



Blog Post

## **Balancing Rights Against Public Order: Ghana Police and the Use of the Public Order Act in Response to Civil Protests and Demonstrations**

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By Elikem Gadzekpo

### **Introduction**

Mass mobilization, protests, and demonstrations are not just essential for every democracy, they are also powerful tools for holding state actors accountable. In polities where citizen expectations are unmet, these forms of citizen participation in governance provide legitimate and constitutional platforms for groups or individuals to voice their concerns and dissent. They ensure that state actors are aware of and responsive to the needs and desires of the citizens they serve. This awareness and responsiveness, in turn, are crucial for maintaining a healthy and functioning democracy, reassuring us of the system's resilience and its ability to adapt to the changing needs of its citizens.

Protests and demonstrations, as points of solidarity, have the power to drive global socio-political change. The Anti-Apartheid Movement in the 1960s, the Anti-Iraq War Protests in 2003, the Women's March in 2017, the End SARS protests in 2019, and the Black Lives Matter Movement in 2020, all stand as pivotal historical moments. These historical examples not only serve as a powerful reminder to authorities that citizens are dissatisfied with the state of affairs and the condition of their lives but also inspire other actors to demonstrate in other areas, spark debate, and even bring to the attention of external or third-party actors to make a move. By understanding and learning from these historical examples, we can gain a deeper insight into the role of protests in shaping our world and feel enlightened and informed about their impact.

Throughout the political history of Ghana, protests and demonstrations have been instrumental in the growth and development of democracy and the state. A notable historical protest was

the 1948 ex-servicemen protest against the British Government in the Gold Coast, which led to the death of Sergeant Adjetey and triggered the 1948 Accra Riots. In the 1950s, the Positive Action campaign by Kwame Nkrumah and the Convention People's Party led to the end of British colonial rule on the Gold Coast and Ghana's independence in 1957<sup>1</sup>. After Nkrumah was overthrown in 1966, a wave of coups and protests culminated in the 1979 coup led by Jerry John Rawlings, who formed the Armed Forces Revolutionary Council (AFRC). In the early 1990s, there was a push for democracy by civil society groups, student unions, and opposition parties who were protesting against military rule. They demanded the return to a civilian government, resulting in Ghana's transition to democracy and adoption of the 1992 Constitution<sup>2</sup>. Mention can be made of the famous "Kume Preko" (kill me finally) demonstration that rocked the country in 1995 over what many citizens believed was the insensitivity of the government to introduce the imposition of the Value Added Tax (VAT) amidst the high cost of living and inflation Ghanaians were experiencing.

In recent years, however, protests in Ghana, such as #OccupyGhana, #FixTheCountry, and more recently, #OccupyJulorbi demonstrations, have all emerged as protest platforms for Ghanaians to exercise their civil and constitutional right against the state and government. As their predecessors, the intention of these protests has been to seek immediate change in the country's management by demanding better and improved living conditions from the state and its political actors. A right they exercise firmly entrenched within Ghana's superintending legal order framework that provides explicit provisions to safeguard the rights of citizens to protest. But recent protest events and certain actions of the Police in how they engage with protestors threaten to undermine this right of protest under the subtle cover of enforcing public order, creating confusion about how citizens can exercise their rights to protest.

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<sup>1</sup>Eric Opoku Mensah, "Collective memory, merging enemies, consistency of word and place: Nkrumah's rhetorical artefacts in the "Positive Action" protest" (2016) AYR <<https://repository.gii.edu.gh/server/api/core/bitstreams/5a739e3a-304a-47f7-b28c-73a917b3099c/content>>

<sup>2</sup> John L Adedeji, "The Legacy of J.J. Rawlings in Ghanaian Politics, 1979 - 2000" (2001) 5(2) ASQ <<https://asq.africa.ufl.edu/wp-content/uploads/sites/168/Adedeji-Vol-5-Issue-2.pdf>>

This article explores the intersection of the right to peaceful assembly and the role and response of the police under Ghana's legal framework, including the 1992 Constitution and the Public Order Act.

## Legal Framework

Chapter 5 of the 1992 Constitution outlines fundamental rights and freedoms guaranteed to all persons within Ghana's bounds. Article 21(1)(d) grants all citizens the right to freedom of assembly, including freedom to take part in processions and demonstrations.<sup>3</sup> Before embarking on a demonstration or protest, organizers must notify the police as mandated by the Public Order Act, 1994 (Act 491). The provisions of Act 491 outline the procedure for organizing public gatherings and demonstrations with the intent to protect and maintain public order. Despite this objective, its true nature is marred by arbitrary interpretations and selective enforcement by authorities. This has resulted in the stifling of voices critical of the government, undermining democratic principles.

