

## RECENT DEVELOPMENTS

# Right to Peaceful Protest in Nigeria and the Recurrent Syndrome of Brutalization: The #EndSARS Protest Debacle

Alex Cyril Ekeke\* 

University of Fort Hare, East London, South Africa  
Email: [alexekeke@yahoo.com](mailto:alexekeke@yahoo.com)

(Accepted 12 September 2022; first published online 14 April 2023)

### Abstract

Protests play a significant role in the political, economic, social and cultural life of our societies. Protests have repeatedly motivated positive social change. Through protesting, individuals and groups express disagreement, opinions and objections to government actions or inactions. Protests bring attention to errors in governance and demand their rectification. The right to peaceful protest is protected under the international and African regional human rights frameworks, including the Nigerian Constitution. In Nigeria, the Public Order Act is designed to support the appropriate and peaceful conduct of peaceful assemblies (protests), meetings and processions. Yet the Nigerian government does not respect the right to peaceful protest, particularly in the case of protests against the government. This can be seen in recent protests against Nigeria's notorious Special Anti-Robbery Squad. This article examines the context of the application of the right to peaceful protest in Nigeria in view of the recent #EndSARS protests.

**Keywords:** #EndSARS; Right to Protest; Nigeria; SARS; Lekki

### Introduction

In early October 2020, Nigerians started protests calling for the disbanding of the Special Anti-Robbery Squad (SARS), an infamous police unit accused of violent harassment and extrajudicial killings across the nation.<sup>1</sup> The protests erupted following a viral video showing a SARS officer allegedly shooting a man in Delta State, before driving off.<sup>2</sup> Peaceful protests, primed under the hash tag #EndSARS, spread across the country and to Nigerians in diaspora in solidarity with the movement, including in the USA and Europe.

On 20 October 2020, Nigerian soldiers shot at protesters at Lekki Toll Gate, in a bid to restrict the #EndSARS protest, killing at least ten persons, according to the report of the Lagos State Judicial Panel of Inquiry on Restitution for Victims of SARS Related Abuses and Other Matters (Judicial

\* LLB and BL (Nigeria), LLM and LLD (Pretoria). Postdoctoral research fellow, Department of Public Law, Nelson R Mandela School of Law, University of Fort Hare, East London, Eastern Cape, South Africa; lecturer, Department of General Studies, Federal College of Education (Technical), Omoku, Nigeria.

1 TM Ebiede "The massive protests in Nigeria, explained" (26 October 2020) *The Washington Post*, available at: <<https://www.washingtonpost.com/politics/2020/10/26/massive-protests-nigeria-explained/>> (last accessed 20 January 2023).

2 J Parkinson "Nigeria protests: What's happening and why are people demonstrating against SARS?" (26 October 2020) *The Wall Street Journal*, available at: <<https://www.wsj.com/articles/nigeria-protests-whats-happening-and-why-are-people-demonstrating-11603277989>> (last accessed 14 February 2023).

Panel of Enquiry).<sup>3</sup> Furthermore, on 13 February 2021, the Nigerian police once again restricted #EndSARS protests, arresting many protesters including a popular comedian named Debo Adedayo (Mr Macaroni).<sup>4</sup>

SARS was created in 1992 to fight serious, violent crimes in Nigeria, including carjacking and armed robbery; however, SARS become synonymous with allegations of police brutality and impunity.<sup>5</sup> Amnesty International has documented SARS alleged abuses, including extortion, rape and extrajudicial killings of innocent civilians.<sup>6</sup> Many people in Nigeria have complained about SARS frequently extorting young Nigerians who seemed to have disposable income.<sup>7</sup> The #EndSARS protest became a messaging board for traumatic personal stories of violence, theft, intimidation, rape and extrajudicial killings by SARS. The Nigerian government's reaction to the #EndSARS protests has once again brought to the fore its intolerance of protest, especially against government actions. The Nigerian government's intolerance of protests against its actions is a long-standing concern, as can be seen in past protests, such as the All Nigeria Peoples Party protest in 2003 and protests by the Academic Staff Union of Universities in 2012, which was violently broken-up by the police (see below). This article examines the right to peaceful protest in Nigeria in view of the recent #EndSARS protests.

### Right to peaceful protest under international law

Throughout history, peaceful protests have helped to force a reassessment of society's moral bounds. Movements have used peaceful protest to achieve their aims, including the recognition of rights, and the end of slavery, colonialism and racial discrimination.<sup>8</sup> Recently, the Black Lives Matter (BLM) movement, formed in 2013 in the USA and committed to fighting racism especially in the form of police brutality, has grown into a worldwide protest.<sup>9</sup> BLM protests have been largely peaceful<sup>10</sup> and have resulted in some major changes. These include police reforms (for example, some cities, such as Washington DC in the USA, have passed policies restricting the use of chokeholds by law enforcement agents), racist relics (for example, several monuments honouring slave owners, colonizers and Confederate leaders have been removed) and education (for example, schools, including

3 See *Report of Lagos State Judicial Panel of Inquiry on Restitution for Victims of SARS Related Abuses and Other Matters* (2021) at 287–91; and Ebiede “The massive protests”, above at note 1. See also, Parkinson “Nigeria protests”, above at note 2.

