

Returning Sovereignty to the People: A Case for a Right to Resist in Nigeria

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Abstract

The Constitution of the Federal Republic of Nigeria recognizes sovereignty as belonging to the people of Nigeria and it is the people who decide, through elections, who will govern them under a social contract arrangement of donated powers from the governed to the government. Where government subverts that trust by engaging in acts that are unconstitutional, the very basis for the donation is annulled and the original owners of the power can legitimately and legally resist that government. However, Nigeria's constitutional journey since 1999 charts of path of serial departure from the ethos of constitutionalism. Yet the guiding instrument- the constitution, lacks a constitutional window for the people to resist constitutionalism. Utilising doctrinal legal research methodology, the paper contributes to the ongoing discussion on democratic backsliding in Nigeria by dissecting the intrinsic fabric of constitutionalism as one being rooted in the people. It theorises the concept of the Right to Resist as a self-enforcing mechanism with the real potential of stabilising democratisation and constitutionalism in Nigeria as well as serving as an insurance policy against government overreach, by intentionally elevating the rights of the people – the governed, over and above the rights donated by the people to the government. The paper mirrors the foundational provisions of the African Charter on Human and Peoples' Rights which uniquely situates the Right to Resist within the African legal jurisprudence and recommends that pathway as a veritable one for Nigeria's legal jurisprudence, constitutional order and governance framework for the purposes of justiciability and efficacy.

Keywords: Right to Resist, Constitutionalism, Democracy, Fundamental Human Rights, African Charter on Human and Peoples' Rights.

Introduction

In October 2020, a phenomenon, akin to a revolution mushroomed in Nigeria sending shocking waves reverberating across the globe to the surprise of a world used to a docile and complacent citizenry known to accept indignities of whatever scale from their governments. Lagos, Nigeria's commercial capital witnessed one of the most significant youth-led protest and resistance movements in its modern history - the #EndSARS demonstrations. It was sparked by the Special Anti-Robbery Squad (SARS)'s decades of human rights violations, arbitrary arrests, torture, extortion, and extrajudicial killings. The protests snowballed into demands for reforms, accountability, transparent governance and

social justice (Uwazuruike, 2025). The protests which occurred within the context of democratization that has seen the country experience unbroken civilian rule since 1999 underlined and brought to the fore a compelling matter, though mute for a long time, within Nigeria's constitutional order – the sovereignty and supremacy of the people over the government. The Nigerian government responded to the protests by initially dissolving the Special Anti-Robbery Squad (SARS), followed by a violent military crackdown on demonstrators, and later setting up a judicial inquiry panel. As an aftermath, the Judicial Panel of Inquiry and human rights groups established documented cases of at least 56 deaths directly attributable to the protests from security agencies shootings (Lagos State Judicial Panel of Inquiry for Restitution of Victims of SARS-Related Abuses and Other Matters Report, 2021; Amnesty International, 2020; BBC News (2021). These figures were however, contradicted and found to be grossly underreported when the Lagos State government hurriedly announced the mass burial of 103 unclaimed bodies with bullet wounds as persons identified as victims of the #EndSARS protests in October 2020 (Amnesty International, 2023; Ogwuda, 2025).

The protests ignited a conversation on a hitherto dormant core principle of constitutionalism that exists in many constitutions globally and in international human rights conventions. The principal grants citizens the right to resist maladministration by demanding accountability, and ensuring that leaders remain servants, and not masters of the people. In addition, the protests exhumed the theory of conditional legitimacy, hitherto dormant in Nigeria, which postulates that voting a government into power does not, in itself, negate, vitiate or foreclose the window of challenging and protesting poor governance (Odenigwe & Nweke, 2025).

Statement of the Problem

The ideal of constitutionalism situates sovereignty with belong to the people and the essence of democracy speaks to a governance model of the people, for the people and by the people. Thus, elementarily, power always reside in the people and never leaves. Section 14(2) (a) of the 1999 Constitution of the Federal Republic of Nigeria (CFRN, 1999) unequivocally recognizes this by stating that "sovereignty belongs to the people of Nigeria." Thus, when the people decide through elections to exercise their right to select a few to govern their affairs, *ipso facto*, they can legitimately and legally resist the people they selected, where the terms under which they were selected are being violated. However, there is major lacuna in the provisions of the CFRN, 1999 that will trigger the activation of this Right to Resist a government duly elected into power by the people in whom power and sovereignty resides. The constitution does not make provision for that right.

