

A COMPARATIVE EVALUATION OF THE EFFECT OF THE OUTBREAK OF COVID-19 ON SELECTED LEGAL RIGHTS IN NIGERIA

Collins O. Chijioke (Ph.D) and Enwere Oguchinalu (LL.M)

¹Head of the Department of Private and Property Law of the Faculty of Law of Abia State University, Uturu, Nigeria. He is also the Dean of the College of Law, Gregory University, Uturu. Tel: 08035524178, 08163202222

²Lecturer, Faculty of Law, Abia State University Uturu, Nigeria. Tel: 08126051254

ABSTRACT: *There is no gain saying the fact that the outbreak of the corona virus; which spread over the globe like wide fire; is the worst calamity that has hit mankind since the second war. The virus, otherwise tagged Covid-19 has infected so many people and caused several deaths all over the world. This awful pandemic has affected not just lives; but all spheres of human endeavours ranging from the health sector to food and agriculture, migration and tourism, education, international commerce, environment and legal rights; to mention but a few. This paper critically examined the effect of the pandemic on some selected basic and constitutional rights with Nigeria as the focal geographical scope of the study, while drawing comparative analysis from the developments in some other countries. Relying on the exploratory doctrinal methodology and secondary sources of information, the paper found that the pandemic has inhibited the full enjoyment of basic rights; including fundamental rights, a situation which citizens have been compelled to accept. The paper further found that this period has witnessed a high level abuse of human rights as well as some other legally cognized basic rights. The paper condemned total deprivation and violation of such rights under any guise and concluded by suggesting ways how this pandemic period could be managed with citizens continually enjoying their basic and constitutional rights.*

KEYWORDS: basic rights, fundamental rights, pandemic, virus, vaccine, violation.

INTRODUCTION

Covid 19 pandemic has constitutional such a threat to human existence that the level of fear so far generated by the rate at which the virus spreads; can aptly be described as “health pandemonium”. It is evident that the pandemic has overwhelmed the health sector with no plausible solution in sight. Antonio, (2020) has described the pandemic as a social crisis that is fast becoming a human crisis. The pandemic has redefined pattern of living, standard of living, inter-personal and diplomatic relationships and has adversely affected economic growth and developmental strides expected in normal situations.

Measures taken by countries in their bid to combat this pandemic have certainly infringed upon the rights of her citizens as contained in both domestic and international laws, coupled with failure of countries to meet with certain obligations owed her citizens. This can aptly be

likened to a war situation where some rights are suspended as a matter of emergency. How some basic and constitutional rights have been adversely affected by the emergency crisis occasioned by the pandemic all over the world; with emphasis on Nigeria is the focus of this article. This article also shall make necessary recommendations towards safeguarding the said rights in a pandemic situation.

Conceptual Clarifications

Human Rights

Human Rights are those rights that belong to an individual simply because he or she is a human being; in other words – human beings are naturally born to possess human rights. For Osita Eze (1984); “Human Rights” are demands or claims which individuals or groups make on society, some of which are protected by law and have become part of the *lex lata* while others remain mere aspirations to be attained in the future. In Nigeria, Fundamental Human Rights are provided for in Chapter Four (IV) of the Constitution of the Federal Republic of Nigeria.

Corona Virus

One of the issues raised in health topics (2020) had it that Corona virus disease is a member of the Corona viruses family that are known to cause illness ranging from the common cold to more severe diseases such as Middle East Respiratory Syndrome (MERS) and Severe Acute Respiratory Syndrome (SARS). A novel corona virus (COVID-19) was identified in December 2019 in Wuhan, China. This is a new corona virus that has not been previously identified in humans. Health science (2020) has posited that; the virus is an infectious virus and its symptoms include fever, tiredness, and dry cough. Some patients may have aches and pains, nasal congestion, runny nose, sore throat or diarrhea. These symptoms are usually mild and begin gradually, till it develops after a period of fourteen days, except for the symptomatic patients. The outbreak of Corona virus was declared a Public Health Emergency of International Concern by the World Health Organization (2020) while the Director General of WHO (2020) rightly declared it as a pandemic.

Crisis

Fowler; (1934); traced the origin of the word "Crisis" to the Greek word "Krisis" which means decision. Crisis has been defined (2020) as an unsuitable situation, in political, social, economic or military affairs, especially one involving an impending abrupt change. The Merriam Webster Dictionary (2020); defines crisis as an unstable or crucial time or state of affairs in which a decisive change is impending especially; one with the distinct possibility of a highly undesirable outcome.

