



## Public Order Act Enforcement in Nigeria's Fourth Republic: An Assessment of State Governors' Reckless Interference and Implication for Opposition Politics and Democratic Stability

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### ABSTRACT

*Despite the constitutionally strategic status of state as the second tier of government in Nigeria's federal system and the seemingly imperial position occupied by state governors in the present political dispensation; these state governors who also major as chief executives and chief security officers of their various states have in recent times been known as mainstay of corruption in Nigeria especially in the fourth republic, operating what essentially could better be described as fiefdoms under their spheres of influence. Suffice to say that the governors have always tended to represent vested interests opposed to popular democratic rules and procedures. With respect to public order act and its enforcement therefore, it's not in doubt that the act places the buck on the Nigerian police force. Nevertheless, state governors also have roles under the law to that effect as chief security officers of their various states. Confronted by prevailing reality, with respect to public order enforcement in Nigeria, this study explored the copious and arbitrary interference of state governors and implication for opposition politics and democratic stability in the fourth republic. Available secondary evidence revealed that most state governors are averse to opposition politics and have flagrantly used their position to frustrate, hoodwink, repress and stifle opposition political parties by using the police to deny them right to use public space for rallies and campaigns under the guise of enforcing public order. This indeed has massively contravened the fundamental right to peaceful assembly as well as hampered the growth of democracy in Nigeria.*

## Introduction

It is apt to state from onset that oligarchy-driven insecurity and instability have generated a strong and widespread sense of injustice among the Nigerian populace especially with recourse to elections and the quest for political power. Tangential to the above, governance in Nigeria has been characterized by inefficient yet authoritarian centralization across tiers of government, a dearth of meaningful people oriented political representation, a culture of executive recklessness, impunity and a demoralizing climate of unaccountability dating back to military rule and unapologetically consolidated in the present democratic dispensation. Consequent on the foregoing, the combination of aggrieved injustice and the social misery of the majority, in turn, risks producing and reproducing systematic disillusionment with democracy, thus creating conditions capable of igniting social conflicts and, most importantly, threatening the stability of Nigeria's fourth republic democratic political order. It is in view of the need to tame the tide that public order act and its enforcement becomes a national imperative.

Public order is a condition characterized by the absence of widespread criminal and political violence, such as kidnapping, murder, riots, arson, and intimidation against targeted groups or individuals (Tamuno, 2020). Under this condition, such activities are reduced to an acceptable minimum, perpetrators are pursued, arrested, and detained, and the local population no matter which party to the conflict they may belong to is able to move freely about the country without fear of undue violence. It is to be noted therefore, that public disorder can be profoundly destabilizing for societies and countries on the part to building and consolidating democracy. To ensure democratic consolidation the existence of viable opposition political parties should be sacrosanct. More so, it is expected that the instruments of the law be administered in such a manner as to create level playing ground for all whether the ruling party or opposition political party as the case may be. Consequently, the importance of

public order cannot be over-emphasized as it is essential for peace, stability and development across sectors (Harrison, 2021). Conversely, Olabode (2011) succinctly asserts that;

*Public disorder can instill constant fear in the local population, undercut efforts to strengthen state security institutions, and jeopardize the success of the peace process as well as stifle democratic process. The exercise of arbitrary powers by state governors under the guise of public order enforcement may also constitute public disorder.*

It is in the light of the above that, Olabode further lamenting on the level of impunity by some state governors, vehemently posited; criminal and politically motivated activity is often accompanied by widespread violation of human rights, including torture; cruel, inhuman, or degrading treatment; and arbitrary arrest and detention. Olabode (2011) insists that this scenario is further complicated by the fact that the population has few means by which to address these threats, for instance; the police are usually in short supply, with a legacy of abuse and corruption. There are few judges, and confidence is low in their ability to adjudicate cases independently. Prisons are overflowing. Without public order, people will never build confidence in the public security system and will seek security from other entities like militias and warlords and this will no doubt further worsen the already bad situation if nothing urgent and critically strategic is done to address it.