4 S Busari and N Princewill “Nigerian police arrest protesters at Lekki shooting site” (13 February 2021) *CNN News*, available at: <<https://edition.cnn.com/2021/02/13/africa/nigeria-endsars-lekki-protests-intl/index.html>> (last accessed 20 January 2023); PI Williams “Lekki Toll Gate Lagos Nigeria [EndSARS protest]: Police arrest Mr Macaroni, odas on February 13 ‘Occupy Lekki Toll Gate protest’ wit heavy security for Admiralty Plaza” (13 February 2021) *BBC Pidgin*, available at: <<https://www.bbc.com/pidgin/tori-56033351>> (last accessed 20 January 2023).

5 *Ibid.*

6 See for example, O Ojigbo “Nigeria: Horrific reign of impunity by SARS makes mockery of anti torture law” (26 June 2020, Amnesty International), available at: <<https://www.amnesty.org/en/latest/news/2020/06/nigeria-horrific-reign-of-impunity-by-sars-makes-mockery-of-anti-torture-law/>> (last accessed 14 February 2023). See also *Nigeria: Time to End Impunity: Torture and Other Human Rights Violations by Special Anti-Robbery Squad (SARS)* (June 2020, Amnesty International), available at: <<https://www.amnesty.org/en/documents/af44/9505/2020/en/>> (last accessed 20 January 2023).

7 Parkinson “Nigeria protests”, above at note 2.

8 See M Werft and J Ngalle “5 Peaceful protests that led to social and political changes” (8 July 2016) *Global Citizen*, available at: <<https://www.globalcitizen.org/en/content/peace-protests-dallas-response/>> (last accessed 14 February 2023).

9 AD Hoffman “Black Lives Matter: Pain, protest, and representation” (2017) 7 *Midwest Journal of Undergraduate Research* 223 at 226 and 227; V Williamson, K Trump and KL Einstein “Black Lives Matter: Evidence that police caused deaths predict [sic] protest activity” (2018) 16/2 *Perspectives on Politics* 400 at 401. See also “Black Lives Matter: International activist movement” *Britannica*, available at: <<https://www.britannica.com/topic/Black-Lives-Matter>> (last accessed 20 January 2023).

10 S Mansoor “93% of Black Lives Matter protests have been peaceful, new report finds” (5 September 2020) *Time*, available at: <<https://time.com/5886348/report-peaceful-protests/>> (last accessed 20 January 2023).

in Milwaukee, Indianapolis, San Diego, and Philadelphia districts, are adopting racial equity policies and closing racial gaps among students).<sup>11</sup>

In Africa, peaceful protests have proven to be a feasible instrument for showing socio-political or economic resistance and people around Africa have used this tool many times to protest against their government's actions and to demand government attention to act in a particular way.<sup>12</sup> For example, the Arab Spring was a series of anti-government protests that spread across much of the Arab world in the early 2010s.<sup>13</sup> It began in response to corruption and economic stagnation; it started in Tunisia and resulted in many Arab rulers being deposed. Although some would argue that deep-seated structural problems remain,<sup>14</sup> the Arab Spring is an example showing that peaceful protest has the power to change the system.

The right of peaceful assembly (including the right to peaceful protest)<sup>15</sup> is protected under the international human rights framework. Article 21 of the 1966 International Covenant on Civil and Political Rights (ICCPR) provides:

“The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others.”

Correspondingly, at regional level, article 11 of the African Charter on Human and Peoples' Rights (African Charter) provides: “[e]very individual shall have the right to assemble freely with others. The exercise of this right shall be subject only to necessary restrictions provided for by law in particular those enacted in the interest of national security, the safety, health, ethics and rights and freedoms of others.”

Similar to the provisions of article 21 of the ICCPR and article 11 of the African Charter, the right to peaceful protest is articulated in other international and regional instruments,<sup>16</sup> and its content has been elaborated in the views, resolutions and interpretative guidelines of monitoring bodies.<sup>17</sup>

11 J Menjivar “Black Lives Matter protests: What’s been achieved so far” (13 August 2020) *Dosomething*, available at: <<https://www.dosomething.org/us/articles/black-lives-matter-protests-whats-been-achieved-so-far>> (last accessed 20 January 2023).

12 See generally ER Sanches “Zooming in on protest and change in Africa” in ER Sanches (ed) *Popular Protest, Political Opportunities, and Change in Africa* (2022, Routledge) 1; G Kibanja et al “African perspectives on peaceful social protests” in K Malley-Morrison, A Mercurio and G Twose (eds) *International Handbook of Peace and Reconciliation* (2013, Springer) 217; and G Mavunga “#FeesMustFall protests in South Africa: A critical realist analysis of selected newspaper articles” (2019) 7/1 *Journal of Student Affairs in Africa* 81.

13 See generally EA Salam “The Arab Spring: Its origins, evolution and consequences ... four years on” (2015) 23/1 *Intellectual Discourse* 119; and S Puspitasari “Arab Spring: A case study of Egyptian revolution 2011” (2017) 6/2 *Andalus Journal of International Studies* 160.

