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SMOTHERING THE RIGHT TO PROTEST: THE #ENDSARS 2020 PROTEST IN PERSPECTIVE

Ebele Gloria Ogwuda*

Abstract

Protests play a pivotal role in the civil, political, economic, social and cultural life of societies as it often and continues to inspire positive change and improve protection of human rights. It provides a platform for citizens to hold the government accountable by demanding better treatment. The #EndSARS social movement which started in 2017 was rekindled in 2020 to inter alia scrap the Special Anti-robbery Squad (SARS), end police brutality, extra judicial killings, etc. What however started off as a peaceful protest across the country became bloody when on 20th of October, 2020, the government allegedly deployed security personnel to peaceful, unarmed and unsuspecting protesters at the Lekki Toll Gate area of Lagos metropolis (the convergence point for the protesters). An act which appeared to be premeditated left scores dead. This action leaves us in doubt as to the 'existence' of the right to protest in Nigeria. It is against this background that the paper examines the right to protest in Nigeria vis-à-vis the #EndSARS protest and the resultant effect. This is done to ascertain the extent of the right and government's responsibility towards protecting this right. Using the doctrinal approach, the paper finds that the brutal hijack/killings of the non-violent protests/protesters by state actors was an outright violation of the right to protest and clearly an act of failure by the government to ensure security and welfare of the people as provided under section 14(2)(b) of the 1999 Constitution. The paper concludes with recommendations calling on the government to adopt proactive measures to ensure effective policing of protests through a non-violent control strategy that protects and also prevents violation of this right.

Key words: right to protest, government responsibility, #EndSARS, protests

1.0 INTRODUCTION

There was great optimism at the inception of the 21st century that the century belongs to Africa given the fact that the continent lost the 20th century to tyranny, failing economy, corruption, conflicts and failed state syndrome.¹ The diverse predictions that Africa would still be confronted with state-induced violence against its citizens in the new millennium however dashed this optimism.² It was predicted that; 'it is unlikely that Africa will be able to silence the guns by 2020 or by 2023'.³ This connotes that Sub-Sahara Africa will continue to experience a high degree of violence, riots and protests which has played out in several African countries such as the Democratic Republic of the Congo, Central African Republic, Libya, South Africa, Egypt, Nigeria, etc.⁴

Protests play a pivotal and intricate role in the civil, political, economic, social and cultural life of societies as it often and continues to inspire positive change and improve protection of human rights. Also, they provide platform for citizens to hold the government accountable by demanding better treatment. Historically, protests also help to define and protect public space in every part of the world.⁵ They generally boost the development of an engaged and informed citizenry and likewise strengthen representative democracy by promoting direct participation in public affairs.⁶ As an age long phenomenon, it represents an open challenge of an existing or

* LL.B, BL, LL.M (University of Abuja); EMAIL: ebeleogwuda@yahoo.com; Postal Address: Dala Hill Street Maitama Abuja; Tel: 07066096871

1 Kenneth Chinedu Asogwa, and Others, 'The State, End SARS Protests and Human Rights Violation in Nigeria' (2021) 22(2)

JLAS <https://www.researchgate.net/publication/354447752_The_State_End_SARS_Protests_and_Human_Rights_Violation_in_Nigeria> accessed 11 August 2024.

2 Ibid.

3 J J Cilliers, 'Violence in Africa: Trends, Drivers and Prospects to 2023' (2018) 12 Africa Report <<https://ssrn.com/abstract=3254122>> cited in Asogwa, and Others, (n 1).

4 Asogwa and Others, (n 1).

5 Kingson Uwandu, 'Right to protest: A fundamental Human Right' <<https://guardian.ng/features/law/right-to-protest-a-fundamental-human-right/>> accessed 4 August 2024. For further reading see, Meghan Werft, Julie Ngalle, '5 Peaceful Protests that led to Social and Political Changes' <<https://www.globalcitizen.org/en/content/peace-protests-dallas-response/>> accessed 11 August 2024; Desmond George-Williams, 'Bite Not One Another' Selected Accounts of Nonviolent Struggle in Africa <<http://novact.org/wp-content/uploads/2012/09/Bite-not-One-Another-Selected-Accounts-of-Nonviolent-Struggle-in-Africa-Desmond-George-Williams.pdf>> accessed 11 August 2024.

⁶Uwandu, (n 5).

proposed course of action by members of a society with a contrary view to that which has been introduced or imposed so to speak. In recent times, the relevance of protest as a veritable tool for shaping the political course of independent States has been in doubt.⁷ This is because States have more often than not utilised force or taken stringent actions to repress protests and stifle the right to protest. For instance in Russia, after several Russians (in tens of thousands) protested against alleged fraud in the 2011 Duma elections, the Russian government reacted by increased fines against unauthorized protests. It also adopted laws which tagged non-governmental organisations accepting aid from abroad as “foreign agents,” and increased arrests of regime opponents.⁸ In Bahrain, military forces (linked to troops from the Gulf States) expelled protesters from Pearl Roundabout i.e. the site of the 2011 Bahraini Uprising, before setting ablaze and razing the historical landmark.⁹ The Nigerian Government’s response to the 2020 #EndSARS protest provides us with another clear example of a poorly managed and unlawful use of force in protests. The protest which erupted across all the States of the Federation was carried out to secure the disbandment of the (Federal) Special Anti-robbery Squad (SARS).¹⁰ SARS is the unit of the Nigerian Police Force (NPF) that had the mandate to combat the crimes of armed robbery and kidnapping across Nigeria. The Unit had for years allegedly been accused of various human rights violations such as extra-judicial killings, unlawful arrests and detentions, torture, extortion and dispossession of citizens’ properties. The failure of the appropriate authorities to effectively address and nip the menace in the bud culminated into the reignited #EndSARS protest that took place amidst the Covid 19 pandemic in 2020.¹¹ What however started off as a peaceful protest across the country sadly became bloody on 20th of October, 2020. In a bid to quell the protest, the government allegedly deployed security personnel to peaceful, unarmed and unsuspecting protesters at the Lekki Toll Gate area of Lagos metropolis (the convergence point for the

