

## **Measures to Combat The Coronavirus Disease in Nigeria: Implications on Human Rights**

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### **Abstract**

**T**he Coronavirus Disease has been in existence since December 2019 and ever since it was detected, has caused severe illness and several deaths in several persons all over the world. Efforts to curb the pandemic, led to several restrictive measures in Nigeria, which unfortunately trampled on the rights of some persons. Other measures like washing of hands with soap and water as well as prompt treatment of infected persons, highlighted the inadequacy in the Nigerian system where persons do not have access to required resources. Using a doctrinal approach, this study examines the human rights violations that Nigerians experienced, due to efforts to curb the pandemic in the country. It concludes that although these measures are necessary due to the danger and risks associated with COVID 19, they must be compliant with relevant national and international human rights laws.

**Keywords:** Coronavirus Disease, Covid-19, Human Rights, Pandemic, Nigeria

### **1. Introduction**

The Coronavirus Disease (COVID 19) was first detected in Wuhan, China, in December 2019.<sup>1</sup> Within 50 days of the detection, the virus had infected

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more than seventy thousand persons and killed over eighteen hundred individuals in China.<sup>2</sup> Initially, it was named the Wuhan coronavirus or 2019 novel coronavirus (2019-nCov) by researchers in China and on the 11<sup>th</sup> of February, named coronavirus disease 2019 (COVID-19) by the World Health Organisation (WHO) while the virus was termed SARS-CoV-2.<sup>3</sup> The virus is a new strain which was never previously found in humans until the 2019 occurrence. It had however been seen in various avian hosts and mammals, including ‘bats, camels, mice, cats, dogs and more recently in scaly anteaters.’<sup>4</sup>

COVID 19 is an extremely infectious disease. People are infected through droplets from respiratory organs when in close contact with an infected person. Droplets could also fall on surfaces which a person could touch before touching his or her nose, eyes or mouth. The incubation period, that is, the period between the date of infection and the onset of symptoms, ranges between 5 to 14 days. Within this period, an infected person can be a threat to other people. COVID 19 is a respiratory infection which attacks the lungs and causes breathing difficulties, cough, loss of taste, nausea, sore throat, body aches and fever. Most times, people recover without special treatments administered to them. In severe cases, however, it leads to respiratory failure, acute respiratory distress syndrome (ARDS), damage to other organs in the body and eventually death. Early identification, isolation and treatment is key to a successful handling of the disease.<sup>5</sup> Infections could occur for people of all ages but it was discovered that it was more difficult for persons above 60 years to survive. According to the WHO, over 95 percent of deaths have occurred in persons above the age of 60.<sup>6</sup> Also,

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<sup>1</sup> Aishwarya Kumar and Puneet Kumar Gupta and Ankita Srivastava, ‘A Review of Modern Technologies for Tackling COVID-19 Pandemic, Diabetes & Metabolic Syndrome’ [2020] 14(4) *Clinical Research & Reviews*, 569-573.

<sup>2</sup> Muhammad Adnan Shereen, and others, ‘COVID-19 Infection: Origin, Transmission, and Characteristics of Human Coronaviruses’ [2020] 24(1) *Journal of Advanced Research*, 91-98.

<sup>3</sup> Li Bai, and others, ‘Chinese Experts’ Consensus on the Internet of Things-aided Diagnosis and Treatment of Coronavirus Disease 2019 (COVID-19)’ [2020] 3 *Clinical eHealth*, 7-15.

<sup>4</sup> Manuel Rojas, and others, ‘Convalescent Plasma in Covid-19: Possible Mechanisms of Action’ [2020] 19(7) *Autoimmunity Reviews*, 1-9.

<sup>5</sup> Bai (n 3) 9.

<sup>6</sup> WHO, ‘Statement – Older People are at Highest Risk from COVID-19, but All must Act to Prevent Community Spread’ <<https://www.euro.who.int/en/health-topics/health-emergencies/coronavirus-covid-19/statements/statement-older-people-are-at-highest-risk-from-covid-19,-but-all-must-act-to-prevent-community-spread>> accessed 28 July 2020.

persons with previous health issues such as cardiovascular disease, cancer, diabetes, chronic respiratory disease, kidney disease, and hypertension, are more prone to death from the disease than those whose immune system could successfully fight it off.<sup>7</sup>

As at 28 July 2020, an estimated 16,688,264 persons have been infected with COVID 19 globally, while about 657,462 persons have died and 215 countries have reported cases.<sup>8</sup> Its invasion in nearly all countries of the world, has led to its being termed by the WHO as ‘the most important public health emergency of the last century after the 1918-1920 influenza pandemic’.<sup>9</sup> The extent of damage and response differs from country to country around the world and while some countries have made a lot of success in ... curtailing... the outbreak, other countries have struggled with the pandemic with a lot of deaths recorded.<sup>10</sup> Nigeria has been criticised for her unpreparedness in preventing the pandemic from extending to the country by not closing her borders early before the onset of the index case and subsequent infection by others.<sup>11</sup> Basic resources needed such as ventilators, testing kits, facemasks and sanitizers have been scarce due to the large number of infections. A lot of progress has however been made and several infected persons have recovered from the disease. Many countries have focused on managing symptoms and building the immune systems of infected persons to get rid of the disease.

Due to the dangerous nature of the pandemic, several measures were taken to curb the spread. Some of these measures were however reported to violate the human rights of vulnerable persons that have been established in

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<sup>7</sup> Ibid.

<sup>8</sup> Worldometer, ‘COVID 19, Corona Virus Pandemic’ <<https://www.worldometers.info/coronavirus/>> accessed 28 July 2020.

<sup>9</sup> World Health Organization, ‘Situation Reports Coronavirus’ <<https://www.who.int/emergencies/disease-s/novel-coronavirus-2019/situation-reports>> accessed 25 July 2020.

<sup>10</sup> Cesar V. Munayco, ‘Early Transmission Dynamics of COVID-19 in a Southern Hemisphere Setting: Lima-Peru: February 29<sup>th</sup> - March 30<sup>th</sup>, 2020’ [2020] 5 *Infectious Disease Model*, 338-345.

<sup>11</sup> O.O Oleribe, and others, ‘Ebola Virus Disease Epidemic in West Africa: Lessons Learned and Issues Arising From West African Countries’, [2015] 15(1) *Article in Clinical Medicine*, 54–57; Ngozika A. Obi-Ani and Chinenye Anikwenze and Mathias Chukwudi Isiani, ‘Social Media and the Covid-19 Pandemic: Observations from Nigeria’, [2020] 7(1) *Cogent Arts & Humanities*, 1-15.

national and international legal instruments.<sup>12</sup> Other measures like washing of hands with soap and water as well as prompt treatment of infected persons, emphasised that the rights of Nigerians to some resources are violated. This study discusses the meaning and origin of COVID 19. It spells out the measures that were taken by the Nigerian government to respond to the crisis and curtail the spread of the virus. It also discusses the ways by which these measures violate the human rights of citizens and recommends ways by which human rights principles can be integrated into these responses. It specifically focuses on the first wave of the pandemic, that is the first few of February 2020, when COVID 19 was first discovered in Nigeria.

## 2 History, Origin and Development of the Coronavirus

Coronaviruses (CoVs) are the largest group of non-segmented positive strand RNA viruses of the *Coronaviridae* family. The name “coronaviruses” is derived from the “club shaped spike projections” which are seen at the surface of the virion.<sup>13</sup> The first human coronaviruses, known as HCoV-229E and HCoV-OC43 were first identified in the 1960s, from cultures got from an adult who had common cold. Two other coronaviruses, known as

HCoV-NL63 and HCoV-HKU1 were later identified in people who had upper respiratory tract infections, asthma, bronchiolitis and pneumonia. These four viruses were found in temperate climates and caused respiratory illnesses in humans, especially in the winter, compared to the other seasons.<sup>14</sup>

In 2003, there was an outbreak of the coronavirus causing Severe Acute Respiratory Syndrome (SARS) in Guangdong province in China, identified as SARS Co-V. Unlike the previous coronaviruses, SARS Co-V was highly infectious, with infected persons showing pneumonia symptoms with Acute Respiratory Distress Syndrome (ARDS) and multiple organ dysfunction

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<sup>12</sup> UN Habitat, ‘The Value of Sustainable Urbanization: World Cities Report 2020’ <[https://unhabitat.org/sites/default/files/2020/10/wcr\\_2020\\_report.pdf](https://unhabitat.org/sites/default/files/2020/10/wcr_2020_report.pdf)> accessed 25 July 2020.

<sup>13</sup> Mengmeng Zhao, and others, ‘Advances in the Relationship Between Coronavirus Infection and Cardiovascular Diseases’ [2020] 127 *Biomedicine & Pharmacotherapy*, 110230- 110246.

