



# UNIMAID JOURNAL OF PRIVATE AND PROPERTY LAW

Vol. 5, No.2, 2020

ISSN: 2534-6181



**UNIMAID JOURNAL OF PRIVATE AND PROPERTY LAW**

**(UJPPL)**

**ISSN: 2534-6181**

**PUBLISHED BY**

**The Department of Private Law  
Faculty of Law  
University of Maiduguri  
P. M. B. 1069  
Maiduguri – Nigeria  
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This publication is also available online at  
[www.unimaid.edu.ng/publication/privatelaw](http://www.unimaid.edu.ng/publication/privatelaw)

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## BREACHES OF FUNDAMENTAL RIGHTS IN AFRICAN STATES BY STATE AGENCIES DURING COVID-19: AN OVERVIEW

By

Tolulope R. Ibitoye\* and Stephen I. Ilesanmi\*\*

### Abstract

Coronavirus (COVID -19) is a global pandemic that affects the respiratory system, hinders easy breathing, may lead to death, and spreads cross-geographically through drops caused by an infected person's cough, sneeze, or spit. Consequently, it is key for individuals to have free access to the enjoyment of their fundamental human rights at all times. Also, States strive to protect human rights without acting in breach in spite of the pandemic. However, Covid-19 has justified constraints on the enjoyment of fundamental rights, especially, the rights to life and health as attempts are made to restrict its transmission via the implementation of quarantine or isolation laws in various jurisdictions. In curbing its spread, many countries, particularly, African states, through the instrumentalities of state agencies, deny people of their rights in so many ways. Hence, this article examines significant International, Regional, and Local Human Rights Instruments on selected five African states; and their applicable Quarantine Laws; their practical responses to Covid-19; breaches committed; and recommends how states can respect human rights during pandemic period experienced in the year 2020.

**Keywords:** Breaches of Fundamental Rights, COVID-19, African States, Quarantine Laws, State Agencies.

### Introduction

The protection of fundamental rights of people, such as, rights to life, liberty, and personal security; health; equality; freedom from discrimination; freedom from slavery and torture; freedom of movement; freedom from inhuman and degrading treatment; to mention but few, is not debatable, but, it is highly significant in times of disasters, such as communicable diseases affecting the public health of people worldwide. Coronavirus is a novel contagious disease affecting humans, although, not new in animals like bats and snakes. It was actually transmitted from the latter to humans. It was first identified in Wuhan, China, has been named coronavirus disease 2019 (COVID-19)– ‘CO’ stands for corona, ‘VI’ for virus, and ‘D’ for disease. Formerly, this disease was referred to as ‘2019 novel coronavirus’ or ‘2019-nCoV.’ It is linked to the same family of viruses as

Severe Acute Respiratory Syndrome (SARS) and some types of common cold.<sup>1</sup> Covid-19 is not limited geographically and that is why it has become a global problem. In some cases, the infection can be deadly as it can cause pneumonia or breathing difficulties.

As a result of its severity, almost all countries have developed strategies to combat its spread in their respective jurisdictions by sensitizing the populace about its prevention, spread, and treatment. In situations where necessary, some countries have triggered their quarantine laws in order to isolate suspected or infected people and also disinfect their environment. By so doing, it seems like some human rights have been trampled upon, particularly, by state agencies in some African countries, such as, Nigeria, Ghana, South Africa, Ethiopia, and Kenya, but, is it supposed to be so? For instance, the Police, Army, and other security agencies beat up, detain or even rob some citizens who disobey quarantine laws by leaving their houses to fend for their families because the government could not do so. The poor, ill, elderly, and other less-privileged are denied access to Covid-19 test kits and treatments, in circumstances where they show symptoms of the virus. Moreover, some communities are marginalized by the government in their response in treating them or giving them palliatives like food, money, face masks and gloves. So, in trying times of this nature, are governments supposed to protect or deny people of their fundamental rights, especially, the rights to life and health? How should state actors go about preventing the spread of the disease's while simultaneously protecting, and not breaching, human rights?

