims were protesters; others were hit by stray bullets.[17] According to Human Right Watch, eye witness testimony, the police opened fire on the crowds indiscriminately in different parts of Lagos where the protest took place. Initially, the police denied any killing. Eventually under intense pressure and following widespread publicity of the incident's graphic reports of the

[13] Aziken, E. 'Nigeria: Labour Leader Challenges Presidency Again', *Vanguard* Newspaper, Abuja: 2 January 2003.

[14] HRW, Testing Democracy: Political Violence in Nigeria' <www.hrw.org> Accessed 11 April, 2023.

[15] Aziken, E. 'Nigeria: Labour Leader Challenges Presidency Again', *Vanguard* Newspaper, Abuja: 2 January 2003.

[16] Human Rights Watch Telephone interviews with sources in Port Harcourt, July 9 and 10, and November 7, 2003. See also letter to the Rivers State Commissioner of Police by the Civil Rights and Development Organisation (CRIDO) on the killing of Izuchukwu Nzenwenfe: Thisday Newspaper, "Police Clamp Down on Rivers Labour Leaders", *Thisday* Newspaper, July 3, 2003. Accessed on 23rd May, 2018.

[17] ibid.

shootings, including footage of the victims, were shown on private televisions stations they conceded that a number of people may have died but continued denying responsibility for their deaths, claiming that some had been killed in the general confusion, or that they may have been killed by armed rioters.[18]

The Human Rights Watch report indicates that order to the police to shoot protestors in Lagos may have been issued from the highest level, from the police force headquarters in Abuja. On July 7, at the height of the protest in Lagos, a man who was arrested in Abuja in connection with an unrelated incident was taken to the Police Force Headquarters. While he was waiting there, at around 11:00 am, he overheard a telephone conversation between a senior officer (who was in the same room with him) and the Commissioner of Police of Lagos state. He was able to hear part of the conversation because the loud speaker on the telephone was switched on. According to his testimony, the Commissioner of Police for Lagos state reported that people were protesting in large numbers in the Ikeja area of Lagos and asked on what he should do. The senior police officer replied that if the situation persisted for more than thirty minutes, the police should shoot the protestors on sight. [19]

vi. On 2nd January, 2012, there were mass protests when former President Goodluck Jonathan increased the pump price. The protests took place across the country. Over 2 million demonstrators participated in the streets of Lagos and conducted themselves peacefully, yet armed soldiers were deployed in a desperate bid to suppress the protests on the orders of the Commander-in-Chief of the Armed Forces, Dr. President Goodluck Jonathan.[20] There was no insurrection that required military deployment as envisaged under

[18] Ibid, and the Human Right Watch Telephone Interviews, July 2003. In their testimony to a Senate inquiry on this matter, the police said that according to their records, eight people had died the protests in Lagos, but claimed that seven of them had died as a result of fatal motor accident. Senate Committee on Petroleum Resources, report on the alleged killings during the strike over price increased of petroleum products.

[19] Human Right Watch Interview, Abuja, July 20, 2003.

[20] Akoni, O. Akanmu, G. Balogun, I and Olowoopejo, M. 'Deployment of Soldiers to Lagos: Fashola writes Jonathan' *Vanguard* Newspaper: 21 January, 2012.

the Constitution.[21] To the surprise of many, instead of protesting the usurpation of the constitutional duties of the police by the armed forces, the Inspector General of Police in a press conference in Abuja justified the deployment and threatened to charge demonstrators with treasonable felony.[22]

vii. On June 20th, 2013, the federal government of Nigeria announced an increase of more than 50 percent in the price of fuel. Fuel prices have traditionally been kept low through government subsidies. The government's announcement of a sudden and sharp price increase caused a storm of public outrage across the country. Negotiations between the government and trade unions broke down and the trade unions under the leadership of the Nigeria Labour Congress (NLC), called a general strike from June 30. This led to protests as massive public demonstrations were organized in different parts of the country.[23]

The police response to the strike and protests was brutal. Large numbers of both regular and paramilitary mobile policemen were deployed across the country. The policemen violently broke up demonstrations and rallies, dispersing protesters with tear gas and live shots, even when there was no sign of violence. These policemen, shot dead several protesters and passers-by, and people were severely beaten including several journalists who were covering the events. Between twelve to twenty people were reportedly killed and others injured. There were reports that some protesters resorted to acts of violence, many protests were completely peaceful.

viii. On 6th September, 2016, members of the Bring Back Our Girls (BBOG) protesting for the return of the abducted Chibok school girls were prevented by the police from embarking on protest march to the Presidential Villa.[24]

---

[21] Section 217(2)(c) of the Constitution provides circumstances where military deployment will be legally justified.

