CHAPTER EIGHTEEN

AN OVERVIEW OF HUMAN RIGHTS CONCERNS RAISED BY THE RESPONSE TO COVID-19 PANDEMIC IN NIGERIA

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Abstract

In response to the threat occasioned by the spread of the Covid-19 pandemic, the government of the Federal Republic of Nigeria, came up with regulations, restricting some human rights provisions already entrenched in the countries 1999 Constitution(as amended), such as; right to the dignity of the human person, in section 34, right to Personal liberty in section 35, right to freedom of association in section 40, right to freedom of movement in section 41 and right to private and family life, as found in section 37. The Paper employed the doctrinal research methodology in carrying out this research work. Even though the Constitution allows some restrictions and derogation from fundamental rights in Section 45 (1)-(3) this paper identified discriminatory application of the restrictive measures introduced at various levels to curb the spread of Covid-19. The paper also examines the Infectious Disease Control Act, 2021 and discovered that some of its provisions are too harsh and not in line with international best practices.The paper therefore concludes and recommends among others that while one agrees that the signing of the COVID-19 Regulation 2020, is in exercise of the powers conferred on the President, by sections 2, 3 and 4 of the Quarantine Act careful attention must be placed on human rights principles such as non-discrimination, transparency and respect for human dignity.

Keywords: *Overview, Human Rights Concerns, Restrictions, Derogation from fundamental human rights, Response to Covid-19, Nigeria.*

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1. Introduction

Human rights are inherent, indivisible, interconnected and interrelated.[1] They are natural to all human beings irrespective of ethnicity, sex, nationality, origin, religion, and colour. These rights can be protected in a functional democratic setting that anchors its foundation on the rule of law.[2] The push for respect for human rights has been on the global front burner for many years now, and to demonstrate the seriousness attached to it by the international community, some developed countries have made respect for human rights by a least developed or developing country, a key indicator, in determining whether or not to grant aid or to do business with the country.[3]

Irrespective of the above, Amnesty International reveals that human rights violations are rampant globally with high degrees of frequency, regularity and gravity generally and specifically in Nigeria.[4] These violations are further exacerbated during the enforcement of lock downs and other restrictions due to the Corona-Virus also known as Covid-19 Pandemic. The period of the pandemic has been described as that period that 'at one time or the other in our national history, we had observed the tenets of human rights more on paper than in practice'[5] The COVID-19 pandemic affected all spheres of human endeavour, ranging from the health care system, economy, politics, sports and recreations, and the enforcement of human rights which is the focus of this paper.

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[1] J.A Dada, 'Human Rights under the Nigerian Constitution: Issues and Problem', (International Journal on Humanities and Social Science (2012) (2) (12) at 2.

[2] O.Ikenga, 'A Jurisprudential Critique of Human Right Situation in Nigeria: Nigeria Democracy and Global Democracy (2nded I K Odimegwu, 2007) (3) World Philosophy Day, 222.

[3] MuhammedTawfiqLadan "Compendium of State Administration of Criminal Justice Laws Analyses" Vol III, (ed) (Nigerian Institute of Advanced Legal Studies (NIALS), Funded by John D and Catherine T MacArthur Foundation, p.5 2021

[4] Amnesty International reveals the 10 worst attacks on human rights across the world last year <https://www.independent.co.uk/news/world/politics/amnesty-international-reveals-the-100worst-attacks-onhuman-rights>Accessed 10 August 2022

[5] M Ajomo 'The Rudiments of Human Rights' (1999) at 105 <>Accessed September 15, 2022

2. *Fundamental Human Rights and Derogation or Restriction on the Rights during the Pandemic*

The Covid-19 pandemic posed a challenge to the enforcement of fundamental human rights and the observance of rule of law because both remain applicable even in times of national emergency.[6] This became evident in the case of *Ibrahim v Nigeria Army*.[7] When the court defined fundamental right as a right derived from natural or fundamental law.

Under various international instruments on human rights, States must ensure protection of certain recognized rights such as right to life, healthcare,[8] and freedom of expression, access to information, education and freedom of movement among others. However, in an attempt by the States to take necessary measures during the pandemic to limit the spread of Covid-19, they trample on rights, suppress freedoms, imposed severe restrictions on freedom of movement and assembly, which can be seen in the form of closures of educational establishments, premises used for commercial, recreational, sports, cultural and religious purposes, all these restrictions one way or the other dismantled democracy and violate the rule of law.[9]

Even though the interference with these rights is allowed under the international human rights instrument once it is lawful, necessary, proportionate to the public interest being pursued and non-discriminatory against any religion, language, race, age, disability or other background.[10] Nevertheless, States are duty bound to

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[6] Joy Okundia 'The Impact of Covid-19 on Human Rights and Individual Health: The Perspective of International Cooperation Limitations' available at: <https://www.researchgate.net/publication/355476444>accessed 15 July 2021

[7] Ibrahim v Nigeria Army (2015) LPELR 24596 (CA)

[8] The 1946 Constitution of the World Health Organization (WHO) in its preamble defines health as "a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity". The preamble further states that "the enjoyment of the highest attainable standard of health is one of the fundamental rights of every human being without distinction of race, religion, political belief, economic or social condition. The 1948 Universal Declaration of Human Rights also mentioned health as part of the right to an adequate standard of living (art. 25). The right to health was again recognized as a human right in the 1966 International Covenant on Economic, Social and Cultural Rights.