## Recent Protests

In 2015, a group labeled the Alliance for Accountable Governance, Let My Vote Count, and the New Patriotic Party, mobilized hundreds of people in Accra to demand the creation of a new voter register. Protestors wore white, holding placards with inscriptions like *'No voodoo register'* and *'Ghost names votes for goats.'* The demonstration was initially peaceful but quickly turned ugly when they were headed to the Office of the Electoral Commission and were suddenly met with tear gas from the police, who also began arresting many of them<sup>4</sup>.

On Friday, 11 February 2021, a famous Ghanaian activist and a convener of the #Fixthecountry movement, Oliver Barker-Vormawor, was arrested at the Kotoka International Airport by national security operatives. He was detained at the Ashaiman Police Station for over 58 hours without bail despite explicit constitutional provisions outlawing these abuses of police power. On Monday, February 14, 2022, he was brought before the Ashaiman District Court on the

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<sup>3</sup> 1992 Constitution, Article 21

<sup>4</sup> Samuel K. Obour, ['Police clash with Let my Vote Count demonstrators'](#) *Graphic Online* (Accra, 16 September 2015)

charge of treason under 182(b) of the Criminal Offences Act, 1960 (Act 29). Preceding Vormawor's arrest, the High Court, in May 2021, sought to impose an indefinite ban on the #FixTheCountry movement from protesting. This did not deter people from marching on the streets of Accra in August 2021, who were chanting their dissatisfaction with the poor standard of living, quality of governance, and overall state of the state's democracy. Before the protest, the convenors had acted per the Public Order Act (Act 491) and notified police of the upcoming protest. Despite this action, security officers met them with hostility and resistance. On that day, the protestors were met with intimidating security officers with unreasonable and almost detrimental levels of weapons and crown control vehicles, which led to chaos on the day of the protest.

Similarly, in September 2023, Democracy Hub<sup>5</sup>, a civil society group, organized a three-day protest within the area of the Jubilee House, to express their dissatisfaction with the mismanagement of the economy and copious amounts of corruption that had taken place under the President Akufo-Addo's administration. The protests sparked the online campaign "*#OccupyJulorbiHouse*." The phrase is a play on the word Jubilee coined in the Ga language; "*Julorbi*" is a phrase in Ga language which means "son of a thief." During the protests, the protesters were met with several police officers who had allegedly been ordered to arrest the protestors and hold them in police custody. Many of these protestors were not released until late at night.

On the holiday weekend celebrating the birthday of Kwame Nkrumah in September 2024, Democracy Hub organized another protest against the illegal mining activities known as 'galamsey' (gather them and sell them). When the protestors gathered at the 37 Hospital roundabout, they were met with hordes of policemen, women, and vans set to intimidate the group. About 53 of the protestors were arrested and taken to prison on the alleged charges of conspiracy to commit a crime, unlawful assembly, causing unlawful damage, offensive conduct conducive to a breach of peace, assault on a public officer, and defacement of public property<sup>6</sup>.

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<sup>5</sup>Mawuse Oliver Barker Vormawor , '[Flubbing One's Lines: Revisiting #FixTheCountry's Horrid Day at the Ghana Supreme Court!](#)' *Ghana Law Hub* (24 June 2021)

<sup>6</sup>Redaction, '[Three-day protests begin in Ghana, demanding release of detained activists](#)' *Africa News* ( 3 October 2024)

## State Response and Reaction

Prior to each of the protests and demonstrations the organizers of the protests notified the police and took the necessary steps as proscribed under the Public Order Act. However, the protests that have taken place were met with aggression and force from the Ghana Police Service, resulting in mass arrests and restriction in protests. The protests differed but the state reaction remained the same. Are state actors sending a warning to its citizens not to protest on national issues or concerns?

The case of *NPP v IGP*<sup>7</sup> has been one of the key precedents for understanding and interpreting constitutional law. In this case the New Patriotic Party filed a suit against the Inspector General of Police on the claims that sections 7, 8, 12(a) and 13 of the Public Order Decree, 1972 (NRCD 68) that required, a permit or the consent of the Minister for the Interior or a police officer was needed before citizens could embark on a public demonstration or procession or celebration was unconstitutional. This was upheld by the Supreme Court, who declared the right to protest must be protected and exercised in a way that does not threaten public order. The judgment indicates that the right to assemble is a limited right where some restrictions may be necessary on some occasions, but ultimately, it is a right that cannot be denied. A year after the case, Parliament passed the Public Order Act 1994 (Act 94) to codify Article 21 of the Constitution.

