



THE LEGAL IMPLICATION OF COVID-19 AND THE ENFORCEMENT OF STATE OF EMERGENCY IN INTERNATIONAL LAW

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Abstract

The article examine well as other rights, i.e, the limit international under section 37, 38, human rights law 39 and 41 of the impose on Constitution of the governments during Federal Republic of emergencies, the Nigeria (CFRN) 1999

enforcement of such limit and how does COVID-19 fit in these conceptualizations.

The article examine the fundamental rights under section 40 as

Keywords: *Human rights, Emergencies, Enforcement, Rgulatios and Covid-19 pandemic*

has to be read subject to what is reasonable

INTRODUCTION

Generally, human rights are deemed almost sacrosanct in most part of the world where democratic tenets are upheld, and this is why they have universal appeal. However, there are certain instances where these rights have been restricted or suspended in Nigeria. These instances range from war, state of emergencies, coup, and outbreak of pandemics.

The Constitution of the Federal Republic of Nigeria, 1999, as amended, (CFRN 1999) at Chapter 4 thereof, provide for certain rights that cannot be easily extinguished. These rights includes, right to life, right to dignity of person, right to personal liberty, right

within the democratic Rights (“ACHR,” nations, modern day society, the Universal European Convention international human Declaration of Human on Human Rights rights law is designed Rights, the (“ECHR,) European precisely to protect International Social Charter (“ESC”). people from Covenant on Civil and The article concludes governments that Political Rights that as the states bear abuse their powers. (“ICCPR”) American the responsibility of Convention on Human protecting their

To fair hearing, right to private and family life, right to freedom of thought, conscience and religion, right to peaceful assembly and association, right to freedom of movement, right to freedom from discrimination, right to freedom of expression, right to acquire and own immovable property anywhere in Nigeria, etc. this article examine specific rights that have been suspended or restricted during the COVID-19 pandemic and the justification or otherwise of this restriction. Effort will equally be made to examine instances where these rights have been restricted in the past and juxtapose them with present day restrictions. The article examine the COVID-19 pandemic, the attendant world health organization regulations and its effect on fundamental human rights of the citizens. Many may argue that even when there are no such extraordinary circumstances like state of emergencies, military coups or a pandemic, human rights are rarely respected in Nigeria as we witness daily extrajudicial killings of citizens by law enforcement officials, unlawful arrests of critics, etc -myself included. These views are justified considering the human rights index ranking of Nigeria but this article will be restricted to human rights violations under state of emergencies and the Corona Virus pandemic in Nigeria.

The World Health Organization (WHO) Director General’s recent remarks on COVID-19 emphasized that “All countries must strike a fine balance between protecting health, minimizing economic and social disruption, and respecting human rights”.¹ Human rights frameworks provide a crucial

¹ WHO. Director General, Media Briefing, March 11. Available at <https://www.who.int/dg/speeches/detail/who-director>

structure that can strengthen the effectiveness of global efforts to address the pandemic.

The current COVID-19 outbreak has been described as a pandemic.² The global and national COVID-19 responses have presented unique and rapidly-shifting challenges to the promotion and protection of health and of human rights of people around the world. As countries identify ways to address COVID-19, integrating human rights protections and guarantees into our shared responses is not only a moral imperative, it is essential to successfully addressing public health concerns.

The 'enjoyment of the highest attainable standard of health' is at the heart of the World Health Organization 1948 Constitution.³ Our commitment to health as a human right must continue to serve as a beacon for how countries respond to this and other public health emergencies.⁴

Many countries have implemented large-scale public health and social measures in an attempt to reduce transmission and minimize the impact of COVID-19,⁵ including quarantine and the restriction of movement of individuals.⁶ WHO emphasizes that any such measures should be implemented only as part of a comprehensive package of public health and social measures,⁷ and in accordance with Article 3 of the International

² <https://www.who.int/dg/speeches/detail/who-directorgeneral-s-opening-remarks-at-the-media-briefing-on-covid-19---11-march-2020> (accessed April 2020) ² WHO. Press briefing 11 March. Available at <https://www.who.int/dg/speeches/detail/who-directorgeneral-s-opening-remarks-at-the-media-briefing-on-covid19---11-march-2020> (accessed April 2020) ³ WHO. Constitution of the World Health Organization.

