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**Protest Demonstrations, Political Participation and the Law in
the Era of Terrorism: Nigeria's Public Order Act and the
United States' HR 347 in Perspectives**

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Abstract

Protest demonstrations are means of holding dissents or expressing discontent through public marches. At the macro level, they are globally considered an acceptable means of participating in politics, as stated in the Article 11 of the African Charter on Human and Peoples' Rights and other international laws. But owing to the increasing spate of terrorism and violence across the globe, different countries of the world have recently made, interpreted and enforced different domestic laws to regulate protest rallies and political assembly of people in public places and this threatens democracy and political participation. Examining the situations in the United States and Nigeria, this paper argues that while laws regulating protests may be inevitable in our increasingly terrorized world, their enforcement can also be manipulated for sectional political and even anti political advantages, depending on the character of the state in question, and the quality of its judiciary. Caution and suggestions are given on how not to hinder political participation and democracy while controlling protest demonstrations.

Key words: Protest Demonstrations, Political Participation, Law, Democracy, Terrorism

Introduction

Protest, though never a new phenomenon in human history has continually increased in the global scene today. Starting from France and Britain in 2010, to Tunisia, Egypt and Libya in what is yet to end four years after, protest has spread significantly across the globe, shaping political events and attempting to re write histories. Dictators have fallen, nations have been turned around, and *status quos* have been changed in many countries due to the reason of protest demonstrations. This is in connection with the long term prediction that increasingly, "citizens are becoming more critical towards politicians" (Klingemann 1995:1), and this being 'critical' constantly manifests in protest; suggesting why "we are now experiencing a flood of research and theory which purport to speak to the issue" (Hollander and Einwohner 2004:533, cited in Eesuola 2012).

Protest is a form of political participation. Election, which is the most common form, is very ritualistic and periodized, and citizens often have no choice than to follow its rituals and periodization before they can achieve any political or social changes. With protest however, an opportunity is made available for citizens of a country to demonstrate their need for political change, or ventilate their angers on certain political issues that they do not agree with. Quite often they do this through means ranging from rallies, strikes, street marches, sit-ins and so on.

Demonstration is the most used means of protest all over the world today. All forms of protesting, or means, if we like, can, in a sense, be forms of demonstration since they need to be exhibited to press demands and make claims. By protest demonstration therefore, this paper means all forms of protest activities or actions that are displayed in the public place, usually to attract attention of the authorities to which protest is directed.

But terrorists across the world have equally been laying claims to protest in a bid to explain or justify their actions. Analysis of Osama Bin Ladin's statement between 1999 and 2004 has attracted the conclusion that Al Qaeda's attack on the United States in 2003 was a protest against Western penetration of Islamic values and land in the Middle East (Halminton 2006, Payne 2008). This may suggest that the Al Shabbab attack on a shopping mall in Kenya was a protest against the role that Kenya played in Somalia and still plays in East Africa, while in Nigeria, Book Haram lays claims to protesting against western education because of the way it had been perverted by Nigerian educated elite and Christians to create several irreconcilable contradictions in the country (Eesuola 2014).

Besides the claim laying dimension to protests, protesting crowds and demonstrators may easily share terrorists' emotions if they are together for a long time. Terrorists may hide under protest demonstrators to cause havoc to the public, and, even a non terrorist demonstrating crowd is a target of terrorist whose goal is to kill and maim in high numbers. Besides, like terrorism, protest demonstration may threaten the political elite, the dominant class and the state.

Protests demonstrations have therefore become contextually different in today's world of terrorism, and nations world over have reacted to the difference by making, interpreting and enforcing different domestic laws to regulate it and other political assembly of people in public places. This occurs in spite of the Article 11 of the African Charter on Human and Peoples' Rights as well as other international laws that expressly guarantee the rights of people to peacefully assemble. How have the United States and Nigeria responded to this scenario through the law, and what are the implications of their responses to political participation, public safety and general political development in these two countries, as well as the global community in the 21st century?

