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STREET PROTESTS, DEMONSTRATIONS AND DEMOCRACY: AN INTERROGATION OF THE LEGALITY OF PUBLIC ORDER ACT IN NIGERIA

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Abstract
The paper examines the legality of street protests, demonstrations and democracy in Nigeria. Acknowledging that power resides with the governed in every democracy as provided for by both national and international laws, the paper interrogates if street protests and demonstrations contradict provisions in Nigerian laws thus creating a legal and political lacuna that seems to deny citizens the rights to civil disobedience. The study investigates the legal provisions for protests and demonstrations in Nigeria in relation to two landmark court judgements on the legal battles of All Nigeria Peoples Party and 11 Others Vs Inspector-General of Police; and the legal case of Dr. Lewis Chukwuma and 2 Others Vs Commissioner of Police. The paper adopts the Social Contract Theory, using secondary sources. The study discoveres that the provisions in the Public Order Act 2004 constitutes a threat to the right provided for peaceful assembly in the 1999 Nigerian Constitution. The paper discovers that the police employ the Public Order Act to disrupt or deny people access to street protests and peaceful demonstrations in spite of guarantees provided in the constitution of the Federal Republic of Nigeria. This is a threat to Nigeria's fragile democracy. The study recommends that the National Assembly should endeavor to make laws that will create a balance between various provisions so as to guarantee democratic rights for protests, demonstrations and peaceful assembly.

Keywords: Civil Disobedience, Peaceful Assembly, Human Rights, Derogation of Rights

1.0 Introduction

People's right to gather and demonstrate on issues of common interest to them is seen as a fundamental human right, and is regarded as the people's way of exercising direct democracy. Aside from being a right, demonstrations and Protesters have not only historically affected the path of governmental policy; in modern times, they have been viewed as 'primary makers of history' (O'Flaherty, 2013). Protests provide a means to express diverse voices, enhancing people's sense of political efficacy (Oliver and Myers, 1999). Street protests and demonstrations are therefore important to the democratic processes, they allow citizens opportunities to voice their concerns, displeasure, dissent, and demands for change.

Davenport stated that, "embedded in the democratic principles of freedom of assembly and freedom of speech, these gatherings (protests and demonstrations) become a tangible expression of the public will" (Davenport, 2007). It (protests) allows individuals to collectively engage with the political process, shaping public discourse and influencing policy agenda in a manner reflective of democratic ideals (Earl & Schussman, 2010).

There are many international and regional human rights documents that respect everyone's right to peaceful assembly, which also encompass the right to peaceful demonstration. Though many Nigerian leaders view demonstrations offensive as exemplified by Nigeria's President Tinubu taking exception to four protests in nine months (Egbujo, 2024), demonstrations are a hallmark of democratic and pluralist states since they not only allow

citizens to express their opinions, but also to continue participating beyond elections (Olutola, 2020).

In democracy, street protests are not only a sign of citizens exercising their democratic rights but they also constitute an essential mechanism for holding governments accountable (Tilly, 2004). However, the manifestation of these protests also highlights the delicate balance between exercising civil liberties and preserving public order, posing challenges and opportunities for both citizens and the regulatory agency (Van Laer& Van Aelst, 2010).

Nigeria is a party to a number of international human rights treaties guaranteeing these rights, the most important of which are the African Charter on Human and Peoples' Rights (African Charter) and the International Covenant on Civil and Political Rights (ICCPR). These treaties impose an unwavering three-tier obligation on Nigeria to respect, protect, and uphold the rights enshrined in them. Nigeria has not yet taken any specific action to stop the repression of protesters and demonstrators by revisiting its use of force legislation, despite all these legislative measures in favor of civil disobedience (Cole, 2015).

In order to determine the local and international legal provisions that guarantee civil disobedience as a necessary component of democracy and to identify the gap that restricts the right of people to peaceful assembly and demonstration, this study examines the legality of civil disobedience, such as street protests and demonstrations, in Nigeria. Have the Nigerian leaders over time, come to terms with the importance of divergent opinions in a democracy as communicated with protests and demonstrations? Are the Nigerian people able to appreciate the importance of peaceful protests and demonstrations in the conduct of a democracy? The paper interrogates these questions using the legal battles of All Nigeria Peoples Party and 11 Others Vs Inspector-General of Police; the case of Dr. Lewis Chukwuma and 2 Others Vs Commissioner of Police.