[9] Sawal I, Ahmad S, Tariq W., Tahir, M. J., Essar, M. Y., & Ahmed, A. 'Unequal distribution of COVID□19 Vaccine: A looming crisis' (Journal of Medical Virology, 93(9), 5228–5230. 2021). <https://doi.org/10.1002/jmv.27031>accesses July 17, 2021

[10] World Health Organisation: 'Addressing Human Rights as Key to the COVID-19 Response' Human Reproduction Programme April, 2022

ensure striking the balance between their response to the Pandemic and respect for the rule of law. As the WHO Director General recently advised on COVID-19, 'All countries must strike a fine balance between protecting health, minimizing economic and social disruption, and respecting human rights.'[11]

It is apposite at this stage to highlight some of the human rights affected by the outbreak of Covid-19 pandemic. They are, right to life, right to the dignity of the human person, right to personal liberty, right to freedom of association, right to freedom of movement and right to private and family life. In the International modern world, the 1948 Universal Declaration of Human Rights (UDHR) was the first recognized instrument on human right. It articulated that everyone has the right to life, liberty and security of person and no one shall be deprived arbitrarilyof these rights.[12] Article 4 stated further that no one shall be held in slavery nor subjected to torture or to cruel, inhuman or degrading treatment or forced to perform compulsory labour.[13]

Thus, in the case of *Nigeria Police Force & Ors v Omotosho & Ors,* the deceasesd, one Azeez Omotosho was the husband of the 1st Respondent and father of the 2nd - 4th Respondents.The fundamental right sought to be enforced by the Respondents was their right to dignity of human person as enshrined in section 34 (1) of the 1999 constitution of the Federal Republic of Nigeria (CFRN) as amended .Based on their contention that the killing of the said AzeezOmotoso in their presence amount to torture, inhuman and degrading treatment and a disrespect to their dignity and infringement of their respective individual right to

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[11] WHO Director General, Media Briefing, March 11. Available at https://www.who.int/dg/speeches/detail/who-directorgeneral-s-opening-remarks-at-the-media-briefing-on-covid-19 other international human rights laws recognizing right to health are: Article 5 of the 1965 International Convention on the Elimination of All Forms of Racial Discrimination: Article 12 of the 1966 International Covenant on Economic, Social and Cultural Rights: Articles 11, 12 & 14 of the 1979 Convention on the Elimination of All Forms of Discrimination against Women:

[12] Article 24 of the 1989 Convention on the Rights of the Child: Articles 28, 43 & 45 of the 1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families: Article 25 of the 2006 Convention on the Rights of Persons with Disabilities. The right to health is also recognized in several regional instruments, such as the African Charter on Human and Peoples' Rights (1981), the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights, known as the Protocol of San Salvador (1988), and the European Social Charter (1961, revised in 1996). The American Convention on Human Rights (1969) and the European Convention for the Promotion of Human Rights and Fundamental Freedoms (1950) etc.

[13] Article 3 of the 1948 Universal Declaration of Human Rights, Article 4 of the Africa Charter on Human and Peoples Rights, Section 33 of the Constitution Federal Republic of Nigeria 1999 as amended and the case of Omonyahun&Ors v. Inspector General of Police &Ors (2015) LPELR 25581 (CA)
Article 4& 5 of the UN Declaration, Article 5 of African Charter and Section 34 of the Constitution FRN

a family. It is clear that the Respondents action is for the enforcement of the right to dignity of human person irrespective of the fact that the action which resulted in the infringement of the said right was the killing of their husband and father. It is a constitutionally guaranteed right and must at all times be seen and respected as such, if the wheel of the rule of law is to be allowed to grind properly. The court went further that the criminality involved in the act of unlawful killing of the deceased does not deprive the Respondents from maintaining an action to enforce their constitutionally guaranteed right to dignity of human person.[14]

Article[15] 26 and 17[16] provides that everyone has the right to free, compulsory education in the elementary and fundamental stages. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace. The covid -19 Pandemic stalled this objective in a way because schools were closed down indefinitely during this period and unlike in other developed countries where lectures continued virtually, many public schools in Nigeria could not continue with academic activities because of the high cost of internet activities.

Similarly, the Declaration recognises individual rights to privacy and family life when it provides that no one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation.[17] Article 13[18] says everyone has the right to freedom of movement and residence within the borders of each State, right to leave any country, including his own, and to return to his country. This right was trampled upon during the Covid -19 period and anybody who violated the restriction order placed by the Nigerian government was either arrested or summarily dealt with by law enforcement agents in Nigeria.

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[14] Nigeria Police Force &Ors v Omotosho&Ors (2018) LPELR 45778 (CA) See also the case of Omonyahun v Inspector General of Police (2015) LPELR (25581) at 70

[15] Article 26 UDHR

[16] Article 17 African Charter

[17] Article 12 UDHR, Article 19 African Charter and Section 37 of the 1999 CFRN as amended. See also the case of Okafor&Ors v Ntoka&Ors (2017) LPELR 42794 (CA)

[18] UDHR, Article 12 African Charter and Section 41 of the 1999 CFRN as amended.