Available at https://www.who.int/governance/eb/who_constitution_en.pdf (accessed April 2020) \

³ CDC. Reducing Stigma. Available at https://www.cdc.gov/coronavirus/2019-ncov/daily-lifecoping/reducingstigma.html?CDC_AA_refVal=https%3A%2F%2Fwww.cdc.gov%2Fcoronavirus%2F2019-ncov%2Fsymptomstesting%2FReducing-stigma.html (accessed April 2020) ⁵ See above CDC. Reducing Stigma.

⁴ WHO/OHCHR. Fact sheet 31: Right to Health. Available at <https://www.ohchr.org/Documents/Publications/Factsheet31.pdf> (accessed April 2020); see also UNAIDS. Agenda for Zero Discrimination in Healthcare. Available at <https://www.unaids.org/en/resources/documents/2017/2017-agenda-zero-discrimination-health-care>

⁵ Ibid

⁶ UNCESCR. General Comment 14: The Right to Health. 2000. Available at https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=E/C.12/2000/4&Lang=en (accessed April 2020)

⁷ WHO. Rational use of personal protective equipment for coronavirus disease (COVID-19) and considerations during severe shortages. Available at https://apps.who.int/iris/bitstream/handle/10665/331695/WHO-2019-nCov-IPC_PPE_use-2020.3-eng.pdf (accessed April 2020);

Health Regulations (2005), be fully respectful of the dignity, human rights and fundamental freedoms of persons.⁸ The human rights considerations regarding such measures are further articulated in both the UN Committee on Economic, Social and Cultural Rights General Comment 14 (2000) and the International Covenant on Civil and Political Rights (ICCPR) (1976) and further elaborated in the Siracusa Principles (1984), according to which any such restrictive measures should be: in accordance with the law; pursue a legitimate aim; proportionate; and not arbitrary or discriminatory.⁹ Furthermore, human rights require that countries should demonstrate that any such restrictive measures are necessary to curb the spread of infectious diseases in order to ultimately promote the health, rights and freedoms of individuals.¹⁰ If the original rationale for imposing a restriction no longer applies, the restriction should be lifted without delay. In addition, oversight and accountability mechanisms should be in place to allow individuals who are impacted to challenge the appropriateness of those restrictions.¹¹ Not conforming to these safeguards not only runs the risk of a range of human rights violations of the most vulnerable but will also ultimately undermine the larger public health objectives.¹²

Human Rights, State of Emergencies and the Covid-19 Pandemic in Nigeria
Human rights are freedoms, immunities and benefits that, according to modern values, all human beings should be able to claim as a matter of

⁸ WHO. Rolling updates on coronavirus (COVID-19). Available at <https://www.who.int/emergencies/diseases/novelcoronavirus-2019/events-as-they-happen> (accessed April 2020)

⁹See UNCESCR. General Comment 14: The Right to Health.2000. Available at https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=E/C.12/2000/4&Lang=en (accessed April 2020); WHO. Ethics & COVID-19 – Restrictive Measures and Social Distancing. March 2020. ²⁰ WHO. Ethics & COVID-19 – Restrictive Measures and Social Distancing. March 2020.

¹⁰WHO. 25 Q&A on Health and Human Rights. Available at <https://www.who.int/hhr/information/25%20Questions%20and%20Answers%20on%20Health%20and%20Human%20Rights.pdf> (accessed April 2020)

¹¹WHO. Shortage of personal protective equipment endangering health workers worldwide. April 3. Available at <https://www.who.int/news-room/detail/03-03-2020shortage-of-personal-protective-equipment-endangeringhealth-workers-worldwide> (accessed April 2020);

¹² WHO. Rational use of personal protective equipment for coronavirus disease (COVID-19) and considerations during severe shortages: interim guidance. April 2020. Available at <https://www.who.int/emergencies/diseases/novelcoronavirus-2019/technical-guidance/infection-preventionand-control> (accessed April 2020)