⁷Osatohanmwun Eruaga, ‘The Right to Protest: A Review of The Law and Empirics in Nigeria’ in Epiphany Azinge and Laura Ani (eds), *Freedom of Protest* (NIALS Press, 2013) 27. See also Uwandu, (n 5); ‘Protests around the world explained’ <<https://www.amnesty.org/en/latest/news/2019/10/protests-around-the-world-explained/>> accessed 15 August 2024.

⁸Dawn Brancati, ‘Democracy protests: Origins, features, and significance’ <https://www.researchgate.net/publication/326347435_Democracy_protests_Origins_features_and_significance> accessed 23 August 2024.

⁹Ibid.

¹⁰Chinemerem Nnawuihe, ‘The Right of Assembly and Peaceful Protest: Constitutionally Guaranteed Rights Loathed by Nigeria’s Successive Governments’ <<https://thenigerialawyer.com/the-right-of-assembly-and-peaceful-protest-constitutionally-guaranteed-rights-loathed-by-nigerias-successive-governments/>> accessed 15 August 2024.

¹¹Afolabi Sotunde, ‘#Endsars Movement: From Twitter to Nigerian Streets’ <<https://www.amnesty.org/en/latest/campaigns/2021/02/nigeria-end-impunity-for-police-violence-by-sars-endsars/>> accessed 23 August 2024.

protesters); who shot and reportedly killed about 12 people with several others sustaining injuries.¹² This dastardly act in the opinion of the researcher was nothing short of a coercive attempt to silence the right to protest, instill fear in Nigerians and deter future protests. The Ecowas Court's ruling on the matter in July 2024 apparently aligns with this opinion as the Court held that Nigeria violated the rights of citizens during the 2020 EndSARS protest.¹³ It is quite disheartening that four years after the incident (even though an official report by the panel set up to investigate the incident has been released), none of the state actors involved in the act have been readily identified for the purpose of prosecution. The government has sadly not learnt from its past mistakes as depicted in the recent #EndBadGovernance protests which took place from 1-10 August 2024. The government through the machinery of security personnel was yet again caught in the act of violating this right as attempts at peaceful protests across the Nation were met with deadly resistance through use of violence, tear gas and mass arrests of unarmed and peaceful protesters. It is alleged that lives were lost in some Northern States, including Kano, Kaduna, Katsina and the FCT.¹⁴

It is against this context that the paper examines the Right to Protest in Nigeria *vis-à-vis* the #EndSARS protest and the resultant effect. This is done to determine the extent of the right and government's responsibility towards protecting same. Reason being that there will always be protests as Elie Wiesel (was a Nobel Laureate) has rightly pointed that; **'There may be times when we are powerless to prevent injustice, but there must never be a time when we fail to protest'**.¹⁵ The paper is divided into six sections for the purpose of this discourse. The second section after the introduction will take a cursory look at the notion, methods, actors, targets and impact of protest movements. The third section will examine those laws (international, regional and national) that primarily make provisions for the right to protest while section four will

¹²Sunday Nwafor, 'Lagos Endsars Panel releases list of casualties at Lekki Tollgate' <<https://www.vanguardngr.com>> accessed 22 August 2024.

¹³'Ecowas Court holds Nigeria liable for Deadly Protests' <<https://legalbrief.co.za/diary/legalbrief-africa-new/story/ecowas-court-holds-nigeria-liable-for-deadly-protests-2/>> accessed 30 August 2024.

¹⁴'Takeaways from the #EndBadGovernance Protest' <<https://www.thisdaylive.com/index.php/2024/08/13/takeaways-from-the-endbadgovernance-protest/>> accessed 11 November 2024. See also, 'Nigeria: Repression of Peaceful Protest must End' <<https://www.amnesty.org/en/latest/news/2024/10/nigeria-repression-of-peaceful-protest-must-end/>> accessed 12 November 2024.

¹⁵ 'The Words of Elie Wiesel (Hon.'74) Are More Urgent Than Ever after Pittsburgh Tragedy' <<https://www.bu.edu/articles/2018/elie-wiesel-quotes-danger-of-indifference/>> accessed 2 May 2025.

critically analyse the #EndSARS protest and government's response. Section five will conclude the paper while section six will make recommendations to ensure that government adopts proactive measures for effective policing of protests through a non-violent control strategy that protects and also prevents violation of this right.

