



Protection of the Right to Freedom of Association and Assembly in Nigeria

An Advisory Opinion to Federal and State Governments and Third Parties issued pursuant to section 5(l)(m)(o) of the National Human Rights Commission (Amendment) Act

1.0 Preamble

The National Human Rights Commission of the Federal Republic of Nigeria (hereinafter referred to as the Commission),

Conscious of its mandate to promote, monitor, protect and enforce human rights of everyone in Nigeria in line with the national, regional and international human rights instruments to which Nigeria has enacted and is a party,

Recognising the universality, indivisibility, interdependence and interrelatedness of human rights and the centrality of the freedom of expression to facilitating dialogues and building bridges and pluralistic societies,

Further recognising that the freedom of association and peaceful assemblies are the cornerstones of civilised societies through which citizens and groups participate in governance and democratic processes, promoting their viewpoints and protecting their legitimate interests,

Acknowledging that the right to freedom of expression is fundamental to building democratic societies, enhancing national cohesions and creating an enabling environment for peace, accountable governance and sustainable development.

Further acknowledging the roles of the state and its organs, including executive, legislative and judiciary, law enforcement, military and security agencies in ensuring the protection of the right to peaceful assembly and association in accordance with the Constitution, national, regional and international human rights instruments.

Further acknowledging the roles of civil society organisations, human rights organisations, trade unions, political parties, the Nigerian Bar Association, the media and other organisations and professionals in the promotion of freedom of association and peaceful assembly and the freedom of expression and the need to continuous cooperation, capacity and assistance to enable the full realisation and enjoyment of these rights by every Nigerian as a means to building democratic, accountable and pluralistic societies.

Noting that the enjoyment of right to association and assembly must be peaceful and accord with constitutional and legal boundaries established under national and international human rights norms

Hereby issues the following Advisory:

2.0 Principles

This Advisory is issued pursuant to the legal and inherent powers of the National Human Rights Commission in section 5(l)(m)(o) of the National Human Rights Commission (Amendment) Act, 2010 under the following principles:

1. Indivisibility, inter-relatedness and Interdependence of all human rights: All human rights are inter-related and depend on one another for full realization and enjoyment.
2. Equality: Every Nigerian is equal before the law and so is the application and enjoyment of all human rights to every Nigerian
3. Non-discrimination: Every Nigerian is able to enjoy human rights as enshrined in the Constitution and other legal and international human rights instruments without any discrimination as to birth, sex, religion, ethnicity, and political, cultural, economic and social orientations
4. Neutrality and Independence: The National Human Rights Commission invokes its independence and neutrality under section 6(3) of the NHRC Act of 2010

3.0 Application

This Advisory shall be applicable to the conduct and management of all protests in Nigeria and other actions leading to the enjoyment of the rights to freedom of association and peaceful assembly and other associated rights therefrom.

This advisory is issued to:

- (a) All persons and authorities exercising powers over law enforcement, security, intelligence and military affairs.
- (b) All persons exercising executive, legislative and judicial powers in the federal, state or local government.
- (c) All persons organising protests and assemblies in Nigeria whatever name called and who seek to enjoy or realise the aforesaid rights to freedom of association and assembly and all the associated rights and duties thereto.
- (d) All civil society, media and professional organisations and bodies who has mandate to promote the rule of law, accountability governance, peace and human rights in accordance with the Fundamental Rights and the Fundamental Objectives and Directive Principles of State Policy enshrined in the Constitution of the Federal Republic of Nigeria.

4.0 Legal and Normative Principles Relating to the Right to Freedom of Association and Assemblies

4.1 The right to peaceful assembly is a fundamental human right recognised internationally, regionally, and at national level. In Nigeria, this right is enshrined in the Constitution and further strengthened by international and regional human rights instruments.

4.2 Section 40 of the Nigerian Constitution guarantees the right to peaceful assembly and association, stating that “Every person shall be entitled to assemble freely and associate with other persons, and in particular, he may form or belong to any political party, trade union or any other association for the protection of his interests.”