<sup>14</sup> Jeffrey S. Kahn and Kenneth McIntosh, ‘History and Recent Advances in Coronavirus Discovery’ [2005] 24 *The Pediatric Infectious Disease Journal*, 223-227.

syndrome.<sup>15</sup> It was discovered that the presence of underlying health conditions, including hypertension and heart diseases, increases the severity of the illness and the risk of death in affected persons.<sup>16</sup> The virus spread to other countries including Thailand, Vietnam, Taiwan, Hong Kong Singapore and the United States of America. It affected about 8096 persons and caused about 774 deaths, which led to a declaration of the state of emergency in 2004 by the Centers for Disease Control and Prevention (CDC) and the WHO.<sup>17</sup>

In 2012, another coronavirus outbreak called MERS Co-V began in Jeddah, Saudi Arabia and spread to other Middle East countries including Qatar, Bahrain, Kuwait, Jorda and Tunisia, before it spread worldwide. The symptoms associated with MERS are similar to those of SARS, as infected persons suffer from pneumonia while severe cases lead to ARDS and failure of organs in the body.<sup>18</sup> The virus is transmittable between human beings and this occurs mainly through droplets from the nose and mouth. Many persons, including healthcare workers who were attending to patients, were infected, which caused the closing down of hospitals and the refusal to attend to infected patients. Immuno compromised persons who had conditions like diabetes and renal failure had a higher risk of dying. Precautions were taken to prevent further spread of the virus, such as the use of Personal Protective Equipment (PPE), isolation and sensitisation of the public through diverse ways. Between 2010 and 2015, WHO reported that MERS-COV invaded 26 countries, with 1621 infected persons and 584 deaths globally.<sup>19</sup>

A more recent outbreak occurred in 2019, when fever and pneumonia cases with unfamiliar origin was discovered in Wuhan, China. From further research, it was discovered that it was a new type of coronavirus and was named the severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2).

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<sup>15</sup> Christopher P. Robinson and Katharina M. Busl, 'Neurologic Manifestations of Severe Respiratory Viral Contagions' [2020] 2(4) *Critical Care Explorations*, 1-7.

<sup>16</sup> J.W. Chan, and others, 'Short term Outcome and Risk Factors for Adverse Clinical Outcomes in Adults with Severe Acute Respiratory Syndrome (SARS)' [2003] 58(8) *Thorax*, 686-689.

<sup>17</sup> Aisha M. Al-Osail and Marwan J. Al-Wazzah, 'The History and Epidemiology of Middle East Respiratory Syndrome Corona Virus' [2017] 12 *Multidisciplinary Respiratory Medicine*, 1-6.

<sup>18</sup> Emmie de Wit, and others, 'SARS and MERS: Recent Insights into Emerging Coronaviruses' [2016] 14(8) *Nat. Rev. Microbiology*, 523- 527.

<sup>19</sup> Al-Osail and Al-Wazzah, (n 15) 3.

It was thereafter named "coronavirus disease 2019" (COVID-19) by WHO. COVID 19 is the 7<sup>th</sup> human coronavirus that has been in existence.<sup>20</sup> It was discovered that the COVID 19 symptoms patients had were similar to SARS-CoV and MERS-CoV, that is, 'high fever, dyspnea, and chest radiographs revealing invasive multilobed lesions.'<sup>21</sup>

### 3 Human Rights in The Fight against Pandemics

Human rights are vital in ensuring that individuals and groups of persons are protected from abuse. It sets standards in which persons are to be treated enabling them demand for their entitlement with dignity, instead of begging for it or considering it as a favour. The Universal Declaration of Human Rights (UDHR), was the first document which highlighted the basic principles of human rights. Thus, a person whose rights have been violated can approach the court of law for redress.

Human rights infringements are usually targeted at the poor and other vulnerable persons due to their ignorance, reluctance in voicing out their grievances and seeking for redress, in addition to their financial dependence, which has the effect of worsening the quality of their lives.<sup>22</sup> Nigeria is a signatory to several international human rights instruments which protect the rights of persons to life, dignity, health, freedom of movement and prohibits torture, arbitrary arrest and detention. These instruments include: the International Covenant on Civil and Political Rights (ICCPR),<sup>23</sup> International Covenant on Economic, Social and Cultural Rights (ICESCR),<sup>24</sup> the African Charter on Human and Peoples' Rights (ACHPR),<sup>25</sup> the UN Convention against Torture and other Cruel, Inhumane

<sup>20</sup> Zhao, and others, (n 13) 1.

<sup>21</sup> Rojas, and others, (n 4) 1.

<sup>22</sup> N Apergis and A Cooray, 'How do Human Rights Violations affect Poverty and Income Distribution?' [2020] 161 *International Economics*, 56–65; Human Right Watch, 'Poverty and Inequality' (2020) <<https://www.hrw.org/topic/poverty-and-inequality>> accessed December 12, 2020.

<sup>23</sup> G.A. Res. 2200A (XXI) (1966), <<https://www.ohchr.org/EN/ProfessionalInterest/Pages/CCPR.aspx>> accessed 25 July 2020.

<sup>24</sup> G.A. Res. 2200A (XXI) of 16 December 1966, <<https://www.ohchr.org/en/professionalinterest/pages/cescr.aspx>> accessed 25 August 2020.

<sup>25</sup> OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982) <<https://www.achpr.org>> Watch, 'Poverty and Inequality' (2020) <<https://www.hrw.org/topic/poverty-and-inequality>> accessed December 12, 2020.

<sup>25</sup> G.A. org/legalinstruments/detail?id=49> accessed 25 August 2020.

and Degrading Treatment or Punishment,<sup>26</sup> and the United Nations Convention on the Rights of the Child (UNCRC).<sup>27</sup> Nigeria is a signatory to the above stated instruments and it has domesticated the African Charter on Human and Peoples Rights into Nigerian Law through the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act, Laws of the Federation of Nigeria (LFN) 1990. Some states have also domesticated the UNCRC, through the Child Rights Act, 2003. The domesticated laws are therefore enforceable and persons whose rights have been violated can seek legal redress in courts.<sup>28</sup> The rights established in these international instruments have also been incorporated into the CFRN.<sup>29</sup>

Chapter II of the CFRN consists of economic, social and cultural rights. Section 14(2)(b) of this chapter provides that 'the security and welfare of the people shall be the major concern of government'. The rights to health, education, environmental protection and preservation of culture of Nigerians have also been established.<sup>30</sup> These provisions are however not justiciable and Nigerians cannot hold the government responsible for not fulfilling their obligations arising from the human rights provisions. However, the ACHPR which has been domesticated in Nigeria, can be relied upon to enforce claims.

Apart from these constitutional provisions, other laws have been enacted in Nigeria to protect the rights of persons concerning various issues. These include: Trafficking in Persons (Prohibition) Law Enforcement and Administration Act, Discrimination Against Persons with Disabilities (Prohibition) Act, Anti-Torture Act, Universal Basic Education Act, Violence Against Persons (Prohibition) Act and HIV/AIDS (Anti-Discrimination) Act.

<sup>26</sup> G.A. Res. 39/46 of 10 December 1984

<<https://www.ohchr.org/en/professionalinterest/pages/cat.aspx>> accessed 26 August 2020.

<sup>27</sup> G.A. Res 44/25 of 20 November 1989 <<https://www.ohchr.org/en/professionalinterest/pages/crc.aspx>>; P. Nkemdilim, and others, 'State Actors, Human Rights Violations and Informal Livelihoods During The COVID-19 Pandemic in Nigeria', [2021] *Territory, Politics, Governance*, 1-20.

<sup>28</sup> See section 12 of the CFRN, which requires the domestication of international legal instruments at the Nigerian National Assembly before they can be enforceable.

<sup>29</sup> P Mbah and C Nwangwu, 'The Counter-Insurgency Operations of the Joint Task Force and Human Rights Abuses in Northern Nigeria, 2011–2013', [2014] 4(5) *Journal of Educational and Social Research*, 67–78.

<sup>30</sup> See sections 17, 18, 20 of the CFRN.

According to the WHO, human rights cannot be totally ignored during the COVID 19 pandemic. It has to be integrated into the global efforts being made to stop the spread of the virus, as human rights aids in creating a structure and help responses to be more effective.<sup>31</sup>

The ICCPR stipulates that States could derogate from their obligations to uphold the rights of citizens when there is an emergency which ‘threaten the life of a nation’ and the existence of such emergency has been declared officially.<sup>32</sup> According to McGoldrick,<sup>33</sup> the condition that the ‘life of the nation’ must be threatened by the emergency, was added to ensure that manipulation and exploitation does not occur by States. She further stated that the expression “life of the nation” was chosen instead of the “life of the people,” to avoid doubts as to whether ‘people’ meant everyone or few of the population.<sup>34</sup> The European Court of Human Rights defines the phrase “public emergency threatening the life of the nation,” as “a situation of crisis or emergency which affects the whole population and constitutes a threat to the organized life of the community of which the state is composed.”<sup>35</sup> Section 45(2) of the 1999 Constitution of the Federal Republic of Nigeria (CFRN) also permits the derogation of rights when there is an emergency situation that must be addressed.