rights in the society in which they live. In *Ransome-Kuti vs. AG*¹³ Federation fundamental human rights was defined as a right which stands above the ordinary law of the land and which, in fact, is antecedent to the political society itself. It is therefore a primary condition to a civilized existence as guaranteed in the constitution. It is in the light of the foregoing that the famous constitutional lawyer, Professor Ben Nwabueze defined fundamental rights as what the constitution says it is. It is important to point out the fact that while human rights are universal in nature, fundamental human rights are territorial and is determined by the culture, values and tradition of the people within a particular nation state. For example, the fundamental human rights in Saudi Arabia will be different from that of Nigeria. In Nigeria, the fundamental human rights are contained in section 33 to 46 of the CFRN 1999. These rights have been held to be sacrosanct, save for instances that are equally be provided in the ground norm, as aptly captured in Omnibus part of section 45 of the CFRN 1999 which restricts the fundamental human rights guaranteed in sections 37 to 41, i.e, rights to private and family life, rights to freedom of thought, conscience and religion, rights to freedom of expression and the press, rights to peaceful assembly and association, rights to freedom of movement. Specifically, section 45 of the CFRN 1999 provides that nothing in the aforementioned sections shall invalidate any law that is reasonably justifiable in a democratic society in the interest of defense, public safety, public order, public morality or public health or for the purpose of protecting the rights and freedom of other persons. It is in this light of the foregoing, that the court. The fundamental rights under section 40 as well as other rights, i.e, under section 37, 38, 39 and 41 has to be read subject to what is reasonable within the democratic society. That is to say, the defendant appellant rights under section 37 and rights to privacy, among other fundamental rights under the CFRN 1999 are not absolute.

Another instance where fundamental human rights of citizens can be restricted is under section 33 of CFRN 1999 on right to life. Similarly, at section 33(3) of CFRN 1999 as amended, the fundamental rights to life is restricted if such life is taken in a manner permitted by law, i.e in defense

¹³ (1985) 2 NWLR Pt.6, p. 211 SC

of self, property or others, in order to effect a lawful arrest or to prevent the escape of a person lawfully detained. Furthermore, at section 35 (1)(E) the rights to personal liberty can be derogated from in the case of a person suffering from infectious or contagious disease, persons of unsound mind, persons addicted to drugs or alcohol or vagrant for the purpose of their care or treatment or the protection of the community. It is in the light of the foregoing that the Supreme Court in *Osawe vs. Registrar of Trade Unions*¹⁴ held that one has to bear in mind, that the rights guaranteed under section 34, 35, 37, 38 of the CFRN are “qualified rights”. There are not absolute rights.

Looking at the above, certain issues stands out, to wit, infectious diseases as a ground upon which fundamental human rights can be restricted. Infectious disease as, defined by the W.H.O, are disorders caused by pathogenic microorganisms such as bacteria, viruses, fungi, etc, and they can spread directly or indirectly from one person to another. Recently the World Health Organization designated the novel corona virus, otherwise known as COVID-19, as a pandemic. This pandemic has therefore led to the suspension or restriction of some of the otherwise guaranteed fundamental human rights in the CFRN 1999 constitution.

Widespread Human Rights Violations

International observers have raised concerns over the widespread human rights violations in various countries resulting from efforts to contain the spread of the COVID-19 pandemic. Extreme measures adopted by countries over the last three months- from restrictions in public places, arrest, detentions, shootings, electronic surveillance, stigma etc- have been identified as major incidents of gross human rights violations.

International organisations such as United Nations (UN), World Health Organisation (WHO), World Justice Project (WJP), and Nigeria's Human Rights Commission (NHRC) have criticised the handling of the pandemic in some countries in Asia, Europe, parts of the Americas, and Africa. As of Saturday, May 16, the new Coronavirus had affected 200 countries with 4,

¹⁴ (1985) 1NWLR, Pt. 4, p, 755 CA

654,130 cases and 310,000 deaths. US is the worst hit country in the world with death toll of about 90,000.

The United Nations findings indicate that the measures adopted in some countries to contain the spread of the deadly virus have been too extreme, resulting to gross human rights violations. The UN listed Nigeria, Kenya, South Africa, the Philippines, Sri Lanka, El Salvador, Dominican Republic, Peru, Honduras, Jordan, Morocco, Cambodia, Uzbekistan, Iran and Hungary as countries which witnessed increased human rights violations in the course of the COVID-19 lockdown. Beside these 15 countries where the UN body, led by Secretary General, Antonio Guterres, deemed allegations of human rights violations as troubling, it also noted reports of the new Coronavirus emergency measures in about 80 countries.