The consequences of this oversight are emerging and becoming apparent as Nigeria journeys on the democratic pathway. Under According to Section 14(2)(b) of the CFRN, 1999, the primary purpose of government is the protection of citizens' lives, property, and overall safety from internal and external threats and the promotion of the economic, social, and living standards of citizens so they can thrive (Okeke, 2022). A review of the trajectory

that governance has taken since 1999 indicates that the core tenants of constitutionalism are being undermined and the people who voluntarily surrendered some of their powers to elected officials are bearing the brunt of the democratic recession. There is a building consensus that Nigeria is experiencing a crisis of democracy and constitutionalism with visible symptoms of democratic decline. The purpose for which the governments was elected in 1999 has been serially subverted. Four reports, local and international and prevailing literature signpost this malaise.

Firstly, the Coalition of Civil Society Organizations in Nigeria in their assessment have concluded that governments since 1999 have been failing to live up to the three fundamental principles that form the bedrock of democracy (Nigeria Civil Society Situation Room, 2025). Secondly, a 2025 report of Chatham House (2025) casts doubts on the democratic credentials of Nigeria given "its entrenched corrupt political class, its dwindling electoral participation, popular suspicion of the ruling class, shrinking civil liberties, and weak democratic institutions". Thirdly, Freedom House in its Report (2024) scores Nigeria 44/100, citing persistent challenges of a compromised electoral process for each electoral cycle, endemic corruption, widespread insecurity, and weak institutional accountability and the serial abuse of civil rights and liberties.

Fourthly, the Ibrahim Index of African Governance tool (2026) that measures and monitors governance performance in African countries in its recent report scores Nigeria 45.7 out of 100 in overall governance, putting her position as 33 out of 54, noting that the scores are lower than the African average (49.3) and lower than the regional average for Western Africa (52.6).

Finally, a review of extant literature points to a pattern of ongoing democratic backsliding evidenced by autocratic tendencies, subversion of civil rights and liberties and creeping authoritarianism. Unlawful arrests and killings, forced disappearances, physical attacks, torture, degrading treatment; anti-civil society restrictive laws; the proscription and the designation of constitutionally-permitted protesters as terrorists have been on the rise (Ibezim-Ohaeri, 2017; Omoigberale, 2026; Action Group on Free Civic Space, 2026). Evidently, constitutionalism and democratic rule is in bad health in Nigeria.

Research Objectives and Question

Given the established fact that sovereignty resides in the people, this paper sets out to make a case for and postulate a justification as to why citizens should have a lawful right to defend the constitutional order when state institutions fail, the government they selected turns oppressive and tramples on their rights and liberties thus undermining the core purpose for which government was instituted. In doing so, the paper analyses the concept and legal basis of a Right to Resist, identifies the gaps in the CFRN, 1999, makes a case for the imperativeness of a Right to Resist in Nigeria, situating it within the four corners of the *grundnorm* of Nigeria's constitutional order. The outcome of this exercise aims at strengthening Nigeria's constitutional resilience, promote citizen-centric accountability,

and provide an insurance policy and legal shield against tyranny and tendencies against constitutionalism.

The paper poses one overarching question: considering that the people are sovereign and power resides with them, are they not legitimately and legally positioned to resist the exercise of the power they delegated to elected officials where the power is being exercised for purposes other than they were initially given? The paper seeks to answer this question, utilising philosophical, political and legal perspectives.

Methodology

The paper utilises the "black-letter" legal analysis research method that focuses on systematically identifying, appraising, and interpreting written rules and principles of law found in primary and secondary legal authorities to establish a case for the Right to Resist, a hitherto dormant option that possesses the real potential of mitigating the recessionary path Nigeria's democracy is on. This is done by analysing the existing constitutional provisions that shows the lacuna the paper seeks to address. This research method is used given the virgin nature of the concept and the paucity of literature that addressees the four corners of the concept within the Nigerian context.

Literature Review

The concept of the Right to Resist, though a global phenomenon, has received little or no attention within Nigeria's governance architecture. Notwithstanding that Nigeria has witnessed a progressive period of democratic rule since 1999 with peaceful handover of power occurring thrice, scholarly contributions on the concept are lacking. This lacuna is telling given the challenges that democratization is encountering in Nigeria especially in the areas of government adherence to the rule of law and protection of fundamental human rights of her citizens.

Even though there is a litany of writings on the right to protest within Nigeria's constitutional architecture (Ekeke, 2023; Ogwuda, 2025; Bibi-Farouk, 2024; Ugbejeh and Dallong 2023; Ekeke, 2024), none exists on the Right to Resist. It is important to clarify that the right to protest is a distinct right from the Right to Resist in legal jurisprudence. The right to protest is a compound right that encompasses three separate and distinct rights: the freedom of expression, the freedom of association and the freedom of peaceful assembly. All these inter-related rights are recognized and protected by the CFRN, 1999. Specifically, Section 39 grants citizens the right to hold opinions and to receive and share ideas without interference under the umbrella of the Freedom of Expression, while Section 40 encapsulates the Freedom of Assembly and Association by guaranteeing the right to assemble freely and belong to groups, which courts interpret as the right to peaceful protest (Wall, 2024).