It is needed to be pointed out at this point that public order is domain of the police or other policing agencies, courts, prosecution services, and prisons all of which make up the criminal justice system. We must understand that this system is chain-linked and all elements need to work together in a holistic manner. This study is therefore designed to address the innuendoes, ambiguities and lacuna in the

institutional framework with respect to public order act and its enforcement with the role of state governors in focus vis a vis its implication on opposition politics and democratic stability in the fourth republic.

### **Objective of the study**

In all intents and purposes this study explores public order act and its enforcement in Nigeria by critically reviewing the interference of state governors and implication for opposition politics cum democratic stability in the fourth republic. Pursuant to the above, the following specifics are addressed; to

1. examine the proviso of public order act in Nigeria and why is it necessary;
2. assess the legal frameworks on peaceful assembly as a human rights concern;
3. interrogate the legality of the use of force in public order enforcement;
4. review evidences on state governors' interference in public order enforcement and implication for opposition politics

### **Methodology**

Qualitative data shall be collected from the archives of civil societies in Nigeria. Logical inference and libertarian theory shall be used for analysis. Some of the assumptions of the theory are the expressions of free will; individual's rights and voluntary cooperation of the citizens. Among the recommendations of possible ways to improve state civil society relations in Nigeria is that the law enforcement agencies who continue to implement the Public Order Act should be reeducated to respect the rights of the citizens to support or oppose public policies through protests or rallies.

### **Theoretical Framework**

Structural-functional approach as an offshoot of the systems approach and can be placed in the same methodological category. It can therefore be placed within the category of macro as opposed to micro approaches to political inquiry. Structural-functionalism, a sociological concept with fountainhead of Malinowsky, emerged from the effort of scholars like Talcott Parson, David Easton,

Gabriel Almond, Bingham Powell, and James Coleman to develop a comprehensive framework within which political system, past and present as well as Western and non-Western could be analyzed as a basis for scientific study of comparative politics and administration. The proponents of the structural-functional approach sought to develop a common scientific framework for the analysis of all political systems. This approach has four related analytical goals with the acronyms CRIP:

- i. Comprehensiveness: The inclusion of Western and non-Western cases
- ii. Realism: The analysis of the actual behaviour, rather than formal rules
- iii. Intellectual order: The creation of a unified theory of politics which will bring together the fields of comparative government, political theory and international relations
- iv. Precision: The application of scientific and quantitative techniques in the study of political behaviour and phenomenon.

The core assumption of the structural-functional approach is that a universal set of political functions could be defined and associated with different structures in different political systems. In other words, all political systems perform the same core set of functions, although these functions may be performed by different structures from one society to another. Political system here refers to a set of interactions, institutions and agencies concerned with formulating and implementing collective goals of a society by employment or threat of employment of more or less legitimate physical compulsion. It exists in domestic and international environment shaping these environments and being shaped by the environment. The literature on structural-functional analysis has identified five types of political structures located within the modern political system: political parties, interest groups, legislature, executives/bureaucracies, and the courts (judiciary).

In existing Western systems, political parties are largely but by no means exclusively associated with interest aggregation; interest groups with interest articulation, legislature with rule making or policy

formulation, executives and bureaucracies (including the police and other law enforcement agencies) with rule application, enforcement or policy implementation and courts with rule adjudication. The summary of the assumption of the structural functional approach is that for the effective operation of society different structures or institutions are created and each structure is assigned functions. Thus when the structures efficiently perform their assigned functions it results to effectiveness, stability and system efficiency but when any of the structures fail in its functions it automatically results in system dysfunction and instability. This approach no doubt vividly guides our analysis and understanding of Public Order Act and its enforcement in Nigeria: a critical review of State Governors interference and implication for opposition politics cum democratic stability in the fourth republic.