[22] Op Cit at no 1

[23] Human Rights Watch, December 2003 Vol. 15, No. 19(A).

[24] Ayodele, A 'Police Stop Bring Back Our Girl Protest in Abuja' *Punch* Newspaper, 6 September, 2016.

ix. On 23rd January, 2018 some members of the BBOG group were arrested by the police for embarking on a protest at the Presidential Villa, Abuja calling on government to secure the release of the girls.[25]

x. On 6th February, 2017 there were protests against bad governance, economic hardship and delay in decision making by the President, high unemployment and harsh economic policies of the federal government.[26] The protagonist, Tuface Idibia, a popular musician was forced to pull out from the protest before the set date by the government and threats were issued by the police and other law enforcement agencies.[27] A coalition group of Concerned Nigerians protested over the long absence of President Muhammadu Buhari, demanding he must either return to the country or hand over power to his vice.[28] The protesters were attacked with tear gas canister, hot water and brutalized by the police.

The above are few examples of cases of protests and the responses of Nigerian government, the police and other law enforcement agencies in Nigeria. The questions arising from the above cases in Nigeria are (1) whether the right to protest is protected under the Nigerian law and (2) whether police permit is required before gathering for a protest?

4. LEGAL FRAMEWORK FOR RIGHT TO PROTEST

The law guarantees and protects right to peaceful protest. The right is covered by rights to association, assembly and personal liberty. It enjoys both domestic and international recognition and protection. The right to peaceful assembly and association is one of the traditional civil and political rights.[29] In Nigeria, this right to protest of any Nigerian is guaranteed and protected under the international law and the 1999 Constitution of Federal Republic of Nigeria (as amended).[30] The earlier attention and recognition of this right underscores its importance to human existence.

---

[25] See Channels Television Report 'Police Arrest BBOG Protesters in Abuja' 23 January 2018 available at <https//www.channelstv.com> Accessed 24 April, 2023.

[26] Emmanuel Okogba, 'Protests: Key Issues that Sent Nigerian to the Street' Vanguard News, <Varguardngr.com> accessed 12 September, 2018.

[27] Ibid.

[28] Ameh Comrade Godwin, *Punch* Newspaper, August 9 2017.

[29] Also known as the first generational rights

[30] The 1999 Constitution of the Federal Republic of Nigeria (as amended).

Under the international law, Article 21 of the 1966 International Covenant on Civil and Political Rights (ICCPR) states that:

> 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 interest 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.

Nigeria is a signatory to ICCPR but is yet to domesticate it as required by section 12 of the Constitution.

But unlike the ICCPR, the African Charter on Human and Peoples' Rights (African Charter) has been domesticated by African Charter on Human and People's Right (Ratification Enforcement Act).[31] The African Charter provides that 'every individual shall have the right to free association provided that he abides by the law' and 'every individual shall have the right to assemble freely with others'.[32] The exercise of this right shall be subject only to necessary restriction provided for by law, in particular those enacted in the interest of national security, the safety, health, ethics, rights and freedom of others.

Furthermore, the 1999 Constitution in section 40 of the Constitution 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 or any other association for the protection of his or her interests.

Also, Section 39 of the Constitution gives every Nigerian the right to freely express himself or herself, including to hold opinions and to receive and impart ideas and information without interference.

The right to protest is also subsumed under the rights to life and dignity of human person. Thus, section 33(1) and Section 34(1)(a) of the Constitution guarantee the right to life and the right to human dignity, including the right not to be subjected to torture or inhuman or degrading treatment.

---

[31] Cap A9 LFN 2004.

[32] Article 10 (1) and 11of the African Charter on Human and People's Right (Ratification Enforcement Act) Cap A9 LFN 2004.

However, these provisions guaranteeing the right to protest are subject to the general restriction placed by section 45 of the Constitution. Section 45 of the Constitution provides for grounds under which the right to protest could be derogated. It provides that the right can be derogated by any law that is reasonably justifiable 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 other persons. Section 45 (1) of the Constitution provides thus:

> Nothing in sections 37, 38, 39, 40 and 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 freedoms of other persons.?