Lockdown

According to the Merriam Webster Dictionary (2020), Lockdown is an emergency measure or condition in which people are temporarily prevented from entering or leaving a restricted area or building such as a school during a threat of danger. It also entails compelling people to stay in indoors in order to keep them safe. Lockdown may be either full lockdown, which Wikipedia (2020) described as entailing people being compelled to stay where they are may not enter or exist a building or rooms within it or; drill lockdown which may be held in the absence of a threat to familiarize people with what they must do.

Isolation

Isolation is the condition of being alone, especially when this makes one feel unhappy. Isolation is the condition of being separated from other people. Self- isolation is a process whereby a person is required strictly to stay at home or in identified accommodation, away from situations where a person mixes with his family members or the general public, for the period of fourteen (14) days. It may be by compulsion or by self imposed.

Quarantine

For the purpose of checking and controlling the spread of covid-19, quarantine is applied as a measure to keep someone who might have been exposed to COVID-19 away from other people; where the health situation of such a person is monitored for a specific period of time. Though, both self-isolation and quarantine exist to decrease public exposure to a disease. It is a fact that while isolation separates people with contagious disease from people who are not ill, quarantine separates and restricts the movement of people who are not ill but may have been exposed to a contagious disease to see if they become ill. In other words, quarantine is not reserved for people who are ill. People who appear healthy can still be quarantined. In Nigeria, Quarantine is regulated by the Quarantine Act, 2004. It is in paragraph (item) 54 of the Exclusive Legislative List; and it is the principal legislation regulating the act of quarantine in Nigeria. There is also the Nigeria COVID-19 Regulations 2020 made pursuant to the Act; which are replicated by various regulations of state governments.

Pandemic

Fowler and Mesurier (1934); have not only traced the origin of the word "pandemic" the Greek words "pan" and "demos" which means "all" and "people" respectively but have also defined it as; the disease that is prevalent over a whole country or the world. It has been used in reference as occurring over a wide geographic area and affecting an exceptionality high proportion of the pollution (2020). The difference between an epidemic and a pandemic is that while an epidemic is a disease that affects a large number of people within a community, country or region, a pandemic is a disease that has spread over multiple countries or continents.

Social Distancing

Social Distancing; also called "physical distancing" is a set of non pharmaceutical interventions or measures taken to prevent the spread of a contagious disease by maintaining physical distance between people and reducing the number of times people come in close contact with each other. It typically involves keeping a certain distance from others and avoiding gathering together in large groups. The World Health Organization (2020) suggested favouring the term "physical distancing" as opposed to "social distancing" in keeping with the fact that it is a physical distance that prevents transmission, people can remain socially connected via technology.

Having looked at the conceptual clarifications, it will now be pertinent to look at the topic holistically.

Corona Virus Pandemic and Basic Rights Crisis

It has become a reality that the world today is being ravaged by a deadly virus which has not only stampeded the activities and developments in countries but has also brought the economies of countries to a standstill. The impacts of the novel corona virus are being felt across the world, and in all domains of life. Existing inequalities are more visible than ever, with the burdens of the crisis falling on some more than others. Some governments are exploiting the crisis to crackdown on civil liberties. The incidence of the said virus has resulted in flagrant violation of human rights and basic rights in the world today all in the name of combating the virus.

As governments around the world respond to the novel corona virus, many are declaring state of emergency and giving themselves expansive powers. It is of crucial importance to ensure that exceptional measures so introduced do not undermine human rights and basic rights. International human rights instruments such as; the Universal Declaration of Human Rights, African Charter on Human and Peoples' Rights (also known as the Banjul Charter), European Convention on Human Rights and American Convention on Human Rights; to mention but a few, promote and protect human rights and basic freedoms.

This Constitution of the Federal Republic of Nigeria (the Constitution) 1999 (as amended) enshrines the guaranteed and justiciable fundamental rights in its chapter iv; twelve rights are provided under the said chapter and they are the right to life, right to dignity of the human person, right to personal liberty, right to fair hearing, right to private and family life, right to freedom of thought, conscience and religion, right to freedom of expression and the press, right to peaceful assembly, and association, right to freedom of movement, right to freedom from discrimination, right to acquire and own immovable property anywhere in Nigeria and protection from compulsory acquisition of property.

