

The right to demonstrate in a democracy: An evaluation of public order policing in Nigeria

Isaac Terwase Sampson*

Research Fellow/Legal Officer, National Defence College, Abuja, Nigeria

Summary

Demonstrations or civil protests personify the popular right to freedom of expression as well as the right to freedom of peaceful assembly and association, all guaranteed under the Universal Declaration of Human Rights, regional instruments on human rights as well as the constitutions of many states. It is widely accepted that the expression of dissent through demonstrations or public processions is an acceptable democratic practice; provided that it is exercised in accordance with the law. In Nigeria, however, the predominance of military regimes in the country's political history has produced a culture of intolerance to any exertion of this democratic right. The country's return to civil rule in 1999, however, witnessed a resurgence of civil protests which were expectedly met with state repression. This article examines the legality of the right to demonstrations and civil protests in Nigeria, the nature of the police's response to the exercise of this right as well as the factors that underpin the nature of state response. It argues that the right of demonstrations and civil protests is a genuine democratic right guaranteed under international law as well as Nigeria's municipal law. It is further contended that derogations or restrictions to the exercise of this right must be in tandem with fundamental rights and freedoms which allow democracy to run its course while enforcing law and order and protecting the rights of others. The article concludes by proffering recommendations for the effective and harmonious policing of demonstrations in a democratic Nigeria.

* LLB LLM (Jos, Nigeria); isaacteewa@yahoo.com

1 Introduction

All over the world, public order policing¹ is a major challenge for the state.² The contradiction between the maintenance of peace and order (for which the police are mandated) and the expression of citizens' democratic right to dissent, through demonstrations or protests against negative decisions by the state, often leave the police in the dilemma of choosing between failing in their responsibilities and attracting criticism from the populace. Most often, however, the police have chosen to risk criticism rather than praise; as the consequences attached to the policing of demonstrations almost always present human rights concerns.

Even in advanced democracies, demonstrations have not been policed without human rights abuses. Confronting demonstrators ultimately leads to a confrontation between the police and the demonstrators; most often resulting to physical injuries to some demonstrators and or the death of others. Recently, police authorities in the United Kingdom were left battling allegations of causing the death of Ian Tomlinson, who was alleged to have been battered by the police while policing the G-20 Protest in London.³ Similarly, in December 2008, the cradle of democracy was rocked by a five-day protest over the killing of a 16 year-old boy by Greek police, resulting in further accusations of police brutality during the ensuing protests. In the face of fierce and persistent rioting by over 40 000 students and workers; police were forced to attack demonstrators with teargas, smoke and percussion grenades, forcing people to disperse.⁴ In the aftermath of the municipal elections in Russia, the Russian riot police clashed with demonstrators in Moscow after the protesters staged what was referred to by the police as an

¹ This paper adopts De Lint's definition of public order policing as 'the use of police authority and capacity to establish a legitimate equilibrium between governmental and societal collective and individual rights and interests in a mass demonstration of grievance'. See W de Lint 'Public order policing: A tough act to follow?' (2005) 33 *International Journal of the Sociology of Law* 179.

² For a survey of literature on the universality of challenges associated with public order policing, see among others P Waddington *Liberty and order: Policing public order* (1994); M King & N Brearley *Public order policing: Contemporary perspectives on strategy and tactics* (1996); M King 'Policing and public order issues in Canada: Trends for change' (1997) 8 *Policing and Society* 47–76; D della Porta & H Reiter (eds) *Policing protest: The control of mass demonstrations in Western democracies* (1998) and M Button *et al* 'New challenges in public order policing: The professionalisation of environmental protest and the emergence of the militant environmental activist' (2002) 30 *International Journal of the Sociology of Law* 17–32.

³ P Lewis 'Ian Tomlinson's death: Guardian video reveals police attack on man who died at G20 protest' (2009) <http://www.guardian.co.uk/uk/2009/apr/07/ian-tomlinson-g20-death-video> (accessed 13 October 2009).

⁴ P Garganas 'Greek mass movement rises up against the state: Athens was rocked by mass protests on Sunday against the killing of Alexandros Grigoropoulos' *Socialist Worker Online* 9 December 2008 <http://www.socialistworker.co.uk/art.php?id=16684> (accessed 13 October 2009).

'unauthorised rally'.⁵ In Iran, the police cracked down on post-election protesters who protested the outcome of the 2009 presidential elections in that country.⁶ The list is endless.

In spite of Nigeria's multi-faceted political development, the history of policing demonstrations has been consistently 'anti-people'. Whereas some scholars concede that (even) liberal democracies cannot boast of attaining a 'fully integrated' police with liberal rights accommodation, there has nonetheless been a relative reduction in violence and an increase in the level of responsiveness to democratised legal norms and technological modernisation in their approach to public order policing.⁷ Little of these virtues can, however, belong to the Nigerian police. Until recently, the Nigerian police had no tolerance for protests and demonstrations, consistent with other liberal democratic traditions; their contemporary exhibition of pseudo-tolerance to civil protests is laden with political undercurrents, manifesting in their religious enforcement of the Public Order Act. In view of such a culture of intolerance for the exercise of the democratic right of demonstrations and civil protests under Nigeria's evolving democracy, the article engages doctrinal and non-doctrinal approaches to interrogate the lawfulness of the right to demonstrate in Nigeria. It examines the existing legal framework for the regulation of this right and situates police response within the context of this legal regime. While police intolerance to mass demonstrations is founded on claims to the maintenance of law and order as authorised by the Public Order Act, the article interrogates the constitutionality of the Act by reviewing judicial attitude to the limitation of mass protests. The article recommends measures for achieving democratic policing of civil protests without compromising order.

2 Understanding police attitude to demonstrations as a clash of two security concerns

A way of understanding the attitude of security agencies (especially the police) to demonstrations and protests is to explore the age-long perception of the concept of 'national security' by the state and the contemporary divergent view of security held by communal and human rights activists. The orthodox/traditional perception of security which prevailed prior to and during the bi-polar era privileges the regime or state as the primary reference point for security, while the neo-liberal security conception gives primacy to the individual and the community as the essence of security. An understanding of these

⁵ 'Russian riot police clamp down on protesters' <http://www.presstv.ir/detail.aspx?id=108528§ionid=351020602> (accessed 13 October 2009).

⁶ 'Iran clamps down on protests' *CBS News Online* (2009) <http://www.cbsnews.com/stories/2009/06/14/world/main5087285.shtml> (accessed 13 October 2009).

⁷ De Lint (n 1 above) 189.

two divergent security conceptions is therefore instructive to an understanding of police response to demonstrations and civil protest.