Due to the spate of abuse and oppression carried out as a result of the provisions permitting derogation of rights in the ICCPR, the Siracusa Principles on the Limitation and Derogation Provisions in the ICCPR (hereinafter Siracusa Principles), was drafted.<sup>36</sup> The Siracusa Principles is a non-binding document which was adopted by the UN Economic and Social Council in 1984, to stop repressive acts as well as the violation of human

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<sup>31</sup> WHO, ‘Addressing Human Rights as Key to the COVID-19 Response,’ <file:///C:/Users/ooolus/Downloads/W HO-2019-nCoV-SRH-Rights-2020.1-eng%20 (1).pdf> accessed 28 July 2020.

<sup>32</sup> ICCPR, Article 4(1).

<sup>33</sup> Dominic McGoldrick, ‘The Interface between Public Emergency Powers and International law’, [2004] 2 *International Journal of Constitutional Law*, 380-394.

<sup>34</sup> Ibid.

<sup>35</sup> *Lawless v. Ireland*, Eur. Ct. Hum. Rts. (Ser. A) No. 3 (1961).

<sup>36</sup> International Commission of Jurists, ‘Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights’ (1984) <<https://www.icj.org/wp-content/uploads/1984/07/Siracusa-principles-ICCPR-legal-submission-1985-eng.pdf>> accessed 13 August 2020.



rights of persons under the guise of public emergencies.<sup>37</sup> According to the Siracusa Principles, restrictive measures taken during periods of emergencies, must be necessary, proportional to the objective that is aimed to be achieved, supported by law, of limited duration and do not promote inhumane actions as well as discrimination based on gender, age, status, background, and vulnerability. Government must also be accountable and transparent with all responses, which should be communicated to the public.<sup>38</sup> Non-compliance with the above stated guidelines hinder the protection of the rights of persons and leads to harm, injustice, lack of trust of the government and conflict. It also affects the main objective of these restrictions.<sup>39</sup> Paragraph 28 of General Comment 14<sup>40</sup> notes that limitations of fundamental rights are "...intended to protect the rights of individuals rather than to permit the imposition of limitation by States." States thus have the duty to justify such measures that would warrant a restriction of such rights.

The Siracusa Principles however, apply generally to all public emergencies and do not specifically focus on the transmission and treatment of diseases which affect the health of the populations.<sup>41</sup> Public health threats, vary from general emergencies in terms of 'the dynamics of transmission, the severity of illness, the availability of treatment, and control measures'.<sup>42</sup> Restrictions of human rights in public health emergencies require specific attention and there have been calls for legal guidance from the Human Rights Committee, which is the body vested with the function of monitoring the implementation of the ICCPR by its parties.<sup>43</sup> The committee has, through its general comments, previously provided guidance to States, on the drafting of laws and policies to conform with human rights principles, but it is yet to address

<sup>37</sup> Nina Sun, 'Applying Siracusa: A Call for a General Comment on Public Health Emergencies' [2020] 22(1) *Health and Human Rights* 387-389.

<sup>38</sup> Benjamin M. Meier and Hanna Huffstetler and Judith Bueno de Mesquita, 'Monitoring and Review to Assess Human Rights Implementation' in LO. Gostin & BM Meier (eds), *Foundations of Global Health and Human Rights* (Oxford University Press, 2020) 155.

<sup>39</sup> WHO (n 31).

<sup>40</sup> UN Committee on Economic, Social, and Cultural Rights. General Comment No. 14 the Right to the Highest Attainable Standard of Health (Article 12 of the International Covenant on Economic, Social, and Cultural Rights). Aug 11, 2000, E/C.12/2000/4.

<sup>41</sup> Katherine W. Todrys and Erin Howe and Joseph J. Amon, 'Failing Siracusa: Governments' Obligations to Find the Least Restrictive Options for Tuberculosis Control' [2013] 3(1) *Public Health Action*, 7-10.

<sup>42</sup> Sun, (n 37) 387.

<sup>43</sup> Ibid.

limitations of rights during public health emergencies.<sup>44</sup> In the interim, global institutions like UNAIDS, the Global Fund and WHO, have highlighted some important issues valuable to the promotion of human rights in pandemics, which can be used as guidelines, despite their insufficient coverage.<sup>45</sup>

#### 4 Legal Effects of the Measures to Combat Covid19 in Nigeria

The COVID 19 outbreak was declared a global pandemic on the 11<sup>th</sup> of March, 2020 by WHO due to the high level of its spread and the severe effects on nations. Governments were therefore urged to take urgent steps to curtail the spread of the virus.<sup>46</sup> The Nigeria Centre for Disease Control (NCDC) reported Nigeria's first coronavirus case on February 27, 2020, when an Italian citizen working in Nigeria, returned from a trip to Italy. Since then, the number of infected persons have been on the rise and as at 29 July 2020, NCDC estimated that about 41,804 persons have been infected and 868 deaths have occurred.<sup>47</sup> Due to the inadequate testing kits and the failure of people to report the existence of symptoms and submit themselves for testing, there have been speculations that the infected persons could actually be more than the figures given by the NCDC.<sup>48</sup>

In accordance with sections 2-4 of the Quarantine Act<sup>49</sup>, which authorises the president to make regulations for the purpose of preventing the introduction or spread of infectious diseases within Nigeria, the COVID-19 Regulation 2020<sup>50</sup> was enacted. A Presidential Task Force on COVID-19

<sup>44</sup> Ibid.

<sup>45</sup> UNAIDS, 'Rights in the time of COVID-19 — Lessons from HIV for an Effective, Community-led Response' (2020)

<<https://www.unaids.org/en/resources/documents/2020/human-rights-and-covid-19>> accessed 13 August 2020; The Global Fund, 'COVID-19 Guidance Note: Human Rights in the Time of COVID-19' <<https://www.theglobalfund.org/en/funding-model/updates/2020-04-14-covid-19-response-guidance-on-country-dialogue-and-human-rights/>> accessed 13 August 2020; WHO, 'Addressing Human Rights as Key to the COVID-19 Response' (n 31).

<sup>46</sup> Human Rights Watch, 'Human Rights Dimensions of COVID 19 Response' <<https://www.hrw.org/news/2020/03/19/human-rights-dimensions-covid-19-response>> accessed 16 May 2020.

<sup>47</sup> NCDC, 'Covid 19- Nigeria' <<https://covid19.ncdc.gov.ng/>> accessed 16 August 2020.

<sup>48</sup> Iniobong Ekong and Emeka Chukwu and Martha Chukwu, 'COVID-19 Mobile Positioning Data Contact Tracing and Patient Privacy Regulations: Exploratory Search of Global Response Strategies and the Use of Digital Tools in Nigeria' [2020] 8(4) *MIR Mhealth Uhealth* 1, 2.

<sup>49</sup> Cap Q2, LFN 2004, <<https://lawsofnigeria.placng.org/laws/Q2.pdf>> accessed 16 November 2020.

<sup>50</sup> Federal Republic of Nigeria, 'Covid 19 Regulations' <[https://covid19.ncdc.gov.ng/media/archives/COVID-19\\_REGULATIONS\\_2020\\_20200330214102\\_KOhShnx.pdf](https://covid19.ncdc.gov.ng/media/archives/COVID-19_REGULATIONS_2020_20200330214102_KOhShnx.pdf)> accessed 18 July 2020.

(PTF) was established to provide guidelines and coordinate Nigeria's efforts in curbing the spread of COVID 19.<sup>51</sup> The PTF produced a lockdown policy document which highlights control measures and lists businesses and sectors exempted from the restrictions.<sup>52</sup> The measures set up by both federal and state governments seem to be necessary steps to achieve objectives stated in the lockdown policy document. The methods of implementation however violated the human rights of persons, especially the poor.<sup>53</sup> These measures and their effects are discussed as follows:

#### 4.1. Restriction of Movements

The cessation of movements in Lagos, Ogun and the Federal Capital Territory (FCT) for an initial period of 14 days was to take effect from the 30<sup>th</sup> of March 2020. The lockdown was further extended for a few more weeks and was finally relaxed on the 4<sup>th</sup> of May, 2020. The federal government banned all international flights and inter-state travels and also closed all schools and universities. Persons working in the essential sectors like healthcare, food transportation and security personnel were however exempted from this restriction.<sup>54</sup> State governors, on their part, took various measures to protect their populations by restricting movements and banning public gatherings and religious programs. Food, drugs, as well as other essential items, were the only items allowed to be sold. States like Oyo and Ekiti, on the other hand, only set dusk to dawn curfews. Many states also mandated the use of face masks for their citizens when they are outside their homes while the washing of hands and the use of sanitizers were encouraged.

The restriction placed on movement has been the subject of various arguments and there have been claims of human rights violations on the basis of the provisions of the CFRN, which established the rights of Nigerians to move freely within the country and leave the country whenever

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<sup>51</sup> Presidential Task Force on COVID-19, 'About the PTF' (2020) <<http://statehouse.gov.ng/covid19/objectives/>> accessed 18 November 2020.

<sup>52</sup> Presidential Task Force on COVID-19, 'Implementation Guidance for Lockdown Policy' <<https://statehouse.gov.ng/wp-content/uploads/2020/04/PTF-COVID-19-Guidance-on-implementation-of-lockdown-policyFINAL.docx-2.pdf>> accessed 18 November 2020.

<sup>53</sup> P. Nkemdilim, and others, (n) 27.