The argument for this is that the rights may be subject to restrictions, for the protection of national security, law and order, public health or morality.[19] The proviso in Article 12 of the African Charter and many other Conventions/treaties[20] allow limitations when necessary such as the case of Covid-19 pandemic in order to accommodate the need to balance individual right against public interests, including the protection of public health and safety. The pandemic has affected everyone's lives at work, school, travel, restaurant, and the event and tourism sectors in particular have suffered considerable financial losses due to restricted regulations and recommendations.[21] Many companies struggled to survive while others closed down and terminated employments due to the restriction in trade during the pandemic.

The Covid-19 pandemic specifically also affect the right of women and children as provided and protected under Convention on the Elimination of All Forms of Discrimination against Women (CEADAW) which in its Article 12 provides that States parties shall take all appropriate measures to eliminate discrimination against women in the field of health care in order to ensure, on a basis of equality of men and women, access to health-care services, including those related to family planning.[22] Even though the Covid-19 pandemic affected both men and women the existing gender and social inequalities are exacerbated by COVID-19 and impacted more on girls/women and children.[23] The restrictions on mobility due to Covid-19 affected women and children access to essential sexual and reproductive health services. Such restrictions can therefore be regarded as a violation of their human rights.[24] This is even more so in Nigeria where a large number of women are engaged in the informal sector and they earn their living from petty trading on a day to day basis.

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[19] Article 12 of African Charter, other right affected by the restriction include freedom of association and religion. The Declaration in Article 18 says: Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.

[20] Section 45 of the 1999 Constitution as amended

[21] The Impacts of the Coronavirus Pandemic on the Implementation of Fundamental and Human Rights Recommendations by the Human Rights Delegation, Human Rights Centre's publications, JoonasTupala2020 <www.humanrightscentre.fi/publications>accessed August 5, 2022.

[22] Article 12 of Convention on the Elimination of All Forms of Discrimination Against Women (CEADAW)

[23] UNW.GenderEquality Measures in COVID-19 Response. Available at available at <www.unwomen.org/en/news/infocus/in-focus-gender-equality-in-covid-19-response> accessed 29 August

[24] UNFPA. COVID-19 A gender lens. Available at <>

Also, Article 19 of the Declaration[25] gave individual right to freedom of expression and to receive information without any restriction whatsoever. It provides: 'Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers'[26] Thus, in the case of *Aviomoh v Commissioner of Police* it was reinstated that the freedom of expression and freedom to hold opinions are rights accruing to Nigerian citizens. So that when section 39 (1) of the Constitution entitles a person to freedom of expression to impart ideas and information, it is not a blanket right. It must not be utilized or invoked in such a way, that it offends public safety, order, morality and health, and it must not be injurious to the rights and freedom of other persons.[27]

Consequently, certain measures taken during the period of the Pandemic that restrict freedom of expression, access to information and the media are not justifiable because dissemination of information, is necessary so that the public can understand the danger and adopt measures to protect themselves at individual level regardless of language, age, disability or other background. Restricting the public flow of information and its agents i.e. Journalists and human rights defenders are detrimental to an effective public health as envisage by Article 25[28] of the declaration. The Government at various levels only need to regulate and control deliberate dissemination of misinformation that may cause harm to public healthcare or undermine government efforts in curbing the spread of the diseases.

There were reports of human rights violations from the efforts of the security agencies to enforce the stay at home order issued by President MohammaduBuhari (the President of the Federal Republic of Nigeria) which resulted in the extra-judicial killing of about eighteen innocent Nigerians, between March 30th and April 13th 2020,[29] a figure higher than the documented toll

[25] Article 19 UDHR, Article19 African Charter and Section 38 of the 1999 Constitution as amended
[26] Ibid
[27] Aviomoh v Commissioner of Police (2014) LPELR 23039 (CA)
[28] It says: Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, and housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.
[29] <https://www.bbc.com/news/world-africa-52317196>accessed October 5, 2022

inflicted by the disease as of 15th day of April 2020. The cases of violations cut across South West, South East and South-South states including Lagos State and Abuja, the Federal Capital Territory.[30] It was also reported that the National Human Rights Commission, received and documented about 105 complaints of incidents of human rights violations occasioned by security forces in 24 of Nigeria's 36 States and Abuja.[31] This article will now examine some of the human rights concerns raised by the response to covid-19 globally.

3. An Overview of Human Rights Concerns Raised by the Response to the Covid-19 Pandemic Globaily

This section will examine the human rights violations that ensued from the response to the Covid-19 pandemic generally, but specifically as it relates to right to dignity of human person, right to personal liberty, right to freedom of association, right to freedom of movement and right to private and family life which are first generation rights.[32] Some of these rights shall be examined one after the other.

a) Violation of the Right to Personal Liberty

The right to personal liberty was violated during the outbreak of the Covid-19 Pandemic. Apart from the fact that the Pandemic has on its own curtailed this right, government policies and enforcement agencies in Nigeria worsened the situation. This is because during the period in question, in most states in Nigeria, there were cases of arbitrary arrests and detention of citizens. Even health workers and others on essential duties were not left out. According to Sahara Reports[33] the National Human Rights Commission (NHRC) as at 25th April, 2020 received and documented about 105 complaints of such incidents perpetrated by Security Forces.