These are the questions that this paper responds to in about four parts. This introduction that generally overviews the paper, and it is followed by an exploration of relevant literature on the phenomenon of protest as a means of political participation, viz a viz its relationship with terrorism in the world today. A discussion of how the United States and Nigeria have, through the law, reacted to the situation of protest demonstration during this period of terrorism, will lead to conclusion and recommendations.

Protest Demonstration, Political Participation and Terrorism in Scholarly Views

Protest refers to expression of dissent, ventilation of anger or resistance against a particular phenomenon. Demonstration is the most used means of protest all over the world today, although, according to Auvinen (1996), protest still "consists of ... riots and strikes which have an expressed political target and/or involve conflict behavior against the political machinery" (p.78). In fact, Auvinen expressly identifies three types of protest as "political demonstrations, riot and political strike"; where, as he further clarifies, "a political demonstration is an organized, non-violent protest by a group of citizens, a riot is any violent demonstration or clash of a group of citizens, and a political strike is any form of industrial strike by industrial workers, government employees or students" (1996:383, in Eesuola 2012).

Protest also is what Charles (1992) describes as "contentious politics", that is "contentious activities on the part of claimants, or those who claim to represent them, relying, at least in part, on non- institutional forms of interaction with elites, opponents or the state" (pp. 3). Also in the words of Tercheck (1974:133), protest

“refers to public group activities utilizing confrontation politics to apply stress to specific target for the purpose of affecting public policy” (cited in Kritzer, 2001:630).

Another word that is closely used along with protest is social movement, which Opp (2009) describes as “sustained challenges to power holders in the name of disadvantaged population living under the jurisdiction or influence of those power holders” (pp. 3). Resistance, revolt, uprising and strike are equally related to protest, because they are all contentious activities on the part of some people making some claims. All these social phenomena are found in one field of study, and “protest and social movement are the terms that are, most of the time, used to describe them (Opp 2009: 29).

Why do people protest? Auvinen’s (1996) “conceptual model” highlights some reasons: bad economic performance in a state, ethnic dominance, authoritarian political regime, and low level of economic development which often lead to relative deprivation, especially amongst the urban middle class and youth, who, as he claimed, are the direct victims of such socio-economic situations. This means that protest demonstrations are likely to occur in urban areas due to the overwhelming presence of the middle class and the youth who are often the immediate victims of harsh socio-economic conditions. Auvinen adds that protest is common in a “democratic political environment” which permits “individual and group political association and expression” (pp. 383).

Another reason people protest is rested in what Eisinger (1973) refers to as Political Opportunity Model. The POM refers to the nature of the entire political environment where protest occurs, and posits that “the political opportunity structures have an impact on political behaviour” (Cited in Opp, 2009;1263); that the nature and character of the political environment generally determine whether or not there will be protest in the first place, the class and stratification of people that will initiate or participate in protest, as well as the forms and dimensions that their protest actions will take.

There is also the neo Marxian’s Legitimacy-Stability explanation of protest. Propounded mainly by O’Connor (1973), Legitimacy-Stability claims that man protests against the polity if he lacks confidence in the political regime, and that majority of the people in a particular polity will protest or support protest against a political regime that lacks legitimacy. Then there is the issue of biographical availability which claims that that whether or not an individual would participate in protest demonstration depends, first, on his biographical availability, that is, “personal constraints that may increase the cost and risk of participation, such as full time employment, marriage and family responsibilities” (cited in Eesuola: 2012: 29-30). It is the case of biographical availability that political musician, Fela Anikulapo Kuti referred to in his song, Sorrow, Tears and Blood which he composed to incite

the Nigerian people against the draconian practices and policies of the Nigerian state during the military interregnum (Eesuola:2012). Fela sang:

<i>My people self dey fear too much</i>	My people are too cowardly
<i>Dem fear for the things dem no see</i>	They are afraid of invisible things
<i>Dem fear for the air around them</i>	They are afraid of the air around them
<i>Dem fear to fight for freedom</i>	They are afraid of fighting for freedom
<i>Dem fear to fight for justice</i>	They are afraid of fighting for justice
<i>Dem fear to fight for happiness</i>	They are afraid of fighting for happiness
<i>Dem always get reason to fear</i>	They give reasons for their fear