For the exemption to be valid, the first requirement is that the law must be reasonably justifiable in a democratic society. A democratic society is defined as a society based upon respect for human rights. Public order in such a society is based on the appreciation by the authorities of the dignity of the individual and the protection of his or her rights. Undemocratic societies are characterized by contempt for human rights and disregard for rule of law. Another key feature of a democratic system is that it is based on the fact that the people are the source of authority, and that they have the right to account and monitor those who exercise this authority on their behalf.[33]

The term 'a democratic society' appears in the International Covenant on Civil and Political Rights.[34] These terms were inserted at the Eighth Session of the United Nations Commission on Human Rights in 1952 at the suggestion of France. At that time, the argument by France was that the insertion of the concept was essential, since it was already contained in the general limitation provision of Article 29 of the Universal Declaration of Human Rights. It was in adherence to the spirit of the Universal Declaration of Human Rights and to declare forthrightly that even public order was and

[33] This underscores the social contract theory.
[34] Articles 21 and 22.

is subordinate to human rights, that the reference to a democratic society was included.[35]

Though the Nigerian Public Order Act is a law made for the purpose of maintaining public order, for the purpose of determining whether the Act is a law that is reasonably justifiable in a democratic society, the origin and provisions of the Act have to be examined together with the meaning and character of a democratic society. The consideration of whether the Public Order Act is a law that is reasonably justifiable in a democratic society is necessary so as to bring it under the umbrella of the provision of section 45 of the CFRN.

4.1 Whether the Public Order Act is a Democratic Creation

The Public Order Act is largely a product of our past colonial rule and domination. It regulates protest and is designed for the purpose of proper and peaceful conduct of public assemblies, meetings and processions. By this Act, government of each state was empowered to direct the conduct of assemblies, meetings and processions on the public roads or places of public resort in the state and prescribe the route by which, and the times at which any procession may pass. It places a requirement on any person interested in convening any public gathering or conducting any procession to apply to obtain a license.[36] But the Act cannot be said to be a law reasonable justifiable in a democratic society because it was not enacted by the majority of the people through the parliament. It is part of the received English law.

Going by its colonial heritage, the Public Order Act is definitely not a democratic creation. The Ghanaian case of *New Patriotic Party v. IGP*[37] Accra remains a reference case as far as the right to peaceful assembly and public order viz- a- viz the issue of reasonable justifiability in a democratic society is concerned. The court in this case had to decide on the constitutionality of the Public Order Decree 1972 of Ghana, which is in *pari materia* with the Public Order Act of Nigeria.

---

[35]https://www1.umn.edu/humanrts/monitoring/adminchap12.html. Accessed on 26th April, 2023.

[36] Njideka, O.C. "Public Order Act and Peaceful Protest in Nigeria". University of Nigeria ,Nsukka. <www.nsukka.ng> Accessed 29th April, 2023.

[37] (1993-94) 2GLR 459 (SC).

The Supreme Court of Ghana after tracing the history of the Public Order Decree as a consequence of the colonial status, from which Ghana evolved as a nation, held that the Decree was unconstitutional. The Court further declared that such an absolute power conferred upon a police, administrative officer or a Minister to abridge the fundamental human rights of the citizens is unconstitutional. Going by the sound judgment in this case which is on a law which is very similar to the Nigerian Act, it is submitted that the curb on the enjoyment of the right enshrined in section 40 of the 1999 Constitution, by the Public Order Act cannot be said to be reasonably justifiable in a democratic society as to make it come under the exception of section 45 of the Constitution.

The earlier decision of the Supreme Court in the case of *Williams v. Majekodunmi,*[38] is quite instructive on what the court considers reasonably justifiable in a democratic society. In this case, the plaintiff was served with a restriction order by the defendant in the exercise of powers conferred on him. In his action for a declaration, he alleged inter alia, that the said restriction order served on him by the defendant was illegal, and unconstitutional. Whilst the plaintiff argued that the restriction order was not reasonably justifiable in a democratic society, the Attorney-General of the Federation justified the restriction orders on the grounds of state security and public welfare. Bairamian FJ, delivering the lead judgment, held that the restriction order on the plaintiff was not reasonably justifiable, and set aside the order. Also, in *Arthur Nwankwo v. The State*,[39] the appellant was tried and convicted for publishing a seditious material. On appeal to the Enugu Division of the Court of Appeal, declared the Sedition Law unconstitutional because it derogates from the freedom of expression guaranteed by the 1979 Constitution.