4.3 Regional Instruments

4.3.1 African Charter on Human and Peoples' Rights (ACHPR) 1986¹

Article 11 of the ACHPR provides that "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." Nigeria has domesticated the ACHPR, making it a part of its national law. The African Charter is a part of Nigeria's domestic human rights obligations under the African Charter on Human and People's Rights (Ratification and Enforcement) Act, Chapter A9 LFN 2004.

4.3.2 African Commission on Human and Peoples' Rights (ACHPR) Guidelines on Freedom of Association and Assembly in Africa

1. The African Commission on Human and Peoples' Rights has developed guidelines to assist African States in implementing their obligations under the ACHPR. These guidelines emphasise the importance of the right to peaceful assembly in promoting democracy and good governance and provide detailed guidance on permissible restrictions.
2. Non-discrimination: The guidelines emphasise that all individuals should be able to exercise their rights without discrimination based on race, gender, political affiliation, or any other status. (paragraph 80)
3. Legitimate Restrictions: While freedom of association and assembly is fundamental, it can be subject to restrictions. However, such restrictions must be lawful, necessary in a democratic society, and proportionate to the aim pursued. This means that any limitations imposed by Nigerian authorities must not infringe upon the essence of these rights. (paragraph 85 - 88)
4. Protection from Violence: The state has an obligation to protect individuals exercising their rights from violence or intimidation by third parties. This includes ensuring that protests can occur without fear of repression or violent backlash. (paragraph 94 - 98)
5. Relevant Provisions on Protest
 - a) Right to Protest: Individuals have the right to organize peaceful protests as a means of expressing their views or grievances. (paragraph 63 - 70)
 - b) Notification Requirements: While some jurisdictions may require organizers to notify authorities about planned protests, such requirements should not serve as barriers but rather facilitate peaceful gatherings. The ACHPR advises against overly burdensome notification processes that could hinder the exercise of this right. (paragraph 71 – 79)
 - c) Use of Force: Any use of force by law enforcement during protests must adhere strictly to principles of necessity and proportionality. Excessive force against protesters is considered a violation of human rights. (paragraph 94)
 - d) Accountability Mechanisms: There should be mechanisms in place for holding the State accountable for any abuses committed during protests. This includes investigating incidents where excessive force was used or where protesters were unlawfully detained. (paragraph 99 – 103)

4.4 Global Instruments

4.4.1 Universal Declaration of Human Rights (UDHR) 1948²

¹ Adopted by the Heads of State of the Organisation of African Unity at the 18th Ordinary Session in June 1981

² UDHR was adopted at the 3rd Session of the United Nations General Assembly on 10 December, 1948

Article 20(1) of the UDHR states that "Everyone has the right to freedom of peaceful assembly and association." Although not legally binding, this declaration serves as a foundational document for human rights globally and emphasises the importance of peaceful assembly as a means of expressing opinions and advocating for change.

4.4.2 International Covenant on Civil and Political Rights (ICCPR) 1966³

Article 21 of the ICCPR guarantees the right to peaceful assembly, stipulating that "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." Nigeria, as a State Party to the ICCPR, is obligated to uphold these standards.

4.4.3 General Comment No. 37 (2020) on the right to Peaceful Assembly (article 21 of the ICCPR)⁴

1. Introduction:

General Comment No. 37, issued by the United Nations Human Rights Committee, provides an authoritative interpretation of Article 21 of the International Covenant on Civil and Political Rights (ICCPR), which guarantees the right to peaceful assembly. This document offers detailed guidance on the nature, scope, and limitations of this right, clarifying the obligations of states and the rights of individuals.

2. Nature and Application of General Comment No. 37:

General Comment No. 37 defines "peaceful assembly" broadly, covering gatherings in public and private spaces, both physical and online. It emphasises that an assembly is presumed to be peaceful if its organisers intend it to be non-violent and if participants conduct themselves in a peaceful manner. (paragraphs 11-20)

3. State Obligations:

The General Comment stresses that states have a positive obligation to facilitate peaceful assemblies. This includes ensuring safety, providing necessary infrastructure, and taking measures to prevent disruptions from counter-demonstrators or hostile forces. States must also protect participants from undue interference and refrain from imposing arbitrary restrictions. States must also ensure that laws governing assemblies do not unduly restrict the right. Furthermore, States should provide adequate protection for participants against violence or intimidation as well as facilitate peaceful assemblies through appropriate measures. (paragraphs 31 -35).