14 A Allmeling and N Amies “An incomplete revolution” (2011), available at: <<https://www.dw.com/en/the-arab-spring-2011-an-incomplete-revolution/a-15595634-0>> (last accessed 20 January 2023).

15 See General Comment No 37 (2020) on the Right of Peaceful Assembly (Article 21), para 6: “Article 21 of the Covenant protects peaceful assemblies wherever they take place ... such assemblies may take many forms, including demonstrations, protests, meetings, processions”.

16 For example, the Universal Declaration of Human Rights, art 20(1); Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights), art 11; and American Convention on Human Rights, art 15.

17 For example, in respect of the regional mechanisms, see: *Guidelines on Freedom of Peaceful Assembly* (3rd ed, 2019, Organization for Security and Cooperation in Europe, Office for Democratic Institutions and Human Rights, and European Commission for Democracy through Law (Venice Commission)); *Guidelines on Freedom of Association and Assembly in Africa* (2017, African Commission on Human and Peoples' Rights); and *Guidelines for the Policing of Assemblies by Law Enforcement Officials in Africa* (2017, African Commission on Human and Peoples' Rights).

The right to peaceful protest is an important right that allows people to express themselves collectively and to contribute to shaping their societies. Peaceful protest can take place outdoors or indoors, in public or private spaces, and extends to remote and digital activities including online,<sup>18</sup> which was especially relevant during the COVID-19 pandemic, when many peaceful protests moved online.<sup>19</sup> It also represents the very foundation of a system of participatory governance in a democratic system. The right to peaceful protest is also an important tool that can and has been used to recognize and realize a wide range of other rights, including economic, social and cultural rights.<sup>20</sup> According to General Comment No 37<sup>21</sup> on the right to peaceful assembly, the UN Human Rights Committee stated that “failure to respect and ensure the right of peaceful assembly is typically a marker of repression”.<sup>22</sup>

Respecting the right to peaceful assembly imposes negative and positive duties on state parties to ensure its enjoyment without discrimination. The negative duty “requires States to allow such assemblies to take place without unwarranted interference and to facilitate the exercise of the right and to protect the participants”.<sup>23</sup> This can be done by not restricting, blocking, dispersing or disrupting peaceful assemblies without compelling justification. Positive duties of state parties include to facilitate peaceful assemblies and to promote an enabling environment for the exercise of the right to peaceful assembly. This should be done without discrimination, including providing protection for protesters “against possible abuse by non-state actors, such as interference or violence by other members of the public”.<sup>24</sup> While there is no clear dividing line between protests that are peaceful and those that are not, there is a presumption in favour of considering protests to be peaceful; additionally, violence against participants or isolated acts of violence by some protesters should not be attributed to others. Thus, some protesters may be protected by article 21, while others are not.<sup>25</sup>

Nigeria is a state party to the ICCPR as well as the African Charter; however, the Nigerian government has continued to disregard the provisions of article 21 of the ICCPR and article 11 of the African Charter, particularly when it comes to protests against the government. This was demonstrated in its handling of the #EndSARS protests.

18 General Comment No 37, above at note 15, para 6.

19 For example, after George Floyd’s death, thousands took to the streets in the USA, protesting against anti-black racism and in support of the BLM movement. This flame of protest continued to burn in the digital space. On Twitter, people began matching donations to bail funds and people posted plain black squares to Instagram as part of #BlackoutTuesday. See K Rosenblatt “On social media, donation matching raises millions for George Floyd protesters” (1 June 2020) *NBC News*, available at: <<https://www.nbcnews.com/news/us-news/social-media-donation-matching-raises-millions-george-floyd-protesters-n1221301>> (last accessed 20 January 2023); and S Ho “A social media ‘blackout’ enthralled Instagram. But did it do anything?” (13 June 2020) *NBC News*, available at: <<https://www.nbcnews.com/tech/social-media/social-media-blackout-enthralled-instagram-did-it-do-anything-n1230181>> (last accessed 20 January 2023). See also I Filippov, E Yureskul and A Petrov “Online protest mobilization: Building a computational model” (paper presented at the 13th International Conference on the Management of Large-Scale System Development, Moscow, Russia, 28–30 September 2020); and ZC Steinert-Threlkeld “Online social networks and offline protest” (2015) 4/19 *EPJ Data Science* 1.

20 General Comment No 37, above at note 15, para 2.

21 A general comment is a treaty body’s interpretation of human rights treaty provisions; it often seeks to clarify the duties of state parties regarding specific provisions of a treaty and suggests approaches to implement those provisions. General comments are important, expert pronouncements on treaty or covenant issues, but are not legally binding. See generally, H Keller and L Grover “General comments of the Human Rights Committee and their legitimacy” in H Keller and G Ulfstein (eds) *UN Human Rights Treaty Bodies: Law and Legitimacy* (2012, Studies on Human Rights Conventions) 116.