The right to protest pigeonholes several activities and actions including rallies and marches, expressing views by displaying banners, waving flags, wearing placards, and shouting slogans, giving public speeches and handing out informational pamphlets; demonstrations

that involve holding sit-ins, strikes, or peaceful assemblies and finally photographing or videotaping police officers and public events in plain view as long as you do not interfere with operations to hold power to account (Edler, 2026; Bibi-Farouk, 2024). This right has been judicially recognised in the case of *Inspector General of Police V. ANPP* (2007). Even though the right to protest is constitutionally protected, the prevailing reality is that it is largely ineffective in practice because security forces continue to frequently restrict and crack down on protestors brazenly and with impunity (Lagos State Judicial Panel of Inquiry for Restitution of Victims of SARS-Related Abuses and Other Matters Report, 2021; Ekeke, 2023).

The right to protest is a legal ventilation, recognized in free societies that is essentially anchored in peaceful expression, public visibility, and collective voice, devoid of physical force or coercion. It serves one central purpose of allowing citizens to ventilate feelings and visibility to sway public opinion, raise awareness, and serve as a pressure on decision-makers towards a chosen path (Wall, 2024).

The Right to Resist however, takes on a different coloration both in its essentials and thrusts. It is triggered when the legal system fails or a government becomes tyrannical. In essence, it is used as a shield of last resort. It embraces wider forms of extreme measures including civil disobedience, breaking unjust laws, general strikes, or physical self-defense against a regime (OConnor, 2025). Thus, while the existing literature treat the right to protest within the framework of the CFRN 1999 as one of the Fundamental Human Rights, the Right to Resist is examined here as a right not provided for in the constitution but is available in legal jurisprudence and is justiciable, having regard to the domestication of the African Charter on Human and Peoples' Rights within Nigerian's legal ecosystem.

The challenge with the law and extant literature in Nigeria on the two rights – the right to protest and the Right to Resist is that they are regarded as identical, deemed the same and the two rights are treated contemporaneously and interchangeably to mean the same thing (Ugbejeh and Dallong, 2023; Ben-Igwenyi, 2023). The paper posits however, that the meaning attached to the rights to freedom of association and expression in Chapter 4 the CFRN 1999 cannot be deemed or considered to embed a Right to Resist existing contemporaneously with the right to protest. The provisions in Chapter 4 are predicated on the condition that the exercise of the right must remain peaceful, non-violent, and orderly and secondly, the citizens do not need police permission to hold a peaceful protest. On the other hand, the Right to Resist has within its central ingredients, the viability of active opposition, defiance, or forceful counteraction against state authority, laws, or law enforcement action (Ginsburg et al, 2013). Thus, the prevailing literature on the concept of the right to protest does not cover nor extend to the Right to Resist. Quite apart from the two rights being separate and distinct, they possess different meanings with unidentical ingredients.

Theoretical Framework

The concept of the Right to Resist has developed from a historical, philosophical and legal background, becoming in the process, an important tool for individuals and groups to defend their rights in the face of injustice, oppression and maladministration, and has become an integral part of the struggle for the freedom of societies (Teegarden, 2010).

Historical Background

The origin of the concept dates back to ancient Greek law, specifically in Athenian tyrannicide laws which authorized the killing of anyone who attempted to overthrow the democratic constitution (Teegarden, 2010). Building on that foundation, the Magna Carta of 1215 provided that the king (sovereign) was subject to, rather than, above the law and authorised a council of barons to revolt if the king violated their rights. This fundamentally reshaped the relationship between the governed and the government (Murphy, 2012) and emerged as one of the key ingredients of the Declaration of the Rights of Man and of the Citizen issued during the French Revolution in 1791. The provision was later incorporated into the preamble of France's 1958 constitution (Ginsburg et al., 2013) which was essentially an echo the words of the Declaration of Independence Declaration of Independence (1776) document passed by the United States of America Congress on July 4, 1776 which postulates that whenever any form of government becomes destructive of the ends for which it was instituted, the people have the right to change, abolish or institute a new one.

Under the Confucian political-legal tradition, which has its roots five centuries before the rise of the Common Era, the idea of a Right to Resist was inherent in the people. Mencius, a Chinese philosopher, wrote that rulers existed and reigned as a result of a mandate from Heaven and the mandate stood, provided they ruled fairly, justly and as long as they behaved properly (Fung, 1937). If however, they deviated from those virtues, they forfeited the mandate. The theory of the mandate of Heaven helped scholars to understand the rise and fall of rulers, and it is sometimes identified with a right of rebellion.