### **Public Order Act in Nigeria: Why is it Necessary?**

Oguonu (2020) describes the Public Order Act as one of the laws of Nigeria designed for the purposes of proper and peaceful conduct of public assemblies, meetings and processions. The government of each state was empowered by the Act 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. The Act states that any person desirous of convening any public gathering or conducting any procession shall apply to obtain a license. As Nigerian democracy stabilized, scholars have argued that the Act is undemocratic and that the Act runs contrary to section 40 of the 1999 constitution (as amended) which provides for freedom of assembly and association. In line with the above section, the Federal Republic of Nigeria 1999 constitution (as amended) maintains; *"Every person shall be entitled to assemble freely and associate with other persons and in particular, he may form or belong to political party, trade union or any other association for the protection of his interest..."*

This section stands provided that the provisions "shall not derogate from the powers conferred by the 1999 constitution on Independent National Electoral

Commission with respect to political parties to which that commission does not accord recognition". Civil societies in Nigeria especially the Civil Liberty Organization has sued for the repeal of such Act to respect the citizens' constitutional rights of assembly and association. Despite that the Abuja Court of Appeal has quashed the Act in 2007; the implementation of this ruling is still questionable especially in respect of how public gatherings are handled. The repeal of Public Order Act has not enhanced the freedom of citizens to protest or conduct public rallies in Nigeria. The police continue illegal arrest of citizens or members of civil society involved in the public protest or rallies, insisting that the citizens must obtain a license (permit) from the police to embark on any public protest or rally.

The rationale for police refusal to implement the 2007 court ruling on the Public Order Act suggests that the police in Nigeria focus largely on protecting the government at the detriment of protecting the rights of the people. This police behaviour is traceable to the colonial history of the Nigerian police. The police in Nigeria was formed to implement colonial orders and not to protect lives and properties of citizens/natives. Nigeria became a complete police state after the post-colonial nationalist leaders inherited the colonial police without significant reforms. This in part explains the incessant police brutality in Nigeria during protests and rallies by citizens. Civil Liberty Organization, a human right defense group has often clashed with the Nigerian police which restrict the people from expressing one of the most fundamental human rights - right of association enshrined in the constitution.

One of the primal characteristic of democracy is the right of citizens to conduct peaceful processions, rallies or demonstrations without seeking or obtaining permission from anybody. One of the legislative measures taken to protect peaceful protest is the enactment of the fundamental Human Right Enforcement procedure rule 2009. Its legal framework is provided for in different laws, the *fons et origo*, that is, the Constitution, being the first port of call.

## Legal Frameworks on Peaceful Assembly as a Human Rights Concern

The right to peaceful assembly is guaranteed by the 1999 Constitution, and any law that attempts to curtail that right is null and void, otiose, and of no consequence whatsoever. Section 45 permits these rights to be restricted in the interests of defense, public safety, public order, public morality or public health, or to protect the rights or freedoms of others. Nigeria is a State Party to the 1966 International Covenant on Civil and Political Rights (ICCPR), Article 21 of which governs the right of peaceful assembly, provides that:

*“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.”*

At regional level, Nigeria is a State Party to the 1981 African Charter on Human and Peoples’ Rights, Article 11 of which provides as follows: *“Every 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.”*

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 constitution of the Federal Republic of Nigeria 1999 (as amended). 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 Courts in *Inspector General of Police (IGP) v All Nigeria Peoples Party & Others* (2007) 18 NWLR 469 500 paras G-H thus:

*“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.”*

The duty on the state and its law enforcement agencies is to facilitate the enjoyment of the right of peaceful assembly (which includes political party campaigns and rallies). However, where an assembly becomes unlawful, or is unlawful, the Police have the duty to clamp down on such in line with existing laws.