The reason people do not want to protest are what we refer to as biographical availability, and Fela, in STB, list them thus:

I no want die, I get one wife, I get one child I don't want to die, I have a wife; a child

Mama dey for house, papa dey for house My mother and father still live

(Anikulapo-Kuti, Fela, Sorrow Tears and Blood, cited in Eesuola 2012)

It is equally of importance to explore the type of behavior that protest is. Scholars such as Hollander and Einwohner (2004) and Olafsson (2007) have asserted that protest is a non-conventional form of political participation, while Useem and Useem (2001) describe it as “a high risk political behaviour”. Others also see protest as irregular behaviour, and that individuals who participate in it often do so in order to compensate for some lacuna in their personality or achievement.

But Schussman and Soule (2005) contend the position of these scholars, and assert that protest activities and social movement are normal and “inherently political”, what have become “a taken for granted part of the repertoire of citizens’ political activities” (pp.1084). They observe that resistance, political protest and other contentious activities increase as voting and other forms of political participation decrease, and that since they share such compensatory roles, “it makes little sense to limit analysis of political participation to voting and electoral activities”(pp.1084). These writers, along with Charles (1996) and Jasper (1998) also consider protest as one of the many forms of interacting with elites, opponents or the state.

How is protest a form of political participation? Discussing the institution of elections, Bowman and Boyton (1974:205) assert that “this is not the only form of

political participation that is open to citizens”. He adds that “They (citizens) may make their views felt through communication of their preferences on policy matters to government officials, (and) this can be as simple as writing a letter to a public official or it may involve the organization of a group to communicate their views”. They further add that “high involvement types of participation would be campaigning, writing letters, and getting involved in political demonstrations” (pp. 206). Also in the words of Wai-Man Lam (2003), “Political participation refers to lawful and unlawful activities of supports, making demands, debates and other forms of expression communicated verbally or through the media, and targeted at the rulers. Wai-Man Lam adds that protest also includes “activities that are designed to pose challenges to existing rules, norms and practices” (pp.6).

Although some scholars think that political participation must have the backing of the law, as in the case of Nie and Verba (1975) who positions it as “consisting of those legal activities by private citizens which are more or less directly aimed at influencing the selection of government personnel and, or the actions they take (pp.34), others, ranging from but not limited to Hartington and Dominguez, consider protest as “the activity of private citizens designed to influence government decision making” (1975:11).

Suberu (1991) made some attempts to categorize political participation, highlighting them in conservative versus radical, active versus passive, as well as aggressive versus non aggressive forms. Conservative participation has to do with adhering strictly and unquestionably to the law and the way it prescribes that people should participate, often with very poor or no understanding on the part of the participant. In the reverse however, radical political participation is what occurs where participants do not accept laws without deliberately querying them. Some people are, due to socialization and other factors, often more quickly disposed towards aggressive attitude to politics than others. In the contrary, others prefer non aggressive ways such as campaigning, street talks, writing letters, debates, sit ins, hunger strike and so on, even when they have enough grievances to justify aggression.

For recap, protest refers to expression of dissent, ventilation of anger or resistance against a particular phenomenon, and it “consists of ... riots and strikes which have an expressed political target and/or involve conflict behaviour against the political machinery” (Auvinen 1996:.78). Protest refers to “contentious activities on the part of claimants or those who claim to represent them, relying, at least in part, on non- institutional forms of interaction with elites, opponents or the state” (Auvinen 1996: 3). From occurrences around the world in the last five years, people are getting more and more involved in politics, and protest demonstration is quite central to the involvement.

Protest Demonstration and Political Participation in the Era of Terrorism

Although terrorism is not new to politics and political struggles around the world, especially between 1789 and 1968 when it was used for all sorts of political purposes as state building, national liberation war, global dominance and hegemonic consolidation (Challand & BIlIn 2007), it was the period between 1968 and the 2003 Al Qaeda's attack on the United States that opened another chapter in the history of terrorism. Since then, terrorist activities have spread geometrically across world.