Therefore, this article shall examine two of the most relevant rights (rights to life and health) during Covid-19 pandemic. It will discuss relevant international, regional, and local instruments on rights to life and health in five selected African countries (Nigeria, Ghana, South Africa, Ethiopia, and Kenya), and also look at their quarantine laws. Furthermore, it will analyse the preparedness of these States on medical facilities and institutional structures in enhancing rights to life and health of their citizens. Likewise, the jurisprudential issues of rights to life and health will be juxtaposed with their breaches, while a comparison of the protection of these rights in the African States will be made with those practised in some advanced states like USA, UK, China, and Italy, so as to justify the jurisprudential discussions of this work. Lastly, this article will make recommendations to state agencies of African states on measures to take in order not to act in breach of their citizens' fundamental rights during Covid-19 pandemic.

#### **International, Regional, and Local Instruments on Human Rights**

Human Rights are fundamental, indivisible and inalienable, and none is superior to the other. However, in times of pandemic, two rights are essential to the survival of

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<sup>1</sup> UNICEF, 'Coronavirus disease 2019 (COVID-19): What is it really?' (March 20 2020) <<https://www.unicef.org/wca/what-is-coronavirus>> 23 April 2020

humans. They are the right to life and the right to health. These rights are enshrined in various international, regional and local legal documents which shall be briefly observed below.

### **International Treaties**

The Constitution of World Health Organisation (WHO) states categorically that in its Preamble that 'the enjoyment of the highest attainable standard of health is one of the fundamental rights of every human being without distinction of race, religion, political belief, economic or social condition.'<sup>2</sup> It is one of the principles that are basic to the happiness, harmonious relations and security of all peoples. Similarly, it recognises that in all countries, there exists a common danger of unequal development in the promotion of health and control of disease, especially communicable disease.<sup>3</sup> Thus, the protection of the right to health of all citizens by each government is paramount but on a case-by-case basis, especially when dealing with a pandemic like coronavirus.

The International Covenant on Economic, Social and Cultural Rights<sup>4</sup> does not make an explicit mention of 'right to life' but it makes 'recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family' as 'the foundation of freedom, justice and peace in the world.'<sup>5</sup> Similarly, it recognises that all rights are derivable from 'the inherent dignity of the human person.'<sup>5</sup> Hence, the human person has an intrinsic dignity/self-worth present in his/her being by reason of the fact that human life is sacred, thus, no life should be ended arbitrarily. Then, it implies that everyone should enjoy his/her innate right to life. On the other hand, Article 12 of ICESCR identifies the right of all persons to 'the enjoyment of the highest attainable standard of physical and mental health,' including the prevention, treatment and control of epidemic, endemic, occupational and other diseases; and 'the creation of conditions which would assure to all medical service and medical attention in the event of sickness.'<sup>6</sup> In other words, every human being has the right to enjoy the utmost standard health even in the face to epidemics and other diseases like Covid-19 while the government should be able to provide the best medical services and treatments at the periods of state emergencies and public health threats.

An equally authoritative treaty, though applicable to women is the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW).<sup>7</sup> It indirectly recognises the right to life of women by reaffirming belief in 'human rights, in the

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<sup>2</sup> WHO, 'The Constitution of the World Health Organization' (1946)  
<<https://apps.who.int/gb/bd/PDF/bd47/EN/constitution-en.pdf?ua=1>> 23 April 2020

<sup>3</sup> WHO, The Constitution

<sup>4</sup> The International Covenant on Economic, Social and Cultural Rights (ICESCR), Adopted in 1966 and entered into force in 1976 <<https://www.ohchr.org/EN/ProfessionalInterest/Pages/ICESCR.aspx>> 23 April 2020

<sup>5</sup> ICESCR, The Preamble

<sup>6</sup> ICESCR, Article 12

<sup>7</sup> The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), Adopted in 1979 by the UN General Assembly <<https://www.ohchr.org/en/professionalinterest/pages/cedaw.aspx>> 23 April 2020



dignity and worth of the human person and in the equal rights of men and women.<sup>8</sup> Also, it inspires governments to eradicate discrimination against women in the enjoyment of their right to health and places them on the same level with men when it comes to their health.<sup>9</sup> Similarly, the Convention on the Rights of the Child<sup>10</sup> expressly recognizes that 'every child has the inherent right to life;<sup>11</sup> right to health, to facilities for the treatment of illness, to combat disease and to develop preventive health care,<sup>12</sup> in situations of pandemics like COVID-19.