By mid-March 2020, more than 150 countries had reported cases of COVID-19, and WHO (2020) announced that there were more than 200,000 cases worldwide. More than 7,000 people had

died and the numbers were continuing to rise at an alarming rate. On March 11, 2020, the World Health Organization declared that the outbreak of the viral disease COVID-19 had reached the level of a global pandemic; citing concerns with "the alarming levels of spread and severity". The WHO called for governments to take urgent and aggressive action to stop the spread of the virus.

Enjoyment of human rights has suffered severely in this era and the noticeable violation are in form of human rights censorship, discrimination, arbitrary detention, xenophobia attacks which were reported from different parts of the world. Amnesty international has responded recently that human rights violations hinder rather than facilitate responses to public health emergencies and undercut their efficiency. It is in view of this fact that the World Health Organization (2020) has stated that stay at home measures for slowing down the pandemic must not be done at the expense of human rights, suffice it to say that violated rights are not limited to human rights but include other basic rights.

Right to Life

This right has been flagrantly violated in Nigeria by the security outfits whose duties include securing lives and properties. This dastard acts were committed on the mere excuse that those who were brutally murdered did not comply with the lockdown "stay at home" directive. The philosophy behind the stay at home order is to keep the people safe, in this wise therefore, the police senseless murdering of innocent people is anything but apropos to that philosophy.

British Broadcasting Corporative (BBC) (2020); news reported on 16th April, 2020 that Nigerian security forces as at that date had killed more Nigerian citizens than the pandemic itself; citing videos sent to the National Human Rights Commission (NHRC) as its sources. From the data made available to BBC; as that the said date covid-19 had killed 12 Nigerian while the security forces had killed 18 Nigerians. This was a clear violation of Section 33 of the Constitution.

Right to Medicare

In Libya, the medical situation was worsening amidst the ongoing war, where hospitals were constantly being attacked. In April 2020, the UN humanitarian coordinator for Libya, Yacoub El Hillo confirmed that 27 health facilities had been damaged and 14 closed in five weeks. On April 6, UAE-backed forces of Khalifa Haftar launched a rocket attack against the Al-Khadra General Hospital and damaged the 400-bed facility where 300 patients, including two COVID-19 patients, were being treated. The attack was condemned as a violation of international humanitarian law by Yacoub El Hillo (2020). The right to free Medicare which is still considered as non justiciable right in Nigeria was visibly violated. Political, economic, social, education and environmental objectives amongst others are enshrined in Chapter 11 of the Constitution as Fundamental Objectives and Directive Principles of State Policy; being aspirations to be attained; which are yet to be attained and it includes health care. The attempt to by the Federal House of Representatives in Nigeria to make law to handle health care in

respect of covid-19 was commenced in such a manner that attracted suspicions and condemnation. This is talking about the Infectious Diseases Bill; which intends to bring about the law for compulsory vaccination of citizens among other draconic provisions. This was condemned as likely to violate citizens' right to the dignity of their human persons enshrined in Section 34 of the Constitution. This Bill has been suspended.

Freedom from Discrimination

Antonio; (2020); opines that there have been reports of racism against Asian people, particularly against Chinese people in Europe and the Americas. The World Health Organization's Emergency Committee issued a statement advising all countries to be mindful of the "principles of Article 3 of the International Health Regulations,(IHR)" which is a caution against "actions that promote stigma or discrimination," when conducting national response measures to the outbreak. There are no such known stigma cases in Nigeria for now; this could be because citizens hardly know who has been treated of the virus.

Right to Acquire and Own Movable Property

There is rising cases of ethno- nationalism, dictatorship, authoritarianism among presidents and prime ministers in most countries of the world and a pushback against human rights in some countries, the crisis appear to have provided a good excuse to adopt repressive measures for purposes unrelated to the pandemic. The Nigerian example is the Governor of Rivers State who personally supervised the pulling down of two hotels for violating the State Regulation made pursuant to the Quarantine Act, without trial or Order of court. This act clearly violated Section 43 of the Constitution of the Federal Republic of Nigeria which guarantees the right to acquire and own immovable property anywhere in Nigeria. This right like every other fundamental right can only be deprived a citizen by judicial pronouncement after the citizen had been afforded fair hearing in the court.