In Nigeria, as of April 15, the NHRC announced it received 105 complaints of rights violations in 24 states of the country's 36 states namely Abia, Adamawa, Akwa Ibom, Bayelsa, Benue, Cross River, FCT, Ebonyi, Edo, Enugu, Ekiti, Delta, Gombe, Imo, Kaduna, Katsina, Kogi, Kwara, Lagos, Nasarawa, Niger, Ogun, Osun, Plateau, and Rivers states. NHRC said it was investigating cases of 29 extra-judicial killings, violation of rights of movement, unlawful arrest and detention, seizure or confiscation of properties, sexual and gender-based violence, discrimination, torture, inhumane and degrading treatment and extortion.

In Russia, there are complaints of excessive monitoring using cybertech. NGOs such as Roskomsvoboda reported violation of digital rights, "cyber gulag" as the government deployed over 100,000 CCTV cameras with facial recognition software installed in Moscow, St. Petersburg and other major regions as the country aggressively enforces the shelter-in-place orders.

In China, the authorities adopted drastic measures such as use of surveillance and data tracking through facial recognition technology, mass testing, quarantine, contact tracing, and compulsory face masks in public. Some journalists and NGO workers were reportedly censured or intimidated.

In Kenya, officials allegedly intimidated, threatened and physically attacked journalists under the dusk-to-dawn curfews over the COVID-19, according to the Human Rights Watch. There are also reports of spike in domestic violence in Kenya, during the lockdown.

In Honduras, the government on March 16, declared a state of emergency, and suspended a range of constitutional rights, including freedom of expression, according to the UN Commissioner for human rights. The parliament on March 30, adopted draconian emergency law that allows the Prime Minister Viktor Orban to suspend laws, bypass parliament and adopt decrees on an unlimited basis.

United Nations' Global Concerns

Thus, in April, the UN's High Commissioner for Human Rights, Michelle Bachelet, in a statement denounced the shootings and detentions by law enforcement agencies seeking to enforce the lockdowns and curfews. "Emergency powers should not be a weapon government can wield to quash dissent, control the population, and even perpetuate their time in power," she said¹⁵.

Also, in a virtual briefing in Geneva, Georgette Gagnon, UN's director of field operations, said "there are probably several dozen more we could have highlighted". "A main concern on exceptional emergency measures is what has been described as a toxic lockdown culture in some countries. As the High Commissioner highlighted, police and other security forces are using excessive and sometimes deadly force to enforce lockdowns and curfews. Those who cannot pay bribes, poor people, are taken to mandatory quarantine centres although there is no indication that they have come into contact with someone testing positive to COVID.

On China, Gagnon said the office was reaching out over six cases of reports of "censorship on and offline, intimidation, arrest and apparent detention of dissenting voices such as doctors, journalists, human rights defenders and members of the CCP (Chinese Communist Party).¹⁶"

On its part, the WHO noted that many countries have implemented large-scale public health and social measures in an attempt to reduce

¹⁵ Abdallah, Nayera; Hassan, Samar (21 April 2020). Grant McCool (ed.). "[Saudi Arabia suspends praying in the Two Holy Mosques for Ramadan: tweet](#)". Reuters. Archived from [the original](#) on 21 April 2020. Retrieved 21 April 2020.

¹⁶ "[Saudi tells Muslims to wait on Hajj plans amid coronavirus crisis](#)". Aljazeera. 1 April 2020. Archived from [the original](#) on 3 April 2020. Retrieved 6 April 2020.

transmission and minimize the impact of COVID-19, including quarantine and the restriction of movement of individuals.¹⁷

WHO, in its report suggested that such measures should be conducted in accordance with "Article 3 of the International Health Regulations (2005), be fully respectful of the dignity, human rights and fundamental freedoms of persons.¹⁸" "The human rights considerations regarding such measures are further articulated in both the UN Committee on Economic, Social and Cultural Rights General Comment 14 (2000) and the International Covenant on Civil and Political Rights (ICCPR) (1976) and further elaborated in the Siracusa Principles (1984), according to which any such measures should be: in accordance with the law; pursue a legitimate aim; proportionate; and not arbitrary or discriminatory,"

According to WHO stressed that all countries must strike a fine balance between protecting health, minimizing economic and social disruption, and respecting human rights.

For its part, the World Justice Project, in a statement on May 15, said the COVID-19 is having dramatic effects on many facets of the rule of law around the world. Growing barriers to access to justice, rising manipulation of emergency powers, and intensifying pressures on civil society and independent media are together eroding fundamental principles of good democratic governance and the rule of law.