### **Regional Instruments**

The African Charter on Human and Peoples' Rights<sup>13</sup> recognises that 'every human being shall be entitled to respect for his life and the integrity of his person,' thus, 'no one may be arbitrarily deprived of this right'<sup>14</sup> even in pandemic situations. Likewise, as a person is entitled to enjoy good health, so are countries enjoined to take all necessary measures to safeguard the health of their people and guarantee that they receive medical attention when they are sick<sup>15</sup> or afflicted with any infectious disease, coronavirus inclusive.

The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, also known as Maputo Protocol<sup>16</sup> (which is the African regional version of CEDAW) identifies a woman's right to life and the integrity and security of her person. It also prohibits all forms of inhuman treatment against her;<sup>17</sup> for instance, neglecting to treat a woman infected with Covid-19 because of her gender, while treating her male counterparts. The right to health of women is also recognised including her sexual and reproductive rights<sup>18</sup> during public health crises.

Furthermore, 'the African Charter on the Rights and Welfare of the Child<sup>19</sup> stipulates that every child has an inherent right to life, protected by law; which all nations must ensure, to defend to the maximum extent possible, his/her survival, protection and development.<sup>20</sup> Moreover, Article 14 stipulates that every child has the right to enjoy

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<sup>8</sup> CEDAW, The Preamble

<sup>9</sup> CEDAW, Article 12

<sup>10</sup> The Convention on the Rights of the Child (CRC), Adopted in November 1989 and came into force in 1990 <<https://www.ohchr.org/en/professionalinterest/pages/crc.aspx>> 23 April 2020

<sup>11</sup> CRC, Article 6

<sup>12</sup> CRC, Article 24

<sup>13</sup> The African Charter on Human and Peoples' Rights, Adopted 27 June 1981 and entered into force 21 October 1986 <<https://www.achpr.org/legalinstruments/detail?id=49>> 23 April 2020

<sup>14</sup> ACHPR, Article 4

<sup>15</sup> ACHPR, Article 16

<sup>16</sup> The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, Adopted in 2003 and came into force in 2005

<[https://www.un.org/en/africa/osaa/pdf/au/protocol\\_rights\\_women\\_africa\\_2003.pdf](https://www.un.org/en/africa/osaa/pdf/au/protocol_rights_women_africa_2003.pdf)> 23 April 2020

<sup>17</sup> Maputo Protocol, Article 4

<sup>18</sup> Maputo Protocol, Article 14

<sup>19</sup> The African Charter on the Rights and Welfare of the Child, Adopted in 1990 and entered into force in 1999 <[https://www.un.org/en/africa/osaa/pdf/au/afr\\_charter\\_rights\\_welfare\\_child\\_africa\\_1990.pdf](https://www.un.org/en/africa/osaa/pdf/au/afr_charter_rights_welfare_child_africa_1990.pdf)> 23 April 2020

<sup>20</sup> ACRWC, Article 5

the best attainable health, as governments try to combat diseases like Covid-19 through the application of appropriate technology.

### Local Laws

The Constitution is the local law protecting the fundamental human rights of citizens of each country. In Nigeria, human rights of persons are enshrined in the 1999 Constitution of the Federal Republic of Nigeria.<sup>21</sup> The right to life is preserved in all circumstances under section 33, and no one can be deprived deliberately of his life, except in execution of a court sentence. However, right to health is not expressly provided for in the Constitution, but, Nigerians can rely on international and regional treaties to defend their health/medical rights where such is being denied during COVID-19 disaster.

Ghana is another country whose Constitution<sup>22</sup> identifies the right to life<sup>23</sup> of all persons, and similar with Nigeria, it does not unequivocally protect the right to life of people, but, entrenched in the protection of personal liberty is the law that a person may be deprived of his liberty where he or she is suffering from an infectious or contagious disease, and needs some medical care or treatment or for the protection of the community.<sup>24</sup> Further, the constitution protects the rights of the sick and discourages deprivation of medical treatment to an individual due to his/her religious or other beliefs.<sup>25</sup> Thus, the right to health is vital and not subject to discrimination of any sort at all times, whether in time of peace or public health emergency.