22 General Comment No 37, above at note 15, para 2.

23 Id, paras 8 and 23.

24 Id, para 24.

25 Id, paras 17 and 18.

### Peaceful protest in Nigeria and the “filibuster” of the #EndSARS protest

The right under international law to protest peacefully is indisputable and Nigeria has over the years made various laws that give the impression of upholding the right to peaceful protest. However, some of these laws restrict and sometimes, through government action, stifle the enjoyment of the right to peaceful protest.

The right to peaceful protest is guaranteed under section 40 of the Constitution of the Federal Republic of Nigeria 1999 (the Constitution), which provides: “[e]very 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 association for the protection of his interests”. This provision undoubtedly shows that the right to peaceful protest is to be enjoyed by all persons, although peaceful assembly is only provided in the side note, not in the main provision. The fact that the section does not specifically mention peaceful assembly is immaterial.

However, it should be noted that the right to protest is not absolute.<sup>26</sup> Exercising the right to protest, even peacefully and unarmed, could infringe upon the rights of other people, especially in the case of protests in public places. Public places cannot be occupied indefinitely.<sup>27</sup>

The last part of the second sentence of article 21 of the ICCPR outlines the reasonable grounds on which the right to peaceful protest may be restricted. They include: “national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others”. Therefore, any restriction to the right to peaceful assembly must be necessary and in accordance with the law in a democratic society.<sup>28</sup>

The state may restrict peaceful protest if restrictions become essential to preserve the state’s survival, territorial integrity or political independence against a likely threat or use of force.<sup>29</sup> In certain circumstance, such as for reasons of national security, some rights could justifiably be limited so as to protect a state’s territorial integrity or political independence against an external threat.<sup>30</sup> Furthermore, if it is established that a protest would potentially create a significant risk to the safety of people or property, the state may invoke “public safety”<sup>31</sup> as a ground for restricting the right to peaceful assembly.<sup>32</sup>

Similarly, a state may invoke “public order”<sup>33</sup> to justify restrictions to the right to peaceful protest.<sup>34</sup> States should not rely on an unclear definition of “public order” to justify overly broad restrictions to the right to peaceful protest. This is necessary because peaceful protest can sometimes be characteristically or intentionally disruptive and requires a substantial degree of tolerance.<sup>35</sup> Likewise, protecting “the rights and freedoms of others” can be a justifiable basis on which to restrict the enjoyment of the right to peaceful protest.<sup>36</sup> Protesters can legitimately make use of

26 See *Amit Sahni v Commissioner of Police and Others* civil appeal no 3282 of 2020, para 17.

27 *Ibid.*

28 “Facilitating peaceful protests” (2014, Geneva Academy of International Humanitarian Law and Human Rights briefing no 5) at 8, available at: <<https://www.geneva-academy.ch/joomlatools-files/docman-files/Facilitating%20Peaceful%20Protests%20.pdf>> (last accessed 20 January 2023).

29 General Comment No 37, above at note 15, para 42.

30 Siracusa Principles on the Limitation and Derogation of Provisions in the ICCPR (E/CN.4/1985/4, annex), para 29.

31 “Public safety means protection against danger to the safety of persons, to their life or physical integrity, or serious damage to their property”: *id.*, para 33.

32 General Comment No 37, above at note 15, para 43.

33 A public order offence is a crime involving acts that interfere with the operations of society and people’s ability to function efficiently. Public order is important because, without it, society would lapse into anarchy. It is difficult to have a fully operational society if disorder is allowed to reign unchecked.

34 See IT Sampson “The right to demonstrate in a democracy: An evaluation of public order policing in Nigeria” (2010) 10 *African Human Rights Law Journal* 432 at 448; and General Comment No 37, above at note 15, para 44.

35 General Comment, *ibid.*

36 *Id.*, para 47.

public spaces; however, unless they impose a disproportionate burden where the rights and freedoms of non-protesters are impeded, they should not be restricted.

Since the return to democratic rule on 29 May 1999, Nigerians have demanded the right to peaceful assembly by way of protest, while the state has been invoking some undemocratic provisions in the Public Order Act to restrict Nigerians from peaceful protest.<sup>37</sup> For example, section 1(3) of the Public Order Act makes it mandatory for individuals or groups to apply for and obtain a police permit or approval to hold rallies and peaceful assemblies. The police have strictly followed the provisions of this section. For example, in January 2012 the police violently disrupted mass protests against the so-called removal of a fuel subsidy.<sup>38</sup> Likewise, during a protest by the Academic Staff Union of Universities to draw public attention to the underfunding of public universities in Nigeria, the police used tear gas to disperse the protesting academics.<sup>39</sup> While justifying the violent attack by police on protesters, Joseph Mbu, the Rivers State commissioner of police, claimed that the rally was unauthorized, as the conveners had not obtained a police permit.<sup>40</sup>

