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Right or No Right to Peaceful Assembly: A Worst-Case Scenario in Nigeria

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Abstract

On the 20th of October 2020, the Nigerian army allegedly opened fire on peaceful protesters resulting in several recorded injuries and some reported deaths. This major event encapsulates an outright and flagrant disregard of human rights by the very state endowed with the foremost responsibility of protecting it. This article details the events of the famous and recent Lekki shooting as a contravention of the right to peaceful assembly guaranteed under the Nigerian Constitution, the African Charter on Human and Peoples' Rights, the Universal Declaration of Human Rights as well as the International Covenant on Civil and Political Rights. The article further reasons that the role of the international community in spurring a more committed approach to human rights protection by states, cannot be overemphasized.

[Keywords]: Right to assembly, Human Rights, Shooting, Violation, Nigeria

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INTRODUCTION

In the last few years, Nigeria has suffered several political and economic issues such as inflation, unemployment, inaccessibility to adequate healthcare services and large-scale poverty. The threats to safety and security of citizens in particular is the most alarming. The challenges of insurgency and incessant kidnapping has further been heightened by police brutality against the very subjects they are mandated to protect. In 1992, the Nigerian government, in response to rampant armed robberies and other criminal activities within the country, created the Special Anti-Robbery Squad (SARS). This special arm of the Nigerian Police Force, was tasked with combating these criminal activities (Chow, 2020). The Unit initially started out in Lagos state but over time, was constituted in all 36 states of Nigeria. It had a mandate to undertake investigations, make arrests and even prosecute suspected criminals involved in armed robberies, kidnappings and other criminal offences. However, what may have started out as a security necessity has today become an immense source of conflict for Nigerians. Since its inception, it is alleged that members of SARS have repeatedly violated the fundamental rights of citizens, engaging in extortion, bribery, torture, rape, inhuman and degrading treatment of citizens, extrajudicial killings, all in the name of keeping the peace and ridding the streets of ‘criminal elements’ (Malumfashi, 2020). So far, the squad has been held responsible for many tortures, deaths and disappearances of youths whom the unit has consistently accosted either for dressing a certain way or because they live a lavish lifestyle, branding them internet fraudsters or the popular slang ‘yahoo boys’ (Chow, 2020). Many women have been raped or molested at gun point, and money demanded from them for no lawful reason. There are others who have been arrested and tortured, before being released to their families. Those families usually, would not be informed that an arrest was even made and would have expended resources searching for their relatives who disappeared. According to Amnesty International, there were over 82 cases involving torture, inhuman and degrading treatment, and unlawful executions between 2017 and 2020 alone (Amnesty International, 2020). Despite the public outcries over the years against their violent and unlawful activities, there has been little to no investigation or prosecution carried out against erring officers of the squad. Although the Nigerian government has claimed to pursue the disbanding/reforming of SARS, nothing formal or effective has yet been seen to be done (Malumfashi, 2020). Consequently, Nigerians have been clamouring for the complete

disbandment and eradication of the Squad. Since 2017, numerous reports evidencing police brutality started to surface as more victims and their families sought justice. The hashtag #EndSars started to trend across social media platforms such as Twitter and Facebook, in a bid to influence the Nigerian government to do right by its citizens and bring justice to abused families. Around the same time, the President of the Federal Republic of Nigeria, Muhammadu Buhari, created the Anti-torture Act, but as can be deduced, it has done nothing to quell the horrific activities of SARS in and around states in Nigeria.

The Events Leading up to the October 20 Lekki Killings

In the first week of October 2020, a video showing a SARS officer shooting and killing a man in an unprovoked and gruesome manner went viral. This was the tipping point for Nigerians who had had enough of the goings-on. Nigerians poured out in their numbers to protest against police brutality and to call for the Nigerian government to put an end to the SARS and their violent activities. The protest was initially championed by Aisha Yesufu, a political, human and women's rights activist, and was centred largely in Lagos. However, soon after, more activists and many celebrities joined in the protest, spanning across almost all the states in Nigeria. The protests were peaceful as youths gathered in large numbers, holding placards with various slogans, chanting 'End SARS'. The protests were well organized, with funds donated for the Cause disbursed transparently for food and other logistics provided for protesters on a daily basis. The protest spanned two weeks, with many sleeping at the protest grounds, and some returning home at night but convening again the next day.