In ordinary parlance, the term 'security' denotes protection from an invasion or threat of it, but the term becomes less certain upon critical analysis.⁸ Before the end of the Cold War, reference to security in policy and scholarly debate was narrowed down to the protection of the state from an invasion or threat to its existence. After the Cold War, however, security analysis burgeoned beyond the parochial strategic calculation prominent during the bi-polar era, extending the object of protection to the *community* and the *individual*.⁹ This therefore created a dual-pronged security thinking with some analysts advocating adherence to the traditional model (classical view), while others argue in favour of the expansion or liberalisation of security (liberal view). In the traditional sense, security is seen as the defence, *policing* and intelligence functions of states, and the management of threats to and breaches of the peace through multilateral and bilateral process.¹⁰ Traditionalist security proponents of traditional security equate it with peace and the prevention of conflict by military means such as deterrence policies and non-offensive defence through public policy and law.¹¹ According to one of the principal exponents of traditional security, Lipman:¹²

A nation is secure to the extent that it is not in the danger of having to sacrifice core values, if it wishes to avoid war, and is able, if challenged, to maintain them by victory in such war.

In their treatise, Burzon *et al* attribute security in the traditional military-political context to when an issue is presented as posing an existential threat to a designated referent object (traditionally, but not necessarily, the state) incorporating government, territory and society.¹³ This classical world view is also held by Wolfers, who argues that the common usage of the term 'national security' implies that 'security rises and falls with the ability of a nation to deter an attack'.¹⁴ For traditional security adherents, therefore, once a nation or regime is able to preserve her physical and territorial integrity from any recognised threat, and to protect its institutions and governance from disruption by any force, whether internal or external, that nation is secure. From this traditional perspective, the state or the regime is perceived as the reference point

⁸ IT Sampson 'The paradox of resource wealth and human insecurity: Reflections on the Niger-Delta area of Nigeria' (2008) 38 *Africa Insight* 64.

⁹ As above.

¹⁰ E Osita & J Hettmann *Security sector governance in West Africa: Case study of Benin, Côte d'Ivoire, Ghana, Mali, Nigeria and Senegal* (2005) 2.

¹¹ S Tarry 'Widening and deepening: An analysis of security definitions in the 1990s' <http://www.stratnet.ualgary.ca/journal/article3.htm> (accessed 13 February 2009).

¹² W Lipman *US foreign policy: Shield of the republic* (1943) 123.

¹³ B Burzon *et al Security: A new framework for analysis* (1998) 21.

¹⁴ A Wolfers *Discord and collaboration: Essays on international politics* (1962) 150.

of security. Once the territorial borders of a state and its regime are protected from attacks or any threat to its existence, the state or the regime is perceived to be secured.

This state-centred security thinking was taken to an alarming dimension during the military interregnum that disturbed Nigeria's democratic development for over three decades. Under this dispensation, national security meant territorial integrity of the nation, including safety from external aggression, military might and prowess, security of life and property of the dictator and his family, security of life and property of the dictator's lieutenants, security of tenure for life for the dictator, absence of rebellion in the military ranks and among the people; and absence of opposition to the rule of the dictator.¹⁵ In this sense, protection of the regime, the personal safety and comfort of the dictator, his family and lieutenants became synonymous with national security. This would appear to be the exact opposite of the concept of national security as national human security.¹⁶

A challenge to the traditional security thinking initially emerged after World War II, when some scholars and security pundits began to analyse state security *vis-à-vis* the individual who is supposed to be the ultimate beneficiary of security. The thinking then emerged that the accumulation of military hardware, nuclear technology and excellent intelligence did not necessarily provide security to individual safety within the so-called 'secured state'. The argument is that, in spite of the pseudo-stability that may exist due to the enforcement of traditional security in a state and the protection of its regime, citizens of such states may not necessarily be safe. They may not be killed by nuclear attacks or missiles, but may nonetheless be subject to environmental disasters, poverty, hunger, violence and human rights abuses.

The human dimension to security made inroads into global policy analysis in 1994 when the United Nations Development Programme (UNDP) Human Development Report dwelt on human security and human development. The report contended that security has for far too long been interpreted narrowly – as security of territory or as protection of national interests or as global security from the threat of nuclear holocaust – and that it neglected the legitimate concerns of ordinary people who sought security in their daily lives. For many ordinary people, security symbolised protection from the threat of disease, hunger, unemployment, crime, social conflict, political repression and environmental hazards.¹⁷ Human security is thus classified into two aspects: safety from chronic threats such as hunger, disease and repression and protection from sudden and hurtful disruptions in the

¹⁵ M Sani (ed) *Civilian and security agencies relationship: Role of the police in building an equitable and democratic society* (2006) 21-22

¹⁶ As above.

¹⁷ United Nations Development Programme *Human Development Report* (1994) 22-23.

patterns of daily life, whether in homes, in jobs or in communities.¹⁸ Seven components of human security were therefore identified by the UNDP, namely, economic, food, health, environmental, personal, community and political security.

The UNDP Report triggered an avalanche of scholarly research and concept definitions of human security. Hubert defines the concept as safety from both violent and non-violent threats.¹⁹ He contends that 'human security is a condition or state of being characterised by freedom from pervasive threats to people's rights, their safety or even their lives'.²⁰ Hence any invasion or threatened invasion of individual or communal human rights, safety and life exposes them to insecurity and guarantees their demand for state protection from such threats. Human security, therefore, represents a paradigm shift from the traditional security thinking where the state and its actors were the focus of security policy, to a human-centred security approach where humans (who ought to be the ultimate beneficiary of state policy) receive greater attention and protection.²¹

In her treatise, Thomas sees human security as 'a condition of existence in which basic material needs are met and in which human dignity, including meaningful participation in the life of the community, can be realised'.²² This perspective imposes an obligation on the state to take positive measures to guarantee individuals' personal needs, hence the theoretical convergence of human security and socio-economic rights which mandate the state to guarantee the right to food security, health, shelter and education for every individual.

The human security viewpoint therefore identifies the fact that, if the individual person or community is threatened by the myriad of ominous events such as hunger, poverty, environmental degradation, communal conflict, disease, threat to livelihoods, state repression and a general milieu of human rights violations, then the protection of the geographical integrity of the state, its boundaries and regime from existential threats is cosmetic and of no benefit.²³ This security analysis has its foundation in democracy, which advocates the citizens' ownership of government processes and institutions. In congruence with this perception of security, therefore, the very object of national security in a democratic society should be to protect democratic institutions,

¹⁸ FC Onuoha 'Is this yet another false start? The West African gas pipeline project and the host communities in the Niger Delta region' (2008) 7 *Human Security Journal* 92.

¹⁹ D Hubert 'Human security: Safety for people in a changing world' in RA Akindele & A Basse (eds) *Beyond conflict resolution: Managing African security in the 21st century* (2001) 162.

²⁰ As above.

²¹ Sampson (n 8 above) 66.

²² C Thomas 'Introduction' in C Thomas & P Wilkin (eds) *Globalisation, human security and the African experience* (1999) 5.

²³ Sampson (n 8 above).

human rights and the rule of law and not to undermine them in the guise of state or regime security.²⁴ Nigeria's approach to national security should therefore be in tandem with the universal principles of democracy, the rule of law, respect for human rights and political pluralism. Sadly, however,²⁵

the concrete roles played by the police are defined by law and the conception of order in accordance with the political and economic interests of the dominant or ruling groups in society.