Terrorism is "The calculated use of unlawful violence or threat of unlawful violence to inculcate fear; intended to coerce or to intimidate governments or societies in the pursuit of goals that are generally political, religious, or ideological"(Hoffman 1989, in FM 100-20, Military Operations). From the rational choice point of view, terrorists are primarily motivated to achieving political ends. They make certain claims towards those people or institutions with which they have power relations. In fact, according to Abrams (2008), "The strategic model—the dominant paradigm in terrorism studies posits that terrorists are political utility maximizers... (and) individuals resort to terrorism when the expected political gains minus the expected costs outweigh the net expected benefits of alternative forms of protest" (pp.1, my emphasis).

Al Qaeda terrorism, as well as other anti West ones is therefore a reaction to the US power relations with the Islamic countries, particularly against western penetration of Islamic values and land. It is also a claim that Islamic civilization is not inferior to the West's. Terrorism, therefore, is a form of protest, and like any form of protest it is "inherently political" (Modigliani and Francoise 1995:534), because it reacts to power relations in social formations. What differentiates it from the ordinary protest demonstration is the use of violence to inflict fear, but it is unlikely for anyone to predict the dimension that any ordinary protest demonstration too can take if it is not subjected to certain limitations and controls.

Payne's (2008) conclusion that "Osama bin Ladin's public statements issued from 1994 to 2004 show a desire, not to remake the West into Islamic societies, but to punish the United States for its interference in the Muslim world" supports the thesis that terrorism is protest. So is the observation of Halminton (2006), that "It seems obvious that the terrorists want us (United States) out of Iraq--in physical, financial and cultural terms--and out of the Middle East in general. The World Trade Centre, after all, was one of the most potent symbols imaginable of Western financial world domination" (pp.2).

Eesuola (2014) corroborates the same position while explaining the scenario of the Boko Haram insurgency in Nigeria. He asserts that

From the various activities that have characterized its operations over the years, and from statements it has so far issued after typical successful operations, what Boko Haram wants is an end to anything westernization, as a prelude to beginning Sharia in the Nigerian state. With this agenda there must be eradication of Western culture, politics, policies, practices and religion, as well as all institutions and structures that represent them. This is well captured in a 2009 Al Jazera statement credited to the late leader of Boko Haram, Mohammed Yussuf, retreating “its objective of changing the current educational system and rejecting democracy” in Nigeria (pp.2).

From Eesuola's analysis, Boko Haram terrorists make claim that westernization is evil, and protest against all structures and institutions that represent it. The target authority is the Nigerian state which has used its political power to establish and encourage westernization in the society. So, as the Al Qaeda hide under protest against western domination of their values and land to perpetuate terrorist activities against the West, in Nigeria, Boko Haram reacts against internal contradictions that it thinks are caused by the influx of Western ideas in the country, so, it began to attack, in protest, all structures and institutions that bear resemblance with the West.

Apart from terrorism being a form of protest, it also has flammable relationship with protest demonstration. Protest demonstrations are “public group activities utilizing confrontation politics to apply stress to specific target for the purpose of affecting public policy” (Tercheck, 1974:133, cited in Kritzer, 2001:630). The main thrust of protest is “questioning and objecting”, and when people question and object to governmental policies or practices, they essentially react to power relation, confront the political elite, the dominant class, and, by extension, the state. Whatever threatens the state is a form of terrorism. Protest demonstrations threaten the state in certain respects, so it cannot be fully unconnected to terrorism. In addition, protest demonstrations often attract a huge crowd of people gathering in particular places at particular times. Such crowd may contain people of diversified intentions ranging from looting, rape, pick pocketing, arson, serial killing and other forms of violence. Terrorist apologists may also be among them.

Contagious or reciprocal emotion of terrorism is another factor. Writing about how protesters sustain protests for long periods, Jasper (1998) observes that all social actions have emotional undertone, protest inclusive, and that protest initiators and their participants are often motivated by shared and reciprocal emotions, meaning, respectively, the sentiments they all share, either in terms of ideology or socio economic situation; or the emotion that they would have built towards one another as a result of interaction and interrelationship over time. If only

two terrorists are present in a crowd of a thousand demonstrators, terrorist thinking may easily flow through them to others. That can occur in a matter of days.

