

Opinions

May 2012

# May Day: why the right to protest should be sacred

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Femi Aborisade

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# Opinions

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# May Day: why the right to protest should be sacred

*Femi Aborisade*

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To mark May Day – or International Workers' Day – CA/B interviews the leading Nigerian lawyer and pro-democracy campaigner, Femi Aborisade. May 1st is a national holiday in more than 80 countries and celebrated unofficially in many more. It has long been a focus for protests and anti-war struggles, and was this year adopted by the 'Occupy movement' which held a 'global disruption' day to protest against extreme social inequality across the US and globally. As civil society around the world reports a rise in mass demonstrations and other types of more spontaneous action, CA/B speaks to Aborisade about his recent experiences of protesting in Nigeria. He denounces the use of violent control and the lack of coverage by state-owned media. He explains how the 'Arab Spring' and the 'Occupy Wall Street' movements have fired the determination of Nigeria protestors, and calls on the Commonwealth to help civil society improve coverage of protests and to monitor the policing of protests, thereby helping to curb the excessive use of force by national governments.

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## 1. Can you please describe any recent protests in the last 12 months in your country?

The most recent protests in the last 12 months in which I participated were those of 31 December 2011 and 9–16 January 2012. The first of these were initiated by Mrs Ganiat Fawehinmi, the wife of the popular Nigerian Barrister, the late Chief Gani Fawehinmi. The goal was to warn President Jonathan's regime that downtrodden Nigerians would vehemently resist the then proposed policy of removing 'petrol subsidy'.

The protests of 9–16 January 2012 (excluding the weekend of 14–15 January) were in response to the declaration of strikes and protests by organised labour (the Nigeria Labour Congress [NLC] and the Trade Union Congress [TUC]) as well as the pro-labour civil society groups, organised under the Joint Action Front (JAF) against the increase in the price of petrol from N65 to N141/litre, which was effected on 1 January 2012.

The increase in the price of petrol brought about instant rises in the prices of goods and services generally. Not even the Federal Government's attempt to use the courts to stop the strike succeeded. The Federal Government had approached the National Industrial Court (NIC) for an ex-parte order restraining the NLC and TUC from embarking on a strike or compelling anybody to do so. On 6 January, the NIC granted the order but it could not be enforced because, in reality, the NLC and TUC were merely tailing individual workers, youths and the unemployed, who greeted

the announcement of an increase in the price of petrol with spontaneous street protests.

The protests of 9–16 January 2012 were undoubtedly unprecedented in the history of mass movements in Nigeria, in terms of the huge numbers of protesters, the broad base of social support and the courage and initiatives demonstrated. The protesters cut across all segments of economically marginalised segments of society – workers, unemployed, students, traders, professionals, men and women (both young and old), artisans, farmers and so on. In spite of state repression, involving the killing in cold blood of about 20 peaceful protesters and the injuring of hundreds of others, millions of protesters nationwide continued to pour into the streets daily for the entire period of the strike. Depending on the degree of suppression and intimidation, all geo-political parts of Nigeria were soaked in the protest mood. In many parts of the country, protesters adopted the slogan, 'occupy Nigeria', to show that the movement was part of the international one against exclusive, punitive and anti-people economic policies of governments internationally. In Kano, in northern Nigeria, protesters stayed on one spot permanently declaring it 'Tahir square', in emulation of the Egyptian protesters. Not even the likelihood of an attack by Boko Haram suicide bombers deterred protesters. In fact, there was not a single report of the bomb explosion that took place during the period.

Shops, factories, schools, banks, markets and so on were all shut. Nigeria-bound international flights

were either cancelled or rescheduled. Members of the National Union of Road Transport Workers ensured also that commercial vehicles did not ply the road.

Though the leaderships of the NLC and TUC called off the strike on 16 January after the Jonathan regime reduced the price increase from N141/litre to N97/litre, the real reason for the cessation of protests was the deployment in the streets of security forces, including soldiers, regular police and secret police, among others. The heavily armed security agents occupied the streets in a joint military patrol and forcefully suppressed largely peaceful protesters. However, it is also important to point out that sections of this military patrol exhibited support for the protesters in the initial phase of the struggle.