The police in every society acts in furtherance of the socio-economic and political interests of the dominant class (that is the political and economic elite); this is the underlying argument that belies radical political economy and social conflict paradigms on police and policing.²⁶ Alemika and Chukwuma identified three different but mutually-reinforcing political economy models in analysing the role of the Nigerian police as a barrier to change. These are that (1) there are intricate links between political and economic structures of society; (2) the political and economic structures of a society determine its general values, cultures and norms as well as the direction and practice of governance; and (3) a more robust analysis of society is provided by an understanding of the links between the economy and polity and their dialectical interrelations with other structures and social institutions.²⁷ In relation to the roles of the police, therefore, these theoretical extrapolations suggest that:²⁸

[t]he problems of order, law and lawlessness are to be understood as the reflections or products of the way the society organises its economy, especially the dominant interests that drive it. Criminal law enforcement constitutes the rationale for the establishment and sustenance of police and judicial institutions, contains rules prohibiting the behaviours and activities deemed detrimental to the dominant economic and political interests of society ... Classes and groups with dominant economic power control political decision making, including the enactment of criminal law by the legislature, its enforcement and interpretation by the police and judiciary respectively.

Social conflict theorists, on the other hand, argue that the main function of the police is to protect the property and wellbeing of those who benefit most from an economy based on the extraction of private profit.²⁹ They argue further that the police were created primarily in

²⁴ J-L Roy 'Bridging human rights and security' http://www.ichrdd.ca/site/_PDF/publications/intHRadvocacy/bridgingrightsandsecurity.pdf (accessed 12 October 2009).

²⁵ EEO Alemika & IC Chukwuma 'Analysis of police and policing in Nigeria. A desk study on the role of policing as a barrier to change or driver of change in Nigeria' prepared for the Department for International Development <http://www.cleen.org/policing.%20driver%20of%20change.pdf> (accessed 14 October 2009).

²⁶ As above.

²⁷ As above.

²⁸ As above.

²⁹ As above.

response to rioting and disorder directed against oppressive working and living conditions.³⁰ Relying on a Marxist model of political economy and social conflict theory in relation to police and policing, therefore, Alemika and Chukwuma argue:³¹

The police are agents of the state, established for the maintenance of order and enforcement of law. Therefore, like the state, the character, roles and priority of police forces are determined by the political and economic structures of their nations ... The tasks of police are dictated by the contradictions and conflict of interests among groups and classes in society which if not regulated can threaten the preservation of the prevailing social order or *status quo* police violence must be seen as the product of interaction among political, economic, legal, institutional and personality factors.

The above analysis underscores the logic of the police's inclination to state aspirations and their propensity to violent opposition to civil expression of dissent in any confrontation between the state and its people.³² One can therefore argue that the police are organised to protect and secure the interests of the state and its regime in congruence with the traditional security conception, while the security of *society* is put at cross-purposes with state or regime security. In reality, however, the police's mandate in contemporary society resonates protection for the state and the socio-political and economic interest of the dominant class or even the legal order. The communal mandates and prospects of security – for which the police play a dominant role – have burgeoned beyond the state and the polity.³³ The community has an ample stake in characterising its security needs, which includes the protection of human rights and fundamental freedoms. Unfortunately, any demand for these real security needs by members of society is often viewed as a challenge to the established order, and, therefore, repressed by the police.

Although there are contending views that tend to (re)construct the police as agents of the public good,³⁴ the predominant view – supported in this paper – is that the police have always leaned towards the political and economic interests of the ruling class rather than the common or popular wishes of the public. The policing of demonstrations and protests by the Nigerian police is, therefore, inextricably tied to the political economy or the nature and character of the Nigerian state as represented by the dominant ruling class.

³⁰ Institute for the Study of Labour and Economic Crises (1982) in Alemika & Chukwuma (n 25 above) 5.

³¹ Alemika & Chukwuma (n 25 above) 4 5.

³² N Suleiman 'The police and civil society in Nigeria' in MM Gidado *et al* (eds) *Nigeria beyond 1999: Stabilising the polity through constitutional re-engineering* (2004) 255.

³³ De Lint (n 1 above) 184.

³⁴ On this perspective, see I Loader & N Walker 'Policing as a public good: Reconstituting the connections between policing and the state' (2001) 5 *Theoretical Criminology* 9-25.

Herein lies the contradictions in security perception *vis-à-vis* the role of the police in managing protests and demonstrations against acts or omissions of the state and/or its agencies, undermining the security of the population.

The pertinent question is whether Nigeria is a democratic and free or an authoritarian state. The Constitution of the Federal Republic of Nigeria of 1999 declares that '[t]he Federal Republic of Nigeria shall be a state based on the principles of democracy and social justice'.³⁵ It states further that sovereignty belongs to the people of Nigeria from whom government shall through the Constitution derive all its powers and authority. The security and welfare of the people are declared to be the primary purpose of government.³⁶ Although the part of the Nigerian Constitution that expresses these novel ideals is declared non-justiciable³⁷ to the extent that the provisions therein constitute mere ideals towards which the states are expected to aspire,³⁸ there is a convergence of opinions that the rights encapsulated in this part are necessary and desirable;³⁹ hence my view that Nigeria is indeed a democratic and free society. It is argued plausibly that⁴⁰

[i]n a totalitarian society, the police role will be more to defend the *status quo* of political oppression and economic injustice. In contrast, in a democratic society the police are more likely to provide services that will enhance development and democracy.

I argue that since Nigeria is a democratic society, its government and institutions must ensure the protection of 'people's security' as opposed to state or regime security. This would ensure the development of an effective, democratic state based on the constitutionally-declared principles of democracy and social justice.

³⁵ Sec 14 Nigerian Constitution 1999.

³⁶ Sec 14(3) Nigerian Constitution.

³⁷ See sec 6(6)(c) of the Nigerian Constitution which ousts the jurisdiction of the Nigerian courts from enquiring into any matter arising from the provision of these provisions. See also A Nwafor 'Enforcing fundamental rights in Nigerian courts. Processes and challenges' 4 *African Journal of Legal Studies* <http://www.africalawinstitute.org/ajls/vol3/no1/Nwafor.pdf> (accessed 13 September 2010) 4-5.

³⁸ See *Okojie & Others v A-G Lagos State* (1981) NCLR 218.

³⁹ See among others DM Jemibewon *The military, law and society: Reflections of a general* (1998) 109; I Trispiotis 'Socio-economic rights: Legally enforceable or just aspirational?' *Opticon* 1826 Issue 8 (2010) http://www.ucl.ac.uk/opticon1826/currentissue/articles/Article_Laws_Ilias_Social_equality_Publish_pdf (accessed 17 September 2010); JN Aduba *et al* <http://dspace.unijos.edu.ng/bitstream/10485/180/1/15%20THE%20DYNAMICS%20OF%20SOCIAL%20AND%20ECONOMIC%20RIGHTS.pdf> (accessed on 17 September 2010).

⁴⁰ EE Alemika 'Colonialism, state and policing in Nigeria' (1993) 20 *Crime, Law and Social Change* 189-219.