<sup>54</sup> S. Robin-Oliver, 'Free Movement of Workers in the Light of the Covid-19 Sanitary Crisis: From Restrictive Selection to Selective Mobility' [2020] 5(1) *A Journal on Law and Integration*, 613–619.

it pleases them.<sup>55</sup> However, according to the ICCPR, it is lawful for rights to be restricted for the purpose of protecting the health of the public or for national emergencies.<sup>56</sup> COVID 19 is a highly contagious virus which incapacitated almost all sectors in Nigeria and caused several deaths. It is therefore lawful that such restrictions are made to prevent further harm to the public, as long as human rights principles are complied with.

Despite the fact that operational guidelines were produced to guide the police and other law enforcement agencies in the enforcement of COVID 19 regulations,<sup>57</sup> the indiscriminate use of force was reported during the first wave of the pandemic. Thus, there were several reports of members of the security agencies, including the Nigerian Police Force, the Nigerian Security and Civil Defence Corps, killing people in the guise of ensuring compliance with the lockdown orders. According to the National Human Rights Commission (NHRC), the excessive use of force by these officers led to 18 deaths between 30 March and 13 April in Kaduna, Abia, Delta, Niger, Ebonyi and Katsina States. Additional sources revealed the deaths of two persons by the police in Anambra and Abia states, with the Abia incident causing violence where youths released detainees in a police station and thereafter burnt down the building.<sup>58</sup> On the 14<sup>th</sup> of April, 2020, a police officer killed two people at the New Tyre Market Area of Nkpor in the Idemili North Local Government Area of Anambra state, while he was trying to implement the lockdown regulations.<sup>59</sup> Furthermore, a female police officer was killed in Rivers state on the 23<sup>rd</sup> April 2020, by her colleague, who shot her while trying to prevent him from destroying the goods of traders who flouted the restrictions placed on movement, and displayed their wares in the market.<sup>60</sup>

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<sup>55</sup> CFRN, s 41.

<sup>56</sup> ICCPR, Article 4.

<sup>57</sup> Nigeria Police Force, 'Enforcement of Covid-19 Regulation: Operational Guidelines for the Police and other Law Enforcement Agencies in Nigeria' (2020) <[https://covid19.ncdc.gov.ng/media/files/COVID\\_19\\_BOOKLET\\_.pdf.pdf](https://covid19.ncdc.gov.ng/media/files/COVID_19_BOOKLET_.pdf.pdf)> accessed 12 May 2020.

<sup>58</sup> Article 19, 'Nigeria: COVID-19 Response Should not be Used to Violate the Right to Life and Intimidate Journalists' <<https://www.article19.org/resources/nigeria-covid-19-response-should-not-be-used-to-violate-the-right-to-life-and-intimidate-journalists/>> accessed 20 May 2020.

<sup>59</sup> Social Action, 'Human Rights Violations during COVID-19 Lockdown in Nigeria' (2020) <<https://saction.org/humanrights-violations-during-covid-19-lockdown-in-nigeria/>> accessed 30 June 2020.

<sup>60</sup> Ibid.

These actions contradict the right to life of citizens, established by international human rights law. The ICCPR, for example, provides that “every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life”.<sup>61</sup> Unlike some other rights, the obligations arising from this right cannot be derogated from by States, even in cases of public emergencies.<sup>62</sup> Section 33 of the CFRN also protects the right to life and states that persons should not be killed except they have been sentenced to death by a court in Nigeria for the commission of a criminal offence. It is an irony that the lives of citizens that the government aimed to protect through the restrictions placed by the COVID 19 regulations, are not considered as sacrosanct by security agents.

Apart from the killings, meetings and gatherings were scattered aggressively with several arrests made by these security personnel. People, particularly informal workers, were harassed, intimidated, beaten and arbitrarily detained in Kaduna, Lagos and Rivers States, while the goods and means of income of traders were demolished in Abia, Ekiti, Lagos and Rivers States. These actions are contrary to the rights of persons to be treated with respect and dignity, in recognition of their status as human beings.<sup>63</sup> Thus, all forms of disrespect, cruel and inhumane actions by law enforcement officers are human rights violations, despite their intention of ensuring compliance with COVID 19 regulations.

The UN Basic Principles on the use of Force and Firearms, 1990, laid down guidelines to ensure proper use of firearms and force by enforcement officials so as to protect populations. Law enforcement officials should always apply non-violent means while discharging their duties and only when that method remains ineffective should force be used. Force must only be used when it is necessary to preserve life and even in such instances, damage and injury should be minimal.<sup>64</sup> Article 9 of the ICCPR, provides that ‘everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are

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<sup>61</sup> ICCPR, Article 6. See also, Universal Declaration of Human Rights, Article 3; ACHPR, Article 4 and UNCRC, Article 6.

<sup>62</sup> ICCPR, Article 4(2).

<sup>63</sup> See the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Article 2 and 4 and the African Charter on Human and People’s Rights, Article 5.

<sup>64</sup> See UN Basic Principles on the use of Force and Firearms\_Principles 3, 4 5(b).

established by law'.<sup>65</sup> An instance when the right to personal liberty can be derogated from, is in 'execution of the sentence or order of a court in respect of a criminal offence'.<sup>66</sup>

However, a person who is arrested must have really committed an offence. According to section 35(6) of the CFRN, a person who has been unlawfully arrested or detained has a right to be compensated, in addition to a public apology made by the appropriate authorities. The Social and Economic Rights Accountability Project (SERAP), a nongovernmental organization in Nigeria, instituted a claim against the governor of Rivers state, Nyesom Wike and the Nigerian President, Muhammadu Buhari, at the ECOWAS Court of Justice in Abuja over the unlawful arrests, detention and maltreatment, against the people of Rivers state, in the guise of enforcing the lockdown. The governor was also reported to have ordered the demolition of two hotels, due to their disobedience of his order to stop operations for a period of time.<sup>67</sup>

Furthermore, during the period movements were restricted, the human rights of journalists as regards the freedom of expression was violated while they covered the news and performed other functions relating to their professional duties. They were attacked, harassed and arrested by law enforcement and security personnel, who were asked to enforce orders made by the government. There were also reports that the coverage of COVID 19 updates were directly and indirectly censored. For example, several journalists were prohibited from accessing the presidential villa to obtain updates on the measures taken by federal government in ending the pandemic.<sup>68</sup> Also, on March 28, 2020, a Department of State Security (DSS) operative, attacked a journalist working with the Imo State Leadership newspaper, while taking pictures of a hotel where people were forcibly quarantined. Also, the tyres of a circulation vehicle belonging to the Nation newspapers were slashed by soldiers at a checkpoint in Mbiama, a border

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<sup>65</sup> See also, African charter on Human and People's Rights, Article 6 and the CFRN, Section 35.

<sup>66</sup> CFRN, S 35(a).

<sup>67</sup> Premium Times, 'Alleged Rights Abuses: SERAP sues Wike, Nigerian govt at ECOWAS Court', <<https://www.premiumtimesng.com/news/more-news/394314-alleged-rights-abuses-serap-sues-wike-nigerian-govt-at-ecowas-court.html>> accessed 25 July 2020.

<sup>68</sup> Olufunmilayo Obadofin, 'Impact of COVID 19 on Nigerian Newsrooms', <<https://pulitzercenter.org/stories/impact-covid-19-nigerian-newsrooms>> accessed 20 September 2020.

town between Rivers and Bayelsa States, Nigeria.<sup>69</sup> A Rivers state owned newspaper outlet reported the first COVID 19 case in Rivers state and the managing director was allegedly sacked.<sup>70</sup> Countries have been enjoined under international human rights law, to protect the freedom of expression of citizens, as well as the right to receive and convey information and ideas ‘through any media and regardless of frontiers.’<sup>71</sup> This position is also stated in section 39 of the CFRN.

The Committee on Economic, Social and Cultural Rights encourages the provision of “education and access to information concerning the main health problems in the community, including methods of preventing and controlling them.”<sup>72</sup> The media assists in making vital information available to persons, which helps in saving lives and keeping people alert. Thus, the freedom of expression is important during pandemics and authorities managing the COVID-19 crisis have a duty to provide regular and appropriate information on all aspects of the crisis.<sup>73</sup> In many countries however, governments tried to clamp down on journalists who criticized their response to the pandemic. In Thailand and Niger, for example, several journalists were arrested while in countries like India, Myanmar and Bangladesh, internet access was restricted.<sup>74</sup>

The restrictions on movement caused hardship on daily income earners who earn their daily sustenance from small scale businesses which they have to leave their homes to do, thereby rendering them incapable of feeding their families.<sup>75</sup> The reduction of economic activities affected many informal businesses which had to close down and many lost their jobs in the

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<sup>69</sup> Media Rights Agenda, ‘MRA Condemns Attacks on Journalists Covering COVID-19, Calls on Government of Nigeria to Ensure Respect for Media Freedom’ <<https://www.africafex.org/freedom-of-expression-violations/mra-condemns-attacks-on-journalists-covering-covid-19-calls-on-federal-government-to-ensure-respect-for-media-freedom>> accessed 20 May 2020.