In assessing the violations of the right to assembly in Middle Eastern and North African (MENA) countries, the MENA Rights Group (2017) in a report submitted to the UN Human Rights Committee maintained that “in light of cases of violations (by the government) of article 21 (the right to peaceful assembly) documented in countries in the MENA region, we highlight that the intention to commit violence should also be materialized by the *actus reus* of (the assemblers) committing violence...such an approach would entail that the likelihood that an assembly might lead to violence should not enter into consideration in the assessment of its peacefulness. The point to be drawn from the above is that the likelihood that an assembly might turn violent should not be considered as an element to strip peaceful organizers and protesters of the protection of their right. Consequently, adopting a human rights approach under the spirit of a *lex favorabilis* would, in fact, entail that the assessment of the likelihood of violence should be considered as a positive step to be taken by the authorities in order to ensure, through the implementation of preventive measures, that



persons participating in the assembly can carry on peacefully..., and that the latter as well as bystanders are protected from acts of violence and intimidation regardless of their perpetrator's identity (state agents, participants, counter demonstrators etc.) (MENA Rights Group, 2017). Moreover, the report maintains that adopting a most favourable approach to right-holders should equally entail that an assessment of the likelihood of violence should not constitute a sufficient legal basis to ban the assembly but should rather be considered as a means to facilitate the realization of the right to peaceful assembly" MENA Rights Group, 2017).

### **Public Order Enforcement and the Legality of the Use of Force**

In addressing the legality of use of force in public order enforcement, one needs to understand what constitutes 'unlawful assembly'. According to Henry John Stephen, Commentaries on the Laws of England, cited in Garner (2011), it was stated thus:

*"In order that the assembly may be 'unlawful,' it is not necessary that the object of the meeting should itself be illegal. The test is, not the illegality of the purpose for which the persons are meeting, but the danger to the peace which their meeting involves. The mere fact, therefore, that the purpose is unlawful is not enough; it must be shown that it involves reasonable apprehension of a breach of the peace."*

Apropos the foregoing, when persons come together, having a common purpose, and they conduct themselves in a manner that members of the community reasonably apprehend a breach of the peace; they would have committed the offence of unlawful assembly. This further means that the offence is materialized by a common purpose and a conduct that involves reasonable apprehension of a breach of the peace. Where an assembly becomes unlawful therefore, the police must maintain law and order. There are certain laws that allow the police to employ the use of force during unlawful assemblies.

According to the United Nations (1990): *"In the dispersal of assemblies that are unlawful but non-violent, law enforcement officials shall avoid the use of force or, where that is not practicable, shall restrict such force to the minimum extent necessary."* All force used by police and other law enforcement agencies must be necessary for a legitimate law enforcement purpose and proportionate to that purpose.

As initially stated, the right to public assembly, like all other rights guaranteed by law, is not without its limitations. The Nigeria's Public Order Act is an Act of the National Assembly, derives its powers from section 45(1) of the 1999 Constitution (as amended). The Public Order Act is the primary legislation regulating assemblies in Nigeria. The Public Order Act (which prescribes conditions to be fulfilled before an assembly, procession, demonstration or protest could be carried out lawfully) therefore effects the derogation anticipated by section 45(1) of the 1999 Constitution. The Act, amongst other things, provides that any person who is desirous of convening any assembly or meeting or of forming any procession in any public road or place of public resort shall apply to the Governor for a License not less than 48 hours before the time for such assembly or meeting. Where the Governor is satisfied that the 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 to the time for such assembly, specifying the name of the licensee (person(s) granted the license) and defining the conditions under which the assembly, meeting or procession is permitted to take place. And if he is not so satisfied, he can refuse to grant a license. The power to grant licenses can be delegated by the Governor of a State to the Commissioner of Police of the State or any superior police officer (Nigeria Public Order Act, 1979).

The provisions of the Public Order Act clearly evince the obtaining of a license before convening any assembly or meeting or forming any procession in any public road or place of public resort. However, it is doubtful if a failure to obtain this license grants the

Police the power to harass arrest, intimidate, and brutalize citizens who are carrying out a lawful or peaceful protest. It must be noted that a peaceful protest cannot be curtailed by the Police as it is enshrined in the Constitution, a failure to do so would amount to a breach of such revered fundamental right. On the other hand, an unlawful assembly, or unlawful protest precipitates the enforcement of law and order by the Police.