The protest period demonstrated that it was possible to unite the poor segments of the Nigerian people in struggles that are aimed at bringing about good governance and positive changes in their material lives, notwithstanding primordial differences in religion, language and ethnicity. In Kano, Christians and Muslims took turns to form protective barriers during prayer sessions in the course of 'occupation' protests.

## 2. What were your experiences of protesting? Did you encounter any problems?

Though I was not personally brutalised during the 9–16 January demonstrations, protesters in general in Ibadan, south west Nigeria, where I participated, were occasionally tear-gassed. The joint military patrol of security agents constantly intimidated protesters. And at one stage, a curfew was deliberately imposed to limit the period within which people could freely move about and protest. Participating in the 9–16 January 2012 protests was done in fear of either being arrested or shot dead by state agents. But out of personal conviction, we did not care – whatever the consequences might be.

## 3. Were you arrested and charged with anything?

Although I was not arrested during the 9–16 January protests, as a leading figure and active participant in the labour and human rights movement since the late 1970s, I had been arrested and imprisoned without trial several times under successive governments in Nigeria, between 1988 and 2004.

## 4. How are protests policed by the state?

Policing of protests by the state in Nigeria is done largely by relying on physical and non-physical violent control strategy. The former strategy involves using direct physical force on protesters, including the employment of poisonous tear-gas, harassment, arrest, detention, torture and all kinds of inhuman treatment. The non-physical strategy involves the use of draconian laws, rules and regulations which hinder the free exercise of universally recognised fundamental rights of assembly and action. For example, Section 1 (2) of the Nigerian Public Order Act, CAP 382 Laws of the Federation of Nigeria, 1990, requires that any person(s) desirous of convening 'any assembly or meeting or of forming any procession in any public road or place of public resort shall ... first make application for a licence to the Governor not less than 48 hours thereto, and if such 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 licence, not less than 24 hours thereto, specifying the name of the licensee and defining the conditions on which the assembly, meeting or procession is permitted to take place; and if he is not so satisfied, he shall convey his refusal in like manner to the applicant within the time hereinbefore stipulated'.

The above provision of the Public Order Act has been used as a guise to deny the right to protest or to repress protests under the pretext that the organisers have not obtained a permit. However, the Public Order Act contravenes Section 40 of the 1999 Constitution of the Federal Republic of Nigeria, which guarantees the right of association, peaceful assembly and action, without subjecting it to the whims and caprices of any Governor or police

officer. The Nigerian Public Order Act also violates Article 11 of the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act (CAP 10), Laws of the Federation of Nigeria, 1990. Indeed, the provisions of the Public Order Act, which require permits before rallies and protests are held, have been declared unconstitutional by the Nigerian Court of Appeal in the case of *Inspector General of Police v. All Nigeria Peoples Party & ORS (2007) 18 NWLR (Pt. 1066) 457 C.A.*

The Court of Appeal, in the above case, reiterated the judgement of the Supreme Court of Ghana, which had held in the case of *New Patriotic Party v. Inspector General of Police 1992-93 GBR 585 (2002) 2 HBLRA 1* that: 'Police Permit has outlived its usefulness. Statutes requiring such permits for peaceful demonstrations, processions and rallies are things of the past. Police Permit is the brain child of the colonial era and ought not to remain in our statute books'.

However, in spite of the provisions of the Nigerian Constitution, the African Charter, and the holding of the Court of Appeal which reiterated the holding of the Supreme Court of Ghana, the provisions of the Public Order Act, which require issuance of permits before rallies, protests and processions are held, are still being applied.

**5. Are there any minorities at particular risk in your country when exercising the right to assembly?**

I am not aware that there are any minorities at particular risk in Nigeria when exercising the right to assembly. The general rule is that any group(s) of persons who set out to protest against government policy or action, in protection of their interests, risk being repressed. Only pro-government protesters do not entertain the fear of brutal repression.

**6. Has the state ever tried to restrict your freedom in any other way; if so, how?**

The state had tried to restrict my freedom through using the weapons of hunger and job insecurity. Strikers and protesters, who are employed by the state, face the risk of either being sacked or having

payment of their salaries delayed, if not sacked, until the strike is called off. I experienced the illegal sacking from my job between 2000 and 2005 as a result of trade union-related protest activities.