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[30] ibid

[31] <https://www.aljazeera.com/news/2020/04/nigeria-security-forces-kill-18-curfew-2004161425>accessed October 6, 2022

[32] UNDHR 1948 A24

[33] Sahara Reports, Victims of Law Enforcement Brutality During Covid-19 <https://saharareporters.com> <https://www.nigeriarights.gov.ng/nhrc-media/press-release/104-report-of-alleged-human-rights-violations-recorded-between-13th-april-to-4th-may-2020-following-extension-of-the-lockdown-period>

On 10 April 2020, footage shared by Amnesty International revealed that detainees in a Cambodian prison were living in "inhumane conditions." With at least 25 prisoners lying on the floor of a single small cell, the prison is claimed to be extremely overcrowded and there was non-observance of physical distancing requirements. It was referred to as a "ticking time bomb, especially during the corona virus outbreak. This scenario is not different from what is obtainable in Nigeria where the prisons are always very congested and where inmates live in very deplorably condition.[34] It should be noted that overcrowded prisons are likely to have poor sanitary conditions which can facilitate the transmission of communicable diseases, which was regarded as a human rights violation in criminal justice systems.[35]

The International human rights law, notably the International Covenant on Civil and Political Rights (ICCPR), requires that restrictions on rights for reasons of public health or national emergency be lawful, necessary and proportionate. Restrictions such as mandatory quarantine or isolation of symptomatic people must, at a minimum, be carried out in accordance with the law. They must be strictly necessary to achieve a legitimate objective, based on scientific evidence, proportionate to achieve that objective, neither arbitrary nor discriminatory in application, of limited duration, respectful of human dignity, and subject to review.[36]

In the United States, the Justice Department has quietly asked Congress for the ability to ask Chief Judges to detain people indefinitely without trial during emergencies; part of a push for new powers that comes as the novel corona virus spreads throughout the United States[37] Human Rights Watch noted that the Australian government sent hundreds of Australians to an immigration detention center on Christmas Island where the conditions were previously described as "inhumane" by the Australian Medical Association.[38]

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[34] PrisonConditionsthe -Penal Reform International <>

[35] The 50th session of the UN Human Rights Council took place in Geneva from 13June to 8 July 2022.

[36] SharifahSekalala, 'Health and Human Rights are inextricably linked in the covid-19 response'< https//ah.bmj.com>

[37] The DOJ requests indefinite detention without trial. <https//privacyinternational.org/examples/3519/us-doj-requests-indefinite-detention-without-trial>

[38] Australian Immigration Detention Policy and Practice https://humanrights.gov.au <>

Section 35(1) of the Nigerian Constitution provides that: "Every person shall be entitled to his personal liberty and no person shall be deprived of such liberty save in the following cases and in accordance with a procedure permitted by law"[39]

(a) in execution of the sentence or order of a court in respect of a criminal offence of which an individual is found guilty;

(b) by reason of failure to comply with the order of a court or in order to secure the fulfillment of any obligation imposed by law;

(c) for the purpose of bringing a person before a court in execution of the order of a court or upon reasonable suspicion of having committed a criminal offence, or to such extent as may be reasonably necessary to prevent committing a criminal offence;

(d) in the case of persons who has not attained the age of eighteen years, for the purpose their education or welfare;

(e) in the case of persons suffering from infectious or contagious disease, persons of unsound mind, persons addicted to drugs or alcohol or vagrants, for the purpose of their care or treatment or the protection of the community; or

(f) for the purpose of preventing the unlawful entry of any person into Nigeria or of effecting the expulsion, extradition or other lawful removal from Nigeria of any person or the taking of proceedings relating thereto.

Notwithstanding the above provisions, there were still cases of the violation of this right in Nigeria during the period of the covid-19 pandemic. An example of such violation was the case of the Covid-19 index case in Benue State, who was kept in isolation centre for 58 days against her wish. The woman who is a Nigerian/ British citizen by name MrsIdokoFilani arrived in Nigeria in March, 2020. When she presented herself in a private hospital for minor body pain, she was detained on suspicion of having the Corona virus. After the test, she was said to have the virus even though she was asymptomatic. This woman claimed she

[39] 1999 CFRN (as amended)

does not have the virus and further stated that she was being kept against her wish by the Nigeria Center for Disease Control (NCDC) at the isolation center.[40]
Can one say that her being kept in the isolation center for 58 days against her wish was a violation of her fundamental human right? or can it be said that her isolation is very much in line with the derogation provided by Section 35(1) of the Nigerian Constitution that; "every person shall be entitled to his personal liberty and no person shall be deprived of such liberty save in certain cases and in accordance with a procedure permitted by law"[41] Can her condition be said to fall into the category of people who are exempted and can be lawfully denied their personal liberty as we see in sub section (e) of the Section 35(1) which provides that, "in the case of persons suffering from infectious or contagious disease, persons of unsound mind, persons addicted to drugs or alcohol or vagrants, for the purpose of their care or treatment or the protection of the community."
For many years, the importance of establishing a criminal justice administration that gives greater protection to the rights of the offender and the victim and the interest of the larger society and at the same time meet generally accepted principles and standards has been a major theme in many criminal justice discourses across the world.[42] Many countries have introduced a lot of criminal justice reforms with regards to the treatment of offenders from the time of arrests to the conclusion of trial and imposition of punishment.[43] Greater emphasis is now placed on respect for the human rights of offenders and adoption of non-custodian sentencing among others. This is because the prison is adjudged a places where communicable diseases such as HIV/AIDS, tuberculosis and the recent Covid-19 Virus can easily spread from one person to another.