3 Police response to civil protest and demonstrations in Nigeria: An overview

For purposes of clarity and logic, the policing of demonstrations and civil protests in Nigeria will be classified into four periods, namely, the colonial era (1861-1903); the pre-unification era (1930-1966); the post-unification dispensation (1966-1999); and the present dispensation (1999-2009). This classification will enable us to analyse the transitional development of the police's response to demonstrations and civil protests, with a view to exploring advances in attitudes towards transformation, if any.

3.1 Policing of demonstrations and protests in Nigeria under the colonial administration

For a proper understanding of police response to demonstrations and civil protests in Nigeria, one must necessarily start with an *expos e* of the political economy of colonialism in the country. The colonial organisation and governance of the various ethnic nationalities that form Nigeria were predicated on maximising the interest of the colonialists and the furtherance of their economic and political interests. Political, administrative, legal and institutional regimes were configured to tame the colonial subjects and allow socio-economic exploitation by the colonialists.

The power of the colonial state was not only absolute but also arbitrary.⁴¹ Such absolutism required the use of force, not only to coerce compliance and tame rebellion by the colonised people but, most importantly, to guarantee the security of their lives and possessions. This eloquently testifies to the fact that the Nigerian state's conception of security in fact originated from the unjust colonial order. Colonialism had total disregard for legitimacy or authority since compliance was obtained by coercion rather than authority. These asymmetrical power relations led to intermittent rebellions and strikes from the colonised (including the colonised labour force) with militant and repressive responses from the colonisers via their instruments of coercion, the police. As captured by Alemika and Chukwuma:⁴²

Police forces under various names were established and employed as instruments of violence and oppression against the indigenous population; given the character of colonial rule, police forces were instruments used to sustain the alien domination.

The social and economic configuration of colonialism therefore influenced the character of the colonial police, particularly their response to demonstrations and civil protests.

⁴¹ C Ake *Democracy and development in Africa* (2001).

⁴² Alemika & Chukwuma (n 25 above) 8.

Consequent upon the establishment of police forces in line with the colonial objective, therefore, the police in different parts of Nigeria were used to suppress anti-colonial protests, strikes and demonstrations. There is documented evidence of the deployment of police to violently suppress the communal riots in Tiv land between 1959 and 1960, Kano in 1953, the women's anti-tax riot between 1929 and 1930 and the workers' strikes in 1945, 1947 and 1949,⁴³ with severe consequences, including the loss of lives and property. The oppressive spectacle of the colonial police is also captured by Onoge, who states that⁴⁴

[t]hrough the enforcement of unpopular direct taxation, the raiding of labour camps and the violent suppression of strikes, the police ensured the creation, supply and discipline of the proletarian labour force required by colonial capitalism.

The nature and character of police response to civil protests unfortunately survived the colonial era.

3.2 Policing demonstrations and protests in Nigeria during the pre-unification period (1930-1966)

Prior to 1930, there was no national police force in Nigeria with universal jurisdiction over the entire territory called Nigeria. The Native Authority Ordinance 4 of 1916 (as expanded later by the Protectorate Laws (Enforcement) Ordinance 15 of 1924), ceded the responsibility of maintaining law and order to the native authorities. Accordingly, the native authorities could employ any person to assist in carrying out police functions.⁴⁵

By virtue of these ordinances, therefore, local authorities and native authorities in Southern and Northern Nigeria, respectively, established and administered their police units independently. In 1930, however, the Nigerian police force was established with national jurisdiction over the entire Nigerian territory. Between 1930 and 1966, the Nigerian police force (created in 1930 with national jurisdiction) coexisted with local administration police forces in local government areas in Western Nigeria and the native authorities in Northern Nigeria.⁴⁶ Notwithstanding the creation of the Nigerian police, the local police were deployed by the local governments and native authorities for various negative ends. This trend was exacerbated with the introduction of partisan politics in the 1950s, when the local authorities deployed the local police as tools for political oppression and intimidation.

⁴³ TN Tamuno *The police in modern Nigeria: 1861-1965* (1970) ch 9.

⁴⁴ OF Onoge 'Social conflict and crime control in colonial Nigeria' in TN Tamuno *et al* (eds) *Policing Nigeria* (1993).

⁴⁵ Tamuno (n 43 above) 90.

⁴⁶ Alemika & Chukwuma (n 25 above) 9.

The use of the local police forces in the northern and southern parts of Nigeria for the suppression of political pluralism and dissent is well documented in the literature. According to Ohonbamu,⁴⁷

[i]n the western region, there was mass recruitment into the local forces of party thugs and stalwarts – people against whom the police were supposed to be giving protection to the law-abiding citizens ... Political opponents were arrested by native authority police for holding private meetings to discuss political issues, handcuffed or chained and marched through the streets as an ocular demonstration of what fate awaited those who sought to exercise their fundamental right.

A similar account of the use of local forces by northern politicians is provided by Ahire,⁴⁸ who states:

The fiercest criticisms of the native authority police system relate to its handling of opposition politicians in the 1950s when party politics started in Nigeria. It is on record that NA police forces earned notoriety by using undue coercion and intimidation to enlist support for the ruling party; deny opposition parties permits for rallies; disrupt meetings of opposition parties and generally enforced the obnoxious ‘unlawful assembly’ laws against opposition politicians. The excesses of NA police forces in support of the ruling party in Northern Nigeria prompted a loud outcry which eventually led to their extinction.

These accounts have shown a consistent pattern of behaviour on the part of police, as they protected the political and economic interest of the political elite and violently repressed any exertion of dissent against the established order by way of protest, demonstrations, strikes or even political association and competition. These same characteristics survived the post-unification dispensation.

3.3 Policing demonstrations and protests in Nigeria under the post-unification period (1966-1999)

As stated earlier, the litany of ills associated with the local police forces led to their dissolution in 1966 shortly after independence and early into the first phase of the military incursion into politics. It is important to note that the characteristics of the police elicited above remained unchanged after the attainment of political independence in 1960. The police remained instruments in the hands of politicians in the suppression of rights and pluralism. In conformity with the prevailing political economy in the country, the police remained an instrument of coercion in the hands of the ruling elite. As aptly depicted by Ake:

Although political independence brought a change to the composition of the managers, the character of the state remained much as it was in the colonial era. It continued to be totalistic in scope, constituting a statist

⁴⁷ O Ohonbamu ‘The dilemma of police organisation under a federal system: The Nigerian example’ (1972) 6 *The Nigerian Law Journal* 73-87.

⁴⁸ PT Ahire ‘Native authority police in Northern Nigeria: End of an era’ in Tamuno *et al* (n 44 above) 257.

economy. It presented itself as an apparatus of violence, had a narrow social base, and relied for compliance on coercion rather than authority.