1.1 Definition of Concepts

a) Democracy

According to Appadorai (2003), a democracy is a form of governance in which the people exercise their authority either directly or through representatives who are recurrently elected by the people. In his own contribution, Akinsanya (2000) argued that democracy encompasses a state in which there is some degree of political equality among the people in addition to being a system of governance in which the people rule as opposed to monarchs, aristocracies, and gerontocracies.

Democracy is justified on the grounds that it upholds a variety of essential principles and ideals, including equality, liberty, moral self-development, the common good, individual rights, social usefulness, the satisfaction of desires, effective decision-making and the right to expression. All of these principles are expected to be fulfilled through peaceful means.

b) Human Rights

The rights and freedoms to life, property, good life and expressions are enlarged to accommodate all of humanity; in which inalienable rights of good human existence are guaranteed globally.

According to Aduba (2012), human rights are those freedoms that are a part of every person's inherent humanity; as a result, they define and validate that person's humanity. As a

result, they are protected as holy rights, ensuring that injustice and inhumanity are avoided or lessened. He continued by arguing that because these rights are unalienable and indivisible, there is no hierarchy of rights; and no right may be suppressed in order to advance another right. These rights cannot be taken away or given up.

c) Civil Disobedience

Scholars have regarded civil disobedience differently, but in the end, all of their viewpoints essentially say the same thing. Foster and Nwiyor (2017), see civil disobedience as the "refusal by a significant number of people to abide by specific laws or pay taxes, usually as a form of peaceful political protest" The phrase civil disobedience is morally justified law-breaking, normally intended to change a particular law or policy (Hoffman and Graham, 2009).

The ramifications of the aforementioned criteria include, among others, the fact that civil disobedience typically does not involve using violence to further objectives. It means that because the state has implemented policies that are unfavourable to the people (the contractors), who had previously agreed to obey the state (the sovereign), the people decide to voluntarily and peacefully withdraw their obedience. The people's rejection of state obedience becomes ethically acceptable. The people act disobediently because they want the government to change or reevaluate one or more of its policies.

Certainly, the people's activities amount to breaching the laws that the state has established to rule over them. It is a form of opposition or protest against the established and acknowledged authority. But the fact that many people are involved in civil disobedience shows that it is not a closed or solo activity. It thus attains a semblance a democracy. Indeed, democracy and civil disobedience go hand in hand. Civil disobedience is rarely tolerated by political systems like monarchies, aristocracies, dictatorships, etc and is viewed as criminal and unacceptable in political systems other than democracies. Since democracy is centered on the people, civil disobedience is seen as a platform for the voice of the people to be heard and is hence acceptable.

1.2 Methodology

As an ex poste facto research, the study's data comes from secondary sources, and the research uses contents analysis to look at how the factors relate to one another. Two contending court cases; the All Nigeria Peoples Party and 11 Others Vs Inspector-General of Police; and the legal case of Dr. Lewis Chukwuma and 2 Others Vs Commissioner of Police as they explain the Public Order Act of 2004 will provide the main sources of data for analysis in the paper. This will be done within the context of the various international commitments Nigeria has entered at global and regional levels on human rights and individual liberties. The interesting twists on judgements of these cases is analyzed to explain how the Nigerian state reacts to street protests and demonstrations in Nigerian democratic setting. Certified true copies of the judgement and reactions of the various legal minds, newspapers and other documented analyses are used to arrive at conclusions.

1.3 Theoretical Framework

This paper is anchored on the Social Contract theory, which argues that the legitimacy of the government should always rest with the people's consent because they created it with their consent and that the consent of the governed (the people) is the source of governmental authority and that the right to revolution belongs to the governed. The foundation of the

Social Contract theory is the idea of consent. Without explicit consent by each individual, government has no jurisdiction. People live together in societies in accordance with an agreement that regulates political, economic and moral behaviors. This is explained as a social contract which entails direct human relationships without recourse to any divine interventions.