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[40] This woman's case went viral on the social media where she was always filming herself and broadcasting to the whole world through the internet that she did not take any drug throughout her stay in the isolation center at Abuja where she was kept.
[41] 1999 CFRN (as amended) S. 35(1) and S,25(1)
[42] Compendium of state Administration of Criminal Justice Law Analyses (Vol, III) Nigerian Institute of Advanced Legal Studies (NIALS) Ed by M.T Ladan (2021) at 10.
[43] ibid
[44] Ibid

The United Nations has kept the issue of criminal justice reforms on the front burner and pushed for its actualisation.[44] Thus a number of norms, standards and principles have been developed to guide states in developing acceptable criminal justice administration in their respective states and some of these standards deal with human rights and are general in nature.[45] They include, the International Covenant on Civil and Political Rights (ICCPR), Convention on the Rights of the Child (CRC) and the African Charter on Human and People's Rights (ACHPR). However, some other standards are subject specific and they include UN Standards Minimum Rules for the Treatment of Prisoners[46] which deals essentially with imprisonment, and the Human Rights Standards and Practice for the Police (HRSPP).[47] With the advent of Covid-19, it was recommended that the person effecting arrest, should observe Covid-19 preventive measures.[48]

b) Violation of the right to Dignity of the Human Person

The principle of the dignity of the human person is the bedrock of International human rights standards, best practices and norms. The principle emphasisestwo main subjects, first is the obligation of law enforcement officials to protect human dignity and uphold the human rights of all persons, in addition to respecting the principles of legality, necessity, humanity and non-discrimination.[49]

There is now advocacy globally for a shift from adversarial justice system that emphasise imprisonment as punishment as against that that emphasise alternative to imprisonment and restorative justice. This will not only achieve prison decongestion but will also protect the vulnerable groups in the society such as women, children, and the mentally ill as groups who often suffer more adverse consequences of imprisonment.[50] Some instruments have been developed and

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[45] Ibid

[46] United Nations Doc. A/RES/45/110

[47] HRSPP was developed by the office of United Nations High Commissioner for Human Rights (OHCHR)in 2004 as a standard reference guide for police operations across the world

[48] For instance in view of the health emergency, arrest should be considered for only serious offences and as a last resort and the observance of other covid-19 protocols such as the wearing of non-medical face mask and hand gloves when touching the suspect.

[49] UN Overview of International Legal Framework for Disability Legislation www.un.org and Article 46 of the United Nations Declaration on the Rights of Indigenous People, adopted by the UN General Assembly 13 September 2007, Doc. A/61/295.

[50] This will not in any way diminish the use of the prison as an important form of punishment and a crucial aspect of criminal justice administration.

adopted by the international community to promote a shift from imprisonment as punishment for crime. They include;

i. the United Nations Standard Minimum Rules for Non-Custodian Measures.[51]
ii. Declaration of Basic Principles of Justice for victims of Crime and Abusive.[52] And
iii. Basic Principles on the use of Restorative Justice Programs in Criminal Matters. Adopted by the UN Economic and Social Council on 24 May 2002.[53]

The Administration of Criminal Justice Act (ACJA)[54] brought a new dawn in the criminal justice system of Nigeria. The congestion of the Nigerian prisons (currently known as correctional centers) is staggering and a threat to the lives of prisoners who ought to be protected against the menace of the pandemic of COVID-19. Many people in Nigerian prisons have not been convicted of a crime but are locked up simply because they are still facing trials or awaiting trials. The same thing applies to flouters of lockdown who were arrested and dumped in police cell. The essence of lockdown conflicts with the idea of such massive detention of flouters of the rule. One is prone to ask whether the arrest is correctional or a condemnation?

Section 34 of the Constitution provides that every individual is entitled to respect for the dignity of his person, and accordingly-

(a) No person shall be subjected to torture or to inhuman or degrading treatment;
(b) No person shall be held in slavery or servitude; and
(c) No person shall be required to perform forced or compulsory labour.

The Infectious Disease Act, 2021 abrogated the erstwhile Quarantine Act of 2005 and has been described as superfluous, and that it smirks of dictatorship.[55]

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[51] Known as Tokyo Rules, United Nations Doc. A/RES/45/110.
[52] United Nations Doc.A/RES/45/110.
[53] Doc. E//2002/99.
[54] Enacted in 2015. Before 2015, the criminal Justice system of Nigeria was regulated by (I) the Criminal Procedure Act (CPA), which came into effect as Ordinance No.42 of 1945.It was re-enacted as Ordinance No. 43 of 1948 and went through a series of amendments over time until it was incorporated as Cap 80.LFN 1990.and (ii) the Criminal Procedure Code (CPC) Cap C30 Laws of Northern Nigeria,1963, which was enacted by the Northern
Region of Nigeria and applied only in the Northern region and later when states were created, to all the Northern States of Nigeria.
[55] Femi Falana, SAN, Human Rights and Constitutional Lawyer This Day Newspaper of 26/05/2020 at 4.