Granted that police repression had been institutionalised since colonial rule, it, however, became increasingly intensified under the successive military regimes after 1966.⁴⁹ In spite of the use of the armed forces in the performance of police functions under the military, the police were nonetheless involved in some measure of violence in the suppression of civil protests and demonstrations. In 1971, the police violently suppressed a student protest at the University of Ibadan when they fired live bullets at the students, resulting in the death of one Kunle Adepeju.⁵⁰ Similarly, in April 1978, the police and army units killed six students and seriously wounded at least 20, when the National Union of Nigerian Students (NUNS) instigated or participated in nationwide campus protests against increased university fees.⁵¹ In May 1986, the police also killed more than a dozen Ahmadu Bello University students who were protesting the disciplinary action against student leaders observing 'Ali Must Go' Day (referring to the then Minister of Education), in memory of students killed in the 1978 demonstration.⁵²

Although the first Ogoni civil demonstration of 1993 had no record of police repression, the first use of major military/police force against the protests was witnessed in April 2003. On 30 April 2003, 10 000 Ogoni people protested at Nonwa against the construction of a pipeline by the American contracting firm, Willbros, on behalf of Shell. They were fired on by Nigerian security operatives, which wounded 10 people.⁵³ In fact, the persistence of minority rights demonstrators under that military regime prompted the promulgation of the Treason and Treasonable Offences Decree of 1993, which criminalised any protests or demonstrations in the country having the potential of causing civil unrest and destabilising the regime. The decree legitimised the use of absolute violence as a means of controlling minority groups' rebellion.⁵⁴ Generally, however, all military regimes were intolerant to demonstrations that adversely affected the regime's interest. As we shall see later, however, the same military regimes would tacitly organise and sponsor demonstrations to advance their own interests while

⁴⁹ Alemika & Chukwuma (n 25 above) 13.

⁵⁰ SG Ehindero *The Nigerian police and human rights* (1988) 140.

⁵¹ EEO Alemika & IC Chukwuma (eds) 'Civilian oversight and accountability of police in Nigeria' <http://www.cleen.org/POLICE%20ACCOUNTABILITY%20BOOK1.pdf> (accessed 9 September 2010)

⁵² As above.

⁵³ Factsheet on the Ogoni Struggle <http://www.ratical.org/corporations/OgoniFactS.html> (accessed 12 October 2009).

⁵⁴ FO Adeola 'Environmental injustice and human rights abuse: The states, MNCs, and repression of minority groups in the world system' (2000) 8 *Human Ecology Review* 52.

denying other legitimate requests or attempts to demonstrate against their policies and actions.

3.4 Policing demonstrations and protests in Nigeria under the present dispensation (1999-2009)

With the return to civil rule in 1999, there was a semblance of tolerance towards demonstrations and civil protests by the Obasanjo administration. The then President, Chief Olusegun Obasanjo, admitted in one of his Independence Day broadcasts that the right of Nigerians to hold public meetings or protest peacefully against the government over the increase of the prices of petroleum products, was legitimate.⁵⁵ However, as the 2003 elections drew near, an intolerance to opposition that characterised past Nigerian regimes resurfaced, and the police unreasonably refused to grant permits for political rallies. In Makurdi, for instance, after a refusal to make available the Aper Aku Stadium to the rival All Nigeria Peoples Party (ANPP) by the ruling People's Democratic Party (PDP)-led government in the state, the police told the ANPP that they could not guarantee the safety of the ANPP presidential aspirant, General Muhammadu Buhari, while the latter was already on his way to Makurdi. Consequently, the police authorities in the state asked the party and its presidential candidate not to land for purposes of the rally.

After the 2003 presidential elections, a rally organised by the ANPP in Kaduna to protest the outcome of the election was stopped by the police, purportedly for lack of a permit which indeed had been sought earlier but refused. This led to the judicial challenge of the provisions of the Public Order Act which require the issuance of a permit for the holding of rallies and processions by the ANPP. As we shall see later, the case eventually led to the declaration of these provisions of the Act as unconstitutional by the Court of Appeal. Confusion now reigns as the police insisted on disrupting any rally, procession or protest embarked upon without the requisite permit despite the court's decision quashing these provisions.

From the chronological analysis of the police's response to demonstrations and civil protests in Nigeria, a consistent pattern becomes evident. This is that the police response has always been 'anti-people', confirming the validity of my assertion that the police further the interests of the dominant political and economic class in society.

4 The legality or otherwise of civil protests and demonstrations in Nigeria: An overview

In view of the polices' attitude to civil protests and demonstrations in Nigeria demonstrated above, it is imperative that one interrogates

⁵⁵ *Guardian* 2 October 2005 1 4.

the lawfulness or otherwise of these activities under the Nigerian legal milieu. Two pillars support the legality of protests and demonstrations in Nigeria. First, the right to protest is deeply entrenched in international human rights instruments to which Nigeria is a party,⁵⁶ as well as in Nigeria's municipal legal regime. Secondly, the right to protest is widely accepted as a fundamental norm in all democratic societies.

Nigeria is party to several international instruments which embody these rights. Among these international instruments, the Universal Declaration of Human Rights (Universal Declaration) and the African Charter on Human and Peoples' Rights (African Charter) are significant. Nigeria has not only signed and ratified the African Charter, but it has domesticated it by enacting it as the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act, Cap 10, Laws of the Federation of Nigeria 1990. In *Abacha v Fawehinmi*,⁵⁷ the Supreme Court held that the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act, being municipal law, is enforceable by all courts in Nigeria. The Court of Appeal reinforced this position when it held that the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act was a statute with international flavour. That being the case, in the case of a conflict between it and another statute, its provisions shall prevail over those of the other statute for the reason that it is presumed that the legislature does not intend to breach an international obligation.⁵⁸

Most importantly, however, the Constitution of the Federal Republic of Nigeria (CFRN) 1990 sufficiently guarantees the right to protest and demonstration. Section 39 of the Constitution provides that 'every person shall be entitled to freedom of expression; every person shall be entitled to own, establish and operate any medium for the dissemination of information, ideas and opinions'. Similarly, section 40 of the Constitution provides:

Every person shall be entitled to assemble freely and associate with other persons, and in particular, he may form or belong to any political party, trade union or any other association for the protection of his interests.

Provided that the provisions of this section shall not derogate from the powers conferred by this Constitution on the Independent Electoral Commission with respect to political parties to which that Commission does not accord recognition.

On the other hand, the right to express dissent with policies and decisions of government or its agencies is one of the cardinal principles of democracy. This fact has also been given judicial approval by the Nigerian courts as they have held that:⁵⁹

⁵⁶ Arts 19 & 20 Universal Declaration; arts 9, 10 & 11 African Charter.

⁵⁷ (2000) 6 NWLR (Pt 660) 228.

⁵⁸ *Inspector-General of Police v All Nigeria Peoples Party & Others* (2007) 18 NWLR 469 500 paras B-C.

⁵⁹ n 58 above, 471 501 paras G-H.

[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 recognised and deeply entrenched in the system of governance in civilised 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 dividends of their experience.

This sentiment was echoed by Muhammad JCA when he emphasises that

certainly, in a democracy, it is the right of citizens to conduct peaceful processions, rallies or demonstrations without seeking or obtaining permission from anybody. It is a right guaranteed by the 1999 Constitution and any law that attempts to curtail that right is null and void and of no consequence.