### **State Governors' Interference in Public Order Enforcement and Implication for Opposition Politics**

In the present political dispensation evidences abound to buttress the flagrant intolerance of state governors with respect to right to lawful assembly as a fundamental human rights and public order enforcement. Sahara Reporters News (2022), details that the Inspector General Police, Baba Ahmed accuses Governors of sponsoring thugs to attack opposition parties. According to the report, as a follow-up to the 2023 general elections and pursuant to maintenance of public order, the Inspector General of Police accused some state governors of sponsoring thugs to incite violence. The IGP decried the rising cases of political attacks on opposition parties across the country. Sahara Reporters revealed a number of such incidences across the country. In Ebonyi state, Labour Party and All Progressives Grand Alliance activities and candidates have been attacked and their campaign materials damaged. Speaking during a meeting with the leaders of 18 political parties at the Force Headquarters, Abuja; the IGP Baba condemned the attacks and vowed to take decisive action against hate speech, incitement to violence, mobilization of thugs and other violations. He said there will be prompt arrest, investigation, and prosecution of offenders in line with the provisions of Sections 92 and 93 of the Electoral Act 2022. Baba Ahmed (2022) states;

*Political violence manifests in three forms....The last form of political violence relates to the conduct of some state governors who manifest traits of political intolerance which often*

*inflame political tension. In this regard, we have been receiving reports of some state governors who encourage political thugs and sub-national security outfits under their control to disrupt seamless and statutorily guaranteed campaign activities of parties or candidates with whom they hold opposing political views.*

The IGP consequently, accused such governors of deploying their powers and influences to denying political opponents of spaces to undertake their campaigns or peaceful political congregations in contravention of the provisions of the Electoral Act 2022 (as amended).

Most of the recorded violent incidents or threats, according to the police chief, resulted from political extremism, misinformation, intolerance, wrong political orientation, hate speeches and incitement. Such actors, according to him, usually give the wrong direction to their party faithful, arm them, give them a wrong orientation and encourage them to resort to the use of threat, violence, and other means to frustrate competing political parties and impose their own faulty perception of politicking. Decrying the politically-motivated violence, the IGP recalled that 18 presidential candidates publicly made a firm commitment to the nation to maintain peace and abide by the rule of law and the Electoral Act in their political activities with the signing of the Peace Accord on September 29.

In conformance to the above, The Punch Newspaper of October 12, 2022 reports that with the campaigns for the 2023 presidential and the National Assembly elections by political parties and their candidates in full swing, there are concerns over draconian orders and obnoxious laws by some governors, which are capable of stifling the exercise. Daily Trust on reports that contestants use a variety of techniques to reach voters and deliver their messages and manifestos, including traditional and new media, public events, political rallies, posters and billboards, among others.

The Daily Trust Newspapers of November 22, 2022 further maintains, however that;

*There are concerns over moves by some state governors issuing draconian orders, clamping down on media houses and enacting laws stakeholders view as moves to stifle free campaigns by opposition political parties and their candidates ahead of the 2023 general elections. Gladiators and stakeholders in the electoral process have particularly raised concerns over the actions of the governor of Zamfara State, Mohammed Bello Matawalle; Anambra State governor, Charles Soludo; Kogi State governor, Yahaya Bello and Rivers State governor, Nyesom Wike. While some of these governors have banned or attempted to ban political rallies by the opposition citing security concerns, others have enacted laws charging what stakeholders described as exorbitant fees to be paid for placement of posters, erection of billboards and use of public facilities in their respective states.*

Any order aimed at restricting political parties' activities, rallies and campaigns, is a deliberate slap on democracy and the worst of distractions in the contemporary political system. It is inconsistent with extant laws of the Federal Republic, at variance with international charters on human and peoples' rights. Reacting to the development, the chairman of the Inter-Party Advisory Committee (IPAC), Yabagi Sani, as reported in the Daily Trust Newspapers of November 22, 2022 described it as a bad omen for democracy, adding, "A situation where elected actors who are supposed to advance the cause of democracy are putting stumbling blocks and trying to see how they can entrench their own state and capture tendencies spells doom for democracy." Democracy is about freedom, it is about the ability for you to convince people.