<sup>70</sup> Article 19, (n 59).

<sup>71</sup> See the Universal Declaration of Human Rights, Article 19; International Covenant on Civil and Political Rights, Article 19 and African Charter on Human and People’s Rights, Article 9.

<sup>72</sup> Human Rights Watch, Human Rights Dimensions of COVID- Response, (n 46).

<sup>73</sup> Council of Europe, ‘The Impact of the COVID-19 Pandemic on Human Rights and the Rule of Law’ <[web/human-rights-rule-of-law/covid19](http://www.coe.int/en/)><https://www.coe.int/en/>> accessed 16 May 2020.

<sup>74</sup> Media Defence Initiative, ‘COVID-19: Governments must Protect Freedom of Expression during the Pandemic’ <<https://www.mediadefence.org/news/covid-19-governments-must-protect-freedom-expression-during-pandemic>> accessed 20 May 2020.

<sup>75</sup> Human Rights Watch, ‘Governments should Respect Rights in COVID-19 Surveillance’ (2020) <<http://www.hrw.org/news/2020/04/02/governments-should-respect-rights-covid19-surveillance/>> accessed 22 July 2020.

process.<sup>76</sup> Due to the increase in the rate of poverty, some teenagers and youths, mainly in Lagos and Ogun states, resorted to stealing from people's houses.

Sadiya Umar Farouq, the minister of Humanitarian Affairs, Disaster Management and Social Development in Nigeria, announced that food rations would be supplied to vulnerable families but people only got little portions that were not even sufficient to cook for a day, while some did not receive anything.<sup>77</sup> Economic assistance was also promised to the poor and vulnerable persons in Nigeria for a period of four months. It was claimed that the sum of N20,000 was paid to persons registered under the National Social Register of Poor and Vulnerable Households, which was established in 2016 to curb poverty. However, there was no confirmation of the money ever being received and the government could also not give a viable account of the payment of the relief funds.<sup>78</sup> On the 4<sup>th</sup> of April 2020, SERAP called for a detailed account of the cash transfers by the government, as provided by the 2011 Freedom of Information Act. This is as a result the concerns they had as to whether the supposed beneficiaries actually received the funds.<sup>79</sup>

Efforts to reduce economic losses in this period were also made. For example, Nigeria's Central Bank announced a 50 billion Naira Targeted Credit Facility (TCF), to support households and small and medium sized enterprises (SMEs) whose economic activities were disrupted by the COVID-19 pandemic.<sup>80</sup> Also, the House of Representatives on the 24<sup>th</sup> of March 2020, introduced and passed the Emergency Economic Stimulus Bill, 2020, which aims to provide relief to employees and companies during the pandemic. This will be achieved by 'providing a tax rebate for employers and business owners; deferring the payment of mortgages under the National Housing Fund; and waiving the import duties on medicines and

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<sup>76</sup> International Labour Organization (ILO), Contagion or Starvation, the Dilemma facing Informal Workers during the COVID-19 Pandemic, (2020) <[https://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS\\_744005/lang-en/index.htm](https://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS_744005/lang-en/index.htm)> accessed 22 August 2020.

<sup>77</sup> Human Rights Watch, 'Nigeria: Protect Most Vulnerable in COVID-19 Response' <<https://www.hrw.org/news/2020/04/14/nigeria-protect-most-vulnerable-covid-19-response>> accessed 20 May 2020.

<sup>78</sup> Ibid.

<sup>79</sup> Ibid.

<sup>80</sup> Central Bank of Nigeria, 'Guidelines for the Implementation of the N50 Billion Targeted Credit Facility' <<https://www.cbn.gov.ng/Out/2020/FPRD/N50%20Billion%20Combined.pdf>> accessed 12 June 2020.



medical goods.’<sup>81</sup> This is a laudable effort which will indeed reduce the number of jobs lost, if the Bill is eventually passed into Law.

Several victims of domestic violence suffered more harm during the lockdown period since their abusers stayed at home more often than previously. Domestic violence activists and service providers were not exempted from the restriction of movement thereby facing more challenges in reaching out to these victims.<sup>82</sup>

#### **4.2. Closure of Schools**

Due to efforts to curb the spread of COVID 19, a lot of schools were temporarily closed and the education of billions of children were disrupted. Even after the lockdown ended, loss of livelihoods of some parents and lack of funds, hindered the payment of children’s school fees and the purchase of necessary materials to receive effective education. Closing of schools however helped in reducing contacts and prevented the spread of the virus because children, especially the younger ones, might be incapable of practising the precautionary measures expected to prevent infection.

Section 18 of the CFRN, provides that the government shall take necessary measures to ensure that everybody has access to free, compulsory and universal primary education. The right to education has also been established in Article 17 of the African Charter on Human and Peoples’ Rights (Ratification and Enforcement) Act, as well as several international instruments.<sup>83</sup> The Committee on Economic, Social and Cultural Rights, in making comments on Articles 13 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), stated that;

Education is both a human right in itself and an indispensable means of realizing other human rights. As an empowerment right, education is the primary vehicle by which economically and socially marginalized adults and children can lift themselves out of poverty and obtain the means to

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<sup>81</sup> Brooks and Knights, ‘Nigerian Emergency Economic Stimulus Bill: All you need to know’ <<https://iclg.com/briefing/11493-nigerian-emergency-economic-stimulus-bill-all-you-need-to-know>> accessed 21 June 2020.

<sup>82</sup> Amnesty International, ‘Nigeria: Authorities must Uphold Human Rights in fight to Curb COVID-19’, <<https://www.amnesty.org/en/latest/news/2020/04/nigeria-covid-19/>> accessed 15 June 2020.

<sup>83</sup> See Universal Declaration of Human Rights, Article 26; UNCRC, Article 28 and ICESCR, Article 13.

participate fully in their communities. Education has a vital role in empowering women, safeguarding children from exploitative and hazardous labour and sexual exploitation, promoting human rights and democracy, protecting the environment and controlling population growth...<sup>84</sup>

States have the responsibility to ensure that education is continued for children in periods of crisis through alternative methods.<sup>85</sup> According to UNESCO, this can be done through the adoption of ‘a variety of hi-tech, low-tech and no-tech solutions’ Some countries made use of ‘online learning platforms’ as an alternative to physical presence.<sup>86</sup> Some countries however experienced challenges, which led to the exclusion of some children from learning during that period. For example, most displaced children, disabled children, refugees, children living in poverty and those living in rural areas, do not have such opportunities.<sup>87</sup>

Furthermore, not all teachers are well trained in virtual education, which reduces their level of productivity. Teachers who are being paid low incomes, might lack the necessary technological equipment to enable them work from home and conduct effective online classes. Parents had to supervise both classwork and assignments sent to these children, making them experience a lot of stress, especially those who lacked the expertise of ICT learning, parents with several children, as well as those working from home with the added responsibility of providing food and attending to other house chores. Abuse and neglect were also more common in these periods, as essential workers like doctors and nurses, had to leave their children with other people while they went to work. Children were also deprived of social activities experienced in schools, which helps in their overall development.

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<sup>84</sup> CESCR, ‘General Comment 13, The Right to Education’ (Article 13) (8/12/99) (E/C.12/1999/10) para 1  
<[http://www.ohchr.org/EN/Issues/Education/Training/Compilation/Pages/dGeneralCommentNo13TheRighttoEducation\(article13\)\(1999\).aspx](http://www.ohchr.org/EN/Issues/Education/Training/Compilation/Pages/dGeneralCommentNo13TheRighttoEducation(article13)(1999).aspx)> accessed 13 Sept 2019.\

<sup>85</sup> Aliona Normandin, ‘Ensuring the Right to Education in times of Covid 19- 1 May 2020’ <<https://leidenlawblog.nl/articles/ensuring-the-right-to-education-in-times-of-covid-19>> accessed 13 June 2020.

<sup>86</sup> Human Rights Watch, Human Rights Dimensions of COVID- Response, (n 46).

<sup>87</sup> Human Rights Watch, ‘Covid 19 and Children’s Rights’ <<https://reliefweb.int/sites/reliefweb.int/files/resources/COVID19%20and%20Children%E2%80%99s%20Rights.pdf>> accessed 9 April 2020.

Those who relied on school feeding programs organised by the government to improve the plight of children living in poverty, lost that opportunity while learning from home, which put more pressure on parents to feed them.<sup>88</sup> Nigerian authorities however claimed that the school feeding programs continued even during the lockdown. According to the Minister of humanitarian affairs, Disaster Management and Social Development, 'a total of 382,765 school pupils, 124,589 households and 2859 schools in Ogun State, Lagos State and Abuja benefited from the school feeding programme as part of government's COVID-19 social intervention programme'. (Adesomoju, 2021).<sup>89</sup> People however criticised this statement and labelled it as untrue, since schools were closed at that period.<sup>90</sup>

The United Nations and its partners made some efforts in improving the situation by preparing online and offline materials, including documentaries, on the radio and television, so that children could continue learning while schools were shut down.<sup>91</sup> However, several children were still excluded which means that their education were interrupted for several weeks, with the effect of deterioration, especially for students who were previously struggling with learning.<sup>92</sup> Russell M Viner and others,<sup>93</sup> suggested that instead of full school closures, less drastic measures could be employed. These include: changing the school organisation structure to reduce student mixing, by for example, closing playgrounds, cancelling non-essential activities and meetings, keeping students in constant class groups or classrooms, increasing spacing between students in classes and shortening the school week.