In his judgment, Adekeye JCA cites with approval the comments of President Obasanjo that

democracy admits of dissent, protests, marches, rallies and demonstrations. True democracy ensures that these are done responsibly without violence, destruction or even unduly disturbing any citizen and with the guidance and control of law enforcement agencies. Peaceful rallies are replacing strikes and violent demonstrations of the past.

In spite of the above, however, it is important to note that the right to hold rallies, processions and demonstrations does not go without recognised derogations or restrictions. These restrictions follow almost every legal instrument that guarantees such rights. Section 45 of the 1999 Constitution provides that:

Nothing in sections 37, 38, 39, 40 and 41 of this Constitution shall invalidate any law that is *reasonably justifiable*⁶⁰ in a democratic society –

- (a) in the interest of defence, public safety, public order, public morality or public health; or
- (b) for the purpose of protecting the rights and freedom of other persons.⁶¹

Historically, though, Nigeria's Public Order Act (now Cap 382 LFN 1990) is a colonial piece of legislation; it is currently an Act of the National Assembly, deriving its powers from section 45(1) of the 1999 Constitution and is considered to be an existing law by virtue of section 315 of the Constitution.⁶² The Public Order Act (which prescribes conditions to be fulfilled before a procession, demonstration or protest could be carried out lawfully) therefore effects the derogation anticipated by section 45(1) of the 1999 Constitution. However, as seen in my earlier analysis, the police in Nigeria have deployed the Public Order Act to unjustifiably deny people and groups the right to carry out processions or demonstrations, most often for the political aims of the ruling

⁶⁰ My emphasis.

⁶¹ See similar derogations under art 29 of the Universal Declaration and art 11 of the African Charter.

⁶² n 58 above, 472.

class. It is expected that permissible derogations to these rights in a democratic society should be enacted within the context of the rule of law, within the parameters of legality, necessity, proportionality, temporality and non-discrimination,⁶³ rather than for political reasons as is usually the case in Nigeria. No wonder, therefore, that the people had to challenge the constitutionality of the exercise of these derogations in the form exercised by the police. This brings us to the thorny issue of the constitutionality or otherwise of the Public Order Act and its judicial construction by Nigerian courts in the light of the limitations imposed by the law on exercising the right to demonstrate.

5 The constitutionality or otherwise of the Public Order Act

From our discussion on the police's response to demonstrations and civil protests above, one can infer that the denial of the right to protest by the Nigerian police post-dates the country's return to democratic governance in 1999. The authority to deny this democratic right is anchored on the Public Order Act (POA) and premised on the likelihood of an eventual breakdown of law and order. The persistence of this attitude by the Nigerian police led to the challenge of the POA by some citizens in the courts. Two cases are the reference points in respect of the constitutionality of the POA. These cases are *Dr Lewis Chukwuma and 2 Others v Commissioner of Police*⁶⁴ and *Inspector-General of Police v All Nigeria Peoples Party and 11 Others*.⁶⁵ In *Chukwuma*, the issues for determination were (1) whether the appellants required a police permit to hold a meeting of their association; and (2) whether the police were justified to disrupt the appellants' meeting and seal off the venue.

The appellants, a socio-cultural association of all Igbo-speaking people in Northern Nigeria, were scheduled to host a meeting of its members at a hotel in Ilorin, Kwara State. On the day scheduled for the meeting, the officers, men and agents of the respondents (the Nigerian police) came to the venue and forcefully dispersed the appellants and their members and sealed off the venue. Being aggrieved by the action of the respondents, the appellants instituted an action at the Federal High Court, seeking a declaration that the action of the respondents was a violation of their constitutional right of association, freedom of movement and assembly and therefore claimed damages against them. The trial court dismissed the action on the ground that the actions of the police were justified. The appellants appealed to the Court of Appeal.

⁶³ Roy (n 24 above) 18.

⁶⁴ (2006) All FWLR 177.

⁶⁵ As above.

It was the case for the appellants that their meeting was not a public meeting, neither was it held in a public place in terms of the provisions of the Public Order Act, for which a permit was required. For a clear understanding of the contentions of the parties to this case, however, it is imperative to quote the relevant provisions of the POA. Sections 1(1), (2), (3) and (4), 2 and 3 of the POA provide as follows:

- 1 (1) For the purpose of the proper and peaceful conduct of public assemblies, meetings and processions, and subject to section 11 of this Act, the governor of each state is hereby empowered 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 by which and the times at which any procession may pass.
- (2) Any person who is desirous of convening or collecting any assembly or meeting or of forming any procession in any assembly or meeting or of forming any procession in any public road or place of public resort shall, unless such assembly, meeting or procession is permitted by a general license granted under subsection (3) of this section, first make application for a licence to the governor not less than 48 hours thereto, and if such governor is satisfied that assembly, meeting or procession is not likely to cause a breach of the peace, he shall direct any superior police officer to issue a license, not less than 24 hours thereto, specifying the name of the licensee and defining the conditions on which the assembly, meeting or procession is permitted to take place; and if he is not so satisfied, he shall convey his refusal in like manner to the applicant within the time hereinbefore stipulated.
- (3) The governor may authorise the issue of a licence by any superior police officer, setting out the conditions under which and by whom and the place where any particular any particular kind of description of assembly, meeting or procession may be convened, collected or formed.
- (4) The governor may delegate his powers under this section, in relation to the whole state or part thereof, to the Commissioner of Police or any superior police officer of a rank not below that of a Chief Superintendent of police ...
- 2 Any police officer of a rank of Inspector or above may stop assembly, meeting or procession for which no license has been issued or which violates any conditions of the license issued under section 1 of this Act, and may order any such assembly, meeting or procession which has been prohibited or which violates any such conditions as aforesaid to disperse immediately.
- 3 Any assembly, meeting or procession which takes place without a licence issued under section 1 of this Act or violates any condition of any licence granted or neglects to obey any order given under section 2 of this Act shall be deemed to be unlawful assembly and all persons taking part in such assembly shall be guilty of an offence ...

Section 12(1) of the POA defines a *place of public resort* as

any highway, public park or garden, any sea, beach and any public bridge, road, lane, footway or pathway, square, court, alley or passage, whether a thoroughfare or not, and includes any open space or any building or other structure to which, for the time being, the public have or are permitted to have access, whether on payment or otherwise;

while a *public meeting* is defined in the same section to include

any assembly in a place of public resort and any assembly which the public or any section thereof is permitted to attend, whether on payment or otherwise, including any assembly in a place of public resort for the propagation of any religion or belief whatsoever, of a religious or anti-religious nature.

Counsel for the appellants argued that a licence would only be required if such assembly or procession will be held in a public road or place of public resort; and that Yebumot Hotel being a private place, did not come under section 12(1) of the POA to require a permit. The Court of Appeal, however, reasoned that⁶⁶

the meeting of the appellants was for all the Igbo's in the entire northern states of Nigeria. The contents of exhibit 1 leave no one in doubt that though the meeting was to be held in a private place, for all intents and purposes, same was a public meeting. The question to be asked is this: Can the meeting of the appellants be described as an assembly? The answer to the question is provided by section 12(1). By the definition of assembly stated above, the meeting of the appellants to which all the Igbos in the northern states were invited was a public assembly.