4. The General Comment clarifies that any restrictions placed on these rights must be narrowly tailored and should not impair the essence of the right.

4.5 Other Associated Rights Related to the Freedom of Association and Assembly

4.5.1 The right to freedom of association and assembly do not necessarily stand on their own. The enjoyment of these important rights are dependent on the facilitation of other associated human rights.

³ Adopted at the 21st Session of the United Nations General Assembly on 16 December 1966

⁴ Adopted at the 129th Session of Human Rights Committee on 27 July 2020.

4.5.2 Right to Freedom of Expression: Closely tied to the enjoyment of the right to freedom of association and assembly is the right to express opinion freely as guaranteed by section 39 of the Constitution of Nigeria.

4.5.3 Right to Life: The protection of the right to life as guaranteed under section 33 of the Constitution of Nigeria is a major obligation by law enforcement and security agencies deployed to protests as well as organisers of protests and their supporters.

4.5.4 Right to dignity: Dignity is an all-encompassing human right whose guarantee will ensure that protesters and individual are treated humanely and accorded all protection and assistance to conduct their protests and assemblies in the right environment and in dignity.

4.5.5 Right to personal liberty: This right protected by section 35 of the Constitution of Nigeria ensures that protesters are not subject to indiscriminate arrests and detention or any other forms of restriction that will dislodge or block their ultimate aim of organizing their protests of assemblies.

4.5.6 Right to fair hearing: Protesters should be accorded all assistance to ensure that they enjoy their rights to fair hearing before the courts and afforded with access to legal representatives for their protection at the earliest possible time as provided for in section 36 of the Constitution of Nigeria.

4.5.7 Right to freedom of movement: For both protesters and non-protesters, the enjoyment of the right to freedom of movement is essential to sustaining social and economic interactions.

4.6 Case law

4.6.1 In Inspector General of Police vs. All Nigeria Peoples Party and Others (2007) AHRLR 179, the Court of Appeal laid down the judicial principles recognizing the preeminent position of the right to freedom of expression, right to freedom of association and assembly. The Court of Appeal held that “the right to demonstrate and the right to protest on matters of public concern are rights which are in the public interest and that which individuals must possess, and which they should exercise without impediment as long as no wrongful act is done.”

4.6.2 In interpreting the position of the Public Order Act, the Court further held that legislations “cannot be used by way of condition to attain unconstitutional result” and that the “Public Order Act cannot be used to attain the unconstitutional result of deprivation of right to freedom of speech and freedom of assembly.” (para 32). Their Lordships concluded that “the Constitution should be interpreted in such a manner as to satisfy the yearnings of the Nigerian society.

4.6.3 The decision aligns with international human rights standards regarding freedom of expression and assembly, reinforcing Nigeria’s commitment to upholding these rights within its democratic framework under the following principles.

1. Citizens do not require police permits to hold peaceful protests.
2. Notification to law enforcement about planned assemblies does not equate to seeking permission but serves as an avenue for ensuring safety and orderly conduct of protests and assemblies.
3. Law enforcement agencies must respect citizens’ rights while maintaining public order without infringing upon constitutional freedoms.
4. Citizens and protesters have the consequential obligations to ensure orderly conduct, respect for law and the security of other citizens and public and private properties.

5.0 Importance of the Right to Freedom of Association and Assembly:

According to the General Comment 37, the right to peaceful assembly presents us with the following unique value for the enjoyment of the human rights to freedom of association and assembly and the promotion of democracy.