These early signs from the pandemic come on the heels of growing evidence that the rule of law, particularly in such areas as fundamental rights, corruption, and constraints on executive powers, continues to decline in most countries, according to the latest World Justice Project Rule of Law Index, it added.

The Executive Secretary of the NHRC, Dr. Tony Ojukwu, last week announced new guidelines for protection of human rights in Nigeria, under

¹⁷ ["Official Spokesperson for the Two Holy Mosques: Suspending presence and praying in the squares of Two Holy Mosques starting tomorrow"](#). Saudi Press Agency. 20 March 2020. Archived from [the original](#) on 6 April 2020. Retrieved 25 March 2020.

¹⁸ Farooqui, Salmaan (13 March 2020). ["Mosques across Canada cancel, alter Friday prayer to limit spread of coronavirus"](#). The Globe and Mail. [Archived](#) from the original on 16 March 2020. Retrieved 18 March 2020.

the COVID-19 pandemic. He said the guideline was in line with Section 5(1) of the National Human Rights Commission (Amendment) Act, 2010.

Ojukwu explained that, "The Guidelines contain human rights guarantees such as the rights to life, health, dignity, privacy, religion and protection against discrimination. It also contains provisions aimed at ensuring access to adequate accommodation, food, water and sanitation, information and communication for patients at COVID-19 treatment centres and facilities in Nigeria."

International Regulation on Freedom of Movement and Freedom of Assembly

This article elaborates on the freedom of movement and freedom of assembly in the state laws and has enshrined in the various international institutions. The reason for focusing on these two rights is that many of the restriction ordered were adopted with the view of restricting people from moving and assembling, and these restrictions are having a domino effect on the other rights critically review in the [Universal Declaration of Human Rights](#), the International Covenant on Civil and Political Rights ("[ICCPR](#)") American Convention on Human Rights ("[ACHR](#)," European Convention on Human Rights ("[ECHR](#)," European Social Charter ("[ESC](#),"

Since its signature in 1948, the [Universal Declaration of Human Rights](#) has served as the foundation for over a dozen universal and regional treaties enshrining individual human rights. Four of these treaties have derogation clauses, which legally permit temporarily suspending the enshrined rights during national emergencies. The International Covenant on Civil and Political Rights ("[ICCPR](#)") signed 1966 (in force 1976) is the universal version with 113 parties globally and six additional signatories. Regionally, the American Convention on Human Rights ("[ACHR](#)," signed 1969, in force 1978) compounds these universal commitments for 24 states in the western hemisphere today, while the European Convention on Human Rights ("[ECHR](#)," signed 1950 in force 1953) does the same for 47 states, and the European Social Charter ("[ESC](#)," revised 1996, in force 1999) for 34 European countries. While acknowledging that national emergencies

require flexibility, the institutional bodies derogation clauses specify certain rights that are non-derogable at any time¹⁹

Emergencies, though, are in the eye of the beholder. Like many constitutions, international human rights law does not provide an exhaustive list.²⁰ The ICCPR, ECHR, and ESC understand emergencies threaten “the life of the nation,” while the ACHR describes a threat against “the independence or security of a State.” In the end, it is up to national governments to decide if and when these threats exist. Once proclaimed, they may temporarily limit any derogable rights.

Derogations should meet a few criteria.²¹ They should: be proportionate to the crisis; be necessary for protecting the nation and responding to the threat; not discriminate on the basis of race, color, sex, language, religion, or social origin; remain compatible with the state’s other international law obligations; and last only as long as necessary²²

When a signatory state suspends rights during a crisis, they are obligated to inform the relevant international body at least twice.²³ The ACHR also requires the government to provide the “set date for the termination of each suspension” in the initial notice, since states of emergencies are supposed to be *temporary* diversions. The ECHR, ESC, and ICCPR do not request an estimated expiration, but they do require a subsequent notice alerting the organization that the situation no longer poses an existential

¹⁹ the ICCPR (Article 4(2)), ECHR (Article 15(2)), and ACHR (Article 27(2))

²⁰ The ICCPR (Article 4(1)) simply refers to “time(s) of public emergency,” the ECHR (Article 15(1)) and ESC (Article F(1)) to that plus war, and the ACHR (Article 27(1)) to these as well as “public danger.”