By the Middle Ages, the feudal customary law in Europe incorporated the concept of the Right to Resist into a code that included an *ius resistendi* (right of resistance), which endorsed the sanctioning of the king if he breached charter rights (Canning, 2011). This basically elevated resistance to a legal, rather than just moral legitimate act in feudal Europe. Christian scholars in the Middle Ages likewise agreed on the existence of a Right to Resist unjust authority (Bielefeldt, 2003). While the New Testament of the Bible in Romans 13:1-2 decreed the obedience to constituted authority, Thomas Aquinas championed the movement that maintained that the overthrow of a tyrannical government was neither unbiblical, seditious nor treasonous or, but rather a godly act (Bielefeldt, 2003). These laid the foundation for the emergence of a modern concept of the Right to Resist historically.

Philosophical Background

The Right to Resist found expression in the earliest versions of a variety of philosophical traditions. These included the ancient Greek doctrine of tyrannicide that was already part of Roman law, as well as concepts in the Hebrew Bible, Jihad in the Muslim world, and in Sub-Saharan Africa's oral traditions (Bielefeldt, 2003; Murphy, 2012). Philosophers essentially reasoned that power is a donated article by the governed to the government and the donation is predicated on certain inalienable assumptions that when violated, voids the donation and innately empowers that donee to take steps deemed necessary to repossess or recall the power under the Right to Resist.

Conceptually, Weingast (1997) postulates that the concept is founded on two assumptions about the relationship between a government and the governed. The first assumption is presented as a necessary condition: that for the governed to support the government, the latter must not transgress what that governed perceives are his or her fundamental rights. The second, envisages that to remain and hold on to power, the government must retain a sufficient degree of support from and among the governed without which, the government loses power. This postulation is hinged on the basic fact that with the Right to Resist residing with the governed, it will significantly act as a restraining force on the behavior of the government towards the governed. Weingast's postulation further argues that that, where, on a particular subject, there exists unanimity among the governed about what constitutes the legitimate boundaries of the government, it is naturally and safely assumed that government will avoid actions that violate these boundaries for fear of deposition.

In addition, the Right to Resist is mirrored after the Ulysses model (Homer, 800 B.C.E.) which conveys the intentionality of democracy deciding in the present to bind the future actions of political actors with the intention that it will forestall future decisions or outcomes that are anti-democratic and driven by temporary, self-centered or short-sighted narrow interests. It recognized the right of the people, the governed, even in the middle of the democratic circle, to seek to enforce their Right to Resist where the government deviates from accepted norms. This basically, elevates the people as the ultimate enforcers of democratic rule.

Conversely, Locke (1689) theorized that all individuals have natural rights which they surrender voluntarily as part of the social contract and the purpose of society is to protect one's property and other rights inherently valued by human beings. Thus, Locke argued that the efficacy of the social contract was the peoples' collective right to validly resist and revolt against the government should it violate the terms of the social contract. As he put it, "whenever the Legislators endeavour to take away, and destroy the Property of the People, or to reduce them to Slavery under Arbitrary Power, they put themselves in a state of War with the People, who are thereupon absolved from any farther Obedience." (Locke, 1689). Rather than been seen merely as a right, Lock reasoned that resistance and revolution are a duty of the citizenry to prevent tyranny. While Lock's position at the time did not envisage a formalised concept or Right to Resist, the postulation of popular action as an enforcement mechanism for the social contract helped lay intellectual foundation of

the modern Right to Resist. To the renowned political philosopher, Gwilym David Blunt (2018) "The right to resistance is a necessary part of the political conception of human rights". Without it, rights would only be privileges, but with the right, it provides "an ultimate remedy to human rights violations." Finally, the immortal words of a German Philosopher, Bertolt Brecht starkly speaks to the imperativeness of the right: "When injustice becomes law, resistance becomes duty" (Garscha, 2026).

Legal Background

The Right to Resist, often termed *jus resistendi*, is a recognized legal principle validating opposition to the abridgment of civil liberties, human rights, oppression and tyranny. It does not lend itself to a precise legal definition. Two prominent human rights jurists, Honoré (1988) and Murphy (2012) posit that the Right to Resist is the right, given certain pre-conditions, to take action that seeks to trigger social, political or economic change, which may, in certain circumstances be on the unlawful. The exercise of this right under the law is governed by the principle of proportionality and necessity and it must encompass outcomes that compatible with international human rights law, but do not justify infringing others' rights (Murphy, 2012).