These cases above places high premium on the fundamental human right over and above state security and public welfare where there is a derogation of these rights by the state. A law meant to abridge the fundamental human right cannot be said to be reasonably justifiable in a democratic society.

In all the cases mentioned above, the police cited and relied on the Public Order Act; not obtaining of permit before the protest as the

[38] (1962)1 ALL NLR 413; WNLR 150.
[39] (1985) 6 NCLR 228.

justification for attacking the peaceful protesters. The question is whether this requirement of permit is consistent to the provision of the Constitution of Federal Republic of Nigeria.

4.2 Requirement of Police Permit before any Public Gathering or Conducting any Procession

Section 1 (2) of the Public Order Act, provides that:

> who is desirous of convening any assembly or meeting or of forming any procession in any public road any person or place of public resort shall, unless such assembly, meeting or procession is permitted by a general licence granted under subsection (3) of section 1, first apply to the Governor for a licence not less than 48 hours before the assembly, meeting or procession. If the Governor is satisfied that the assembly, meeting or procession is not likely to cause a breach of the peace, he shall direct any superior police officer to issue a licence not less than 24 hours before the event, specifying the name of the licensee and defining the conditions on which the assembly, meeting or procession is permitted to take place. Where the Governor is not satisfied, he is to convey his refusal in like manner to the applicant within the stipulated time.

A careful study of the relevant portions of the above provision of the Public Order Act reveals that the application for a licence is to be made to the Governor. The Governor has the sole discretion to direct any superior police officer to issue a licence. The police cannot grant the licence directly, except where the Governor had delegated his powers to the Commissioner of Police or any superior police officer of a rank not below that of a Chief Superintendent of Police. Therefore, there is no sole repository of the right or power to grant the licence on the Police. The Police can only lawfully exercise such rights under the directive of the Governor. Where the police usurp these duties and functions of the Governor to the extent that a Commissioner of Police would prevent a Governor from attending a meeting in a venue within the State where he or she is the incumbent Governor is not only unconstitutional but undemocratic. This played out at Abia State capital (Umuahia) on 29th April, 2006. The police prevented the

Governor, Chief Orji Uzor Kalu and other members of a faction of Ohaneze Ndigbo from holding its meeting. The Governor alleged that the Police Commissioner, Mr. Charles Akaya, told him that his command acted on orders from above.

Also, section 215(1) of the CFRN gives the Governor power to issue lawful directive to the Commissioner of Police in the State with respect with public safety and order. Thus, in *Attorney-General of Anambra State v. Attorney-General of the Federation*,[40] Uwais CJN (as he then was) held that

> The Constitution in section 215 subsection (1) clearly gives the Governor of Anambra State the power to issue lawful direction to the Commissioner of Police, Anambra State, in connection with securing public safety and order in the State.

In *Chukwuma v. Commissioner of Police,*[41] the appellants who were the plaintiffs before a Federal High Court Ilorin belonged to a social cultural association, which object include promoting the welfare of its members resident in Kwara State. The Association planned to host a meeting of Igbo delegates assembly, which comprises of all the Igbo community associations in the Northern States of Nigeria in Ilorin, Kwara State in a private hotel. On the scheduled day of the meeting, policemen came to the venue of the meeting and forcefully dispersed the appellants and their members and sealed-off the venue. Aggrieved by the action of the respondents, the appellants instituted an action at the Federal High Court Illorin, seeking a declaration that the action of the respondents was a violation of their constitutional right of association, freedom of movement and assembly, a claim of N2 million for damages and an injunction restraining the respondent from stopping, intimidating or harassing the appellants from holding their meetings in Kwara State. At the trial court, the action was dismissed on the ground that the action of the police was justified as they had powers to do so. Being dissatisfied with the judgement, the appellants appealed to the Court of Appeal.

The issues for determination at the appeal were, whether the appellant required police permit to hold a meeting of their association and

[40] (2005) 9 NWLR (PT931) 572.
[41] (2005) 8 NWLR (PT 278); 1964 NNLR 21 AT 24.

whether the police was justified to disrupt the appellant's meeting and seal off the venue of the meeting. The Court considered the provisions of sections 40 and 45 (1) of the Constitution; sections 1 (1), 2 and 12 (1) of the Public Order Act, and section 4 of the Police Act. The Court held inter-alia that any meeting for which no licence was issued, or which violates any condition of the licence, may be dispersed by the Police. That the police were trying to maintain law and order in preventing the holding of the meeting and that their action was justifiable. The Court emphasised the fact that the leadership of the Igbos in the State wrote to the Commissioner of police, complaining of the dire consequences of allowing the meeting of the appellants to be held.