Thirdly, a demonstrating crowd is, any day and time, a good target for terrorists because there is little or no control over the membership of the crowd. Since, “the main targets of persuasion are the enemy and the 'population' that the terrorists hope to represent or control” (Kydd & Barbara 2006, my emphasis), and "Generally, militants prefer to attack soft targets where there are 'large groups' of people that are symbolic and recognizable around the world and that will generate maximum media attention when attacked" (Schneier 2011, my emphasis), terrorists often want to be credited for the number of people they kill or cause havoc to at any point in time (Schneier 2011, Melissa 2011). Apart from the popular World Trade Centre attack of September 11, 2001, "The failed May 1st, 2010 attack against New York's Times Square and the July 7, 2005, London Underground attacks, as well as the January 24th attack at Domodedovo Airport" (Schneier 2011:1), are all prime examples .

From the rational choice viewpoint therefore, it is normal that most states do not make deliberate legal provisions to encourage their citizens to protest, because of the possibility of snowballing to violent and terrorist attacks. This suggests why protest demonstrations are being differently handled in the age of terrorism, and states necessarily have the need to regulate and control protest activities to prevent terrorist emotion sharing among the participants. However, because protest remains a natural human reaction to immanent power contradictions, and protest demonstration is fast becoming a permanent character of the neo-liberal democratic culture that has pervaded the world since the beginning of the 21st century, what countries often do is make laws and policies to regulate it, and leave it to periodical interpretation of the judiciary. Such legal response in the United States and Nigeria will be closely examined in what follows.

Nigeria's Public Order Act, (Cap 382) and the United States' Hr 347 in Perspectives

The Public Order Act is the major law that attempts to regulate protest demonstration in Nigeria. It is an “An Act to repeal all public order laws in the States of the Federation and to replace them with a Federal Act for the purpose of maintaining public order and to prohibit the formation of quasi-military organizations, regulate the use of uniforms and other matters ancillary thereto” (Section 4(2) CAP. 382). In plain terms, “The Act makes it mandatory for individuals or groups to apply for, and obtain police permit or approval to hold rallies and peaceful assemblies”. The law further stipulates that “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.”

With this law, the police commissioner in a state, acting on the instruction of the governor, is empowered to decide whether a group of people can hold protest demonstrations at all. He can put limitation on the means of protest, and can decide to regulate the activities of protesters and demonstrator through the use of force. The Police is also empowered, by the same law, to withdraw hitherto given permission for reasons they only may deem fit.

In the United States the law concerning protest demonstration as amended is the H.R. 347, "a bill which is being dubbed the Federal Restricted Buildings and Grounds Improvement Act of 2011" (Washington Post , May 26, 2012). The September 11th 2003 terrorist attack had given rise to the debate of safety of public property and servants in the hands of any group, and it snowballed into the bill that was eventually passed into this law in 2011". In the law", Washington Post explains, "Congress officially makes it illegal to trespass on the grounds of the White House, which, on the surface, seems not just harmless and necessary, but somewhat shocking that such a rule isn't already on the books. The wording in the bill, however, extends to allow the government to go after much more than tourists that transverse the wrought iron White House fence. Under the act, the government is also given the power to bring charges against Americans engaged in political protest anywhere in the country". In simple terms, protesters and demonstrators in the United States are now restricted to certain places and formats, with other places as no go areas in a country founded on freedom.

It is clear that the Nigeria's Public Order Act and the United States' HR 347 have been designed to manage protest and demonstrations in the interest of security of public property as well as lives of citizens- which have always been the targets of terrorists. But how have the two countries applied the laws?