Over many centuries different scholars have explained social contract as conditional relationships governing behaviors acceptable and beneficial to all. John Locke for example explains that the people pledge to mutual respect and peaceful coexistence, thus transitioning from a state of nature to a state of society (the Pactum Unionis), and with another contract; (the Pactum Subjectionis), the people agree to submit to the rule of a certain government, which in turn agrees to protect their rights to life, property and liberty.

Though heavily criticized and may no longer translate well around the world, especially in places that reject democracy, Locke's social contract theory is a practical explanation of how government began and how it should remain to serve the people it has jurisdiction over. (Nation, 2019)

So, whenever the government fails people's expectations, and its performance is not satisfactory, people could take steps to change the government. Governments could be changed, altered or dissolved legitimately. (Bajaj, 2022)

Protests And Demonstrations in Nigerian and International Laws

The freedom to express discontent has been exercised in globally and in Nigeria from time immemorial, traditional and cultural systems of leadership in Nigeria have made specific provisions for the ordinary people to express discontent in very subtle and in some instances dramatic ways. When monarchies held sway different traditions have allowed protests to misrule an example being the disowning of the Yoruba Obas by his subjects demanding the monarch's suicide. Refusal to provide labor to traditional chiefs farms has always been a means of protest while some traditional Nigerian societies use peer groups to reach consensus before endorsing any decision made by rulers. In more modern times international consensus has been built around the citizens rights to protest. The paper is able to analyze both the global and local commitments of the people to the right to disobedience.

International Legal Provisions and Civil Disobedience

Globally, the Universal Declaration on Human Rights (Universal Declaration) was the first international human rights declaration to formally codify the right to peaceful assembly. Everyone has the right to peacefully assemble and association, according to Article 20(1) of the Universal Declaration. The UN adopted two legally binding human rights instruments, the ICCPR and the International Covenant on Economic, Social, and Cultural Rights (ICESCR) (ICESCR, 1966), in order to hold states accountable for their respective human rights obligations under international human rights law.

State parties are required by Article 21 of the ICCPR to acknowledge that everyone has the right to peaceful assembly and that this right may only be restricted on a few of the grounds stated in the Covenant. A requirement on state parties is implied by the specific guarantee of the right to peaceful assembly, which is that the right should be presumed to exist (Boyle and Shah, 2014).

At the regional level, both Article 15 of the American Convention on Human Rights and Article 11 of the European Convention for the Protection of Human Rights and Fundamental Freedoms provide the right to peaceful assembly. The African Charter on Human and Peoples' Rights guarantees the right to peaceful assembly. Article 11 of the African human rights system, and the African Commission on Human and Peoples' Rights (African Commission) has given this clause life through its numerous provisions.

3.0 **Rights Derogation**

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

At its 55th session in 2014, the African Commission issued a resolution on the right to peaceful demonstration in recognition of the need to address the threat that many state parties pose to this right. The resolution declares, "(T)he Commission condemns serious limitations on fundamental rights and freedoms imposed by some states, particularly the freedom of expression and the rights to information and peaceful assembly." (Olutola, 2020). To this extent none of the Charter's rights may be waived, according to the law.

Viljoen cited in Ali (2013) claims that the African Charter's silence on derogation may be a "normative innovation," but it also puts it at odds with many African governments' internal constitutional systems. Limitation refers to the withholding of a portion or whole of a right, whereas derogation refers to the complete (though temporary) suspension of a right as protected in an international human rights agreement or the constitution of a state. In order to be exempt from their treaty commitments for that relevant period of time, governments may use derogation in extraordinary circumstances (Ali, 2013).

While some authors consider the African Charter's lack of a derogation clause to be a fundamental omission, others see it as a positive step. Some have even argued that since the Charter does not have a derogation provision, all of its rights now have the status of "regional jus cogens." Numerous decisions by the African Commission have upheld the principle that the Charter forbids derogations, including in times of conflict (Olutola, 2020).