2.0 NUANCES AND IMPACT OF PROTEST MOVEMENTS

Protest which is simply an expression of disapproval and objection can be expressed in various forms such as verbal, written, physical, gesture, social media, etc.¹⁶ A research conducted in 2006-2020 reveals that marches and protest assemblies or rallies, blockades, occupations and other kinds of civil disobedience/direct action, boycotts, vandalism/looting, noise making, street music, educational events, strikes/walkouts, including internet activism are the most common methods of protest.¹⁷ In addition, Protests are the result of actions by individuals, groups, organisations, coalitions, and movements seeking to change the narrative or prevent change in institutional policy (including policies of government, corporations, and religious organisations amongst others).¹⁸ As a form of political expression, it is geared towards achieving social or political change by influencing the knowledge, attitudes and behaviours of the public or the policies of an organisation or institution. Also worthy of note is the fact that protests are usually carried out in the public domain and primarily targeted at a body that can influence change i.e. the government, Legislature, Corporations/employers, political parties, Military/Police, financial institutions and so on.¹⁹ It will also be inappropriate not to mention those involved in protests. This is because they are considered the main agents/actors for change who are the most well-prepared and organised in terms of strategies to be adopted and goals to be achieved. They include political parties, workers' unions, NGOs/CSOs, faith groups, and social service agencies. These 'traditional agents' remarkably remain key organizers and participants in many campaigns, demonstrations, strikes, occupations, marches, and rallies.²⁰

¹⁶ Onyekachi Umah, '#EndPoliceBrutality: When and How Can Government Prohibit Protest in Nigeria?' <<https://sabilaw.org/when-and-how-can-government-prohibit-protest-in-nigeria/>> accessed 22 August 2024.

¹⁷ Isabel Ortiz, Sara Burke, Mohamed Berrada, 'World Protests A Study of Key Protest Issues in the 21st Century' <<https://library.fes.de/pdf/>> accessed 6 September 2024.

¹⁸ Luis Loya, Doug McLeod, 'Social Protest' <<https://www.oxfordbibliographies.com/view/document/obo-978019975841/>> accessed 7 September 2024.

¹⁹ Eruaga, (n 7). See also n 15.

²⁰ Ortiz and Others, (n 17).

It is important to note that protests could cover a broad spectrum of issues or grievances ranging from women/girls rights, LGBT/sexual rights, labour rights, freedom of assembly/speech/press, immigration rights, prisoners' rights, religious rights, low living standards, fuel price, hike in food prices, racism, police brutality/misconduct, etc.²¹To further buttress this point, protest movements are usually borne out of sole events/moments which trigger deep-rooted grievances and concerns.²²The most internationally acclaimed protest was triggered by the murder of George Floyd in the United States in 2020. The Black Lives Matter protests that began in May 2020 saw millions of protesters in more than 550 cities and towns across United States. They were engaged in weeks of marches and demonstrations over the death of George Floyd, an unarmed African American man who was killed in Minneapolis by Derek Chauvin, (a Minneapolis Minnesota police officer) on May 25. He has since been convicted for the murder and sentenced to 22.5 years in prison.²³

Even though protests are often seen as disruptions, acts of terrorism and nuisance, it still doesn't take away the fact that such demonstrations and direct action have proven to be a pivotal form of political engagement across the world. This has provided people of colour with the right to citizenship, the right to stand up against populism and recognition of women/girls rights.²⁴About 7.4% or 207 of the world's protests for instance are centered on women and girls' rights. A clear illustration to support this point is the #MeToo movement (launched in 2006) with multiple rallies and action days around the world. It included mass protests against femicide (homicide against women) and rape, from Chad to the United States. Its equivalent in Latin America, (known as #NiUnaMenos) also protested against masculinity, patriarchal societies, and against the impunity of violence against women.²⁵ Before the #MeToo movement, there were also several demonstrations for gender equality, such as in Chile, China, India, Iraq, Israel, Mexico, Morocco, Nigeria, Pakistan, Philippines, Russia, Saudi Arabia, South Africa, Spain, Tunisia, and at World Social Forums (WSF).²⁶

²¹Ibid.

²²Ahmed Soliman, 'What Makes a Successful Protest?' <<https://www.chathamhouse.org/2020/12/what-makes-successful-protest>> accessed 26 August 2024. See also, 'The Role of Political Protest' <<https://edtechbooks.org/democracy/protest>> accessed 30 August 2024.

²³ Ibid.

²⁴ Ibid.

²⁵Ortiz and Others, (n 16).

²⁶ Ibid.

Protests provide the platform for ordinary citizens to project their disapproval. This type of activism is important as it provides the basis for change. For instance, the 2020 protests that took place in Poland in which protesters defied Covid 19 restrictions to stand against an unpopular abortion law is instructive on this point. The said action triggered millions to take further actions which influenced lawmakers to back down.²⁷ Also, the Bring back our girls (#BBOG) campaign (accompanied by protests) which captured global media attention also succeeded in mounting pressure on the Nigerian government to discover some of the missing Chibok girls.²⁸ The impact of protests in a democracy cannot be overemphasised as it affords people the opportunity to express discontentment with prevalent situations and make demands for social, political and economic change.²⁹ Protest movements could be described as a grab for attention in the sense that they attempt to force a conversation about a topic that is being highlighted. Also, they have the ability to change protesters themselves, transforming some from casual participants to lifetime activists which conversely changes the society.³⁰ There have been cases where protesters didn't back down even in the face of police brutality and misconduct while protesting against the same police brutality and misconduct.³¹ Peaceful protesters across the world have had to endure tear gas, rubber bullets, beating, unlawful arrests, batons, pepper spray and other harsh measures. Instead of acting as deterrents, it effectively raises public consciousness about the extent of violence that societies experience. What however becomes worrisome is when real bullets are used in place of rubber bullets to disperse peaceful protesters.