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<sup>88</sup> UNESCO, 'Adverse Consequences of School Closure' <<https://en.unesco.org/covid19/educationresponse/consequences>> accessed 15 June 2020.

<sup>89</sup> Ade Adesomoju, 'COVID-19 Lockdown: Minister insists N500m was spent on school feeding in two states, Abuja', Premium Times (March 27, 2021), <<https://www.premiumtimesng.com/news/headlines/451639-covid-19-lockdown-minister-insists-n500m-was-spent-on-school-feeding-in-two-states-abuja.html>> accessed 25 May 2020.

<sup>90</sup> P. Nkemdilim, and others, (n) 27.

<sup>91</sup> United Nations, 'Education and Covid 19-UN helps Children Continue their Learning' <<https://www.un.org/en/coronavirus/education-and-covid-19-un-helps-children-worldwide-continue-their-learning>> accessed 17 June 2020.

<sup>92</sup> Education cannot Wait, 'Covid 19 and Education in Emergencies' <<https://www.educationcannotwait.org/covid-19/>> accessed 2 June 2020.

<sup>93</sup> Russell M Viner, and others, 'School Closure and Management Practices During Coronavirus Outbreaks Including COVID-19: A Rapid Systematic Review' (2020) 4(5) *Lancet Child Adolesc Health*, 397- 404.

### **4.3. Suspension of Church Activities**

The severity of the COVID 19 pandemic led to the suspension of church services in several countries, while some countries restricted the number of persons that could worship together at once and others allowed drive-in services which took place in parks with members inside their cars. In Nigeria, the government announced in February 2020, that in Lagos and Ogun states as well as the FCT, the maximum number of persons that could worship together was not to exceed 20.<sup>94</sup> Subsequently, due to the increase in the infection rate in the country, religious gatherings were altogether banned in most states. Most churches in Nigeria had to therefore reach their members through virtual means, that is, online, radio and television services.

There were several contentions that such restrictions are a violation of the right to the religious freedom of persons. According to section 38 of the CFRN, everybody is free to practice, observe and propagate their religion, either alone or together with other persons, without interference. Moreover, section 40 of the CFRN provides that every ‘person shall be entitled to assemble freely and associate with other persons...’ Article 18 of the ICCPR also protects the right to religion and adds that this right may be limited by law as part of efforts to “protect public safety, order, health, or morals or the fundamental rights and freedoms of others.”

In the United States (US), there were several protests due to the high value placed on religious freedom. Legal claims were filed against the government by church leaders, on the basis that the restriction on religious gatherings was a violation of their right.<sup>95</sup> Other people however thought they were justifiable reasons necessary to protect the health of the public. Paul Marshall<sup>96</sup> supported the restrictions since they were just temporary measures. Besides, he claimed the restrictions applied to all gatherings, for example, weddings, parties, meetings, among others, and were not just focused on churches. The rule also did not prohibit messages from going round through alternative means, which means several people in many

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<sup>94</sup> Tofe Ayeni, ‘Religion in Nigeria despite Coronavirus Measures’, <<https://www.theafricareport.com/25532/religion-in-nigeria-despite-coronavirus-measures/>> accessed 2 June 2020.

<sup>95</sup> Pamela E. Klassen, ‘Why Religious Freedom Stokes Coronavirus Protests in the U.S., but not Canada’ <<https://theconversation.com/why-religious-freedom-stokes-coronavirus-protests-in-the-u-s-but-not-canada-136557>> accessed 4 May 2020.

<sup>96</sup> Paul Marshall, ‘Do Government Restrictions on Larger Church Gathering Violate Religious Freedom?’ <<https://www.hudson.org/research/15870-do-government-restrictions-on-larger-church-gathering-violate-religious-freedom>> accessed 6 May 2020.

counties were still reached.<sup>97</sup> There were however criticisms of bias from some quarters in Nigeria, when the presiding pastor of the Jesus Reigns Family Church in Apo district, Abuja was arrested, while the same group that effected the arrest were stated to have pardoned some Imams who were caught worshipping in a mosque in Abuja's Maitama district.<sup>98</sup>

There is a high risk that religious gatherings will quicken the spread of COVID 19 and affect not just the congregation, but other members of the society which they will come in contact with. This is because droplets from infected persons can easily be passed round from singing, shouting, shaking of hands and hugging, especially in air closed environments with large crowds. A church refused to comply with public health directives in Daegu, South Korea and a person who worshipped there in March 2020, known as 'Patient 31' ended up infecting about 5,000 persons, which spiralled the rate of infection in that country.<sup>99</sup>

#### **4.4. Publication of Infected Persons**

Another measure taken by the federal government was to publicise the rate of infections among the population for the purpose of increasing awareness and tracing contact persons. Section 37 of the CFRN, protects 'the privacy of citizens, their homes, correspondence, telephone conversations and telegraphic communications...' Medical ethics also supports the principle of confidentiality and maintains that any health information provided to health care providers during consultation, must not be shared with other people. Records containing all information about the patient should also be kept confidential.<sup>100</sup> This principle promotes the doctor-patient relationship and increases trust, which will enable the patient to divulge all necessary information that would make his treatment easier. However, disclosure of private information can be made when non-disclosure will be harmful to public health.

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<sup>97</sup> Ibid.

<sup>98</sup> Jacinta Chiamaka Nwaka, 'Between Religious Freedom and the Public Good: Reactions to Religious Restrictions to Prevent the Spread of Covid-19 in Nigeria', <<https://kujengamani.ssrc.org/2020/05/20/between-religious-freedom-and-the-public-good-reactions-to-religious-restrictions-to-prevent-the-spread-of-covid-19-in-nigeria/>> accessed 6 May 2020.

<sup>99</sup> Wesley J. Wildman, and others, 'Religion and the COVID-19 Pandemic' [2020] 10 *Religion, Brain & Behaviour*, 115-117.

<sup>100</sup> See Code of Medical Ethics, Rule 44.

Arguments have been made over the level of information that should be revealed to the public by authorities, and countries adopted different approaches based on the rate of infection in their country and their privacy laws. For example, in China, the details of the first group of persons to be infected were disclosed to the public and their ‘names, photos, home and work addresses, cell phone numbers and even ID numbers’ were included. This led to the stigmatisation and harassment of these individuals. China’s internet regulator, ‘the Cyberspace Administration’, notified the public on the 9<sup>th</sup> of February, 2020, that only relevant and appropriate health authorities had the right to access and use the personal information of patients to control COVID 19, without the need to obtain their consent. They also added that health information of persons should only be used for the required purpose.<sup>101</sup> The UK Information Commissioner’s Office (ICO) holds the position that ‘privacy and data protection considerations’ should not serve as a barrier in curbing the spread of COVID 19. The ICO states that health information can be collected and used by appropriate authorities to trace people that have had contact with infected persons, manage risks, monitor the rate of recoveries, do further research as regards vaccines and curb the spread of infection. Also, the fact that persons have been infected may be announced to the public, without identifying information included. It adds that only necessary data should be collected and all necessary security measures must be taken.<sup>102</sup> Several hospitals in the UK issued privacy notices to their patients, stating that they would have to share the personal data of those who visit the hospital for treatment in the COVID 19 period, to help in the fight against the pandemic.<sup>103</sup>

The 2019 Nigerian Data Protection Regulation (NDPR), regulates electronic communications and the processing of personal data in various sectors of the country. The provisions of the regulations are similar to the European Union (EU) General Data Protection Regulation (GDPR).<sup>104</sup> The NDPR highlights the rights and level of control people have over their personal data and defines ‘personal data’ as ‘any information relating to an identified or

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<sup>101</sup> Romain Perray and Mark E. Schreiber, ‘Privacy in a Global Pandemic: Analysis of COVID-19 Guidance by Data Protection Authorities’ <<https://www.natlawreview.com/article/privacy-global-pandemic-analysis-covid-19-guidance-data-protection-authorities>> accessed 4 May 2020.

<sup>102</sup> Ibid.

<sup>103</sup> Robert Hart, ‘Global Data Review - Covid-19\_ UK Health Service Forced to Disclose Patient Data’ <<https://globaldatareview.com/coronavirus/covid-19-uk-health-service-forced-disclose-patient-data>> accessed 10 June 2020.

<sup>104</sup> Ekong and Chukwu and Chukwu, (n 48) 1.

identifiable natural person (data subject)...<sup>105</sup> Section 5 of the regulation mandates that the consent of the data subject be obtained before his or her data is collected and processed.

However, an exception to this rule is when such data is to be used in the interest of the public or while acting on an official public assignment.<sup>106</sup> Furthermore, the processing of data must be for a valid purpose and must be used only for that purpose. It must be accurately and adequately collected, with its storage limited to a particular period of time after which it will be deleted.<sup>107</sup> Thus, from the above, the principle of privacy can be relaxed due to the severe and worldwide public health concerns of the COVID 19 pandemic. The lives and health of populations are more important. However, all legal principles and safeguards of data processing established in the NDPR must be complied with.