²¹ All three require the right to life, prohibition of slavery and torture, and freedom from retroactive legislation. The ICCPR and ACHR further maintain the right to legal personality and freedom of thought and religion. They both insist domestic remedies via judicial processes remain protected at all times (ICCPR in Human Rights Committee General [Comment Number 29](#)). The ICCPR prohibits imprisonment for inability to fulfill a contractual obligation. The ECHR as later amended prohibits the use of the death penalty even in times of crisis (Protocol 13, Article 2) and protection from *ne bis in idem* or double jeopardy (Protocol 7, Article 4(3)). The ACHR – which has the longest set of non-derogable rights – demands continued observance of humane treatment while in custody, freedom from forced labor, rights of the child and the family, rights of name and nationality, and the right to participate in government. **All other rights** enshrined in these charters and the entire ESC (see Article F) **may be derogated during emergencies** if the exigent situation demands such actions.

²² (ICCPR Article 4(1), ACHR Article 27(1), ECHR Article 15(1), ESC Article F(1)). Besides that, a derogation’s form and extent are also open to the national government’s interpretation.

²³ (ICCPR Article 4(3), ACHR Article 27(3), ECHR Article 15(3), ESC Article F(2)). The initial notice should include; the reason for suspending rights under the respective article, and the specific rights they have derogated.

threat and the state's legal commitments to individual rights have been restored. In practice, governments that prolong or amend their states of emergency may also update the relevant secretariat after the initial notice is given

In sum, international human rights law has very little to say about defining crisis situations, and only limited restrictions on the means. At present, this means national governments are able to unilaterally decide whether COVID-19 constitutes a threat to the nation requiring emergency government, and, once they have, international human rights law permits limiting any rights except for those deemed non-derogable.²⁴

Countries that have not declared states of emergency to handle the COVID-19 pandemic can still legally limit individual rights under international human rights law. The ESC permits restrictions on any rights for public health.²⁵

Unlike derogation clauses, these limitations are not explicitly time constrained. Simultaneously, there is an impetus in some of these treaties to take extra measures to protect public health. A counterpart to the ICCPR, the [International Covenant of Economic, Social, and Cultural Rights](#), specifically mandates signatory governments protect the public from epidemic diseases²⁶ as does the ESC²⁷ The ACHPR also requires signatories "protect the health of their people²⁸" This tension introduces a unique problem: in an effort to protect health, governments could theoretically permanently suspend some international-recognized human rights.

²⁴ Emmons, Cassandra: *International Human Rights Law and COVID-19 States of Emergency*, *VerfBlog*, 2020/4/25, <https://verfassungsblog.de/international-human-rights-law-and-covid-19-states-of-emergency>, Retrieved on the 25 April, 2020

²⁵ (Article G (1)). The ICCPR, ACHR, ACHR, and African Charter on Human and People's Rights ("ACHPR") permit the following restrictions for public health protection, the right to manifest or practice one's religion (ICCPR Article 18(3), ACHR Article 12(3), ECHR Article 9(2)), respect for private and family life (ECHR Article 8(2)), freedom of movement (ICCPR Article 12(3), ACHR Article 22(3), ECHR Protocol 4, Article 2(3), ACHPR Article 12(2)), freedom of assembly (ICCPR Article 21, ACHR Article 15, ECHR Article 11(2), ACHPR Article 11), freedom of association (ICCPR Article 22(2), ACHR Article 16(2), ECHR Article 11(2)), and freedom of expression (ICCPR Article 19(3b), ACHR Article 13(2b), ECHR Article 10(2)).

²⁶ (Article 12(2)c),

²⁷ (Article 11(3)).

²⁸ (Article 16(21)).

Combining these preemptive commitments and permissive conditions creates additional opportunities for governments to combat COVID-19 without declaring an emergency. It also invites abuse. Together, this means all government responses to COVID-19 should be closely monitored for proportionality, necessity, and retraction of measures once the crisis is under control – not only the emergency decrees.

Enforcement

An emergency's legitimacy and the proportionality of restrictions can be challenged two ways at the international level: international courts and active monitoring.