Collective action is no doubt a life-changing experience. To be in the company of people demanding for positive social change is quite empowering and exciting. Protests have a long term bonding effect on participants. This is known as biographical impacts in scholarship and it

²⁷Ibid. See also Monika Scislowska, 'Angry Women block Traffic across Poland over Abortion Ban' <<https://apnews.com/article/virus-outbreak-poland-abortion-europe-warsaw-58202403cac4485ce716bf4f555340b>> accessed 1 September 2024.

²⁸Tamar Haruna Dambo, and Others, 'Nigeria's #EndSARS movement and its Implication on online Protests in Africa's most Populous Country' <<https://onlinelibrary.wiley.com/doi/abs/10.1002/pa.2583>> accessed 23 September 2024.

²⁹ 'The Role of Political Protest' (n 22).

³⁰Zeynep Tufekci, 'Do Protests even Work? It sometimes takes Decades to find out' <<https://www.theatlantic.com/technology/archive/2020/06/why-protests-work/6/3420/>> accessed 3 September 2022

³¹See, 'The Response to Protests Against Police Brutality is Not More Brutality' <<https://www.aclu.org/news/criminal-law-reform/the-response-to-protests-against-police-brutality-is-not-more-brutality>> accessed 3 September 2024.

has become evident as one would expect that movement participation can be life changing.³² For example, the ‘new left’ protests in the US in the 60s which may have involved just about 2 to 4 percent of the population in contradistinction to the present-day protests that could involve as much as 20 percent; still had cascading effects on the US Society through protesters’ long lasting impacts.³³

3.0 ANALYSIS OF THE LEGAL REGIME ON THE RIGHT TO PROTEST

The right to protest in all ramifications may encompass the right to freedom of assembly, the right to freedom of association, and the right to freedom of speech.³⁴ The right recognises and accommodates situations where people can assemble freely and express their views through protests. This section of the paper shall analyse those laws that make provisions with respect to the right to protest under the International, regional and local (Nigeria) domain.

3.1 INTERNATIONAL/REGIONAL INSTRUMENTS

To set the tone for the discussion, it is important to point out that there is no single robust international instrument that explicitly provide for the right to protest. The right is however accepted both by International and Regional standards.³⁵ What this means is that it is subsumed in the internationally recognised rights of freedom of expression and opinion as well as freedom of assembly.³⁶

Articles 19 and 20 of the Universal Declaration of Human Rights, UDHR specifically provides for freedom of opinion and expression as well as peaceful Assembly and Association. It

³² Ibid.

³³ Ibid. See also, Edward G Carmines, Geoffrey C Layman, ‘Issue Evolution in Postwar American Politics’ in Shafer Byron (ed), *Old Certainties and Fresh Tensions* (Present Chatham House Publishers, 1997).

³⁴ Jo Cooper, ‘The Right to Peaceful Protest’ in Megan Addis, Penelope Morrow (eds) *Your Rights: The Liberty Guide to Human Rights* (8 edn, Pluto Press 2005).

³⁵ Eruaga, (n 7).

³⁶ Ibid.

stipulates that everyone has the right to freedom of opinion and expression and the right thus includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.³⁷ The right to freedom of assembly suggests that everyone has the right to freedom of peaceful assembly and association. It also provides that no one may be compelled to belong to an association.³⁸ A combined reading of both provisions reveal a subtle provision that protects the right to protest. Articles 19(2) and 21 of the International Covenant on Civil and Political Rights (ICCPR)³⁹ also extensively provide for the right to freedom of expression and peaceful assembly. It takes it up a notch by stating under paragraph 3 of Art. 19 that the rights carries duties and responsibilities; the exercise of which is subject to restrictions as may be provided by law.⁴⁰ Article 21 also contains a caveat to the effect that any restrictions on the exercise of the right to peaceful assembly should be in conformity with the law. Freedom of expression which is protected under Art. 19(2) covers information and ideas of all kinds. This involves the freedom to speak on and share information on any subject without restriction or interference except by law.⁴¹ In *Castells v. Spain*,⁴² the European Court of Human Rights held that freedom of expression constituted one of the essential foundations of a democratic society and one of the basic conditions for its progress. It further held that the right is applicable not only to 'information' or 'ideas' that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb.⁴³ The African Charter on Human and Peoples Rights⁴⁴ in Articles 9, 10 and 11 likewise provide for the right to receive information and free expression, freedom of association and freedom of assembly respectively. Under the Charter, every individual is entitled to receive information, has the right to express and disseminate his opinions.⁴⁵ It goes further to provide that every individual has the right to free association as long as it's done within the ambit of the law.⁴⁶ For instance, joining an

³⁷UDHR 1948 Art 19. For further reading see, 'Universal Declaration of Human Rights' <<https://www.un.org>> accessed 22 September 2024.

³⁸UDHR 1948 Art 20.