The legitimacy and legality of the concept has over the years being clarified by legal instruments including the Declaration of Independence (1776), the Declaration of the Rights of Man and of the Citizen¹⁷⁸⁹, the Universal Declaration of Human Rights (1948) and the African Charter on Human and Peoples' Rights (1981) respectively. Thus, the global diffusion of the Right to Resist has been within the context of it been a tool available to the governed to challenge and resist undemocratic, tyrannical, or otherwise oppressive, corrupt or unresponsive domestic regimes that are abridging human rights and acting unconstitutionally. From the above historical background, the concept has been embedded in national constitutions around the world and is currently part of the legal system in forty-two countries, with about one-fifth of the world's constitutions embedding it in its constitutional orders, while with another have three formally recognised it as a legal right. A significant number of these countries are in Africa, the Americas, and Europe.

The African continent has also witnessed progressive developments in embracing the Right to Resist. The inclusion of the Right to Resist in the legal architecture of the African Charter on Human and Peoples' Rights in Article 20(2) uniquely elevated the right, already existing in international law into the continent's legal jurisprudence. Many individual African nations have taken the cue and included provisions explicitly providing for the right or duty to resist unconstitutional rule in their own national constitutions, although the scope and conditions for this right vary country by country. These include South Africa, Benin, Burkina Faso, Chad, Ghana, Mali, Gambia, Guinea, Cape Verde and Uganda (Murphy, 2025). This paper therefore posits that the Right to Resist has a sufficient conceptual foundation within the continent to take root in Nigeria.

Elements of the Right to Resist

The Right to Resist provides pathways for individuals or groups to oppose oppression, tyranny, and violations of fundamental human rights by the state. It is often considered a right of last resort when resort to legal, constitutional, and democratic options for redress have failed (Blunt, 2019). It is sometimes an individual right as well as a collective one. Prevailing literature identifies the foundational ingredients or principles the undergird the concept. The next part of the paper discusses these ingredients.

The first plank upon which the right exists is premised on the foundational concept that the people are the ultimate source of power and that governments operate only with the consent and authority of the governed under a social contract arrangement that is termed donated power from the governed to the government (Weingast, 1997). A look back at governance models shows that before representative government dawned, different types of dictatorships existed with different people living under one form of dictatorship or the other. All were overseen by a single leader exercising unrestrained power. Most of these governance structures were hereditary and monarchical with autocratic trappings that saw the monarch as all-powerful, asserting "divine right", as commonly in Europe or by the "mandate of heaven" as in imperial China. These rulers were sovereign, with supreme authority and the governed were not considered citizens but subjects. The governed did not consent to be governed but still owed obedience and loyalty to the ruler (Albert Sharer Institute, 2026).

With the advent of representative government however, a defining principle emerged, to the effect that the people, and not a supreme leader or an invested aristocracy, are sovereign or supreme. The essential requirement to be governed therefore, was that the people must consent as to how they are governed either directly or through elected representatives. In most cases, this requires popular election, with the right to vote in a representative or direct democratic arrangement for all citizens of a certain age. Thus, the first essential plank upon which the Right to Resist rests is that power does not emanate from a ruler, but in the people, making the citizenry the ultimate authority in a state and they, and they alone, determine how and who governs them.

Secondly, for circumstances to warrant resort to the Right to Resist, there ought to be severe, systemic, or substantial violations of human rights, maladministration and constitutional breaches with a body polity (Honoré, 1998). Razmetaev (2014) in a seminal work on the Right to Resist lists "massive human rights violations by public authorities (quantitative criterion); systematic human rights violations by public authorities (accumulating criterion); or extraordinary human rights violations by public authorities (criterion by serious, explicit and violent nature of the violation)" as qualifying circumstances. In addition, the pattern of abuse must have an elongated duration that has not been addressed or mitigated. Where violations become recurring, the atmosphere may be ripe for the activation of the Right to Resist. As noted in the US Declaration of Independence, resistance is triggered by a sustained pattern of usurpations and abuses,

rather than minor or transient complaints, which show an undeniable design to establish absolute despotism (Ahmet, 2004).

Thirdly, following from the first element - that the power to govern, having been donated by the governed to the government, is predicated on certain conditions and the donation is not absolute (Manzoor, 2013). In statecraft, the donation of the power is explicitly predicated on the government upholding basic rights and the rule of law (Crowe, 2024). In a representative democracy, citizens – the governed- willingly, forgo certain freedoms and donate them to an agreed entity (the government), in order to enjoy the remainder of their freedoms with each other. It is an agreement among citizens of a society that outlines what the citizens surrender the government and what the government, the beneficiary of the surrendered powers, has a responsibility to provide. These surrendered freedoms are called rights, and the responsibilities a government must engage in to fulfill the agreement are called obligations. Those activities that a society may not do and those negative outcomes that society or government may not inflict upon its citizens are called liberties and where there is a default by the government in carrying out or fulfilling its obligations triggers a legitimate Right to Resist (Allen, 1999; Ibrahim & Nurudeen, 2022).