The above case establishes that a Nigerian citizen does not require police permit to hold a private meeting in a private place, but that the meeting of the appellants was a public meeting, being one for all the Igbos residing in the entire Northern States of Nigeria, notwithstanding that it was to be held in a private place. The meeting was also described as a public assembly, since section 12(1) of the Act defines an Assembly as a meeting of five or more persons.

However, the Court failed in *Chukwuma v. Commissioner of Police* to consider whether the Inspector-General of Police was the rightful person to issue the permit referred to in the Act. The determination of this particular issue would have considerably affected the ultimate decision of the Court. The Act specifically provides for the issuance of a Governor's Licence for public meetings and does not mention anything like a police permit.

This position received judicial backing in *the Federal High Court case of All Nigerian People Party (ANPP) v. Inspector-General of Police*.[42] This case was instituted following the police disruption of a solidarity political rally, held in Kano on September 22, 2003, during which the police fired tear gas at the persons in the gathering. The plaintiffs challenged the violent disruption of the rally by the police, and Justice Chikere considered the provisions of sections 38 and 40 of the Constitution; Article 11 of the African Charter on Human and Peoples Right and the Public Order Act. Justice Chikere brought to the fore the fact that the Inspector-General of Police was not competent to exercise any power under the Public Order Act. He held that the requirement of police permit or any other authority

[42] (2008) 12 WRN 65.

for the holding of rallies or processions in Nigeria is illegal and unconstitutional as it violates section 40 of the 1999 Constitution. He went on to issue a perpetual injunction restraining the Inspector-General of Police, his agents, privies and servants from further preventing the plaintiff and other aggrieved citizens of Nigeria from organizing or convening peaceful assemblies, meetings and rallies.[43]

Also, in *Chukwuma v. Commissioner of Police,*[44] the court failed to make affirmative and positive pronouncement on the issue of the constitutionality of the Public Order Act. This issue touches vital issue of whether the Public Order Act was a law that is reasonably justifiable in a democratic society, as to come within the exception made under section 45 of the Constitution. The Court merely based its ultimate decision on the fact that there was a petition to the police by one of the two opposing factions of the Igbo Community Association in Kwara State that the meeting should not be allowed to hold, as it would threaten the peace and security of the area.

Another argument is that the decision in *Chukwuma v. Commissioner of Police* cannot be taken as relevant in every case involving the constitutionality of the Public Order Act. This is because the facts that informed the decision are quite peculiar to the case. Th Court of Appeal decision should be applied within the context of what it decided, rather than applying it *willy nilly* manner to other cases, which it did not and does not contemplate.

Therefore, there is no requirement in the Public Order Act for police permit to be obtained before gathering for a protest. The Federal Capital Territory High Court in the unreported case of *Hadiza Bala Usman and Ors v Commissioner of Police & Anor,*[45]upheld applicant's submissions and held that "it is wrong for the counsel to the Respondent (IGP) to insist that the Applicants must obtain Police Permit before they can gather together for their peaceful protests."

The duty of the police during protest is to provide adequate security. This was emphasised in the Electoral Amendment Act, 2015 which stipulates that "notwithstanding any provision in the Police Act, the Public Order Act and any regulation made thereunder or any other law to the

[43] Ibid.
[44] Supra
[45] (Suit No: FCT/HC/CV/1693/2014 of 30th October, 2014)

contrary, the role of the Nigeria Police Force in political rallies, processions and meetings shall be limited to the provision of adequate security as provided in subsection 1 of this section."[46]

5. CONCLUSION

The paper assessed the right to protest under the Nigerian laws. It examined the concept of protest, cases of protests in Nigeria, the legal framework in Nigeria and the questions of whether the Public Order Act is a democratic creation and whether a police permit is required before gathering together for peaceful protest. The paper found that there exist laws protecting the right of protesters in Nigeria, but the right to peaceful protest is not always respected by the police in Nigeria. It also, established that the requirement for police permit before gathering for peaceful protest is unconstitutional. The government and the Police should respect the right of protesters and the legislatures should urgently enact a new Public Order Act to make it a democratic creation. Thus, the Act should be enacted to complement the Constitution and human law conventions.

[46]Section 94(4) of the Electoral Amendment Act, 2015.