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 requisite permit in the earlier case, the Court of Appeal affirmed the judgment of the Federal High Court and held that the POA constituted a lawful derogation of the right to freedom of assembly and association; secondly, the meeting of the appellants, being a public assembly, required a permit and 'since the appellants did not obtain any licence for the assembly or the meeting at Yebumot Hotel, Ilorin, the action of the respondent (police) in frustrating the meeting was justifiable'.⁶⁷

A seemingly conflicting decision, however, emerged later from the same Court of Appeal – the Abuja Division – in the case of *JGP v ANPP and 11 Others*.⁶⁸ Here, the respondents, a registered political party in Nigeria, sought a police permit from the appellant (the Nigeria police) for its members to protest the alleged rigging of the 2003 general election; a request the appellant refused. Notwithstanding the refusal by the appellant, the respondents went ahead with the rally in Kano on 22 September 2003, which the appellants violently disrupted. The respondents instituted an action before the Federal High Court, raising the following issues for determination:

- (a) whether a police permit or any authority is required for holding a rally or procession in any part of the Federal Republic of Nigeria;
- (b) whether the provisions of the POA which prohibits the holding of rallies or processions without a police permit are not illegal and

⁶⁶ Per Abdulahi JCA in *Chukwuma* (n 64 above) 186 paras A-C.

⁶⁷ *Chukwuma* (n 64 above) 189 paras A-B.

⁶⁸ (2007) 18 NWLR (Pt 1066).

unconstitutional having regard to section 40 of the 1999 Constitution and article 11 of the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act Cap 10.

Therefore the respondents sought a declaration that the requirements of a police permit or other authority for holding rallies or processions in Nigeria; as well as the provisions of the POA which require such permits, were all illegal and unconstitutional, as they contravened the provisions of section 40 of the Nigerian Constitution 1999 and article 7 of the African Charter.

Whereas the lower court granted the relief sought by the plaintiffs/respondents, the defendants/appellants raised the following issues for determination:

- (a) whether it is *ultra vires* the trial court to declare the entire POA unconstitutional when it only considered sections 1(2), (3), (4), (5) and (6) and sections 2, 3 and 4 of the Act, alleged to be inconsistent with the Nigerian Constitution 1999;
- (b) whether the appellant was competent under the POA or any other law to stop the holding of any assembly, procession or rally without a permit or licence.

In determining the appeal, the Court of Appeal considered the provisions of sections 40 and 45 of the Nigerian Constitution as well as sections 1(2), (3), (4), (5) and (6) and sections 2, 3 and 4 of the POA. Whereas the relevant sections of the POA are mentioned above, section 40 of the Nigerian Constitution guarantees freedom of association and assembly while section 45 thereof subjects such guarantees to some permissible derogation in the interest of defence, public safety, public order, public morality or public health and for the purpose of protecting the rights and freedom of other persons.

In dismissing the appeal, the Court of Appeal held that:⁶⁹

[T]he Constitution should be interpreted in such a manner as to satisfy the yearnings of the Nigerian society. The 1999 Constitution is superior to other legislation in the country and any legislation which is inconsistent with the Constitution would be rendered inoperative to the extent of such inconsistency. *Section 1(2), (3), (4), (5) and (6) and sections 2, 3 and 4 of the POA are inconsistent with the constitution – they are null and void to the extent of their inconsistency.*

The Court further emphasised that⁷⁰

[t]he power given to the governor of a state to issue a permit under the POA cannot be used to attain the unconstitutional result of the deprivation of the right to freedom of speech and freedom of assembly. The constitutional power given to the legislature to make laws cannot be used by way of a condition to attain unconstitutional result.

⁶⁹ *Per Adekeye JCA 499-500 paras F-G (my emphasis).*

⁷⁰ 499 paras B-C.

In the face of these conflicts in the decisions of the Court of Appeal, the police resorted to an assumption (erroneously) that they were at liberty to choose whichever decision to follow since the decisions were both of the same court. It is, however, my view that *Chukwuma*⁷¹ can be distinguished from *IGP v ANPP*.⁷² These decisions are distinguishable in the following respects: First, unlike the *ANPP* case, there was a likelihood of a breach of order in the *Chukwuma* case due to the contentious circumstances in the latter case. Exhibit 6, which was a complaint lodged by the leadership of the Igbo's in Kwara State against the police, alerted the police about what they called 'a security risk' if the planned meeting was allowed.⁷³ The Court of Appeal in this case observed that⁷⁴

[I]n the instant case, the police was justified to disrupt the appellants' meeting and seal off the venue of the meeting in view of the fact that there were two rival groups in the tussle for the headship of the Igbo community in Kwara State and that the other group has manifested their displeasure over the holding of the appellants' meeting.

Second, the contention of the appellants in the *Chukwuma* case was not premised on the constitutionality or otherwise of the POA; rather, their contention was that their meeting was not a public assembly as defined by section 12(1) of the POA, hence the police was wrong in disrupting a private meeting held in a private place. On the contrary, the respondents in *IGP v ANPP* challenged the constitutionality of the enumerated provisions of the POA which required the consent or licence of the governor and/or police before holding rallies, processions and assemblies.

Thirdly, assuming, without conceding that the same issues were raised and determined differently by the two divisions of the Court of Appeal, the position of the law on this matter is settled by the Supreme Court in the case of *Mkpadem v Edem*,⁷⁵ in which the Supreme Court held that 'where there are two conflicting decisions of the same or co-ordinate courts, the latter decision of the court constitutes a bar on or against the other'. Accordingly, therefore, the latter decision, which has declared those sections of the POA void, would stand as the authoritative decision. It is my submission, therefore, that the decision of the Court of Appeal in *IGP v ANPP* (which was not appealed) is the current law on the constitutionality of these provisions of the POA.

From the analysis above, I argue that, while demonstrations and public protests are unfettered rights guaranteed under international and municipal law, the POA which sought to impose limitations on its

⁷¹ n 64 above.

⁷² n 68 above.

⁷³ *Chukwuma* (n 64 above) 188 paras A-F.

⁷⁴ *Chukwuma* (n 64 above).

⁷⁵ (2000) 9 NWLR (Pt 672) 631 644.

exercise (to the extent of requiring a pass or licence before proceeding on such an exercise), is void. The question, therefore, is why the police insist on enforcing these limitations in spite of the government professing to be democratic and the decision in *IGP v ANPP*. The answer to this question is unconnected with the nature and character of Nigerian politics and the political economy of policing earlier discussed. The extreme quest for power for social and economic gain and the fear of losing it to rival factions are squarely responsible for this.⁷⁶ This drive for power is responsible for the attitude of the ruling elite in using the police force to intimidate and repress rival factions who seek to wrestle political power from them.