In Abuja, Rotimi Oyekanmi, was exclusively reported by the Leadership Newspapers of December 11, 2022, as saying that there are penalties for contravening these provisions and the law is no respecter of persons, no matter how highly placed. Oyekanmi further said that all registered political parties participating in the election are free to campaign in all the 36 states and 774 local government areas of the country, as well as the Federal Capital Territory. "It is against the law for a state government to prevent any political party from campaigning during this period. Section 95(2) of the Electoral Act 2022 makes it very clear that state apparatus including the media shall not be employed to the advantage or disadvantage of any political party or candidate at any election. A nationwide investigation as reported by the Leadership Newspapers of January 7, 2023, has shown evidence that the ruling All Progressives Congress (APC) and the People's Democratic Party (PDP) in some of the states controlled by them have not allowed the opposition parties unfettered electioneering since the Independent National Electoral Commission (INEC) lifted the ban on campaigns for the 2023 general elections. Apart from imposing huge fees on venues, the governors of the two parties use their signage agencies to destroy the campaign billboards and posters of the opposition candidates under flimsy excuses. Worse still, the governors also prevent the opposition parties from having their secretariats in strategic locations. Instead, they are forced into obscure areas under the guise that they cause traffic gridlock whenever they hold their meetings. The irony of the whole saga is that the governors allow billboards, posters and party offices of candidates of their parties in the same locations where the opposition are dislodged. Shockingly, the APC and the PDP also persecute themselves in the states they are in firm grip (take Rivers state as an instance).

The publicity secretary of African Democratic Congress (ADC) in Rivers state, Chief Lucky Igila in an interview with the Leadership Newspapers of January 12, 2023, described the Executive Order 21 of Gov. Nyesom Wike as a product of fear. Igila said:



*“Well Executive Order 21 is one of the most undemocratic laws ever in Rivers State. “It is actually a product fear, the fear of losing the forthcoming election has caused His Excellency, Nyesom Wike to sign an executive order believing it is going to deter the opposition parties from campaigning. “In an election year like this all parties have the right to go about their campaigns freely, but the PDP led administration in Rivers State has decided to use state agencies to frustrate the opposition from going about their campaign freely.”*

Similarly, Civil Society Organisations (CSOs) and the Inter-party Advisory Council (IPAC), an umbrella body of all political parties in the country, have condemned the clamp down on opposition by some state governors, stating that it will affect peaceful elections in 2023. According to the CSOs, security agencies must ensure that they treat political parties and their candidates equally as provided by the law of the land. The CSOs which spoke to the Leadership Newspapers are Transition Monitoring Group (TMG); Transparency International (TI) and the Civil Society Legislative Advocacy Centre (CISLAC). Speaking through their leader, Awwal Musa Rafsanjani (2022) states;

*“We condemn political intolerance in the states. The governors have no right to clamp down peaceful campaigns organized by a political party or candidate. Governors must not promote intolerance. That is unacceptable. The political parties must talk to their governors to ensure that they run a peaceful campaign because this is the period such things happen. “It is the same politicians that are giving drugs to the youth. We are calling on the youths not to make themselves available to these kinds of politicians. They should behave in a*

*wise manner rather than attacking the opposition”.*

Awwal Musa Rafsanjani charged security agencies not to be biased; and to provide security to every political party and candidates without bias. Also, the Inter-party Advisory Council (IPAC) condemned the clamp down on opposition in some states adding that it is condemnable because it is against the right to the freedom of assembly and it is a threat to democracy. Similarly, the organizing secretary, who is also the acting publicity secretary of IPAC, Egbeola Wale Martins, was reported by the Leadership Newspapers of December 15, 2022 as saying;