Violations under the ICCPR and ECHR can be brought to the respective courts by individual claimants. An optional protocol to the ICCPR, currently ratified by 116 states and signed by an additional three, grants individuals in any signatory state the right to address the Human Rights Committee (also established under the ICCPR) about violations of their rights under the ICCPR. However, these individuals need to show they have exhausted all domestic remedies before their challenge will be reviewed by the Committee, and, as it is not a court, the Committee's response options are limited. The European Court of Human Rights also can be directly addressed by individuals who have exhausted domestic remedies, though only since 1998²⁹ The European Court of Human Rights has historically been asked to judge whether a given situation constituted a threat to the nation. The Court has [confirmed](#) states of emergency were warranted.³⁰

The American Court of Human Rights only hears cases brought to the Inter-American Commission on Human Rights first; no individual has standing before the Court except through the Commission.

State parties to the conventions do have standing before both Courts and the Committee. Thus, individual countries could file complaints of another country's state of emergency violating the convention³¹, which they said justified extrajudicial deprivation of liberty.

²⁹ (Protocol 11, Articles 34-35).

³⁰ For example, in *Lawless v. Ireland* (1961), *Brannigan and McBride v. the United Kingdom* (1993), and *Aksoy v. Turkey* (1996).

³¹ For example, in [Ireland v. the United Kingdom](#) (1978), the European Court of Human Rights confirmed the presence of an emergency under Article 15 of the ECHR

The problem with these juridical approaches boils down to expediency. Given that domestic remedies have to be exhausted under the ECHR and ICCPR and the lengths of time accused governments have to respond to either court or committee, this option hardly rises to the challenge of addressing abuses of rights under states of emergency. Even relaxing the domestic remedies requirement would not meaningfully shorten the process.

Alternatively, monitoring is the most common method for international bodies to enforce human rights. Compliance with the ICCPR is monitored annually by the [Human Rights Committee](#), as the ACHR is monitored by the [Inter-American Commission on Human Rights](#). Human rights within the Council of Europe's member states are monitored by the [Commissioner for Human Rights](#), the [Secretary General](#), and a variety of other [entities](#). Most monitoring practices are determined within these bodies and the wider organization, but some non-governmental actors have sought to contribute to these discussions. For instance, in 1986, the International Law Association's committee on enforcement of human rights produced a framework for critically evaluating actions taken under the guise of states of emergency called the Queensland Guidelines for Bodies Monitoring Respect for Human Rights during States of Emergency; a [subsequent committee](#) is currently assessing this very topic.

While monitors can outpace judicial actors, they have very few punitive tools if a serious violation is found. The modus operandi for monitors is to call attention to a problem and "name and shame" the actors. This response might raise more alarm bells, but cannot directly halt any ongoing abuse.

International Law in Public Health Emergencies

One potential change is conceptual. Each time a new threat emerges, the definition of an "emergency" irrevocably stretches, as was observed post 9/11. We might, therefore, see public health pandemics included as legitimate grounds for derogations under states of emergency. Public health derogations would, importantly, then become subject to the proportionality criterion and be expressly temporary. However, since states can already legally limit some rights in these cases, this change might invite more abuse rather than provide necessary flexibility to address

crises. We should only advocate this conceptual stretching if there are indeed other rights besides those listed in section 2 that need to be derogable during pandemics in the interest of public welfare.

Instead of conceptual rethinking, we can reconsider enforcement. Unilateral or multilateral economic or political sanctions on governments that are abusing their states of emergency would certainly get people's attention. These measures are sometimes effective in non-emergent situations. However, sanctions can hardly be justified nor would they likely be complied with during a true public health pandemic – especially one like COVID-19, which has catalyzed one of the [largest global economic recessions](#) in modern history. This approach would quickly instigate long-term public backlash as people continue to suffer.

The Nigerian Framework

This framework forms the thrust of the Nigerian government policy on the COVID-19 pandemic. It is equally the policy that has infringed on fundamental human rights of the citizens, the most. This infringement cut across the right to freedom of thought and religion, the rights to move freely within Nigeria, the rights to freedom to assemble and associate with other persons, the rights to personal liberty, etc. In furtherance of the above, the Nigerian government has adopted a range of microscopic policies cutting across social distancing, restriction of movement Nationwide, prohibition of religious and social gathering, etc. as aforementioned. All these policies are directly at variance with the aforementioned constitutional provisions and if not checked, may readily escalate to riot, civil disobedience and other anti-state actions. For example, the Nigerian government social distancing policy, as adopted from the World Health Organization, makes it mandatory for persons to stay at least two metres apart at all times. This therefore makes it impossible for citizens to associate freely as they would ordinarily have done if the policy was not in place.