The protests were carried out peacefully, with no reports of vandalism or violence, and recordings of the events were daily uploaded on the internet. The protest started to gain international momentum, with Nigerians in diaspora participating in the protest from their various countries of residence. News agencies across the globe started to report on the events as well. It was obvious that the protesters were not willing to back down until their demands had been met, but the Nigerian government was silent for the most part, choosing to ignore the complaints of the protesters rather than liaise with them and discuss those demands. Soon after, the government pronounced that SARS would finally be disbandment as demanded by Nigerians, but a new and improved Unit known as SWAT, was to take its stead. The Nigerian public, protesters in particular, were reluctant to accept

this. They were pleased in the least that the government had responded to their complaints, but they expressed their concern that a new police unit would not solve the persisting problems of corruption. They insisted that the unit, under any name, be done away with completely, and reforms be made to the Nigerian Police Force, through payments of better salaries and other benefits so they could carry out their functions effectively and more efficiently. The protesters continued to make their presence felt, chanting slogans, and recording and posting images on the internet.

On the 20th of October, things took a drastic turn, as soldiers opened fire on protesters at Lekki toll gate, one of the protest grounds, in a bid to disband them. The sporadic shootings left many injured with some in critical condition. At least, 12 people were reported dead after the incident (Amnesty International, 2020). Some protesters who were able to record the shooting, kept updating and sending out videos on their social media platforms. People were watching around the world, and yet the Nigerian government, did not take any immediate action to stop the massacre. Some protesters even managed to collect bullet shells and bullets from the floor while they took cover for their lives.

After the horrendous attack, the Federal government and the Lagos state government both released official reports. In summary, the Lagos state government declared that the army had been deployed but that there was no record of violence of any sort as the army were strictly observing rules of engagement and were only there to ensure the peace (Africa Confidential, 2021). The Nigerian army corroborated this (Aljazeera, 2020). They also claimed that a state curfew had been imposed earlier on that day, so that all residents of Lagos state, including the protesters, were expected to be in their homes at the supposed time of the attack. The Lagos state government had failed to take into account that at the time the curfew was imposed, it would have been impossible for all the protesters to return to their homes, considering their location, traffic issues and the long distances between towns. Hence, many of them were stranded and had no choice but to sleep at the protest venues. In addition, the Lagos state government could not explain how the surrounding closed-circuit television and streetlights were all turned off just before the arrival of armed forces and during their sporadic shooting (Africa Confidential, 2021). In a presidential address, Buhari did not mention anything about the Lekki shooting, his omission implying that it had never occurred (Onuah, George and Akwagyiram, 2020). However, according to investigations by Amnesty International, the official

reports were largely inconsistent and lacking in merit. Unfortunately, the shootings opened avenues for violent activities which was not the purpose of the protest in the first instance. Incidences of violence erupted around the country, with looting and vandalization of properties.

During the period of the protest, several Nigerians were unlawfully arrested and detained either for their involvement or support of the protest. The government has remained silent on this despite petitions and calls from both within and without Nigeria to release them (Jalloh and Muvunyi, 2020). Although the protest was eventually called off due to security concerns following the shootings, the calls for justice and an end to all forms of brutality, continued across online platforms and through various social media sites and news agencies.