If a state cannot demonstrate that a restriction or rule is "necessary," it may fail to explain the limitation of this right protected by domestic law. This is because the claw-back clause does not give states a pass from their commitments under the Charter. The Commission's ruling in the case of Civil Liberty Organization Vs Nigeria, which deals with the government's takeover of the Nigerian Bar Association's structures, is in line with the notion that regulatory authorities shouldn't ignore constitutional provisions in order to minimize rights protected by the constitution and international agreements (Olutola, 2020).

Therefore, any restriction that violates global human rights norms will fall short of the African Charter's threshold for permissible restrictions. Similar to this, a restriction under national law must not be discriminatory in nature or make the right illusory in order to pass international human rights standards. This does not seem to be the case with Nigeria's attempts to stop peaceful protests and demonstrations in its charred political history.

4.0 Nigeria Constitutional Debates on Provisions for Rights to Peaceful Assembly and Civil Disobedience

In pre-1960 Nigeria, a surge of social protests characterized the socio-political landscape of Nigeria as activists fervently confronted issues such as colonialism, slavery, inflation, unemployment, and corruption. These protests manifested through various channels, encompassing print, radio, music, and street demonstrations. One notable example during the colonial era was the Iwe-Irohin newspaper (1859 – 1867), originally intended to cultivate a reading culture but eventually evolving into a staunch critic of the slave trade. The British Colonial Office's response was predictable; they censured the newspaper for supporting indigenous causes (Omu, 1967). Despite the reprimand, Iwe-Irohin's journalism played a pivotal role in liberating the Egba people from the Dahomey Kingdom, a significant player in the slave trade.

The 1929 Aba Women's Riots showcased 'sitting' as a prominent protest tactic. Women engaged in peaceful demonstrations, dancing, and singing outside the homes of warrant chiefs and Native court officials, even resorting to demanding the removal of the Warrant Chief (Ifeka-Moller, 1975). Rooted in the persistence, cultural knowledge, and commitment to non-violence by the Aba women, these riots left a lasting mark on women-led protests in Nigeria. Noteworthy successes included reduced taxes and the resignation of local appointees by colonial authorities.

Both Iwe-Irohin and the Aba Women's Riots are recognized as effective and non-violent forms of protest. Despite the tragic killing of over 50 women by the police during the Aba Riots, their peaceful approach garnered more sympathy, emphasizing the contrast with the violent protests seen elsewhere in Nigeria's history (Onyeakagbu, 2022).

Table 1.4 Some Major Protests in Nigerian History

S/No	Date	Protest	Major Actor (s)	Location (s)	Major Reason (s)
1	6 December, 1929	Aba Women's Riot	• Igbo and Efik women	Eastern Nigeria	The women protested against tax levies imposed by the colonial government. It led to the death of many of the women.
2	27 November, 1947	Abeokuta Women's Revolt	• Abeokuta Women's Union • Funmilayo Ransome-Kuti	Alake's Palace, Abeokuta	The women protested against an unfair tax regime which led to the abdication of the then Alake of Egba land, Oba Sir Ladapo Ademola II and the abolition of the tax regime by the colonial government.
3	17 April, 1978	Ali Must Go	• Segun Okeowo	Universities nationwide	A 50 kobo increase in student school

			• Ahmadu Ali		feedings sparked the protests.
4	24 May – June, 1989	Anti-SAP riots	National Union of Nigerian Students	Universities nationwide	The protests occurred as a result of the effects of the imposed Structural Adjustment Program (SAP) by International Monetary Fund (IMF) which was introduced by the Ibrahim Babangida-led military government.
5	June, 1993	June 12 Protests	• Nigerians	South West Nigeria	The protests occurred as an aftermath of the annulment of the June 12, 1993 Presidential elections by Ibrahim Babangida.
6	2-14 January, 2012	Occupy Nigeria	• Nigerians	Nigeria	Nigerians protested against the removal of fuel subsidies and eventual price hikes by the Goodluck Jonathan government. It was later reversed.
7	April, 2014	Bring Back our Girls	• Nigerians (Majorly Women like Obi Ezekwesili, Hadiza Bala Usman, Aisha Yesufu, etc.)	Nigeria	Bring Back our Girls (BBOC) protest became a movement beyond Nigeria when the Chibok Secondary School Girls Borno state were forcefully adopted by the Boko Haram terrorist group on April 14/15, 2014
8	October, 2017	End SARS	• Nigerian youths	Nigerians home and Diaspora	Protests against brutality by the police Special Anti-Robbery Squad (SARS). Memorial protests was held on