The contemplated essence of the donated powers is that where the government subverts that trust by engaging in acts that are unconstitutional and against the rule of law, the very basis for the donation of the power is annulled, and the ruled possess the right and power to resist, disobey, or overthrow that government. John Locke, one of the key proponents of this theory argued that citizens consent to be governed only to protect their basic natural rights such as life, liberty, and property, and when the government acts out of line and in violation of that, the power implicitly reverts to the people. Thus, where there is a breach of pre-conditions for the donation of the power, it effectively voids the donation. When rulers govern for their own interests rather than for the common good, acting in an arbitrary, capricious, or absolute manner, in violation of the constitution or its own very laws, the basis for the donation of the power to rule becomes otiose. Blunt (2019) writes that where the rights are “human rights” and there has been a violation, then there must be a remedy to their violation and the ability to resist is the ultimate remedy when other means fail in order not to render the rights merely rhetorical.

Fourthly, for the Right to Resist to be available to citizens, the actions and measures intended to be taken as part of the resistance must be proportional and lawful, in conformity with international human rights and humanitarian law. Thus, even though it is an established legal right, it is not absolute and must be exercised proportionally and lawfully. Clearly therefore, the right avails only when it is activated within the recognized framework of domestic and international legal frameworks. Secondly, the exercise must be proportional – that is, force or disruption used in exercising the right must match the severity of the violation and not exceed what is strictly necessary to counter the threat (Murphy, 2012). Thirdly, core human rights protections, obligations and the rules of international humanitarian law regarding the treatment of persons involved in the enforcement of the right on both sides of the conflict must be upheld (ICRC, 2003).

Fifthly, the Right to Resist is usually treated as a right of last resort. Political theorists describe it as being triggered only in extraordinary circumstances of illegitimate government action. It does not give aggrieved citizens license to defy any law or government action they dislike or resent. Rather, it only activates when the state crosses a moral or legal threshold – when government actions become so unjust that obedience itself would be a kind of complicity. It only becomes viable after the exhaustion of available remedies and the scenario becomes inevitable with peaceful options like courts, protests, and voting are blocked or rendered ineffective (Ginsburg et al, 2013; Murphy, 2025; Polsci Institute, 2025). Essentially therefore, the right only kicks in only when non-violent, legal, or democratic means have been exhausted or proved ineffective, and there has been on sustained obstruction of legal channels, peaceful avenues and democratic processes and an exhaustion of legal options that are available under extant legal framework (O'Connor, 2025).

Sixthly, the Right to Resist is a compound right, sometimes necessitating extraordinary, political action to compel accountability, which can include civil disobedience, protests, or, in extreme scenarios, the overthrow of the government to restore rights (Cohan, 2007; Blunt, 2019). Even though the word “resist” can in itself, conjure images of violence and force, that may be limiting philosophically with the benefit of history, as the right can also be intellectual and cultural. Mahatma Gandhi (Gandhian Institutions, 2026) and Henry David Thoreau (1849) established foundational frameworks for non-violent resistance by arguing that individual conscience supersedes unjust laws in the pursuit of justice and expounded the philosophy of non-violent resistance by underlining the viability of peaceful resistance in achieving justice. This variant of the right asserts that social change can be achieved by peaceful, and not necessarily by force, and it has constituted the basis of many global social movements for change. In addition, Roy (2024), in a further expatiation of the concept of non-violent resistance, catalogues the following methods of non-violent resistance to maladministration, and human rights abuses to include civil disobedience, acts of civil disobedience failure to cooperate, general strikes, boycotts, nonviolent picketing, attempting to avoid arrest, rallies, and petition. Others include hunger strikes, protest marches, boycotts, voluntary self-suffering, refusal to pay taxes, occupation of parks, squares or roads that constitute potent and important tools for individuals and communities in their quest for justice.

Seventhly, one essential explanation for the efficacy of the right lies in the understanding that no person can ever give up the right to protect their own life. Even though PolSci Institute (2025) in their review of the writings of Hobbes famous work, *Leviathan*, postulate the absoluteness of governments and its sovereign near-total authority over the lives of subjects, they single out an exception that it considered unbreakable: no person can ever give up the right to protect their own life. This single exception, the right to self-preservation, becomes the quiet limit on a power that otherwise seems limitless.

It is the thesis of this paper therefore, that the Right to Resist has a firm conceptual background to find root and thrive in Nigeria taking into consideration its historical roots, philosophical leanings and legal foundations. The basis for this position is further strengthened by seven essentials of the right enumerated above which can find resonance with Nigeria's legal and constitutional architecture as a democracy-espousing constitutionalism ethos.