The Right to Peaceful Assembly in Theory

Assembly can be defined as ‘an intentional and temporary gathering in a private or public space for a specific purpose’ (Study Group, 2014). This right is categorized as one of the fundamental rights of citizens in Nigeria. However, as with almost all other rights enshrined, it exists only in theory, as the enforceability of it, especially in the Nigerian context, is practically non-existent. Section 40 of the 1999 Constitution of the Federal Republic of Nigeria (as amended), states that ‘every person shall be entitled to assemble freely and associate with other persons. . .’ although this right can be restricted in the interest of defence or public safety (Federal Republic of Nigeria, 1999). The African Charter on Human and Peoples’ Rights equally provides that ‘every individual shall have the right to assemble freely with others’ with a proviso that it may be restricted in the interest of the public (African Union, 1986). The Universal Declaration of Human Rights, although a non-binding declaration but highly persuasive nonetheless, lays down the right to freedom of peaceful assembly and association (Universal Declaration of Human Rights, 1948). The International Covenant on Civil and Political Rights (ICCPR) mentions that ‘the right of peaceful assembly shall be recognised’ and also lays down conditions upon which the right may be restricted.

A major challenge with these provisions is that while they lay down the right to freedom of assembly, none of them expatiate what that right truly entails. They do not encapsulate the extent and or limits of the right, a necessity which would enable the benefactors of the right to understand what they are

entitled to, and for the bodies with the onus of enforcement to know how and when such a right should be restricted. The major provisions of this right are attached with conditions upon which the right may be restricted as an exception, but alarmingly, the exception is more often more enforced than the right itself. The ‘United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials’ states that when there is need to disperse an unarmed and non-violent group, force should not be resorted to unless necessary, and even then, must be kept to the barest minimum (UN OHCHR, 1990). However, as has been seen from the Lekki shootings, this was not the case. The soldiers allegedly shot at unarmed protesters who were kneeling with their hands raised up, with some waving the Nigerian flag and singing the National anthem (BBC, 2020).

The Nigerian government has simply neglected its duty of care to its citizens and its responsibility to protect, by failing to ensure that their rights to peaceful assembly is given the highest regard, a failure all the more negligent when the circumstances behind the protests are a legitimate cause. While there may be no explicit right to peaceful protest duly spelt out, the right to assemble freely as well as express one’s opinions freely presupposes the creation of an inherent right to engage in a peaceful protest (Addaney, Boshoff and Nyarko, 2019). Given that these gross violations are consistently being carried out by the Nigerian government itself, an avenue for citizens to rightly air their grievances without any backlash from the suppressor would have been ideal. Sadly, Nigeria is not party to the First Optional Protocol to the ICCPR, which would have allowed for individuals to petition the Human Rights Committee when they have genuine concerns that their human rights have been violated (Peaceful Assembly Worldwide, 2020).

The Response of the International Community

The current efforts by states like the US Mike Pompeo and UK Dominic Raab in 2020, renowned celebrities like Beyonce, Rihanna, Childish Gambino, international bodies such as the UN (UN Secretary-General, 2020) and the African Union (African Union Commission, 2020), social media moguls such as Jack Dorsey, the owner of twitter; and the international community at large (Africa Confidential, 2021) has undoubtedly created a valid space for discussion and a much needed push for the Nigerian government to do right by its citizens. Some human rights experts with the Office of the UN High Commissioner on Human Rights, issued a statement calling for a credible and

independent inquiry into the shootings as soon as possible (UN OHCHR, 2020). The African Union also reiterated its support for Nigeria and hinted that dialogues should be carried out to mitigate any future escalations. Although no active steps were taken by the UN or other states to ensure Nigeria rights its wrongs, the fact that they spoke out to condemn the attack is proof that the international community upholds and respects human rights and does not take lightly such gross violations.

Conclusion

The right to assembly or even peaceful protest is a fundamental right, one which ought not to be derogated from, save in the interest of public safety. Where one state in particular is in violation of this right, or any right for that matter, it should not be taken lightly. In the opinion of this writer, international condemnation and calls for thorough investigations and prosecution to be met out against perpetrators is only one step towards reformation. Sanctions (whether economic or political) should be rolled out in the near future. It is highly unlikely that a state would continue to disregard its responsibility under law when its economic, political and even social sustainability depends on its adherence to the said law.

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