For instance, Section 14 of the Act gives the Director-General (DG) of the NCDC, the power to place a citizen under surveillance, and Section 24 gives the power to apprehend on the street, persons suffering from infectious diseases and the power of enforcement officer to order destruction of house , building or anything[56] It also grants excessive discretionary powers to not only the DG but also to the Police and Health Officers to investigate,[57] arrest,[58] and disclose information to prevent spread or possible outbreak of infectious diseases.[59] All these discretionary powers touch on the human rights of citizens such as the right to secrecy and confidentiality and right to own property.

c) Violation of the right to Freedom of Movement

Failure to ease the lockdown when it is absolutely necessary; for instance, to enable people go to hospital, buy food and possibly visit aged parents, is unreasonable and non-justifiable restriction to enjoyment of the right to Freedom of movement. While it is conceded that this right may be curtailed in emergency situations as envisioned by Section 41(2) of the Constitution, the fact remains that restriction on the right has to be lifted in appropriate circumstances. The test for restriction is whether it is reasonably justifiable in a democratic society; and must fall under the grounds listed in Section 41(2) (b) of the CFRN .The government in Nigeria also failed to provide adequate palliative to cushion the effect of restriction of movement in Nigeria .

Furthermore, the regulations made pursuant to Quarantine Act can be said to be in conflict with the Constitution; as it covers more grounds than the Constitution itself. In Nigeria there were incidents of people who claimed that they were forcefully quarantined and were never placed on any medication, only to be discharged later. Some also complained that they were told at the isolation centers that they tested positive whereas their results were not shown to them. These complaints resulted in some patients refusing to be held in public treatment centers. Report had it that in Lagos, a Magistrate Court on the 8th of April, 2020

[56] Part II. S.25 Infectious Disease Act, 2021
[57] Part V. S.56 Infectious Disease Act, 2021
[58] Part V. S. 58
[59] Part V. S. 61

sentenced over 30 lockdown flouters to 14 day quarantine and a month community service.[60] Most of them were caught jogging The fact that the Magistrate made the order for the defendants to be quarantined without first determining their health status is unarguably unfair and a violation of their right to personal liberty. There ought to have been an order mandating that the defendants be tested before they could be quarantined. In the instant case, it is clear that the defendants were quarantined as a punishment and neither in their own interest nor that of the members of the public.

By virtue of section 41 of the Constitution, every citizen of Nigeria is entitled to move freely throughout Nigeria and to reside in any part thereof, and no citizen of Nigeria shall be expelled from Nigeria or refused entry thereto or exit therefrom. Subsection 2 provides that nothing in subsection (1) of this section shall invalidate any law that is reasonably justifiable in a democratic society – Such as;

(a) imposing restriction on the residence or movement of any person who has committed or is reasonably suspected to have committed a criminal offence in order to prevent such a person from leaving Nigeria; or

(b) providing for the removal of any person from Nigeria to any other country to-

(i) be tried outside Nigeria for any criminal offence, or

(ii) undergo imprisonment outside Nigeria in execution of the sentence of a court of law in respect of a criminal offence of which someone has been found guilty;

Provided that there is reciprocal agreement between Nigeria and such other country in relation to such matter.

Section 41(1) provides that every citizen is entitled to move freely throughout Nigeria and to reside in any part thereof. The extradition of the Almajiris[61] from one part of northern Nigeria to another in the midst of the Corona Virus Pandemic is a violation of the right of citizens to reside in any part of the country that they wish. Also the restriction on intrastate movements during the period is a violation

[60] <https://www.thecable.ng>gbagada-joggers-must-be-quarantined>

[61] Street Urchins

of the same.

d) Violation of the right to peaceful assembly and association

This is another important constitutional right violated through the regulations and measures put in place by the government to curb the spread of Covid-19. Section 40 of the Constitution provides that every person shall be entitled to assemble freely and associate with other person, and in particular he may form or belong to any political party, trade union or any other association for the protection of his interest. There was total ban of re. igious gathering at the peak of the Pandemic.

e) Violation of the right to Medicare

Access to medicine has been issue of concerns in the past. The right to health is a fundamental right recognized globally both in national laws and international instruments. In Libya, the medical situation worsened during the war, and hospitals were constantly being attacked. In April 2020, it was confirmed that 27 health facilities had been damaged and 14 closed in five weeks. On April 6, United Arab Emirate (UAE), backed forces of KhalifaHaftar, launched a rocket attack against the AlKhadra General Hospital and damaged the 400-bed facility where 300 patients, including two COVID-19 patients, were being treated. The attack was condemned as a violation of international humanitarian law by Yacoub El Hillo.[62]

The right to free Medicare which is still considered as non-justifiable right in Nigeria was visibly violated during the Pandemic. . Political, economic, social, educational and environmental objectives among others are enshrined in Chapter 11 of the Constitution as Fundamental Objectives and Directive Principles of State Policy; which includes health care is yet to be attained. The attempt by the Federal House of Representatives in Nigeria to make law to handle health care in respect of covid-19 was commenced in such a manner that attracted suspicions and condemnation. Forinstance, the Infectious Diseases Bill;[63] which attempted to introduce the law for compulsory vaccination of citizens among other

[62] By the United Nations Humanitarian Coordinator for Libya, Yacoub El Hillo
[63] Now the Infectious Diseases Act, 2021.

draconian provisions. This was condemned as likely to violate citizens' right to the dignity of their human persons enshrined in Section 34 of the Constitution. This controversial Bill was initially suspended, but has now been passed into law by the National Assembly as the Infectious Diseases Act, 2021.