Making a Case for the Right to Resist in Nigeria

Since independence from colonial rule in 1960, Nigeria has experienced eight military coups with numerous other attempted plots. These events, spanning from January 1966 to 1993, resulted in long periods of military rule before the return to sustained democracy in 1999 (Ani and Onu, 2022). Protection of human rights and civil liberties under the different constitutions has, for the most part, been characterised by systematic and severe violations during military regimes and persistent and structural abuses under democratic rule. This has not abated notwithstanding the successive constitutional guarantees and domestication of international treaties guaranteeing fundamental rights (Samwigwe and Tony, 2023). For example, Nigeria's human rights watchdog, the National Human Rights Commission in its 2024 Human Rights Dashboard (2024) reports an alarming landscape with over two million documented cases of human rights violations across the country, underscoring the persistent challenges to human rights protection in Nigeria.

This serial pattern of the subversion of fundamental human rights and civil liberties of citizens has triggered an ongoing conversation as to the extent of the exercise of state powers by government, given the fact these powers are donated by the citizens to the government. Can the people validly rise and resist the abuse of that power within the legal framework of the existing legal landscape? Put another way, is there a legal pathway through which the ruled – Nigerians – can legally resist the abuse of their rights, when the powers the government exercises are *ab initio*, donated by the governed?

The CFRN, 1999 and its subsequent amendments, do not contain an explicit right to resist abuse of power, human rights infringements and for other related maladministration infractions. Rather, the Constitution embeds elaborate provisions, consistent with the ideal of constitutionalism that offer legal protections against the abuse of the civil rights of citizens. There are copious provisions in the Constitution and other extant legislation that guarantee and protect the rights of citizens to challenge, oppose, and hold the government accountable through several enshrined principles. These include the right to life, dignity, personal liberty, peaceful protest and assembly, and freedom of expression.

It is the thesis of this paper that these constitutional provisions, in themselves, are insufficient to mitigate to the myriad of emerging challenges of fundamental human rights infringements and for other related maladministration in Nigeria. It is posited that Section 14 (2)(a) of the CFRN, 1999 clearly states that sovereignty belongs to the people of Nigeria from whom government through the Constitution derives all its powers and authority. This requires all organs of government, and of all authorities to mandatorily defer to those to

whom sovereignty lies – the people. Significantly, as argued earlier, all the powers being exercised by the government of Nigeria are donated, given by the people of Nigeria as expressly stated in Section 14 (2)(a) of the CFRN, 1999. It follows therefore, that since the donation of the governing powers is for a specified purpose – that of ensuring the “security and welfare of the people (which) shall be the primary purpose of government”, where government verifiably fails secure the security and well-being of its citizens under the Constitution, the doner of the power – the people - ought to and should have an explicit provision allowing them to withdraw the donated powers under the Power to Resist concept.

Until a constitutional amendment to embed the Right to Resist in the CFRN, 1999 is undertaken, the paper submits that recourse can be had to the provisions of the African Charter on Human and Peoples' Rights which have explicit provisions allowing Right to Resist. Recognizing that Nigeria operates a dualist legal system, Section 12(1) of the CFRN, 1999 allows an international treaty to be assimilated into Nigerian legal system and become an enforceable law where the treaty in question undergoes a domestication process by having the National Assembly pass it into a national law (Ozu, 2014; Osuntogun, 2020). It is salutary to note that the African Charter on Human and Peoples' Rights was legally incorporated into Nigeria's legal ecosystem through the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act of 1983 now domiciled in Cap 10, Laws of the Federation of Nigeria, 1990. Under Section 1 of the Act, the Charter has the full force of law within the country and applies to all legislative, executive, and judicial authorities.

The Nigerian courts have affirmed the above position that by virtue of the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act of 1983, the African Charter on Human and Peoples' Rights is part of Nigeria's domestic law and is justiciable (AG LASG v Garuba, 1994; CRP v President, FRN, 1994; Ekhat, 2015). The distinguishing point here is that even though the exact contours of the Right to Resist has not been canvassed before Nigerian courts and adjudicated upon, given that the African Charter on Human and Peoples' Rights is now deemed and considered a Nigerian law and its provisions recognize the Right to Resist, it is desirable that the acknowledgment be migrated into the CFRN, 1999 to coexist with the other provisions relating to the fundamental human rights and civil liberties of the citizens of Nigeria.

These findings suggest that the constitutional Right to Resist serves a dual function, depending on its context. On the one hand, the right can represent a democratic and forward-looking tool that fundamentally constrains future government abuse, empowers the citizenry, and acts as an insurance policy against undemocratic backsliding. On the other hand, the right can serve as a bulwark against for coup-makers who seek to overthrow democratic governments under the guise of exercising the right. Which of these two functions prevails may be in large part be nationally determined by each country. These findings also have significant implications for our broader understanding of constitutionalism. At the heart of any constitution lies a wish to bind the future on behalf of the present. Yet our findings suggest that, at least in some cases, constitutional provisions

may also serve the function of reinterpreting and justifying the past. At least where the right to resist is concerned, constitutions are as much about yesterday as they are about tomorrow.