#### **4.5. Isolation and Quarantine**

Another measure taken to contain the pandemic was to quarantine persons who had been exposed to COVID 19 to confirm if they would become sick and subsequently isolate them if indeed, they have been infected. Section 35 of the CFRN protects the personal liberty of persons, which shall not be denied, except in some cases. One of such cases is when a person is 'suffering from infectious or contagious disease' and is prevented from having contact with other persons while being treated, to prevent infection.<sup>108</sup> Thus, the isolation of persons in different centres across the country due to the pandemic, is legal and totally supported by the law.

#### **4.6 Treatment of Infected Persons**

Right to health is recognized in Section 17 of chapter II of the CFRN. Also, Article 16 of the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act, states that, 'every person shall have the right to enjoy the best attainable state of physical and mental health'.<sup>109</sup> The right to health requires that health care facilities, goods and services are

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<sup>105</sup> NDPR, S. 1.3(q).

<sup>106</sup> NDPR, S 6, part 2.0, subsection 2.2 (e).

<sup>107</sup> Temitayo Ogunmokun, 'Covid-19, Privacy and Data Protection: Matters Arising' <https://www.dataprotection.nigeria/en/guidancelanding/guidance-legal-bases-processingpersonal-data> accessed 13 June 2010.

<sup>108</sup> CFRN, S 35(e).

<sup>109</sup> See also, Universal Declaration of Human Rights, Article 24; ICESCR, Article 12(1); ACHPR, Article 16; UNCRC, Article 24.

adequately available in a non-discriminatory manner, accessible financially and geographically as well as acceptable.<sup>110</sup> Compliance with this right is important in efforts to effectively curtail the spread of the COVID 19 pandemic, as persons who have been infected with the virus need access to medical treatment.

Even though health facilities institutions were operational during the lockdown period, several persons could not access healthcare due to the restriction of movement and skeletal services performed in some hospitals. Many women who wanted to register for ante-natal services were referred to teaching hospitals. Some healthcare workers refused to attend to people because they were not provided with personal protective equipment (PPE).<sup>111</sup> The pandemic revealed the inadequacy of human and medical resources in the Nigerian healthcare system, Government hospitals lack modern, sufficient and well-maintained facilities and equipment, causing government officials and other persons who find such treatments affordable, to travel to other countries for their medical needs.<sup>112</sup> Essential supplies and equipment like diagnostic tests, ventilators, and PPE are not available in sufficient quantity to care for infected persons.<sup>113</sup> Inadequate resources limit the efforts and actions that could be undertaken by healthcare workers who are more at risk of getting infected when they are not adequately protected. Many of them were infected and lost their lives while attending to infected patients.<sup>114</sup>

Marginalised, disadvantaged and vulnerable persons, are not to be excluded in the fight against COVID 19 and have the right to receive the same level of medical care available to the general population. According to the United Nations Committee on Economic, Social and Cultural Rights, “States are under the obligation to respect the right to health by, inter alia, refraining

<sup>110</sup> UN Committee on Economic, Social, and Cultural Rights. General Comment No. 14 the Right to the Highest Attainable Standard of Health (Article 12 of the International Covenant on Economic, Social, and Cultural Rights). Aug 11, 2000, E/C.12/2000/4. <<https://www.refworld.org/pdfid/4538838d0.pdf>> accessed 22 August 2020.

<sup>111</sup> M.P. Ogolodom, and others, ‘Knowledge, Attitudes and Fears of Healthcare Workers Towards the Corona Virus Disease (COVID-19) Pandemic in South-South, Nigeria’ (2020) 1(2) *Health Science Journal* 1–10.

<sup>112</sup> Ngozika A. Obi-Ani and Chinenye Anikwenze and Mathias C. Isiani, ‘Social media and the Covid-19 Pandemic: Observations from Nigeria’, [2020] 7 *Cogent Arts & Humanities* 1-15.

<sup>113</sup> Dainius Puras, and others, ‘The Right to Health must Guide Responses to COVID-19’ [2020] 395(10241) *The Lancet* 1888-1890.

<sup>114</sup> WHO, Addressing Human Rights as Key to the COVID-19 Response (n 31).



from denying or limiting equal access for all persons, including prisoners or detainees, minorities, asylum seekers and illegal immigrants, to preventive, curative and palliative health services.”<sup>115</sup> Persons in correctional facilities and other places of detention, are however at a higher risk of contracting COVID 19, due to the fact that they live in enclosed, unsanitary and overcrowded environments.<sup>116</sup> For example, it has been stated that inmates are 1,480 in Kaduna Prison that is expected to contain only 473 inmates, Kirikiri Prison in Lagos state has 1,601 prisoners instead of the 500 persons originally meant to stay there.<sup>117</sup> These facilities also lack access to running water, sanitation, refuse and sewage disposal as well as quality health care services, thereby increasing the inmates and workers’ vulnerability.<sup>118</sup> A lot of contact is made with the outside world, as members of staff, as well as visitors enter and exit daily. New intakes are also added to the existing ones, either to be detained or imprisoned. Toilets, mattresses, sinks, dining halls and other resources are shared and distancing cannot be achieved between the inmates.<sup>119</sup> According to Wallace,<sup>120</sup> in the United States as at April 2020, about 4, 893 incarcerated or detained persons and 2,778 members of staff, have been diagnosed with COVID-19, which has resulted in about 88 deaths among the inmates and 17 deaths among members of staff.

On 15 May, 2020, the Chief Justice of Nigeria (CJN), directed all chief judges of federal and state high Courts to release persons awaiting trial, so as to decongest the prisons and curb the spread of COVID 19. Persons that are mainly to be considered for release include: persons who have spent 6 years or more in custody, aged persons, persons with no identifiable crime against them, those convicted of minor offences and the terminally ill or

<sup>115</sup> Joseph J. Amon, ‘COVID-19 and Detention: Respecting Human Rights’ <<https://www.hhrjournal.org/2020/03/covid-19-and-detention-respecting-human-rights/>> accessed 15 June 2020.

<sup>116</sup> See World Population Review, ‘Incarceration Rates by Country- 2020’ <<https://worldpopulationreview.com/countries/incarceration-rates-by-country/>> accessed 15 June 2020.

<sup>117</sup> Amnesty International, (n 83).

<sup>118</sup> See Onyemocho Audu and others, ‘Inmates Perception of the Living Conditions in a Medium Security Prison in North Central Nigeria’ [2017] 17(1) *Highland Medical Research Journal* 30-37; Gloria D Shajobi-Ibikunle, ‘Challenges of Imprisonment in the Nigerian Penal System: The Way Forward’ [2014] 2(2) *American Journal of Humanities and Social Sciences* 94-104.

<sup>119</sup> Amon (n 116).

<sup>120</sup> Wallace Megan, and others, ‘COVID-19 in Correctional and Detention Facilities—United States, February–April’ [2020] 69(19) *Morbidity and Mortality Weekly Report* 587-590.

those with health issues.<sup>121</sup> Nations and international organisations have also been obligated to assist other States in responding to COVID 19 in areas of research, medical supplies, information and provision of basic necessities to vulnerable groups, especially those in war-torn countries.<sup>122</sup>

#### **4.7. Washing of Hands and Sanitation**

Water, sanitation, and hygiene (WASH) services, are essential in the fight against COVID 19 and help to prevent the spread of infection, as well as protect the health of populations. WHO and the COVID 19 regulation in Nigeria, has directed that there has to be a proper and consistent washing of hands in homes, schools, supermarkets and especially healthcare facilities, where health care providers are susceptible to more risk.<sup>123</sup> Sustainable Development Goal (SDG) 6 encourages countries to ensure that water and sanitation are available and sustainably managed by the year 2030. Nigeria still has a long way to go to be able to achieve this goal. According to WHO,<sup>124</sup> about 63 million Nigerian lack access to clean drinking water in Nigeria, while about 100 million lack basic sanitation facilities. Water is supplied more to urban areas than rural areas, as workers ignore remote areas which are more difficult to reach and leave residents to get water from unsafe sources. The duty of supplying water to residents primarily rests on the state and local governments, with monitoring done by federal government agencies.<sup>125</sup>

The United Nations General Assembly asserts that access to safe and clean water as well as sanitation are human rights, which are necessary to enjoy life and other human rights.<sup>126</sup> These rights enhance the standard of living of persons and their health.

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<sup>121</sup> Chike Olisah, 'CJN Directs Chief Judges to Decongest Prisons due to Covid-19' <<https://nairametrics.com/2020/05/15/cjn-directs-chief-judges-to-decongest-prisons-due-to-covid-19/>> accessed 17 May 2020.

<sup>122</sup> Puras et al. (n 114).

<sup>123</sup> Human Rights Watch, Human Rights Dimensions of COVID- Response (n 46).