In *All Nigeria Peoples Party and Others v Inspector General of Police*,<sup>41</sup> the plaintiffs, being registered political parties, applied for police permits from the defendant, the inspector general, to enable them to hold unity rallies throughout the country to protest against the rigging of the 2003 elections.<sup>42</sup> The inspector general declined this request; however, the plaintiffs went ahead with the rallies, which the police broke-up violently in Kano on 22 September 2003, on the ground that no police permit had been obtained.<sup>43</sup> Consequently, the plaintiffs challenged the constitutional validity of a police permit under the Public Order Act and the violent disruption of their rally; in its defence, the defendant contended that the plaintiffs had not obtained a police permit.<sup>44</sup> In dismissing the police's contention, the lower court declared, *inter alia*:

“That the requirement of police permit or other authority for the holding of rallies or processions in Nigeria is illegal and unconstitutional as it violates section 40 of the 1999 Constitution and Article 11 of the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act (Cap 10) Laws of the Federation of Nigeria, 1990. That the provisions of the Public Order Act (Cap 382) Laws of the Federation of Nigeria, 1990 which require police permit or any other authority for the holding of rallies or processions in any part of Nigeria is illegal and unconstitutional as they contravene section 40 of the 1999 Constitution and Article 7 of the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act (Cap 10) Laws of the Federation of Nigeria, 1990.”<sup>45</sup>

Not satisfied, the inspector general appealed to the Court of Appeal. The Court of Appeal upheld the High Court decision. Declaring section 1(3) to be unconstitutional, Justice Adekeye of the Court of Appeal held:

“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

37 VC Iwuoha and ET Aniche “Protests and blood on the streets: Repressive state, police brutality and #EndSARS protest in Nigeria” (2022) 35 *Security Journal* 1102, available at: <<https://doi.org/10.1057/s41284-021-00316-z>> (last accessed 20 January 2023).

38 F Falana “Police permit not required for rallies in Nigeria” (23 January 2014) *Premium Times*, available at: <<https://www.premiumtimesng.com/opinion/153860-police-permit-required-rallies-nigeria.html>> (last accessed 20 January 2023).

39 *Ibid.*

40 *Ibid.*

41 (2006) CHR 181.

42 Falana “Police permit not required”, above at note 38.

43 *Ibid.*

44 *Ibid.*

45 *Ibid.*

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.”<sup>46</sup>

With this declaration, no permit is required; protesters in Nigeria need to do nothing more than notify the authorities of their intent. This would go a long way towards preventing the state and the police from abusing the notification process. However, the court’s decision in this case has not yet been reflected in legislative changes, nor have the Nigerian police adhered to the court’s decision. This fact was revealed by the way the police handled the #EndSARS protesters.

### *The #EndSARS protest debacle, the pinnacle*

From 5–20 October 2020, Nigerians, especially youths, went out en masse to protest against SARS, a protest that gained international attention and support on a scale not seen before.<sup>47</sup> This new protest wave started on Twitter with the hash-tag #EndSARS after accusations and videos of SARS officers robbing, attacking and even killing people extrajudicially started trending online.<sup>48</sup> Following these protests, the Federal Capital Territory Security Committee in Abuja issued a ban on the #EndSARS protest in Abuja.<sup>49</sup> Furthermore, another ban was issued by the police in Lagos and a 24 hour curfew imposed by the Lagos State Government.<sup>50</sup> This time the protesters defied the ban order,<sup>51</sup> curfew,<sup>52</sup> alleged sponsored armed thugs against protest,<sup>53</sup> police, anti-protest norms and oppressive norms that have characterized protests under successive governments in Nigeria.<sup>54</sup> To many, the defiance indicated a new dawn in Nigeria, and signified the first time that the Nigerian government became afraid of the people and apologized for its actions and inactions.<sup>55</sup>

On 11 October, the government announced the disbanding of SARS in response to the protests and replaced it with the Special Weapons and Tactics team. This was the fourth time the government had made an announcement about either disbanding or reforming the force, but

46 *Inspector General of Police v All Nigeria Peoples Party and Others* (2007) 18 NWLR (pt 1066) 457 at 491–99.

47 RA Ekwunife et al “EndSARS protest and centralized police system in Nigeria” in A Farazmand (ed) *Global Encyclopedia of Public Administration, Public Policy, and Governance* (2021, Springer Nature Switzerland) 1 at 3.

48 See MO Oyebo “Violent protests in Nigeria: Causes, dynamics and viable solutions” (2022) 7/2 *KIU Journal of Humanities* 117 at 124; and “End Sars: How Nigeria’s anti-police brutality protests went global” (17 October 2020) *BBC News*, available at: <<https://www.bbc.com/news/world-africa-54575219>> (last accessed 20 January 2023).

49 See “Ban on #EndSARS protest in Abuja: Unconstitutional and undemocratic” (Social Development Integrated Centre press release, 16 October 2020), available at: <<https://saction.org/Ban-on-#EndSARS-Protest-in-Abuja-Unconstitutional-and-Undemocratic>> (last accessed 20 January 2023).

50 N Sunday “Breaking: Police ban #ENDSARS protests, others in Lagos” (20 October 2020) *Vanguard*, available at: <<https://www.vanguardngr.com/2020/10/breaking-police-ban-endsars-protests-others-in-lagos/>> (last accessed 14 February 2023).