					20th October 2021 and 2022 to mark the protests.
9	August, 2023	Nigerian Labour Congress	• Nigerian workers	Major Cities across the country	Nigerian Labour Congress protested against the removal of fuel subsidy by the Federal Government under President Bola Tinubu

Author's Compilation August 2023 Sources: "History of Protests in Nigeria" *The Guardian Nigeria News-Nigeria and World news*. 2020/10/25, retrieved 2021/11/12; "How 50k increase in food caused nationwide students protests" *Pulse Nigeria.* 04/01/2018. Retrieved 07/02/2021; Hiltzik, M. "Nigeria. Austerity Program Causes Deep Political Discontent: The results could be significant for the rest of the continent. Meanwhile, SAP jokes go on and on" *Los Angeles Times*. Retrieved 11/08/202; Lewis P. M., (July 1994) "Endgame in Nigeria? The Politics of a Failed Democratic Transition". *African Affairs* 93 (372):323-340. Dio:10.1093/oxfordjounals.afraf.a098722 JSTOR 723365; Onoucha Chijioke (9/01/2013). "Nigeria fuel protests turn violent, two killed" *reuters.com*. Retrieved 09/01/2012; "Strike panicked Jonathan" *Vanguard News*. 20/10/2012. Retrieved 27/05/2020; Busari Stephanie. Nigerian Youth find voice with EndSARS protest movement" *CNN. Archived* from original on 27/10/2020; "EndSARS Memorial *Cable.ng.* Retrieved 20/10/2021;

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

Even though Section 40 of the Constitution of the Federal Republic of Nigeria mentions peaceful assembly in a side note and not in the main provisions, this clause still guarantees the right to peaceful assembly. Every person has the right to freely congregate and associate with other people, and in particular organize or belong to any political party, trade union, or other association for the protection of their interests. The right to peaceful assembly is guaranteed to everyone, including citizens and non-citizens, according to the aforementioned article. Even though the section doesn't mention protests expressly, "…the right to peaceful assembly also includes the right to peaceful protest" (Olutola, 2020).

The right to protest or demonstrate is an expression of the right to freedom of assembly, as Olarenwaju correctly notes in the context of Nigeria; "[while] no human rights treaty or national constitution guarantees the ultimate right to protest [demonstrate]... Nigerians have recently used the aforementioned clause to protest or demonstrate against what they view as anti-masses laws and practices, and this has undoubtedly contributed to the inclusion of the right to protest in our legal system (Olanrewaju, 2013).

In this debate, the Court of Appeal has had to decide in the case of Inspector General of Police Vs All Nigerian Peoples' Party and Others, if Section 40 of the CFRN's provides for express provision requiring a license before exercising the right to demonstrate under the Public Order Act (POA). In upholding Nigerians' express right to engage in peaceful protest, assembly, and demonstrations without obtaining a permit, the court ruled that "[t]he power given to the governor of a state under the POA to issue permits cannot be used to attain the unconstitutional result of depriving the right to freedom of speech and freedom of assembly" (Olutola, 2020).

Since Nigeria's return to democracy on May 29, 1999, many Nigerians have recently increased their demands of the rights to peaceful protest, demonstrations, picketing and assembly. The state on the other hand, has committed to using legislation to deny residents this right based on the permitted limitations under the CFRN.