Freedom of Expression and the Press

In a number of countries, governments have failed to uphold the right to freedom of expression, taking actions against journalists and healthcare workers. It has been reported (2020); that an Activist sharing information about the corona virus pandemic situation in China were intimidated and harassed. It was equally reported (2020) that; the government of China enforced early censorship to suppress information about the corona virus, and the dangers it poses to public health which is an infringement of the right to freedom of expression as well as freedom of the press. There were criticisms (2020); that the pandemic was allowed to spread for weeks before efforts were undertaken to contain the virus. According to Verna (2020) Li Wenliang, a Chinese doctor who alerted his colleagues about corona virus was censored and then detained by the police for "spreading false rumors. In corroborating the report Qin Amy, (2020) concluded that he succumbed to the infection and later died. In Nigeria the outbreak of the pandemic has witnessed a rise in fake news

especially on social media. Sometimes the news was even backed up with falsified videos. There is no doubt that dissemination of fake news adversely affect right to freedom of expression and the press as enshrined in Section 39 of the Constitution.

Right to Personal Liberty

This right has also been subject of violation in this pandemic period. Apart from the fact that the pandemic has on its own curtailed the right, government polices and enforcement agencies have worsened the situation. Emergency Regulations has been global but in most states in Nigeria; there have been cases of arbitrary arrests and detention of even health workers and others on essential duty have been victims. According to Sahara Reports (2020); the NHRC as at 25th April, 2020 received and documented about 105 complaints of such incidents perpetrated by Security Forces.

On 10 April 2020, footage shared by Amnesty International (2020) revealed that detainees in a Cambodian prison are living in "inhumane conditions." With at least 25 prisoners lying on the floor of a single small cell, the prison is claimed to be extremely overcrowded and there was non observance of physical distancing requirements. It has been called a "ticking time bomb, especially during the corona virus outbreak."

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

In the United States, the Justice Department (2020) has quietly asked Congress for the ability to ask chief judges to detain people indefinitely without trial during emergencies; part of a push for new powers that comes as the novel corona virus spreads throughout the United States.

Human Rights Watch, (2020); noted that the Australian government sent hundreds of Australians to an immigration detention centre on Christmas Island where the conditions were previously described as "inhumane" by the Australian Medical Association.

Freedom of Movement

Failure to ease the lockdown when it is absolutely necessary; for instance, to enable people go to hospital, buy food and possibly visit aged parents, is unreasonable and non-justiciable restriction to enjoyment of this right. While it is conceded that this right may be curtailed in emergency situations as envisioned by Section 41(2) of the Constitution, the fact remains that restriction on the right has to be lifted in appropriate circumstances. The test for such

restriction is whether it is reasonably justifiable in a democratic society; and must fall under the grounds listed in Section 41(2) (b). In this regard, the regulations made pursuant to Quarantine Act can be said to be in conflict with the Constitution; as it covers more grounds than the constitution itself.

In Nigeria there are incidents of people who claimed that they were forcefully quarantined and were never placed on any medication, only to be discharged later. Some also complained that they were told at the isolation centers that they tested positive whereas their results were not shown to them. These complaints resulted in some patients refusing to be held in public treatment centers. Report (2020); had it that in Lagos, a Magistrate Court on the 8th of April, 2020 sentenced over 30 lockdown flouters; (most of them were caught jogging), to 14 day quarantine and a month community service. The fact that the Magistrate made the order for the defendants to be quarantined without first; determining their health status is unarguably unfair and a violation of their right to personal liberty. There ought to have been an order mandating that the defendants be tested before they could be quarantined. In the instant case, it is clear that the defendants were quarantined as a punishment and neither in their own interest nor that of the members of the public.

Right to Dignity of Human Person

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

Right to Education

The right to Education is not a fundamental right in Nigeria even though, contained in the Constitution; Section 18(1) of the Constitution provides that Government shall direct its policy towards ensuring that there are equal and adequate educational opportunities. The Government cannot be said to have ensured this aspiration in this period. Schools are closed, while some schools have embarked on online teaching of students, some others have not done anything. It is not all the student of the schools that embarked on e-learning that are participating in the process, due to lack of basic facilities like smart phones and money to purchase data. This has created discriminatory and lopsided learning pattern.

Right to Wages

In Nigeria, the Labour Act 2004, Section 1(1) (a) provides that the wages of a worker shall in all contracts be made payable in legal tender and not otherwise. There is no argument that a labourer is entitled to his wages, it is a fact that employers of labour in Nigeria are not free of

the harsh impact of COVID-19 on the economy. Some of them have introduced wage cut while some have totally refused to pay salaries. There are other employers that have disengaged some of their workers. Section 5 of the Labour Act and Article 8 of the Wages Protection Convention Prohibit the deduction of an employee's wages whether unilaterally or by agreement. Although, Article 8 of the Convention makes an exception where national laws or regulation so permit, there is no such domestic law or regulations permitting workers' wages to be slashed arbitrarily. Failure to pay workers their wages in difficult time as this is akin to slavery and subjecting them to servitude contrary to Section 34(1) (a) of the Constitution. It has been reported by the International Labour Organization (2020); that the recent advent of massive job losses and growing precarity of work is having particularly painful impacts on young people across the globe.