The right to health is closely related to and dependent upon the realisation of other human rights, as contained in the International Bill of Rights, including the rights to food, housing, work, education, human dignity, life, non-discrimination, equality, the prohibition against torture, privacy, access to information, and the freedoms of association, assembly and movement.

4. Legal Response to the Outbreak of Covid-19

It is trite that the legal basis for any regime or authority in Nigeria is the Constitution of the Federal republic of Nigeria.[64] Notwithstanding the country's unpreparedness on health issues like the Covid-19 pandemic, the Constitution already makes provisions which can accommodate response to situation like the pandemic. Accordingly, Section 305 gives the President the discretion to issue proclamation of a state of emergency in the federation or any part of the federation through an instrument published in the official gazette.

Section 305(3) itemises the circumstances or situation to which such proclamation of a state of emergency could be issued as follows-

The President shall have the power to issue proclamation of a state of emergency when among other reasons;

> i) There is a clear danger of an actual breakdown of public order and public safety in the Federation or any part thereof requiring extraordinary measures to avert such danger;
>
> ii)There is an occurrence or imminent danger, or the occurrence of any disaster or natural calamity, affecting the community or a section of the community in the Federation;

though neither the word 'pandemic' nor 'health risk' is mentioned in S. 305, both

[64] 1999 CFRN (as amended 2011)

paragraphs above can be safely put to accommodate the situation of pandemic over which the President can make proclamation.

No wonder the President, rather than declaring a state of emergency under this provision of the Constitution or other emergency power laws[65] opted to do so under a special regime, Quarantine Act of 1926, which does not have all the back and forth excessively complicated administrative procedure.

The Regulation made exhaustive provision that affected human life and existence both economically and socially. It restricted human movements, made exemptions to businesses in medicine, retail shops, food and drinks, logistics and transportation, accommodation, financial institutions, government institution and public utilities, places of worship, agriculture, manufacturing, aviation, communications, legal and security and diplomatic missions, international development partners and honorary consulates.[66]

Another of such regulations, a function of the Quarantine Act of 1926, is the Coronavirus Disease (COVID-19) Health Protection Regulation 2021. The regulation is divided into 6 parts all for the purpose of further restriction of people and businesses.[67]

The use of face covering concealing[68] both nose and mouth, washing of hands or cleaning with the use of hand sanitiser approved by NAFDAC[69] and checking of body temperature are deemed mandatory for any person to be allowed into the premises of identified establishments.[70] It is the mandate of business owners to implement the dictate of the regulation.[71]

The third part of the Regulation is dedicated to the mandatory compliance with treatment protocols. Accordingly, a person may not be able to refuse isolation or admission to a designated health establishment for the management of the Covid-

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[65] Emergency Powers Act and S 45 (2) CFRN

[66] Implementation Guidance for Lockdown Policy 2020

[67] The Presidential Task Force (PTF) is given the discretion to vary the regulations on COVID-19 from time to time as it deems appropriate on the recommendations of the Nigeria Centre for Disease Control (NCDC)

[68] See Regulation 39 for definition.

[69] National Agency for Food and Drug Administration and Control (NAFDAC)

[70] Such establishment include markets (including open markets), Malls, Supermarkets, Shops, Restaurants, hotels, Event Centres, Gardens, Leisure Parks, Recreation Centres, Motor, Motor Parks and Fitness Centres.

[71] See Part 2 on Operations of Public Places. This provision is extended to places of worship, banks, schools, hostels, boarding and detention centres, operators and passengers of public transportation vehicles..

19 disease where he has tested positive. A number of people where forcefully taken into isolation. Some of these patient claimed they are not sick and had been admitted unjustifiably. Some even claimed not to be cared for after being confined into the centres.[72] An alternative to mandatory confinement to designated isolation centres mentioned in Regulation 27 is the alternative home-based but monitored self-isolation. This is only allowed where the person tested positive to Covid-19 is either asymptomatic or shows mild symptoms and also proves that he or she will be able to make such alternative arrangement which satisfies the protocol issued by NCDC as certified by a healthcare provider and assessment by a medical professional.[73]

The Regulation makes the contravention of its provision an offence punishable with both fine and a term of imprisonment for six months or both as contained in the Quarantine Act[74] The Infectious Diseases Control Act was passed into law in 2021[75] with the aim of preventing the introduction into and spread in Nigeria of dangerous infectious diseases and for related matters. The Minister of Health under this regime made regulations such as the Infectious Diseases (Covid-19 Access Restrictions and Clearance) Regulations 2021 for the purpose of combating the disease. The Act makes comprehensive provision on the management of covid-19 right from the stage of symptoms and testing positive, prevention of introduction and international spread of the disease and amongst its numerous provision, vaccination and prophylaxis – responsibility of getting vaccinated and the fact that a person may be forced, by order to get vaccinated where necessary.