51 N Kalu “#ENDSARS protesters defy ban order, storm National Assembly” (15 October 2020) *The Nation*, available at: <<https://thenationonlineng.net/endsars-protesters-defy-ban-order-storm-national-assembly/>> (last accessed 20 January 2023).

52 “Timeline: #EndSARS protests in Nigeria” (22 October 2020) *Aljazeera*, available at: <<https://www.aljazeera.com/news/2020/10/22/timeline-on-nigeria-unrest>> (last accessed 20 January 2023).

53 P Kulkarni “Nigerian protesters stay on the streets defying armed thugs as army begins 2 month long exercise” (20 October 2020) *Peoples Dispatch*, available at: <<https://peoplesdispatch.org/2020/10/20/nigerian-protesters-stay-on-the-streets-defying-armed-thugs-as-army-begins-2-month-long-exercise/>> (last accessed 20 January 2023).

54 S Nwite “#EndSARS: Nigeria’s generation Z: The force defying the anti-protest norm” (17 October 2020) *Tekedia*, available at: <<https://www.tekedia.com/endsars-nigerias-generation-z-the-force-defying-the-anti-protest-norm/>> (last accessed 14 February 2023).

55 *Ibid.*

activists say the move does not go far enough.<sup>56</sup> However, the protest went beyond the call to end SARS. Protesters made five core demands, including the immediate release of all arrested protesters, justice for the families and victims of police brutality, retraining of SARS officers before their redeployment to other police units and an independent body to oversee investigations into police brutality.<sup>57</sup> Protesters also expanded their protest beyond police brutality to include frustration at years of corruption and bad leadership.<sup>58</sup> After about two weeks of continuous protests against the government in general, on 20 October 2020 the government brought a combined force of police and the military to bring a brutal end to the protests, killing at least ten protesters at the Lekki Toll Gate, according to Amnesty International.<sup>59</sup> However, the US government, in its 45th annual human rights report, said “accurate information on fatalities resulting from the shooting was not available at year’s end”.<sup>60</sup> The US report further said that “Amnesty International reported 10 persons died during the event, but the government disputed Amnesty’s report, and no other organization was able to verify the claim”.<sup>61</sup> In response, Amnesty International said it stood by the initial findings it had released, based on the information that it had been able to verify independently at that time and called for an independent and transparent investigation.<sup>62</sup> Furthermore, a coalition led by Femi Falana, the Alliance on Surviving COVID-19 and Beyond, claimed the US report on the killing was misleading and dismissed it, describing it as an “unreliable report compiled in Washington”.<sup>63</sup> However, the Lagos State Government had already set up its own Judicial Panel of Inquiry.<sup>64</sup>

56 S Haynes “The Nigerian Army shot dead at least 12 peaceful protesters in Lagos, rights group says. Here’s what to know” (23 October 2020) *Time*, available at: <<https://time.com/5902112/nigeria-endsars-protest-shootings/>> (last accessed 20 January 2023).

57 “Five demands for #EndSARS protesters” (12 October 2020) *Vanguard*, available at: <<https://www.vanguardngr.com/2020/10/five-demands-from-endsars-protesters/>> (last accessed 20 January 2023).

58 Ekwunife et al “EndSARS protest”, above at note 47 at 3.

59 “Nigeria: Killing of #EndSARS protesters by the military must be investigated” (Amnesty International press release, 21 October 2020), available at: <<https://www.amnesty.org/en/latest/news/2020/10/killing-of-endsars-protesters-by-the-military-must-be-investigated/>> (last accessed 20 January 2023). See also Haynes “The Nigerian Army shot dead”, above at note 56; and *Report of Lagos State Judicial Panel*, above at note 3 at 288–91.

60 “2020 Country reports on human rights practices: Nigeria” (30 March 2021, US Department of State, Bureau of Democracy, Human Rights and Labor), available at: <<https://www.state.gov/reports/2020country-reports-on-human-right-practices/nigeria/>> (last accessed 20 January 2023).

61 Id at 3.

62 “US report on Lekki shooting inaccurate: Amnesty International” (1 April 2021) *The Guardian*, available at: <<https://guardian.ng/news/us-report-on-lekki-shooting-inaccurate-amnesty-international/>> (last accessed 15 June 2021).

63 F Owolabi “ASCAB opposes US report on Lekki shooting, saying it’s an attempt to cover up killings” (1 April 2021) *The Cable*, available at: <<https://www.thecable.ng/ascab-opposes-us-report-on-lekki-shooting-says-its-an-attempt-to-cover-up-killings>> (last accessed 20 January 2023).