The Right to Resist has occupied a unique, almost ground-breaking status in international law, legal jurisprudence and political theory based on its potential to revolutionise governance. However, within the African context and particularly Nigeria, it has faced mixed reception and domestic enforcement challenges. While it was used as an effective anti-colonial tool, it now faces a suspicious and contestable place between the governed and the government especially in cases of entrenched regimes, unwilling to cede power (Murphy, 2011; Murphy, 2025). Across Africa in countries where the concept is institutionalized, it continues to face suppression with successive governments taking deliberate steps to institutionally narrow its applicability. Thus, its practical scope, enforceability and legal parameters remain narrow with its future uncertain (Odoi, and Amasah, 2023; Nkansah, 2014)

Globally, the constitutional Right to Resist plays a dual role depending on its context. In one sense, it functions as a progressive, democratic mechanism that limits potential government abuses, empowers citizens, and safeguards against undemocratic regression. Conversely, it can also be used retrospectively by coup leaders to legitimize their actions and justify the political offenses that enabled them to establish a new constitutional order. It thus can and has been shown to serve both as a sword and shield. Also, it can potentially be an insurance policy against undemocratic backsliding and simultaneously serve as an excuse for overthrowing democratically elected governments (Ginsburg et al, 2013). It is argued the less-than-impressive outing of the Right to Resist in Africa not as a testimony of its unsuitability but rather as a part of a larger challenge of lack responsible and transparency governance that Africa is labouring under. As democracy matures and thrives, the benefits of the right will emerge and become more apparent, thus, helping to strengthen its virtues.

Recommendation

The ailing nature of Nigerian's democracy makes it imperative that the CFRN, 1999 explicitly enshrine within its provisions the right of citizens to resist bad governance and give citizens a permanent shield and an insurance policy against abuse of human rights, civil liberties and other acts of maladministration in the future. This provision would enable individuals and groups to lawfully challenge actions, policies, or leadership that undermine constitutionalism, violate fundamental rights, or perpetuate corruption and abuse of power. This institutionalisation of the right has two benefits – apart from strengthening accountability and transparency in governance, it will also ginger active public civic participation in the governance process.

Ultimately, guaranteeing the Right to Resist bad governance would serve as a critical safeguard for democracy and ensure that leaders remain truly accountable to the people they serve. Above all, by legally recognising the right to oppose bad governance, the time-

honored theory that power belongs to the people, not to abusive leaders, would be underlined. In addition, it would serve as a powerful forward-looking warning to public officials that violating human rights or subverting the rule of law will carry direct, lawful consequences from the public. Making this right a part of the constitutional order guarantees that Nigerians have a legally ringfenced last-resort pathway to defend their democracy when normal systems like voting or the courts are broken or compromised.

In undertaking these legal reforms, it is suggested that the route of a constitutional amendment should be explored rather than a stand-alone legislation. The reasons for this are obviously apparent. Embedding the right in the constitution grants it an elevated platform from which no authority can easily seek to undermine, quite apart from ensuring its seamless justiciability. Given the importance of the amendment for the survival of democracy, adequate safeguards should be embedded to pre-condition the activation of the right to only one of a right of last resort, exercised proportionally to the threats to democracy and good governance. Importantly too, is the need to spell out actions and inactions of government that can trigger the right as a safeguard against coup-making adventurists.

Conclusion

The democratisation journey of Nigeria has not been without its major bumps, chief among which have been the continued infringement of human rights and civil liberties of its citizens and maladministration. For much of the time, citizens have resiled to docility owing to a lack of an effective mechanism to resist these anti-democratic tendencies. The paper has laid out in the foregoing, a justification as to why citizens should have a lawful right to defend the constitutional order when state institutions fail, and the government they selected with pre-set manifestoes turns oppressive, contrary to the original intent of the selection. The paper analysed the concept and legal basis of a Right to Resist, detected its lacuna in the *grundnorm* of Nigeria's constitutional order. Enshrining the Right to Resist and its enforceability in the Constitution subjects the actions and inactions of political actors to a "higher" law. This is within the prevailing situation where most of the rights such those of freedom of association, right to life and freedom and assembly have been serially subverted by the government and its agencies. The right is rooted in constitutionalism and presupposes that citizen have the inalienable rights, being the original donor of power to political actors to collectively resist government overreach, thus making the infringement of human rights, civil liberties and maladministration an unattractive and costly venture with dead-end outcomes for leaders.

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