5. Conclusion and Recommendation

Agreeably that the world community was saddled with the responsibility of saving lives during the pandemic. Nigeria also strived to achieve this objective by passing several regulation to curtail the spread of the virus. The consequences of such regulations cannot be neglected irrespective of the motive especially were

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[72] Peter Uzoho, 'NCDC: Why patients play, dance in Isolation Centres. Thisdaylive, Nigeria <https://www.google.com/amp/s/www.thisdaylive.com/index.php/2020/05/22/ncdc-why-patients-play-dance-in-isolation-centres/amp/> accessed 18 April 2022

[73] Regulation 30 (a & b)

[74] S. 5 Quarantine Act

[75] The Bill for an Act to repeal the Quarantine Act and Enact the Control of Infectious Diseases was passed on Tuesday, 21st December 2021 <https://www.google.com/amp/s/www.vanguardngr.com/2021/12/reps-pass.controversial-infectiuos-diseases-bill-into-law/amp/>

rights violated are those ensured and secured in the grundnorm of the country i.e. the Constitution of the Federal Republic of Nigeria. The government while being proactive should be conscious of the inalienable and fundamental rights of it citizens. Citizens' right to personal liberty were trampled upon with the excuse of preventing the spread of the diseases as stated earlier. Many were forcefully dragged to isolation centres despite their insistence that they were not sick and without a proper test. Some designated Isolation centres refused to admit ordinary citizens. Admissions into such centres require connection with influential people in the country otherwise such a person would not be admitted. This shows lack of equal treatment of citizens during the heated period of the pandemic.

Some patients in an isolation centre embarked on demonstration as they claimed they were not well catered for in the confined centres[76] while some claimed that the testing equipment was faulty as almost everybody tested with the instrument tested positive which is alarming.[77] Among the areas of rights infringed on are, right to personal liberty, right to dignity of human person, right to freedom of movement, right to peaceful assembly and association, right to private and family life, and finally even though not justiciable, right to medical care.

Medically, Nigeria was not prepared for the type of emergency caused by Covid-19. Private hospitals and many government hospitals lack the basic equipment to test and manage the disease.[78] Even though the international human rights law

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[76] TaiwoAdebulu, 'Bauchi: We've addressed irregular feeding complaints at isolation centres' May 5,2020TheCable, Nigeria <https://www.thecable.ng/Bauchi-weve-addressed-irregular-feeding-complaints-at-isolation-centres/amp>Ishola Michael, 'We Have Acted on Complaints About Meals At Isolation Centres-BauchiGovt' May 5 2020 Nigerian Tribune <https://tribuneonlineeng.com/we-have-acted-on-complaints-about-meals-at-isolation-centres-%E2%80%95-Bauchi-govt> accessed 06 October 2022. John Adams, ' Covid-19: Complaints of Poor Treatment at Niger Isolation centre' Minna 24th May 2020 <https://www.sunnewsonline.com/covid-19-complaints-of-poor-treatment-at-niger-isolation-centre/>

[77] OpeAdetayo, 'Why are Nigerians Paying for Fake Covid test results?' 01 October, 2021 ALJAZEERA https://www.google.com/amp/s/www.aljazeera.com/amp/economy/2021/10/1/why-are-nigerians-paying-for-fake-covid-test-results accessed 16 August 2022

[78] OlubunmiAdetunmbi, '10 Lessons from that Nigeria must learn from Covid-19' 01 April 2020 TheCable<https://www.thecable.ng/10-lessons-from-that-nigeria-must-learn-from-covid-19 2022. O.S Ilesanmi, A.A Afolabi. Six months of COVID-19 response in Nigeria: lessons, challenges, and way forward. jidhealth [Internet]. 2020 Sep. 27 [cited 2022 Oct. 6];3(Special1):198-200. Available from: <https://www.jidhealth.com/index.php/jidhealth/article/view/63> 06 October 2022. Francis Abulude&IfeoluwaAbulude, 'Impact of the COVID - 19 pandemic: Lessons from Nigeria' ResearchGate<https://www.researchgate.net/publication/347993916_Impact_of_the_COVID__19_pandemic_Lessons_from_Nigeria>accessed 16 August 2022

guarantees everyone the right to the highest attainable standard of health and makes it obligatory for governments to take steps to prevent threats to public health and to provide medical care to those who need it, Interference with human rights should only be allowed when it is necessary and proportionate to the public interest being pursued and must be non-discriminatory[79] human rights law recognises this in the event of serious public health threats and public emergencies threatening the life of the citizens.[80]

Having identified some human rights concerns, this paper makes the following recommendations;

(i) The need for the Federal and State government to work hand in hand to know the peculiarities and vulnerability of each state. It is not all the states in Nigeria that the inhabitants have to sit at home. There are States, such as Kwara State, that could manage the situation without necessarily closing all markets and accessibility to basics.

(ii) The Nigerian government should develop its health sector so as to forestall a similar occurrence in the event of another health emergency situation, such as the pandemic.

(iii) The tenets of human rights should be observed more in practice than on paper.

(iv) The government at the three levels should work together instead of issuing several regulations, directives, guidelines and protocols at the national, state, and organisational levels.

(iv) More developed countries should make respect for human rights by a less developed or developing country a key indicator in determining whether or not to grant aid or to do business with them.

(v) Government should strike a balance between protecting health, minimising economic and social disruption and respecting human rights.

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[79] The International Covenant on Economic, Social and Cultural Rights which most countries have adopted. Article 10 of the European Convention on Human Rights (ECHR) which is imparimateria with article 19 of the International Covenant on Civil and Political Rights (ICCPR) is a good example of instances wherein a human right may be limited.

[80] See generally also, UN, Overview of International Legal Framework for Disability Legislation <www.un.org> See also Article 46 of the United Nations Declaration on the Rights of Indigenous People : adopted by the UN General Assembly 13 September 2007, Doc. A/61/295