Right to Environmental Protection

The government is tasked by Section 20 of the Constitution to Protect and improve the environment, etc. COVID-19 has impacted on agriculture and food supply; coupled with reported (2020); herdsman menace; which have been recorded to have taken place in Benue, Delta and some other states despite the lockdown. The reduction in agricultural activities is due to the lockdown which has paralyzed agricultural activities. It is also a fact that talks on actions on climate change has slowed down in Nigeria especially with the suspension of the meeting earlier fixed to hold sometime in June, 2020. Apart from this delay, report (2020) has shown that particulate matters are on the decrease and level of pollution shown to have drastically reduced. This positive result must be attributed to the temporary suspension in industrial activities.

Recommendations

One agrees with the assertion (2020); that human rights cannot be an afterthought in times of crisis, People and their rights must be front and centre. A human rights lens put everyone in the picture and ensures that no one is left behind. The same applies to other basic rights.

Governments of each country should fully respect the rights to freedom of expression, access to information, and every other recognized right of the citizens of each country and only restrict them as international standards permit. Antonio; (2020) was right to have said that governments should ensure that the information they provide to the public regarding COVID-19 is accurate, timely, and consistent with human rights principles. This is important for addressing false and misleading information. All information about COVID-19 should be accessible and available in multiple languages, including for those with low or no literacy.

Officers of the law enforcement agencies who violate or infringe on the rights of the citizens during the Covid 19 Pandemic should be punished so as to serve as deterrence to other officers. Government should include the punishment in the extant Regulations.

The rights to freedom of movement and personal liberty should not be absolutely restricted but must be relaxed to accommodate those who have genuine reasons such as those who have need to go to hospital, but food or food items and those who have proof of attending to emergency cases. Essential service providers should not be affected by the restrictions.

There is need for the government to make provisions for adequate and non discriminatory palliatives and economic stimulus packages to the citizens during lockdowns periods will also safeguard to their right. This is because quarantines or lockdowns bring with them unbearable hardship on the people and thus it is time for government to show that it cares for the people that put it in place.

Both state government and the Federal Government must ensure that adequate security is put in place to check criminal activities such as the menace of the herdsmen and insurgency.

This pandemic period is apt for the Government to seriously plan towards sustaining and improving upon the gains so far recorded in handling climate change in Nigeria; as same is temporal for now.

Government agencies with authority over people housed in prisons, jails, and immigration detention centers should consider reducing their populations through appropriate supervised or early release of low-risk category of detainees including for example, those whose scheduled release may be soon, those who are in pre-trial detention for non-violent and lesser offences, or whose continued detention is similarly unnecessary or not justified. Our hospitals must be upgraded as a matter of urgent necessity.

No government official or agency is permitted to take laws into its hands, as it cannot be the accuser, the judge and the executioner at the same time. In view of this fact, various Regulations made pursuant to the Quarantine Act should be scrutinized to ensure that they do not conflict with the constitution and the courts should not hesitate to have the offending provisions declared invalid, null and void in appropriate cases.

It is also recommended that Government should come to the rescue of employers of labour so as to arrest mass sack, failure to pay salaries and wages; this it can do by making available bail out grants which could be expressed as loan to be repaid on long term. By this measure the Government would protecting the labour market and employees.

The Bill on Infectious Disease should be made to remain suspended. It is a known fact that it is not advisable to promulgate laws during pandemic. Government should intensify efforts to work towards finding cure or vaccine for the disease.

CONCLUSION

The flagrant abuse of citizens' basic rights by government and its agencies in their bid to prevent the spreading of the corona virus is very unfortunate. It is not valuable to kill people

in the pretence of protecting them from danger. Any Regulation put in place in the fight against further spreading of the disease must conform to the laws which protect the rights of the citizens; especially constitutional rights. In as much as one concedes that the situation at hand calls for emergency measures, it is posited that the rights of the citizens should not be restricted absolutely. Even, the bible recognizes the fact that the law is made for the man and not man for the law. In view of these facts, the proffered recommendations would usher in a better and humane lockdown regime.

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