Consequently, therefore, the right to demonstrate and/or protest has been politicised in Nigeria. There is no objectivity in the exercise of the powers conferred on the governors and the police in limiting and moderating the exercise of these rights. Once the interests of the ruling party or regime are threatened by a rally, protest or procession, the authority of the governor or the police will be exercised negatively. On the other hand, where the interest of the regime or its image stands to be enhanced by a rally, procession or protest, such authority is not only given but police protection is enlisted for the participants. This has been a consistent attitude by Nigerian regimes, both military and civil. In 1976 the Nigerian government allowed protests and demonstrations against the Israeli bombing of the international airport at Entebbe, Uganda, and received letters of protest from various groups in the country. Similarly, in 1996, the Abacha military regime did not only allow an excessively publicised 'one million man march', but it also gave monetary compensation to thousands of youths all over the country to demonstrate in support of the dictator, General Abacha, when the same regime repressed the Ogoni civil protests with massive police and military brutality.

Even under this dispensation, where there seems to be a half-hearted approval to isolated labour protests, governors of the ruling party have always dissociated themselves from protesters by staying away from them. This claim was confirmed by the President of the Nigerian Labour Congress (NLC) in his response to the absence of the governor of Oyo State, when the labour protesters came to deliver their letter of protest.⁷⁷ The labour leader remarked that 'this has been the practice of all governors who are members of the ruling party (PDP), as governors who are members of opposition parties have always waited in their offices to receive us'.⁷⁸ This disingenuous attitude to public protest led to a general perception of demonstration as 'rioting', since the

⁷⁶ See Ake (n 41 above) 1-12 where this claim finds support.

⁷⁷ HT Soweto 'Labour and civil society coalition rally in Ibadan: Call for change gain an echo among working class masses and youths' <http://www.socialistnigeria.org/page.php?article=1512> (accessed 14 September 2010).

⁷⁸ As above.

legitimate request to exercise the right to protest is most often turned down, forcing the people to turn their despair against the state by resorting to rioting rather than peaceful demonstration. Had the right been allowed to develop over time, the people, even the uneducated, would have realised that demonstrations are not necessarily riotous or violent.

The final issue to be considered is which steps may be taken by all organs of government to ensure a responsible exercise of the right to demonstrate under our democracy.

6 The way forward

From the foregoing analysis, we have found that demonstrations and protest are lawful in a democratic society such as ours. However, an unbridled exercise of this right would result to a greater violation of the rights of others. The imposition of reasonable conditions for the orderly exercise of this right is therefore imperative, as such is the practice in advanced democracies. Unfortunately, however, the POA, which sought to impose such conditions has been decimated by the declaration of some of its provisions as incompatible with the 1999 Constitution. This, therefore, requires urgent legislative measures to prevent the occurrence of what I call a time bomb. As rightly suggested by the Court of Appeal, 'the POA should be promulgated to complement sections 39 and 40 of the 1999 Constitution in context and not to cripple or stifle it'.⁷⁹ In view of the forthcoming 2011 general elections in Nigeria, the National Assembly should therefore enact a reasonable and balanced public protest law that will allow democracy to run its course while enforcing law and order and protecting the rights of others. An urgent amendment of the POA in line with the Constitution and democratic tenets is therefore a critical starting point.

Second, developments in public order policing in established democracies show that intelligence policing has become one of the most important strategies of the police in managing protests.⁸⁰ The strategy enables the police to estimate the intent of the protesters, the number of protesters turning up to a protest site, the exact location or areas to be covered, the possibility or likelihood of transformation into violence and the media mobilisation strategies of the protesters, and such. This clearly has important implications for the accurate and effective deployment of police resources.⁸¹ The Nigerian police should

⁷⁹ *IGP v ANPP* (n 68 above) per Muhammad JCA 501 paras G-H.

⁸⁰ See among others M Maguire & T John 'Intelligence, surveillance, and informants: Integrated approaches' *Police Research Group Crime and Prevention Series*, Paper 64, Home Office, London; Button *et al* (n 2 above) 29; De Lint (n 1 above) 184.

⁸¹ Button *et al* (n 2 above).

therefore improve its technological deficiencies and gather intelligence during the build-up to protests.⁸²

In view of their lack of capacity, both in terms of personnel and equipment, the Nigerian police may also adopt what Hoogenbloom⁸³ calls 'grey policing' to complement their inadequacies. In this respect, therefore, the expertise, information, personnel and equipment at the disposal of other agencies such as the Nigerian armed forces, the para-military agencies, private security outfits, private investigators, the intelligence agencies and so on could be harnessed in the policing of public protests. This is because a resort to firearms is usually had when the police are overwhelmed.

We must not lose sight of the importance of civic education on the right of demonstrations and civil protests as well as the means of exercising these rights responsibly. Most often, we are quick to blame the police for refusing to allow protests, processions and so on, while forgetting the likelihood or real threat of a breach of order that is inherent in the exercise of this right. As stated earlier, demonstrations are often mistaken for riots in Nigeria because of the peculiarities of our political history. In view of the police's attitudes and responses to peaceful demonstrations, therefore, public reaction to perceived wrongs often takes the form of rioting rather than peaceful protests. This is understandably so because of the presumption that legitimate requests for responsible expression of dissent would be denied by the authorities. Consequently, many rallies originally conceived as peaceful are eventually hijacked by hoodlums and turned into riots. There is, therefore, a compelling need for civil society organisations and government to educate the population on the right to peaceful demonstrations and ways in which to exercise it. Similarly, government, through security agencies, should allow the legitimate exercise of these rights so as to encourage the development of this democratic norm.

Third, the crowd control capacity of the police must be improved. This is because people are emotional during protests. The point is that there is a likelihood of violence or disorder in any protest. The police, therefore, need modern crowd control technologies to cope with any violence or disorder when policing demonstrations or processions. The Nigerian police unfortunately grapple with obsolete and inadequate crowd control equipment (tear gas). A move away from these obsolete and inhuman crowd control measures towards new technologies used elsewhere will aid the exercise of the right to protest in Nigeria.

⁸² As above.

⁸³ B Hoogenbloom 'Grey policing: A theoretical framework' (1991) 2 *Policing and Society* 17-30. Hoogenbloom describes 'grey policing' as those forms of informal cooperation between the state police, regulatory agencies and the private sector that include practices such as the use of each other's powers, exchange of information and sharing of technological gadgets.

There is also a need to introduce a human rights component in the curricula of all police colleges in the country. The mistake that is often made by the police and the armed forces is that such training is usually exclusive to officers, whereas 95 per cent of the human rights abuses that are committed by the police and other agents of security forces are perpetrated by the lower ranks. This stresses the recommendation to prescribe a minimum bar of Ordinary National Diploma (OND) for recruitment into the Nigerian police force.

Finally, I recommend continued professional development in the form of compulsory and regular in-service training, conferences and workshops for the police force and other security forces. Only then will the personnel appreciate or keep tabs of current best practices in policing in a democracy. The present situation, where police spend decades without any form of professional development, does not augur well for policing in a civilised society.