³⁹'International Covenant on Civil and Political Rights' <<https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights>> accessed 24 September 2024.

⁴⁰Ibid.

⁴¹ Eruaga, (n 7).

⁴² (1992) A 236/14 EHRR 445.

⁴³ See paragraph 42 of the decision.

⁴⁴'African Charter on Human and Peoples' Rights' <<https://au.int/en/treaties/african-charter-human-and-peoples-rights>> accessed 24 September 2024

⁴⁵ACHPR 1986 Art 9.

⁴⁶ACHPR 1986 Art 10.

armed robbery gang (a criminal association) will not fall within the protection and purview of the Charter. Article 10(2) additionally provides that subject to the obligation of solidarity provided for in Article 29, no one may be compelled to join an association. Article 29 comprises more or less duties of an individual to the state. With respect to freedom of assembly, the Charter provides that every individual has the right to assemble freely with others; the exercise of which shall be subject only to necessary restrictions provided for by the law.⁴⁷

The phrase ‘assembly’ can in broad terms mean an intentional temporary gathering of several persons for a specific purpose, including peaceful protests as well as demonstrations in public areas, public and private meetings, procession and marches, with a variety of different purposes.⁴⁸

3.2 DOMESTIC LEGAL FRAMEWORK

a. The 1999 Constitution

In Nigeria, the 1999 Constitution (the grundnorm) contains provisions that safeguard the right to protest in sections 38, 39, 40 and 41 of the Constitution. While these provisions may not have expressly provided for the right to protest (just like its International counterpart), it still doesn’t change the fact that it’s a fundamental human right of the people albeit subsumed under the foregoing provisions. The right to protest which provides a platform for people to voice out their displeasures, disappointments and frustrations is first an expression of the right to freedom of thought and conscience and religion.⁴⁹ This of course precedes right to freedom of expression⁵⁰ right to peaceful assembly and association⁵¹ and right to freedom of movement.⁵² Section 38 guarantees the right to freedom of thought, conscience and religion. This includes the freedom to embrace a new religion or belief. Section 39 resonates some of the provisions of the International Instruments discussed earlier. It provides that every person shall be entitled to freedom of expression, including freedom to hold opinions, receive and impart ideas as well as information without interference. The right to freedom of expression is one of those rights that is

⁴⁷ACHPR 1986 Art 11.

⁴⁸ ‘Freedom of Association’ International Service for Human Rights (Human Rights Defender Briefing Series 2009) 9 cited in Eruaga, (n 7).

⁴⁹CFRN 1999 s 38

⁵⁰CFRN 1999 s 39.

⁵¹CFRN 1999 s 40.

⁵²CFRN 1999 s 41. See also Uwandu, (n 5).

perceived as pivotal and fundamental to the development of a civilized society. This is because it is the foundation for the enforcement of other rights, the violation of which is made evident by expression.⁵³ Speech which is the basis of expression is one of the most rudiment features of man which assists in determining his natural development and abilities. B O Nwabueze describes it as an irrepressible attribute of man. He stated thus:

*So long as he lives he cannot be prevented from speaking if he wants to do so. You can punish him for what he says, but that is after he has said it. Gaggling apart, it is physically impossible to prevent a living person from speaking what he pleases. His audience may be restricted by government regulation banning assemblages of persons in public places, but he remains free to speak his mind privately if he has the courage to damn the consequences.*⁵⁴

Section 39 goes further to stipulate that such a person is at liberty to own, establish and operate any medium (this includes television and wireless broadcasting) for dissemination of information, ideas and opinions. This however has to be authorised by the President in fulfilment of conditions spelt out by an Act of the National Assembly.⁵⁵ It might be important at this juncture to ask whether there are any restrictions to the scope of this right?⁵⁶ In answering this question, the paper relies entirely on the provisions of section 39(3) and 45 of the 1999 Constitution. Section 39(3) provides that the right to freedom of expression could be restricted by a law reasonably justifiable in a democratic society, for the purpose of preventing the disclosure of information received in confidence, or for the purpose of maintaining the authority and independence of the courts. Section 45 in summary stipulates that the right can only be restricted in the interests of defence, public safety, public order, public morality or public health, or to protect the rights or freedoms of others as stipulated in section 45 of the Constitution.⁵⁷ This

⁵³ K M Mowoe, *Constitutional Law in Nigeria* (Malthouse Law Books 2008) 441.

⁵⁴ *The Presidential Constitution of Nigeria* (Sweet and Maxwell) 462 cited in K M Mowoe (n 53).

⁵⁵ See J O Akande, *The Constitution of the Federal Republic of Nigeria 1999 with Annotations* (MIJ Publishers Ltd 2000) 92. Subsection (3) of section 39 provides that nothing in the section shall invalidate any law that is reasonably justifiable in a democratic society for disclosing information received in confidence, maintaining the authority and independence of Courts or regulating telephone, wireless broadcasting, television or exhibition of cinematography films.

⁵⁶ Mowoe, (n 53).