**7. At the time of the protest, what was the media coverage like?**

Media coverage of the 9–16 January 2012 strike was poor. The state-owned media tended not to cover the protest. If they gave it a mention at all, it would be played down, by not making it prominent. Reports on the strike did not fare much better in privately-owned media. The tendency in the country at the time of the protest and up till now was/is that news coverage has been commercialised. Protests or activities receive media coverage only if the organisers have the means to pay for airtime. Apart from this, the desire to source paid advertisements from the Federal Government moderates the extent to which private media cover protests.

**8. During your campaign did you encounter any problems accessing government information?**

As a general rule, accessing government information was difficult. This is in spite of the Freedom of Information Act that was passed into law in 2011. The Official Secrets Act which had been in force since 1911 appears to have dominated consciousness to the extent that the existence of the Freedom of Information Act hardly makes a difference. A lot of data which ought to be in the public domain on the activities of government agencies involved in managing or controlling subsidies on petroleum products are still not accessible.

**9. Did the internet play a role in the protest?**

The internet played a lot of useful roles in the protest. Protesters were able to exchange information effectively and rapidly, nationally and internationally. Developments in the course of the protests, methodologies adopted in various parts of the country, initiatives developed, slogans and demands formulated, and so on, were exchanged with ease and speed. The spirit of strong and/or

successful protests across the world, such as the 'Arab Spring' in Tunisia, Egypt, Libya and Syria, as well as the 'occupy wall street' demonstration in the USA, helped to fire the determination and resolve of Nigerian protesters. The spread of knowledge that waves of protests were taking place internationally was facilitated by the internet.

#### 10. What needs to change to strengthen the right to protest?

International and supranational organisations such as the Commonwealth should adopt measures to make individual governments, particularly in the developing countries, observe the right to protest as sacred. Currently, the pattern of killing and torture used by some countries against protesting citizens amounts to crimes against humanity.

The right to protest should not be subjected to any permit issued by the authorities in individual countries. The Nigerian Public Order Act, which subjects protests to the whimsical and capricious decisions of the Governor and Police, deserves to be repealed. Rather than suppressing the right to protest, demonstrators who adopt violence should be prosecuted in public courts. An urgent challenge is being made for supranational organisations such as the Commonwealth to support the demands of the Nigerian trade unions and civil society groups for the repeal of the Public Order Act, which subjects exercise of the right to protest to the whims and caprices of the government.

Supranational organisations such as the Commonwealth could also support independent initiatives on the part of civil society organisations to develop capacity for covering protests and monitoring the policing of protests in individual countries, with a view to exposing and thereby curbing the excesses of national governments.

#### About the author

**Femi Aborisade** is a Senior Principal Lecturer (SPL) in The Polytechnic, Ibadan, Oyo State, Nigeria. Aborisade holds a Masters in Industrial and Labour Relations (MILR) and is also a barrister and solicitor of the Supreme Court of Nigeria. A consummate researcher, Femi Aborisade is a member and Laureate of the Senegal-based Council for the Development of Economic and Social Research in Africa (CODESRIA); Laureate of the then Professor Claude Ake-led Council for Advanced Social Science (CASS); and Fellow of the Centre for Civil Society, School of Development Studies, University of Kwazulu-Natal, Durban, South Africa. He is also a member of the editorial board of the International Journal on Governmental Financial Management (IJGFM). Aborisade has been a leading figure and an active participant in the Nigerian labour and human rights movement since the late 1970s and has been imprisoned without trial several times under military dictatorships, as a result of his advocacy and defence of fundamental labour and human rights. Femi Aborisade was the education officer of the Nigeria Labour Congress (NLC), in the early '80s and has written widely on the Nigerian labour movement.



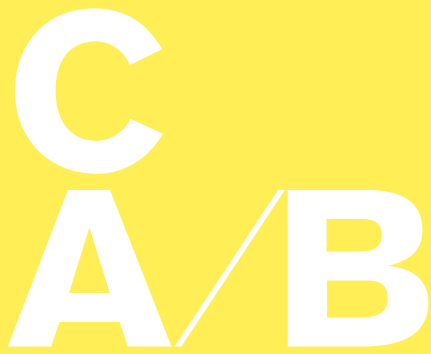
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