5.0 Civil Disobedience and Limitations in the Nigerian Constitution

Nigerian police's denial of the right to protests and demonstrations predates the nation's restoration of democratic rule in 1999. The Public Order Act (POA) 2004, which establishes a basis to restrict this democratic freedom is based on the assumption that when demonstrations and protests take place, law and order will eventually break down. Some citizens challenged the POA in court as a result of the Nigerian police's insistence to use the act to restrict protests and demonstrations. Two cases have served as a benchmark for determining whether the POA is constitutional- All Nigeria Peoples Party and 11 Others Vs Inspector-General of Police and Lewis Chukwuma and 2 Others Vs Commissioner of Police (Alemika& Chukwuma, 2009).

5.1 All Nigeria Peoples Party and 11 Others Vs Inspector-General of Police

In the arguments presented by ANNP as the plaintiffs of the ANNP Vs IG of Police, the ANPP, claimed that the right to peaceful assembly is one of the basic fundamental rights that the Constitution of the Federal Republic of Nigeria (CFRN) provides for under its general limitations section. Restriction and deviation from fundamental rights are mentioned in Section 45(1)'s side note which states that, “nothing in sections 37, 38, 39, 40, and 41 of this Constitution shall be construed to invalidate any law that is reasonably justifiable in a democratic society—(a) for the purposes of defense, public safety, public order, public morality, or public health; or (b) to protect the rights and freedom of others (Olutola, 2020).

The plaintiffs filed a lawsuit with the Federal High Court, asking the court to rule on the following matters: (a) whether a police permit or permission from another authority is necessary for holding a rally or procession in any part of the Federal Republic of Nigeria; and (b) whether the provisions of the POA, which forbid holding rallies or processions without a police permit, are not illegal and in violation of Section 40 of the 1999 Constitution and Article 1 of the Nigerian Constitution.

Thus, the plaintiffs requested a declaration that the provisions of the POA requiring police permits or other authorities for holding rallies or processions in Nigeria were all unlawful and unconstitutional as they violated Section 40 of the Nigerian Constitution of 1999 and Article 7 of the African Charter.

That, Section 1(3) of the CFRN contains a supremacy clause that states that "[i]f any law is inconsistent with the provisions of this constitution, this constitution shall prevail, and that

other law shall, to the extent of the inconsistent, be void." Therefore, the supremacy clause must also be taken into consideration in order to fully understand the National Assembly's authority to pass legislation restricting the rights guaranteed by the CFRN.

That though Constitution gives the National Assembly the legal authority to legally restrict or derogate from the right through the use of laws, but this legislative authority must be balanced with the need to uphold the supremacy of the constitution, according to the sound logic that can be drawn from the two aforementioned provisions. It is sufficient to state that any measure that seeks to restrict rights in violation of the spirit of the constitution would not pass constitutional muster under Section 1(3) since the constitution is the ultimate law of the land.

Although it is the responsibility of the government to maintain the defense, safety, and order of the nation, it cannot do so without taking into account the rights of its people. So, "...when they are objectively reasonable and necessary to protect public order, safety, and the rights and freedoms of others," legislation may be justified under these topics. Popular preferences do not suffice to derogate or restrict a right, as was previously stated. 'Society's morality' cannot be replaced by an equally popular morality (Olutola, 2020).

The case was determined in favor of the plaintiffs, the Nigerian police appealed arguing it had declined the respondents' request for a police permission so that its members might protest the allegedly rigged 2003 general election, to maintain order as required for by the POA as the plaintiffs now respondents were a registered political party in Nigeria.

While on appeal and the appellant's refusal to give permission, the respondents held the rally in Kano on September 22, 2003, which the appellants brutally interrupted.

The appellants, the Nigeria Police submitted the fundamental issues for review as:

(a) Whether it was excessive for the trial court to declare the entire POA unconstitutional when it only looked at sections 1(2), (3), (4), (5), and (6) of the Act and sections 2, 3, and 4 of the POA, which were alleged to be in conflict with the Nigerian Constitution of 1999;

(b) Whether the appellant had the authority under the POA or any other law to the holding of any assembly, procession, or rally without a permit or license.

The Appeal Court dismissed the case and said that the Constitution should be construed in a way that satisfies the needs of Nigerian society. Any legislation that is conflicting with the 1999 Constitution will be rendered ineffective to the degree of such inconsistency, making the 1999 Constitution superior to other laws in the nation. The POA's Sections 1(2), (3), (4), (5), and (6) are invalid to the degree that they are in conflict with the constitution.