⁵⁷ Nnawuihe, (n 10).

undoubtedly presents us with situations where the right could be restricted and also reveals that the right is not absolute i.e. it is not a non-derogable right.⁵⁸

Section 40 guarantees every person's right to peaceful assembly and association. It provides that every person shall be entitled to assemble freely and associate with other persons, form or belong to any political party, trade union or any other association for the protection of his interests.⁵⁹ There is no gainsaying the fact that freedom to engage in association for the advancement or protection of interests is an inseparable aspect of liberty. That is why the Constitution protects the right to assemble freely in public places. It is imperative to point out here that the right as provided under the Constitution does not include the word 'peaceful' but it is generally implied or included. The reason for this is that an assembly or gathering that triggers chaos would be contrary to public order and public policy and consequently unconstitutional as it conflicts with the rights of others.⁶⁰ That is why section 45 permits its restriction in the interests of defence, public safety, public order, public morality or for the purposes of protecting the rights and freedom of other persons. The limitation placed on the right to peaceful assembly and association was determined in the case of *FRN v. Oshiomhole*⁶¹ where the plaintiff sought a declaration from the court regarding the planned mass protest against the government. He sought that the protest be declared contrary to public order, peace and policy in the nation, and interlocutory injunctions against the defendant to prevent them from embarking on such protest. The court in its decision observed that the right to peaceful assembly and association under section 40 of the Constitution was not accorded with absolute freedom as it was limited under section 45 of the Constitution along with other laws.⁶²

Lastly with respect to constitutional provisions is section 41 which provides for and guarantees the right to freedom of movement. It stipulates that every citizen of Nigeria is entitled to move freely throughout Nigeria and to reside in any part thereof, and no citizen of Nigeria shall be

⁵⁸ In *Alhaji Dakubo-Asari v Federal Republic of Nigeria* S.C. 208/2006, the court held thus: 'the human person possesses rights because of the very fact that it is a person, a whole, master of itself and of his acts, and which consequently is not merely a means to an end, an end which must be treated as such...' However, "these fundamental human rights of a person are not absolute and may be restricted on the ground of national defence..."

⁵⁹ CFRN 1999 s 40.

⁶⁰ 'Right to Peaceful Assembly and Association in Nigeria' <<https://www.chamanlawfirm.com>> accessed 30 July 2024.

⁶¹ (2004) NLLR (PT.1) 339 at 355 10.

⁶² 'Right to Peaceful Assembly and Association in Nigeria' (n 60).

expelled from Nigeria or refused entry thereby or exit therefrom. This implies that no citizen can be denied entry into or exit from Nigeria, nor expelled from Nigeria.⁶³ This right like the ones discussed above is not absolute as subsection (2) provides that the section shall not invalidate any law that imposes restrictions on the residence or movement of any person who has or is suspected to have committed an offence, provides for the removal of any person from Nigeria to any other country for the purpose of trial or imprisonment outside Nigeria in execution of the sentence of a court. This was given judicial pronouncement in the case of *Nduka Eziegbo & Anor v. Asco Investment Ltd & Anor*.⁶⁴ The Supreme Court held that:

*Section 41 provides for and guarantees the freedom of movement throughout Nigeria for every citizen of Nigeria who shall not be expelled from or refused entry into Nigeria, except as may be provided by any law which is reasonably justifiable in a democratic society. Here again, the Constitutional right of freedom of movement within, entrance into or expulsion from Nigeria, is not absolute since situations or circumstances are recognised and provided for in which it could legally and lawfully be curtailed, interfered with or limited so long as it is done in strict compliance with the law. The primary aim of the section is to generally protect persons from abuse of power; official and individual.*⁶⁵

Nevertheless, more weight is attached to this right when one takes cognisance of the fact that it gives meaning to other rights. For instance, the rights to personal liberty and freedom of assembly and association would essentially be useless without the right to freedom of movement. The right to freedom of movement therefore suggests freedom to move freely throughout Nigeria, freedom to reside in any part of Nigeria, right not to be expelled from Nigeria, right not to be refused entry into Nigeria and right not to be refused exit from Nigeria.⁶⁶

b. Public Order Act

⁶³ Akande, (n 55).

⁶⁴ (2022) LPELR 56864(SC)).

⁶⁵ See also the case of *Onwo v. Oko* (1996) 6 NWLR (pt. 456) 587.

⁶⁶ 'Right to Freedom of Movement' <<https://www.learnnigerianlaw.com/learn/constitutional-law/movement>> accessed 30 October 2024.

The Public Order Act⁶⁷ is the law that regulates how people may assemble in Nigeria. The objective of the Law is to guarantee the proper and peaceful conduct of public assemblies, meetings and processions. Section 1 of the Act in summary empowers the Governor of each State to direct the conduct of all assemblies, meetings and processions on the public roads or places of public resort in the State and prescribe the route and the times at which any procession may take place. Such assembly, meeting or procession can only take place when a general licence has been granted upon an application made 48 hours before the proposed meeting or procession.⁶⁸ Note that grant of the licence is not automatic as the Governor has to be satisfied that the assembly, meeting or procession is not likely to cause a breach of the peace.⁶⁹ The implication of this provision is that a licence must be issued before any public gathering can be held. Section 2 empowers any police officer of the rank of Inspector or above to disrupt or stop any assembly, meeting procession for which licence has not been issued or which violates any of the terms of licence issued under section 1. Section 3 of the Act further makes unlawful any assembly, meeting or procession which either takes place without a licence issued under section 1 of the Act or violates any condition of any licence granted under section 1 as aforementioned or neglects to obey any order given under section 2 of the Act.