Similarly, in furtherance of the Infection, prevention and control citizens, have been made to obtain police permit to enable them move from one

point to the other. However, in *Anigboro vs Sea Trucks Nig. LTD*³² the court held that Police permit has outlived its usefulness. Status requiring such permit for peaceful demonstration, procession and rallies are things of the past. Police permit is the brain child of the colonial era and ought not to remain in our statute books. Accordingly in the absence of the evidence that a person has committed a crime or that he is a threat to the general public, his movement should not be unduly restricted. In *Chief F.R.A Williams's vs. Majekodunmi*,³³ the Supreme Court held that the restriction order passed in respect of the petitioner is unjustifiable.

This article has largely dealt on the ongoing COVID-19 pandemic and its effect on the constitutionally guaranteed human rights. COVID-19 is a new infection that perhaps requires further study and a review on the way citizens ordinarily live their lives. However, government must find a balance between the protection of the general public and the fundamental human rights of the citizens. What this paper has done therefore is to analyze instances where the policies emanating from the COVID19 pandemic particularly those of the World Health Organization, as adopted by Nigeria, has infringed on the citizen's aforementioned rights. The article has equally examined the justification of restriction of citizens' rights during state of emergencies. It is hoped that government all over the world will be circumspect and extremely reluctant in sacrificing the citizen's rights on the altar of "Public good, public order, public safety, public health and state of emergency".

Conclusion

WHO plays a critical role in supporting Member States to address these challenges and developing a comprehensive approach to COVID-19, embracing human rights as an integral part of our public health response will not only provide ethical guidance during these difficult times but set the foundation for how the world responds to public health crises going forward.

This article concludes that rather than coercion, improved collaboration is a viable answer. Here we should pause before reinventing the wheel. We

³² (1996) 6 NWLR pt.399, p. 35 CA

³³ (1962) 1 All NLR 410

already have an international body that focuses explicitly on combatting international health emergencies through coordination and collaboration: the World Health Organization.³⁴ At present, the WHO is funded by a combination of assessed and voluntary contributions.³⁵ Voluntary contributions are typically earmarked for specific projects, but these preconditions could feasibly be loosened during pandemics. Greater oversight and investment during non-pandemic times can also promise a better reaction to the next crisis. INFECTION, PREVENTION

Recommendations

The following recommendations for religious and traditional leaders are developed to mitigate community vulnerability and increase resilience in combating the deadly virus.

- A. The COVID-19 pandemic has resulted in the spread of xenophobic and discriminatory attacks towards specific groups and communities. Religious and Community leaders should promote messages of unity and discuss with community members the importance of preventing the social stigma of people and groups. Encourage community members to show empathy with others and understand the virus itself. Ensure all messaging is thoughtful and intentional.
- B. As we are practicing social distancing, communities should call on religious leaders and actors to re-examine religious rituals and practices in order to minimize risks of transmission of the virus. Moreover, hygiene is emphasized in every faith; hence, religious leaders should utilize its teachings to educate the community on the importance of sanitation and hygiene. [The World Health Organization \(WHO\)](#) emphasizes the importance of hygiene, such as frequently washing hands with warm water and soap, to help prevent the spread of the virus.

³⁴ WHO. Considerations in adjusting public health and social measures in the context of COVID-19 (https://apps.who.int/iris/bitstream/handle/10665/331773/WHO-2019-nCoV-Adjusting_PH_measures-2020.1-eng.pdf accessed April 2020)

³⁵ Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights, U.N. Doc E/CN.4/1985/4, Annex (1985). Available at <http://www1.umn.edu/humanrts/instree/siracusaprinciples.html> (accessed April 2020)

C. Problematically, none of these treaties specifies *how soon after* a state of emergency is declared the organization needs to be informed. It is, therefore, not surprising that some governments never notify the relevant bodies at all, as was the case with Egypt's state of emergency in 2017, or send notice several weeks after the state of emergency is in place as Turkey did after the 2016 attempted coup d'état. To make matters worse, there are no explicit negative consequences for failing to formally report a state of emergency. There is also no stipulated timeframe for restoring citizens' rights at a crisis's.