

# Right to Peaceful Assembly and Association

This right is one, which is very fundamental to ~~exist~~ the very existence of man as a political animal in society. It is one of the characteristics of democratic societies, enabling public participation in political and social issues.

The right to freedom of peaceful assembly and association is a fundamental right protected by International, Regional and National legal instruments.

The UDHR is an international document that enshrines the rights and freedoms of all human beings. Article 20 of the UDHR provides that:

"1- Everyone has the right to freedom of peaceful assembly and association

2- No one may be compelled to belong to an association."

This article ensures that individuals have the liberty to collaborate freely, while also safeguarding their right to refuse membership in any group.

Article 21 of the ICCPR also makes ~~the regional~~ provision for the right to peaceful assembly, and ~~also~~ further provides in Article 22 for freedom of association and the right of every person to join and form

trade unions - for the protection of his interests.

At the regional level, the right to freedom of association and the right not to be compelled to join an association is provided and guaranteed in Article 10 of the ACTPR, while the right to assemble freely is enshrined in Article 11 of the ACTPR. However, the exercise of these rights are not absolute as it can be restricted by law.

In Nigeria, the right to ~~freedom~~ peaceful assembly and association is provided for in Section 40 of the CFRN 1999

thus:

"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."

The purpose of this provision is that a person is entitled to form and join an association or gathering in so far as such association is ~~a~~ <sup>peaceful</sup> one. Thus, the keyword being "peaceful", presupposes that where an association or assembly is formed for a purpose which is not ~~peaceful~~, then the right accorded by Section 40

cannot be extended to such gathering or association.

For the purpose of clarity and ease of analytical convenience, it is important to note that Section 40 CFRN 99 confers two (2) classes of rights as follows:

i) The general right to assemble and associate freely with others. Although the Nigerian Constitution does not expressly state that such assembly or association must be peaceful, it is necessarily implied.

As stated in the case of **Adewole v. Ijana**, the right to assemble freely and associate with others includes the right to choice of schools; thus, the Lagos State Government's circular which related to the closure or abolition of private schools, and which indicated that only public schools would be allowed in the state was held to be a violation of this right.

In **Salisu v. Lawal**, an order of court asking a wife to return to her matrimonial home was held unconstitutional in the light of the right to peaceful assembly and association. This was also the position of the SC in **Egiri v. Uperio**.

Most noteworthy is the case of **FGN v. Osiomhole**, where the plaintiff (FGN) brought an action seeking a declaration that the protests and strike by the defendant against

the imposition of #1.50k fuel sales tax, is illegal, unlawful and inimical to peace and order in the nation (and that it was contrary to the provisions of the Trade Union and Trade Disputes Acts. The FGN further sought an interlocutory injunction to stop the defendants from so acting. The court in refusing grant the declarations and injunction, held that Section 40 of the 1999 Constitution which provides for the right to assemble and associate confers a right on all Nigerians to meet and discuss matters on which they have a common interest, even though mass protest or the like is not a right, however, that is absolute, and is limited under Section 45 of the Constitution itself, the Criminal Code and other laws of the land of Nigeria.

Section 45 CFRN 99 provides that:

"nothing in Sections 1...40 of this

Constitution shall invalidate any law

that is reasonably justifiable in a

democratic society

(a) - in the interest of defence, public safety, public order, public morality

or public health; or

(b) - for the purpose of protecting the rights and freedom of other persons.

Another limitation to this right is contained in **Section 11** of the **Public Order Act** which provides that the governor of a state is empowered to issue general licenses for the conduct of assemblies, meetings, or processions in public places. Note that this power of the Governor may be delegated to a superior police officer not below the rank of Chief Superintendent of Police, and lawful members of lawful assemblies may wear uniforms, provided it is not offensive or likely to occasion a breach of the peace.

It is noteworthy that certain types of assemblies have been designated as unlawful assemblies under Section 3 of the **Public Order Act**. They are:

1) Any assembly, meeting or procession which is held without the permission of the state government.

2) Any assembly, meeting or procession held at state's place without a licence issued under Section 11 of this Act.

3) Violates any condition of any licence granted under Section 11 as aforementioned;

4) Neglects to obey any order given under Section 2 of this Act; it shall be deemed to be an unlawful assembly.

In the case of **Dewanji v. IGP**, the court stated that an original assembly may be lawful but then degenerate into an unlawful purpose.

Other definitions of unlawful assembly and processions are contained in Sections 69 and 88 of the **Criminal Code Act** respectively.

However, an assembly of persons for the purpose of preventing or protecting any house against persons threatening to break in and enter the house in order to commit an felony or a misdemeanor in the house, is not an unlawful assembly.

2) the second right conferred under Section 40 is the right to form or belong to any political party, trade union or other association.

The right was upheld by the Court in Alhaji Abubatar ~~Thamis~~ Peoples Redemption Party (PRP), and that this right applies to individuals, corporations and incorporate bodies.

In INEC v. ~~MUSA~~, an attempt by the National Assembly and the INEC to introduce additional conditions for registration of a political party was declared unconstitutional by the SC because it was

contrary to the right to form and join a political association under Sect 40 of the Constitution.

However, there is a provision to Sect 40 that the provisions of S. 40 of the Constitution shall not derogate from the powers conferred by the Constitution on the INEC with respect to political parties.

to which INEC does not accord recognition.

From the foregoing, inasmuch as the citizens of Nigeria have the right to form and join any political party, the ~~law~~ INEC may refuse to accord recognition to a political party. For instance, where the names and addresses of a party's national officers is not registered with the INEC ~~the latter~~ as required under Section 222 of the CFRN '99, etc, the latter may refuse to accord recognition to that association as a political party.

- Trade Unions

Freedom to form or join trade unions as guaranteed under the Constitution is reinforced by the provisions of the International Labour Convention of 1948 which has been ratified in Nigeria.

- Section 1(1) of the Trade Union Act defines a "Trade Union"; and Section 52 of the Act defines "workers".

From the foregoing sections, it can be deduced that there are ~~are~~ two (2) criteria to be satisfied for an association to be registered as a trade union:

- 1) First, it must be made up of any combination of workers or employers; and
- 2) Secondly, the purpose must be to regulate the terms and conditions of workers.

In the case of *Re Union of Ijelodun Timber Dealers and Allied Workers*, the Court upheld the decision of the Registrar of Trade Unions not to register the association because its objectives do not relate to relationship between workers and employers but merely relating to the expansion of ~~the~~ Timber trade and welfare of all persons involved.

— Where all the ~~reg~~ requirements under the **Trade Union Act** are complied with, the Registrar of Trade Unions generally has an obligation to register an association. However, where there is already an existing trade union protecting the interests sought to be protected by another association seeking registration, the registrar has the discretion to decide whether or not to register it in order to maintain public order. — In the case of *Osawe v Registrar of Trade Unions*, the Court held that such exercise of discretion was not unconstitutional.

— Also, the provision of Section 11 of the **Trade Union Act** makes it unlawful for persons to organize themselves into ~~trade~~ unions for the purpose of employment.

— There is also the prohibition of certain set of workers from forming a trade union, e.g. members of the armed forces, police etc.