5.2 Lewis Chukwuma and 2 Others Vs Commissioner of Police

In twist of the law, with Chukwuma Vs Commissioner of Police, the plaintiff approached the High Court to protest the denial of right to associate with members of his ethnic group resident in another locality. The questions to be decided were whether the plaintiffs needed a police permit to hold a meeting of their association and whether the police had cause to interrupt the meeting and shut off the location. The respondents' officers, men, and agents (the Nigerian police) arrived at the location on the day set aside for the meeting, dispersed the appellants and their supporters, and then blocked off the location (Alemika& Chukwuma,

2009).The trial court rejected the case on the grounds that the police's conduct was appropriate.

The Plaintiffs appealed; and the Court of Appeal upheld the decision of the lower High Court and held that the POA represented a lawful derogation of the right to freedom of assembly and association; in determining whether the appellants required a police permit to hold a meeting of their association or whether the police was justified in disrupting the appellants' meeting held without the necessary permit in the earlier case; second, because the meeting of the appellants was a public gathering that needed a permit, "the action of the respondent (police) in frustrating the meeting was justifiable "because the appellants did not obtain any license for the assembly or the meeting at Yebumot Hotel, Ilorin" (Alemika& Chukwuma, 2009).

The Court further stressed that the governor of a state's authority to provide a permission under the POA cannot be utilized to achieve the unlawful outcome of denying the right to freedom of assembly and speech. The ability of the legislature to enact laws as provided by the constitution cannot be utilized as a precondition for achieving an unlawful outcome (Alemika& Chukwuma, 2009).

While the police were given the right to stop gatherings in the case of Chukwuma Vs Commissioner of Police, in the case of IGP Vs ANPP and 11 Others, a ruling from the same Court of Appeal—the Abuja Division—appeared to be in disagreement.

The police hence-on resorted to the incorrect notion that they were free to pick which decision to adopt since the rulings were both made by the same court with these discrepancies.

6.0 Conclusion

According to the analyses presented above, it is seen that even though public protests and demonstrations are unrestricted rights protected by international and local law, the POA's attempt to impose restrictions on their exercise (by requiring a pass or licence before engaging in such an exercise) is invalid.

Nigerian and international laws allow for the peaceful assembly of people to participate in protests and demonstrations as enshrined in democratic principles, there are still restrictions as provided by the POA, which limited some rights because of endangered public peace and national existence. The Nigerian police continue to hide behind the act in order to deny citizens the freedom to participate in rallies and demonstrations, notwithstanding court rulings that any statute that conflicts with the 1999 Constitution as amended shall be unlawful.

Nigeria has politicized the right to protest and demonstrations. In using the authority granted by the POA the state and the police to restrict and moderate the enjoyment of fundamental rights, there is no objectivity. A rally, demonstration, or march will be treated adversely by the governor or the police if it threatens the interests of the ruling party or regime. The Nigerian courts have also become ambivalent allowing the police to cherry-pick which permissions to issue and which not to. Future research on this issue may want to discover if this is a balance required in every democracy where the rights to protest and demonstrate are feared to threaten peace and order. Who gets the powers to tilt the balance.

7.0 Recommendations

It is an established political position that protests and demonstrations are permitted in every democracy and that unrestrained use of this privilege could lead to a larger infringement of other people's rights. Therefore, it is recommended that:

1. The POA should be reviewed to complement not abrogate Sections 39 and 40 of the 1999 Constitution in context and not to cripple or stifle it, as the Court of Appeal correctly stated.
2. The National Assembly in Nigeria should pass a reasonable and fair public protest law that mention protests expressly as the right to peaceful assembly and peaceful protest
   that will uphold peace and order, respect others' rights, and let democracy take its course.
3. The Nigerian police should upgrade their ability to gather information on protests before the protests.
4. Other agencies that have expertise, information, personnel, and equipment at their disposal, could be utilized in the policing of public protests.

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