1. The right of peaceful assembly enables individuals to express themselves collectively and to participate in shaping their societies. The right of peaceful assembly is important in its own right, as it protects the ability of people to exercise individual autonomy in solidarity with others.
2. When enjoyed together with other rights such as expression, the right to freedom of association and peaceful assembly “constitutes the very foundation of a system of participatory governance based on democracy, human rights, the rule of law and pluralism. According to the General Comment 37, “peaceful assemblies can play a critical role in allowing participants to advance ideas and aspirational goals in the public domain and to establish the extent of support for or opposition to those ideas and goals.”
3. Where they are used to air grievances, peaceful assemblies may create opportunities for the inclusive, participatory and peaceful resolution of differences.
4. Platform to advance other rights: Peaceful protests and assemblies always have as their aim, the call for the protection or realisation of certain rights, including economic, social and cultural rights by duty bearers. Peaceful protests therefore are necessary elements and platforms to advocate for the realisation of other human rights in a democracy.
5. Through protests and peaceful assemblies, citizens are able to participate directly in governance and shaping public policies in the spirit of the Fundamental Objectives and Directive Principles of State Policy in section 14(2)(b) of the Constitution which provides that “the participation by the people in their government shall be ensured in accordance with the provisions of this Constitution.”

5.0 Policy Recommendations

5.1 In view of the foregoing, the National Human Rights Commission in exercise of its mandate in section 5, paragraphs (l), (m) and (o) of its enabling Act makes the following recommendations:

5.2 Obligations of the Federal and State Governments

1. The NHRC urges the Federal and State Government to uphold the Fundamental Human Rights and the Fundamental Objectives of State Policy enshrined in the Constitution of Nigeria.
2. Federal and State Governments have obligations to facilitate peaceful assemblies by ensuring full protection of protest assemblies.
3. Federal and State Governments shall ensure that protests are not disrupted by opposing third parties, counter-demonstrators or hostile forces.
4. Federal and State Governments shall ensure that initial approaches to emerging violence by protesters or counter-protesters does not immediately lead to the use of deadly force and all measures to preserve human lives shall be ensured in accordance with international best practices.

5.3 Obligations of the Nigerian Police and Other Law Enforcement, Security and Armed Forces

1. On the use of force:

- (a) Abide by the recommendations of the United Nations Code of Conduct for Law Enforcement Officials and the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.
 - (b) This principle specifies that “law enforcement officials may use force only when strictly necessary and to the extent required for the performance of their duty,” that the use of force should be exceptional, and that “the use of firearms is considered an extreme measure.”
 - (c) It also states that “no law enforcement official may inflict, instigate or tolerate any act of torture or other cruel, inhuman or degrading treatment or punishment.”
2. Law enforcement and security agencies shall respect the rights of protesters, including the right to peaceful assemblies to convene assemblies and to voice their opinions.
 3. Provide and protect traffic routes for protesters and non-protesters to ensure the right to freedom of movement are enjoyed by all parties.
 4. Provide protection for public and private properties from against protesters or counter-protesters.
 5. Ensure a prompt, impartial, and thorough investigations into any incidents of human rights violations during the protest.

5.4. Obligations of Protest Leaders:

1. Ensure that the protest is peaceful and avoid provocative actions such as carrying arms, hate speeches, attacks on law enforcement and security agencies or looting of public and private properties
2. Ensure that the protest remains peaceful and law-abiding. Violence and destruction of property will undermine the legitimacy of the protest.
3. While the right to protest is guaranteed, the protection of critical infrastructure is also essential.
4. Cooperate with law enforcement to ensure peaceful protests and apprehension of offenders.

6.0 Conclusion

1. The NHRC believes that through dialogue, respect for human rights, and adherence to the rule of law, it is possible to address the grievances of the protesters while maintaining public order.
2. The NHRC calls on all parties to avoid actions that could endanger public safety or damage private and public properties as well as undermine Nigeria’s democracy.
3. The NHRC will deploy its protective and promotional mandates to monitor every protest in Nigeria and ensure that the aforementioned human rights principles are observed by state and non-state actors.
4. NHRC will be setting up a Human Rights Situation Room as an observatory to monitor, report and deploy actions to protect human rights during protests.
5. The NHRC calls on Nigerians to report human rights violations that occur before, during and after the protests to its state offices and headquarters in Abuja physically or using its online platforms and the following toll-free number: 08006472428 and 6472.

Issued in Abuja, this 31st day of July 2024

Dr. Tony Ojukwu, OFR SAN fcmc
Executive Secretary/CEO
National Human Rights Commission