The first section of Act 94 mandates that individuals or groups intending to hold public events must notify the police at least five days in advance. Importantly, the section emphasizes notification rather than permission. The police can request the postponement or relocation of an event if it poses a threat to public order, safety, or health, or violates the rights of others. However, if the organizers disagree, the police can seek an injunction from a judge to prohibit the event. The police have on numerous occasions sought for injunctions to prohibit protestors

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<sup>7</sup> NPP v IGP [1993-94] 2 GLR 459

from moving forward<sup>891011</sup>, essentially restricting the right before it is exercised. Their actions are creating an environment where it almost appears that before a citizen can protest, they need permission from the Ghana Police Service. A relic ideology that was discarded in 1993. The right to protest or demonstrate cannot be made conditional on police approval, as such a requirement would strip it of meaning.

Act 94 empowers the police to disperse crowds if there is a reasonable belief that public peace will be breached. However, the police's actions in responding to protests have been aggressive and forceful, which causes human rights defenders to wonder if their reaction to the protests are proportional. Have the actions of the police after protests aligned with their duty to maintain peace and order. Does an injunction application permit them to act with force and proceed to detain many citizens.

A study conducted at the School of Criminology and Criminal Justice at Arizona State University shows that a protest that is met with police in heavy armor and disproportionate force is one of the things that turn a peaceful protest into a violent one<sup>12</sup>.

In August 2024, young Nigerians took to the streets to demonstrate against bad governance in their state, however, they were met with security personnel who used force and ammunition to disperse crowds<sup>13</sup>. It was the police reaction that changed the mood of the protest. From this example and many others in history, police tactics to manage protests with force have ended badly.

International standards have been set to protect citizens' rights to protest and allow the police to serve their role as actors to maintain order. UN Basic Principles on the Use of Force and Firearms by Law Enforcement emphasize avoiding force even when it is to disperse an unlawful

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<sup>8</sup> <https://www.ghanaweb.com/GhanaHomePage/NewsArchive/DumsorMustStop-Ghana-Police-Service-files-injunction-against-demonstration-1931964>

<sup>9</sup> <https://allafrica.com/stories/202409200294.html>

<sup>10</sup> <https://www.modernghana.com/news/1090304/your-injunction-application-against-fixthecountry.html>

<sup>11</sup> <https://www.myjoyonline.com/police-secures-injunction-against-democracy-hub-planned-protest/>

<sup>12</sup> Edward R. Macguire, "New Directions in Protest Policing" (2015) 35(6)

SLUPLR<<https://scholarship.law.slu.edu/cgi/viewcontent.cgi?article=1028&context=plr>>

<sup>13</sup> VOA News, '[Nigeria's nationwide protests turn violent; hundreds arrested](#)' VOA (2 August 2024)

assembly. If force is necessary, it must be the minimum amount<sup>14</sup>. The police provide security and ensure law and order is maintained, especially through highly contentious situations like elections and the transition of power. Nevertheless, they are considered public servants, not tools to be used by the state to subvert or violate the rights of its citizens.

Since the commencement of the Fourth Republic, Ghana has been viewed by the international community as the 'Golden Child' of democracy due to the consistent practice of holding what they label free and fair elections<sup>15</sup>. However, the high rate of corruption, weak state institutions, passage of laws targeted at restricting the rights of marginalized communities, tell a different story. The state response is another chapter in Ghana's book of slow descent towards democratic regression.

The actions of the police and to an extent the judiciary appear to attempt to suppress these rights. From the courts granting injunctions to the police mass arresting and use of force send a signal to the citizenry that their right to demonstration and peaceful assembly are not protected. When Ghanaians perceive that their ability to assemble and associate are restricted, it lowers their motivation to participate in the system and lowers the pressure for accountability. When citizens experience unjust treatment at the hands of the police, it undermines public confidence in law enforcement agencies and the justice system. False arrests become a tool to silence political opposition, intimidate activists, and undermine freedom of expression and assembly, essential components of democratic societies. They deprive individuals of their liberty and due process rights, leading to unjust imprisonment, loss of reputation, and psychological trauma.

## **Conclusion**

It is recommended that to ensure the balance between maintaining public order and protecting citizens' constitutional rights, certain steps must be taken. One of the key actions is opening the

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<sup>14</sup>UN OHCHR, [Basic Principles on the Use of Force and Firearms by Law Enforcement Officials](#)' adopted 07 September 1990

<sup>15</sup> <https://www.files.ethz.ch/isn/178670/afrobriefno137.pdf>

conversation for an amendment of Act 94 to clarify the notification process so it is not interpreted as a request for permission. Additionally, there should be established clear objective criteria for when and how police can intervene in protests. It can also be recommended that the Police Professional Standards Bureau introduce specialized training for police officers on human rights, de-escalation strategies, and non-violent crowd control.

The right to peaceful assembly cannot be taken away, neither can we take away the police institution, so it is important that state response to mass gatherings and protests are measured, proportionate and avoid escalating the situation. Police officers should be trained to prepare them to respond to mass demonstrations, including the legal and regulatory framework that pertain to freedom of expression and assembly. They can talk and engage with demonstrators, listen to their concerns and to a certain extent, empathize with them.



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