64 There has been controversy over the legality of this panel. This controversy was raised when Minister of State for Labour and Employment, Festus Keyamo (SAN), challenged the legality of the #EndSARS panel. Keyamo said it was beyond the panel’s jurisdiction to investigate the activities of federal government institutions and officials, such as the Nigeria Police Force and the Nigerian Army: R Ewodage “#EndSARS panel was illegal: Keyamo” (28 November 2021) *Channels*, available at: <<https://www.channelstv.com/2021/11/28/endsars-panel-was-illegal-keyamo/>> (last accessed 14 February 2023). In response, Festus Ogun said that Keyamo’s position did not reflect the true legal position: F Ogun “#EndSARS panel not illegal: A reply to Festus Keyamo” (29 November 2021) *The Cable*, available at: <<https://www.thecable.ng/endsars-panel-not-illegal-a-reply-to-festus-keyamo>> (last accessed 14 February 2023). The Tribunal of Inquiry Law (cap T7, Laws of Lagos State, 2015), sec 1 confers power on the governor of Lagos State to constitute a judicial panel to investigate “the management of any department of the public service”. From the Supreme Court decision in the case of *Fawehinmi v Babangida* (2003) 3 NWLR (pt 808) 604, it is clear that the federal government can only set up a tribunal for the Federal Capital Territory, Abuja and not for states of the federation. The federal government lacks the power and authority to constitute judicial panels or any tribunal whatsoever for state governments. This fact motivated the National Economic Council to direct the immediate establishment of state-based judicial panels of inquiry to investigate complaints of police brutality or related extrajudicial killings, with a view to delivering justice for all victims of the dissolved SARS.



### *Synopsis of the report of the Judicial Panel of Inquiry*

The Lagos State Government set up the Judicial Panel of Inquiry on 15 October 2020. Its main terms of reference were to look into cases of police brutality and other related matters, and award compensation to successful petitioners.<sup>65</sup> The panel began work on 19 October 2020 and concluded on 18 October 2021 with a 309-page report.

Evidence from the testimonies of all witnesses who appeared before the Judicial Panel of Inquiry showed that there had been protests against police brutality and perceived human rights violations, which began in October and ended with the alleged shooting of protesters by soldiers and police at the Lekki Toll Gate in the evening of 20 October 2020.<sup>66</sup>

The report found that the “protesters at the Lekki Toll Gate were defenseless members of the civil populace, youth and young adults”, and that “the Lagos State Government and the Federal Government were well aware of their status, objectives and the nature of their protest”.<sup>67</sup>

According to the report, “the presence of protesters at the Lekki Toll Gate did not threaten the territorial integrity of Nigeria and could not be considered as a civil insurrection to warrant the intervention of the Nigerian Army”; moreover, “some top officials of the Lagos State Government met with the youths at the Lekki Toll Gate around 12.00–1.00 pm on 20 October 2020, seeking selected representatives to discuss an urgent matter with them with a view to persuading them to leave the Lekki Toll Gate”.<sup>68</sup>

The report shows that petitioners who testified before the Judicial Panel of Inquiry proved that they had been hit by bullets and that their injuries were found by the hospitals to be consistent with gunshot injuries.<sup>69</sup> The evidence of Reddington Hospital and Grandville Hospital showed that at least 20 persons who claimed to be protesters had been treated for wounds consistent with gunshot injuries.<sup>70</sup>

The report also found that some “of the 96 corpses for which autopsies were conducted by Professor Obafunwa remain unidentified but they were labelled with EndSARS”.<sup>71</sup> However, the report also noted that “the fact of lack of identity of some of the other 96 corpses on the list supplied by Professor Obafunwa would not obliterate the fact that some of them could have come from the Lekki Toll Gate Incident of October 20, 2020”.<sup>72</sup>

The report shows that “after the Nigerian Army left, the Nigeria Police Force followed up with the killing of the protesters, shooting directly at fleeing protesters into the shanties and the Lagoon”.<sup>73</sup>

The report’s list of casualties from the Lekki incident includes 11 protesters killed, four missing and presumed dead and 22 protesters with gunshot injuries.<sup>74</sup>

From the synopsis of the Judicial Panel of Inquiry report, it is clear that the government intended to suppress the protest with the combined forces of the military and the police, providing yet another example of the government’s intolerance and lack of respect for the right to peaceful protest. Nevertheless, as mentioned above, the right to protest is not absolute. The rights of other people could be infringed during peaceful protests, especially in public places. The indefinite occupation of public places or roads by protesters, which can inconvenience people and violate the rights and freedoms of non-protesters, is not acceptable and could justify restricting a peaceful protest.

65 For its other terms of reference, see *Report of Lagos State Judicial Panel*, above at note 3 at 3–4.

66 *Id* at 281.

67 *Id* at 294.

68 *Ibid*.

69 *Id* at 287.

70 *Ibid*.

71 *Id* at 288.

72 *Ibid*.

73 *Id* at 291.

74 *Id* at 297 and 298.