*“Some governors don’t understand the meaning of democracy and they are beginning to be the biggest threat to our democracy. “They have frustrated the state assembly and the local governments. That’s why people are not comfortable with the state police. If these people who cannot tolerate opposition are given state police, it will be dangerous,”*

Egbeola called on all the state governors to desist from suppressing the opposition because within eight years, they will no longer be there. “If you use power to suppress opposition, whatever you do it will still come back to haunt you because even the person you are supporting may be against you tomorrow”.

More so, the Socio-Economic Rights and Accountability Project (SERAP) (2022) has urged President Muhammadu Buhari and state governors to ensure the rights of all political parties to hold rallies in any part of Nigeria is protected. SERAP also asked the president and the governors not to abuse the rights of candidates and political parties and their supporters to hold rallies, processions or meetings on an equal basis, and free of intimidation, harassment or threat of attack. The organization, which made the demands in an open letter dated October 8, 2022, and signed by its deputy director, Kolawole Oluwadare, also called on President Buhari to publicly instruct the Nigeria Police and state security outfits to respect, protect, and facilitate the rights of everyone to

freedom of expression, assembly, association, and equal participation during the 2023 general election campaigns, regardless of their party affiliation. It further asked the President to ensure that state governors do not use the police to target supporters of opposition parties and those holding differing political views.

### **Recommendations for Policy**

Transforming oligarchy in Nigeria is likely to take decades, but several clear avenues for support in the interim are evident. From the foregoing analysis, it has been established that public assembly, rallies, campaigns, demonstrations and protest are lawful in a democratic society. However, it must be stated that 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, this study has revealed the seemingly unfettered and reckless intolerance of state governors under the guise of enforcing public order in Nigeria. This is incompatible with the 1999 Constitution and as such amounts to violation of the fundamental rights to freedom of association and right to lawful assembly. As a way forward therefore, there is urgent legislative need to review and amend the Public Order Act to compliment sections 39 and 40 of the 1999 Constitution in context and not to cripple or stifle it. In view of ensuring democratic stability in Nigeria, the National Assembly should enact a reasonable and balanced public assembly law that will allow democracy to run its course while enforcing law and order and protecting the rights of others without recourse to political party affiliation and power of incumbency. An urgent amendment of the Public Order Act in line with the 1999 Constitution of the Federal Republic of Nigeria (as amended) and democratic tenets is therefore a critical starting point and key takeaway from this study.

Second, developments in public order policing in established democracies show that intelligence policing have become one of the most important

strategies of the police in managing public order. The strategy enables the police for instance 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 mobilization strategies of the protesters. This clearly has important implications for the accurate and effective deployment of police resources. The Nigerian police should therefore improve its technological deficiencies and gather intelligence during the build-up to protests. In view of their lack of capacity, both in terms of personnel and equipment, the Nigerian police may also adopt what Hoogenbloom (2016) 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 paramilitary agencies, private security outfits, private investigators, and the intelligence agencies and so on could be harnessed in the policing and enforcing public order. 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, rallies, 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. 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 organizations 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 civil and efficient enforcement of public order in Nigeria.

## Conclusion

The Public Order Act mandates that a license be obtained before convening any assembly or meeting or of forming any procession in any public road or place of public resort. However, it clearly does not grant that the governors use the police to harass, or brutalize citizens or political opposition. The right to peaceful assembly, as the name implies, is the right to assemble peacefully. Such a right is sacrosanct, and can only be curtailed by a law that is reasonably justifiable in a democratic society. The role of governors and duty of the police to clamp down on public assembly by citizens can only apply when the assembly has metamorphosed to an unlawful assembly, or the government perceives real not imagined threats to national security.

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