<sup>124</sup> WHO, 'UN Water Global Analysis and Assessment of Sanitation and Drinking Water' <[https://www.who.int/water\\_sanitation\\_health/monitoring/investments/nigeria-10-nov.pdf?ua=1#:~:text=Access%20to%20water%20supply%20was,improved%20source%20of%20drinking%20water.>](https://www.who.int/water_sanitation_health/monitoring/investments/nigeria-10-nov.pdf?ua=1#:~:text=Access%20to%20water%20supply%20was,improved%20source%20of%20drinking%20water.>) accessed 12 April 2020.

<sup>125</sup> Ibid.

<sup>126</sup> UNGA, 'The Human Right to Water and Sanitation' Resolution adopted by the General Assembly on 28 July 2010, A/RES/64/292, <<https://undocs.org/A/RES/64/292>> accessed 15 June 2020.

Droplets from humans on surfaces have a tendency to linger there for some time with the risk of infecting other people, depending on the type of surface, the temperature of the room and strain of the virus. Health care environments must thus be kept clean with disinfectants, to kill all viruses and prevent further contamination from infected surfaces.<sup>127</sup> Sanitation workers in healthcare settings are to be adequately provided with PPE, which includes ‘protective outerwear, heavy-duty gloves, boots, goggles or a face shield, and a mask’. Frequent washing of hands will also prevent infection.<sup>128</sup>

## **5 Protecting Human Rights in Covid-19 Response: Way Forward**

To ensure the protection of Nigerians while fighting a pandemic, particularly COVID 19, the following measures should be taken:

Government should respect the rights to freedom of expression and access to information, and the press should be allowed to carry out their responsibilities and provide ‘accurate, timely, and consistent’ information on COVID 19 to the public without fear of harassment.<sup>129</sup>

Journalists qualify as essential workers and their duties should not be interfered with because they risk their lives to ensure that populations receive adequate information about efforts to combat COVID 19 and how they can protect themselves.<sup>130</sup> Human Rights Watch recommends that information related to COVID 19 be translated to several languages so that people of diverse backgrounds will understand and take appropriate precautions. People with hearing disabilities should also be catered for through sign languages.<sup>131</sup>

When governments order lockdowns, they have an obligation to take available measures to provide palliatives, which include food and water, to enable the people, whose sources of livelihood have been affected by the pandemic, survive. These resources should be allocated in a way that ensures social distancing and does not violate the rights of the beneficiaries. Transparency is important and the public must be aware of the government’s

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<sup>127</sup> WHO and UNICEF, ‘Water, Sanitation, Hygiene, and Waste Management for the COVID-19 Virus :Interim Guidance’ <<https://www.who.int/publications/i/item/water-sanitation-hygiene-and-waste-management-for-the-covid-19-virus-interim-guidance>> accessed 17 May 2020.

<sup>128</sup> Ibid.

<sup>129</sup> Human Rights Watch, Human Rights Dimensions of COVID- Response n (46).

<sup>130</sup> Esther Ikubaje, ‘Nigeria: Fight COVID-19 but Protect Journalists’ <<https://www.thecabale.ng/nigeria-fight-covid-19-but-protect-journalists>> accessed 17 May 2020.

<sup>131</sup> Human Rights Watch, ‘Human Rights Dimensions of COVID- Response’ (n 46).

relief plans, eligibility and mode of operation. Collaborating with NGOs, will help in promoting a coordinated and more effective response.<sup>132</sup>

Government should ensure that children continue with their education during lockdowns by providing sufficient technological resources for alternative forms of education. The provision of such resources, will provide a precedent for alternatives when events which will prompt lockdowns happen in the future. To enable the availability of these resources for all children, a lot of funds are required for internet access, purchase of computers and training on the use of computers for teachers and their students. The time that has been lost by students should be regained through governmental collaboration with school proprietors and teachers to adjust school calendars and provide extra lessons for the children with adequate compensations for teachers. After the pandemic, enrolment of students who had previously experienced challenges in getting educated, for example, girls, disabled children, displaced children, children living in rural and remote areas and people living in poverty, should be monitored by government education officials so as to ensure they return to school.<sup>133</sup> Financial reliefs should be provided for parents who have lost their livelihoods and find it difficult to enrol their children in schools.<sup>134</sup>

Measures to combat COVID 19 must be in accordance with the human rights provisions established in the national and international human rights instruments as well as those recommended by global institutions. Human Rights Committee is expected to publish general comments on limitation of rights and COVID 19. Thus, the right to life and human dignity, which is owed to all citizens, must be protected during and after the pandemic. Law enforcement officers should therefore desist from torturing, harassing and arresting citizens unlawfully. Victims of unlawful arrests should be released and granted reliefs, while the perpetrators should be brought to justice. Citizens on the other hand, should comply with instructions from authorities to enhance the recovery of the nation from COVID 19.<sup>135</sup>

Workplaces, supermarkets and hospitals should ensure that handwashing facilities are provided at strategic points, in addition to alcohol-based

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<sup>132</sup> Human Rights Watch, 'Nigeria: Protect Most Vulnerable in COVID-19 Response' (n 78).

<sup>133</sup> Human Rights Watch, 'Human Rights Dimensions of COVID- Response' (n 46).

<sup>134</sup> Human Rights Watch, 'Covid 19 and Children's Rights' (n 88).

<sup>135</sup> Article 19, (n 59).

sanitizers.<sup>136</sup> WaterAid Nigeria, the Federal Ministry of Water Resources, Clean Nigeria Campaign Secretariat and WASH Media Network, are working together to inform people about the importance of hygiene in the pandemic.<sup>137</sup>

Nigerian authorities must make plans to prevent the outbreak of COVID 19 in correctional facilities and governmental institutions. Prisons must be decongested immediately, following the eligibility criteria that have been established. As much as possible, social distancing should be observed after the decongestion. Other preventive methods like hygienic practices and provision of handwashing facilities, should also be implemented to protect people's health. Members of staff should be mandated to wash their hands before entering work premises to start their daily activities.<sup>138</sup> In compliance with human rights standards, efforts must be made to ensure that the needs of these people are met without any form of discrimination, so as to reduce their risk to infection. Thus, hygiene precautions, testing kits, access to information and healthcare services must be made available and accessible to the general population.<sup>139</sup>

The challenges in Nigeria's healthcare system must be addressed so that pandemics of this nature can be handled effectively. To achieve a functioning and effective system which caters for the health needs of all persons, adequate professionals must be hired and their working conditions, satisfactory. Medical equipment and supplies must be available, maintained and sufficient. These will however not be achievable without sufficient funds allocated to the health sector.<sup>140</sup> Healthcare waste, produced by COVID 19 patients must be carefully handled through separate collection in marked containers, on-site special treatments and safe disposal. More hands

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<sup>136</sup> World Bank, 'WASH (Water, Sanitation & Hygiene) and COVID-19' <<https://www.worldbank.org/en/topic/water/brief/wash-water-sanitation-hygiene-and-covid-19>> accessed 20 June 2020.

<sup>137</sup> WaterAid, 'Handwashing and COVID 19' <<https://www.wateraid.org/ng/covid-19>> accessed 17 May 2020.

<sup>138</sup> Amon (n 77).

<sup>139</sup> WHO, Addressing Human Rights as Key to the COVID-19 Response (n 31).

<sup>140</sup> Human Rights Watch, 'Africa: Covid-19 Exposes Healthcare Shortfalls' <<https://www.hrw.org/news/2020/06/08/africa-covid-19-exposes-healthcare-shortfalls>> accessed 17 May 2020.

and technology are however required to enhance effective operations in waste management.<sup>141</sup>

Furthermore, safety measures should be employed in handling persons who died as a result of COVID 19, despite reports that the risk of transmission in such cases is low. All staff who will have contact with the body of a deceased person due to covid 19 must be appropriately dressed in their PPE, which should be carefully disposed immediately after use, after which hand hygiene should be observed.<sup>142</sup> Frontline healthcare providers should be a priority when PPE becomes scarce and they should be adequately compensated for the hard work they put into the fight against the pandemic.<sup>143</sup> Furthermore, response to the pandemic should not affect the right to health of persons who need to access medical treatment for other purposes so that the pandemic will not increase the prevalence of other diseases and worsen people's health conditions.<sup>144</sup>

## **6 Conclusion**

The COVID 19 pandemic has had several destructive effects in Nigeria. It has caused numerous deaths and affected all the sectors in the country. Stringent measures must thus be taken to fight the pandemic with sufficient financial and human resources. These measures must however comply with existing national and international legal framework, as emergency measures are not opportunities for oppression to be perpetrated on populations by the government or its agencies. Measures taken should thus not be discriminatory against particular persons and should be proportional to the crisis. The government should also be accountable for actions taken and review the timeline for restrictions for further actions to be taken.

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<sup>141</sup> WHO, 'Safe Management of Wastes from Health-care Activities' <<https://apps.who.int/iris/bitstream/handle/10665/42175/9241545259.pdf?sequence=1>> accessed 17 May 2020.

<sup>142</sup> WHO and UNICEF (n 88).

<sup>143</sup> WHO, 'Addressing Human Rights as Key to the COVID-19 Response' (n 31).

<sup>144</sup> Puras, et al. (n 114).