The #EndSARS protest occupied the Lekki Toll Gate<sup>75</sup> for over two weeks, disrupted people's movements and businesses, and shut down major activities at Nigeria's busiest airport, with major roads blocked and economic activities brought to a halt.<sup>76</sup> The #EndSARS protest could be reasonably seen to have violated the rights and freedoms of non-protesters and that could provide a justification for restricting and dispersing the protest. However, the steps the Nigerian government took to restrict and disperse the #EndSARS protest fall short of the requirements under the UN human rights guidance on less-lethal weapons in law enforcement and General Comment No 37 (2020) on the Right of Peaceful Assembly (article 21). Although the government disbanded SARS and replaced it with the Special Weapon Tactical Team, it did not establish any channels for communication and dialogue with the aim of de-escalating tensions and resolving disputes with the protesters.<sup>77</sup> Rather, it used the military, armed with live ammunition and brute force, to restrict and disperse the #EndSARS protesters.<sup>78</sup>

As a state party to the ICCPR as well as the African Charter, the Nigerian government has a positive duty to facilitate peaceful assemblies and to make it possible for protesters to achieve their aims, by providing an enabling environment for the exercise of their right to protest.<sup>79</sup> Where it becomes absolutely necessary to disperse protesters, as in the case of the #EndSARS protest, only law enforcement officials trained in the policing of assemblies and not the military should be used to disperse protests, except in exceptional circumstances.<sup>80</sup> When dispersing protesters, only the minimum force necessary may be used; force that is likely to cause more than negligible injury should not be used against protesters who are peacefully resisting law enforcement officials.<sup>81</sup>

Less-lethal weapons, such as tear gas and water cannon, although considered potentially lethal in certain circumstances,<sup>82</sup> should be used when dispersing protesters, while all reasonable efforts should be made to limit risks, including causing a stampede or harming bystanders. Non-lethal weapons should only be used as a last resort, following an oral warning and with sufficient opportunity given for protesters to disperse.<sup>83</sup> Firearms must never be used merely to disperse a protest, except on targeted individuals in circumstances where it has become necessary to confront an imminent threat of death or serious injury. It is never lawful to fire indiscriminately when dispersing a protest.<sup>84</sup>

By using the military, excessive force and live ammunition, the Nigerian government failed in its duty to facilitate and / or disperse the #EndSARS protesters in accordance with international law. The Nigerian government is responsible under international law for the actions and omissions of its law enforcement agencies. The Nigerian government should train its law enforcement officials consistently, promoting a culture of accountability during peaceful protests with a view to preventing future violations. Having failed in its duty to facilitate and / or disperse the #EndSARS protesters

75 Lekki Toll Gate is a public space located at the Lekki end of the Lekki-Ikoyi Link Bridge, built with public funds for collecting tolls; it also serves as a recreational facility.

76 A Ajala "Photos: Under the sun and in the rain: Protesters occupy Lekki Tollgate 3 days running" (14 October 2020) *Vanguard*, available at: <<https://www.vanguardngr.com/2020/10/photos-under-the-sun-and-in-the-rain-protesters-occupy-lekki-tollgate-3-days-running/>> (last accessed 15 June 2021); O Adeshokan "Is this Nigeria's Arab Spring moment?" (2 November 2020) *FP News*, available at: <<https://foreignpolicy.com/2020/11/02/is-this-nigerias-arab-spring-moment/>> (last accessed 20 January 2023); C Ezeobi "#EndSARS protesters vow to occupy Lekki Tollgate" (9 February 2021) *Thisday*, available at: <<https://www.thisdaylive.com/index.php/2021/02/09/endsars-protesters-vow-to-occupy-lekki-tollgate/>> (last accessed 15 June 2021); and IB Ochi and KC Mark "Effect of the EndSARS protest on the Nigerian economy" (2021) 9/3 *Global Journal of Arts, Humanities and Social Sciences* 1 at 3.

77 General Comment No 37, above at note 15, para 75.

78 See *Report of Lagos State Judicial Panel*, above at note 3 at 287–91.

79 General Comment No 37, above at note 15, para 24.

80 *Id.*, para 80.

81 *Id.*, para 86.

82 See "UN human rights guidance on less-lethal weapons in law enforcement" (2020) at 29–31.

83 See *Report of Lagos State Judicial Panel*, above at note 3, para 87.

84 *Id.*, para 88.

in accordance with international law, the government should facilitate prompt reparations to the victims of the Lekki incident of 20 October 2020 to ensure that justice is served and seen to be served in accordance with the report of the Judicial Panel of Enquiry.

## Conclusions

Peaceful protests have the power to change the system because they are successful, build a broad coalition and bring together allies to fight for a common course. In Nigeria, the right to protest is protected under the international and African regional human rights frameworks, as well as under the Constitution. Nigeria is a state party to the ICCPR as well as the African Charter; therefore, the Nigeria government must facilitate the right to protest in accordance with international law to ensure that everyone in its jurisdiction can exercise their right to protest. Additionally, the Nigerian government must protect protesters and non-protesters against any form of threats and violence by those who wish to prevent, disrupt or obstruct protests, including counter-protesters. Where there is a reasonable ground on which the right to peaceful protest may be restricted or dispersed, only law enforcement officials trained in the policing of protests and not the military should be used. The #EndSARS protest at Lekki Toll Gate was a peaceful protest. Although seen to have violated the rights and freedoms of non-protesters, which may have raised the justification for restricting and dispersing the protest, the steps taken by Nigerian law enforcement officers to restrict and disperse the #EndSARS protesters did not accord with international law. The Nigerian government should therefore commence effective training for its law enforcement officers in policing protests and provide clear and operationally focused rules on the policing of protests, which are also accessible to the public.

**Competing interests.** None