It has been argued that the cumulative effect of the foregoing provisions leaves us with no doubt that the exercise of the rights conferred by section 40 of the 1999 Constitution is primarily restricted. This is because the exercise of the rights conferred by section 40 of the Constitution discussed above seemed to rest substantially on the whim and personal judgment of the state Governor or his police delegate.⁷⁰ The paper aligns with this submission in concluding that the law does not only smother the fundamental right to peaceful assembly and association but also encroaches on the right to freedom of expression guaranteed in section 39 of the 1999 Constitution and is thus unconstitutional. This is because when one is denied the right to peaceful assembly, it invariably affects the right to freely form and express opinions. There however appears to be light at end of the tunnel as several sections of the Public Order Act were quashed

⁶⁷Cap P42, LFN 2004.

⁶⁸ Public Order Act 2004 s 1(2)

⁶⁹ Ibid.

⁷⁰Chinelo Chinweze, 'The Constitutionality of the Public Order Act in a Democracy: 'A Square Peg in a Round Hole' <http://www.gamji.com/article5000/NEWS5960.htm> accessed 31 October 2024.

by the Court of Appeal in 2007 in the case of *All Nigeria Peoples Party v. Inspector-General of Police*.⁷¹ The Court of Appeal per Justice Adekeye held thus:

The Public Order Act should be promulgated to complement sections 39 and 40 of the Constitution in context and not to stifle or cripple it. A rally or placard carrying demonstration has become a form of expression of views on current issues affecting government and the governed in a sovereign state. It is a trend recognized and deeply entrenched in the system of governance in civilized countries – it will not only be primitive but also retrogressive if Nigeria continues to require a pass to hold a rally. We must borrow a leaf from those who have trekked the rugged path of democracy and are now reaping the dividend of their experience

The effect of the above decision is that notifications or licences so to speak are no longer required for any processions or gatherings except where the organisers of such processions or gatherings require police protection. This means that the issuance of police permits for rallies, or any other assembly is not a requirement for the exercise of this right so the police cannot rely on the Act to demand people to apply for permits before organising assemblies or processions.⁷²

It is however disheartening that the Court's decision has not yet received legislative changes or backing. This may perhaps be one of the reasons for continued disruptions, harassments and violence against peaceful protesters.

4.0 THE #ENDSARS PROTEST *VIS-À-VIS* GOVERNMENT'S RESPONSIBILITY

In 2020, the End-SARS protests ranked as perhaps the most consequential crisis among other crises in Nigeria apart from the covid-19 pandemic. The unexpected occurrence or movement took everyone by surprise particularly because it happened amidst the covid-19 pandemic that was practically wreaking havoc in every part of the world. Nigerians were additionally astounded

⁷¹(2008) 12 WRN 65.

⁷²'Right to Protest: Organising and participating in Rallies or Protests' <https://nigeria.action4justice.org/legal_areas/freedom-of-assembly/protection-of-the-right-to-freedom-of-assembly/> accessed 12 November 2024.

by the level of organisation, execution and immediate effects of the protests.⁷³The protest(s) was an outright demonstration of the Nigerian youths' resentment and frustration over police (SARS) brutality, extra-judicial killings and other forms of maltreatment against Nigerians, which had continued for many years without any remedy in sight.⁷⁴ The said protests erupted after a video was circulated on social media which allegedly showed an extrajudicial killing perpetrated by members of the Special Anti-Robbery Squad (SARS)-a unit of the national Nigeria Police Force (NPF) responsible for investigating violent offences. Prior to the video, there had been extensive complaints of human rights abuses against SARS personnel by what the U.S. State Department described as 'credible international organisations'.⁷⁵The then President, Muhammadu Buhari in response to the persistent calls to disband SARS which was amplified on Twitter and other social media platforms via the hashtag #EndSARS announced on October 11 2020 that the unit would be dissolved and its officers retrained and redeployed as part of a new task force. The protests and social media campaigns however persisted with activists reproving the dissolution of SARS as insufficient and requesting for additional reforms, as well as accountability for past violations. They also advocated for higher remunerations for the police to reduce incidents of extortion.⁷⁶One would have thought that this public outcry would have elicited positive outcomes in terms of definite police/SARS reforms. But alas, this was not the case as 20th October 2020 (known as black Tuesday) will forever be etched in the hearts of Nigerians as the day the government failed in its responsibility to protect lives as enshrined in section 14(2)(b) of the 1999 Constitution. On that fateful day, the sound of gunshots were heard, allegedly fired by the army and police into a crowd of young people who had gathered at Lagos's Lekki toll gate to carry out their peaceful protest.⁷⁷They reportedly killed about 12 people with several others sustaining injuries.⁷⁸The massacre at the Lekki toll gate unfortunately disrupted the protest against police brutality that had taken place for more than two weeks in Nigeria.

⁷³E C Okoroafor and Others, 'Conflict Analysis of End-Sars Crisis: Insights and Implications for Socio-Economic Development in Nigeria' <<https://gojamss.net/journal/index.php/gojamss/article/view/680>> accessed 11 November 2024.

⁷⁴Ibid.

⁷⁵ 'Nigeria: #EndSARS Protests Against Police Brutality' <https://www.everycrsreport.com> accessed 10 November 2024.