In the case of Nigeria the law is holistically against protest demonstration and subjects all forms of public gatherings to political coloration. This is why Bamgboye & Chucks Azu (2014) observe that “Whether the protests are against a government policy on university education, fuel price increases and sundry government policies, instances of forceful dispersal by security agencies abound”. During such, people have been gruesomely killed and other have had permanent injuries. Individuals in Nigeria hijack political power to suppress and oppress their opponents. Governors of states and their cohorts did use the public order act to intimidate protesters whose demonstrations were against them, but protect those whose demonstrations are against their opponents. This discriminatory and partisan use of the law led to the case of ANPP versus Inspector General of Police in 2007.

In that case, a Lagos-based human rights lawyer, Femi Falana (SAN), acting for the defunct All Nigeria Peoples Party (ANPP), had challenged the act and obtained a verdict of the Federal High Court in his favour. The then Inspector General of Police, Sunday Ehindero, appealed the verdict but the appeal court still upheld it, noting that

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 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

In spite of that judicial order, it is not uncommon still for some citizens' assemblies and demonstrations to be criminalized because they criticize political parties and politicians in power, whereas the parties and politicians in power criticize and even demonize their opposition with the protection of state agents. Rivers State was a theatre of this absurd in 2013. Channels Television recently reports that on Sunday, 12th January 2014 while organizing a pro-Rivers State Government rally called "Save Rivers Movement", many people were injured and a senator representing Rivers Central was shot. According to Channels Television news, "The rally had been organized by the Senator and others, who are loyalists of the State Governor, Rotimi Amaechi, with whom they recently decamped to the All Progressives Congress, APC, from the People's Democratic Party, PDP, the party of the president" (Channels Television, 12th January, 2014).

But a group that was supposed to be loyal to the president organized a similar rally backed by the police. In fact, Daily Independence reported that When Okrika people staged a peaceful protest in support of the state Commissioner of Police, Mbu Joseph Mbu, who was under public criticism for ordering the use of violence against the political opponents of the president, the protesters had to match to Ateke Tom, leader of the Niger Delta Volunteer Force (NDVF), armed militias in the home country of the president who promised to take their demands to the President (Daily Independent, January 27th 2014).

Conclusion

Protest demonstration is fast becoming an entrenched symbol of political participation amongst all nations of the world. It is perhaps the most used means of participation now, probably because it does not have age or gender restrictions, and it demands no known protocol. Protest will continue in human polity for a long time,

and, law or no law, it is difficult to eradicate it because it is a natural form of human reaction to power relations in the society.

However, terrorism and other forms of insecurity are spreading too, and as they spread, it has increasingly become necessary for nations to make and amend laws that are targeted at regulating the public assembly of people and their conduct during the assembly. The reason is that protest demonstrations come in crowd form, and, as this paper has established, there is a connection between a crowd of any form, and terrorism as well as its activities.

This is why the United States' HR347 and Nigeria's Public Order Act were examined. Of these two laws the Nigerian public order act appears to be a blanket control of public demonstration. The law had been made during the military interregnum in Nigeria and even with return to democracy; it has been used to settle an array of political goals amongst politicians in the state.

Unlike the Nigeria's case, the United States HR 347 is not a blanket law. On the surface the law is aimed at restraining protesters from certain activities and restricting them to certain areas of the country. There has not been any reported case in which the police or any faction of politicians has used the law for self ended purposes.

The implication here is that laws and protest demonstrations do not, on their own, determine people's participation in politics, or develop their democracies, rather, it is the character of their states and the degree of hegemonic order that play a major role in implementation. Consequently, laws that countries make are a reflection of their state character. While a non hegemonic state makes laws that, in letter, intend to serve a purpose, the spirit of such laws may suffer manipulation in the hands of the police and other legal institutions which are often loyal to the political class. In such case the law may turn out antithetical to the reason of its existence. Conversely, a country with strong hegemony often witnesses a relatively high correlation between the letter of its law, and the spirit of its implementation. In such place it is quite unlikely for laws to be hijacked for individual partisan political advantage.

If the world must continue to democratize through high level of political participation, and yet protect the global public in the age of terrorism, there is need to regulate protest demonstrations through the law, but efforts must be made to ensure that such regulations are not manipulated to serve individual and group advantages. A good way to achieve this is to strengthen independence of the judiciary and work towards hegemonic order in a new democracy like Nigeria.

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