⁷⁶ Ibid.

⁷⁷ 'The Roots of the #EndSARS Protests in Nigeria' <<https://www.washingtonpost.com/outlook/2020/10/25/roots-endsars-protests-nigeria/>> accessed 18 November 2024.

⁷⁸ Nwafor, (n 12).

In its findings, the Judicial Panel of Inquiry and Restitution that was set up and charged with investigating the Lekki toll gate shooting in Lagos reported that the Nigerian security forces opened fire on young people protesting peacefully against alleged police brutality. In its report, the panel further accused the Nigerian Army officers of shooting, injuring and killing unarmed helpless and defenseless protesters, without provocation or justification whilst they were waving the Nigerian Flag and singing the national anthem. The panel also described the manner of assault and killing as a massacre and also condemned the conduct of the Nigerian Army which refusal to allow ambulances render medical assistance to victims who required such assistance escalated the incident. Lastly, the Army was also found not to have adhered to its Rules of Engagement.⁷⁹

From the foregoing report, it appears that there was an indictment of the Nigerian Army/Police. But what is most shocking to the researcher and probably all Nigerians is that four years down the line, no prosecution or conviction has been recorded. There has been no justice for the deceased, the victims and their family. The deployment of security forces with live bullets to shoot at peaceful protesters leaves much to be desired. Every person has a right to life, and no one should be deprived of his life intentionally.⁸⁰ The Constitution bestows on the citizens the right to freedom of association, freedom of movement, and freedom of expression as discussed in the previous section, as well as the right to life, right to human dignity⁸¹ and right to personal liberty.⁸² The government sadly trampled upon these rights before, during and even after the #EndSARS protests without any repercussions.⁸³

The entrenchment of the right to peaceful assembly imposes a duty on the government to guarantee its enjoyment without discrimination. The right requires the government to permit such assemblies to take place without unnecessary intrusion, to facilitate the exercise of the right and to protect the participants or protesters. This could be carried out by not imposing restrictions, blockades, dispersing or disrupting peaceful assemblies without compelling

⁷⁹Stephanie Busari and Others, 'Nigerian Judicial Panel condemns 2020 Lekki Toll Gate Shooting as 'a Massacre' <<https://edition.cnn.com/2021/11/15/africa/lekki-tollgate-judicial-panel-report-intl/index.html>> accessed 26 November 2024.

⁸⁰ The 1999 Constitution, s 33.

⁸¹ The 1999 Constitutions 34.

⁸² The 1999 Constitution s 35.

⁸³ Kenneth Chinedu Asogwa, and Others, 'The state, End SARS Protests and Human Rights Violation in Nigeria' <<https://www.ikengajournal.com.ng>> accessed 9 December 2024.

reasons.⁸⁴The question we may want to ask at this juncture is; was there a compelling reason for the government to deploy security forces with live bullets to quell a protest that was adjudged peaceful? If the answer to this question is in the negative, then we may dare to conclude that the government abysmally failed in its duty to respect the right to peaceful assembly and more importantly protect the lives of its citizenry in line with the provisions of section 14(2)(b) of the 1999 Constitution.

From the snippets of the Judicial Panel of Inquiry report discussed earlier on, it becomes quite clear that the government undoubtedly intended to suppress the protest via the combined forces of the military and the police. The #EndSars brutalization and killings therefore provides us with yet another classical example of the government's intolerance and lack of respect for the right to peaceful protest as entrenched in the right to peaceful assembly and association.⁸⁵

5.0 CONCLUSION

Peaceful and successful protests have the power to change the narrative. They provide a platform for building cohesion and bringing the people together to fight for a common goal. The paper analysed the right to protest which is guaranteed under international and regional Instruments to which Nigeria is a state party including the 1999 Constitution. It particularly focused on the #EndSARS protest of 2020 which was a clear demonstration of government's prejudice towards such movements.

6.0 RECOMMENDATIONS

In view of the foregoing, the paper re-echoes that the Nigerian government has a duty to ensure protection of the right to protest in adherence to International law and the Constitution. Additionally, the Government should guarantee the exercise of the right without any form of resistance through threats or violence. Furthermore, where there are compelling reasons to restrict the enforcement of the right to peaceful protest, only security personnel trained efficiently to manage/police protests should be deployed and not members of the Armed

⁸⁴Alex Cyril Ekeke, 'Right to Peaceful Protest in Nigeria and the Recurrent Syndrome of Brutalization: The #EndSARS Protest Debacle' <<https://www.cambridge.org/core/journals/journal-of-african-law/article/right-to-peaceful-protest-in-nigeria-and-the-recurrent-syndrome-of-brutalization-the-endsars-protest-debacle/CA7594872B853DAB25713BE26C45E4E0>> accessed 9 December 2024.

⁸⁵ Ibid.

Forces.⁸⁶ This no doubt requires effective and continuous training of law enforcement officers in the art of policing protests. They should also be provided with clear operational guidelines on the policing of protests which should be accessible to the public. Lastly, there is need to amend the Public Order Act to complement sections 39 and 40 of the 1999 Constitution in order to ensure that the right to protest is not smothered. This should be done in line with the decision of the Court in *All Nigeria Peoples Party v. Inspector-General of Police*.⁸⁷

⁸⁶ Ekeke, (n 84).

⁸⁷ (Supra).