Additionally, South Africa enshrines the rights to life<sup>26</sup> in its Constitution. Similarly, every individual has the right to have access to health care services, and no one may be refused emergency medical treatment.<sup>27</sup> Articles 14 and 15 of the Ethiopian Constitution<sup>28</sup> also recognise the right to life, liberty and security of human beings, but, no protection of right to health. Finally, the Constitution of Kenya<sup>29</sup> identifies that every person has a right to life,<sup>30</sup> but, makes no reference to right to health.

The omissions of right to health in some constitutions does not mean that citizens of such nations will not have access to health, as right to health is required for the survival of anyone. Thus, for right to life to be attainable, there must be protection of right to health by governments and constitutions omitting such crucial rights need amendment. Therefore, the rights to life and health of all persons (male, female, young and old) are

<sup>21</sup> The 1999 Constitution of the Federal Republic of Nigeria Cap. C23, Laws of the Federation of Nigeria (LFN) 2004

<sup>22</sup> The Constitution of the Republic of Ghana (Amendment) Act, 1996

<sup>23</sup> CRG, Section 12

<sup>24</sup> CRG, Section 14 (1) (d)

<sup>25</sup> CRG, Section 30

<sup>26</sup> The Constitution of the Republic of South Africa, 1996 as adopted on 8 May 1996 and amended on 11 October 1996 by the Constitutional Assembly. Section 11

<sup>27</sup> CRSA, Section 27 (1) and (3)

<sup>28</sup> The Constitution of the Federal Republic of Ethiopia, 1995

<sup>29</sup> The Constitution of Kenya 2010 <<https://www.wipo.int/edocs/lexdocs/laws/en/ke/ke019en.pdf>> 23 April 2020

<sup>30</sup> CK, Section 26

guaranteed through the instrumentalities of international, regional and local laws.

#### **Quarantine Laws of selected African States**

This section will do an overview of quarantine laws available in selected African States such as Nigeria, Ghana, South Africa, Ethiopia and Kenya.

##### **Nigeria**

The Quarantine Act of 1926 is the law established 'to provide for and regulate the imposition of quarantine and to make other provisions for preventing the introduction into and spread in Nigeria, and the transmission from Nigeria, of dangerous infectious diseases.'<sup>31</sup> The Act empowers the Federal Government to take extraordinary actions during public health disasters founded on the President's power of emergency. Thus, under section 3, the President is officially qualified to proclaim any place as an infected area, whether within or outside Nigeria boundary. Furthermore, the President can make rules for objects including the recommendation of steps to be taken in places confirmed as infected local area; the prevention of the spread and transmission of any dangerous infectious disease from one place to another in Nigeria; and the prescription of the powers and duties of officers saddled with carrying out the regulations.<sup>32</sup> However, in a situation where the President fails to make a quarantine declaration, such power may be exercised by the governor of any state, subject to similar circumstances, and as may be applied by the President.<sup>33</sup> Very importantly, the President and the Governor of each state '...may provide such sanitary stations, buildings and equipment, and appoint such sanitary anchorages as he may think necessary for the purposes of this Act.'<sup>34</sup>

On the 30<sup>th</sup> of March 2020, based on the extant Quarantine Act discussed above, the President issued Covid-19 Regulations, 2020.<sup>35</sup> The Regulation commands the restriction of movement and cessation of businesses in Lagos, Abuja and Ogun states. The containment will enable the government to 'identify, trace and isolate all individuals that have come into contact with confirmed cases.'<sup>36</sup> Significantly, the government assures to fulfil one of its primary purposes of protecting lives by ensuring the treatment of confirmed cases though containing transmission of the disease to other states.<sup>37</sup>

##### **Ghana**

In 2012, the government passed the Public Health Bill into law. The Act<sup>38</sup> contains many laudable segments relating to prevention of diseases and quarantine, particularly Parts 1 and 3.

<sup>31</sup> The Quarantine Act of 1926, Cap Q2, Laws of the Federation of Nigeria 2004 (QAN)

<sup>32</sup> QAN, Section 4

<sup>33</sup> QAN, Section 8

<sup>34</sup> QAN, Section 6

<sup>35</sup> Covid-19 Regulations 2020, (Nigeria 2020) <[https://covid19.ncdc.gov.ng/resource/COVID-19\\_REGULATIONS\\_2020\\_20200330214102.pdf](https://covid19.ncdc.gov.ng/resource/COVID-19_REGULATIONS_2020_20200330214102.pdf)> 21 April, 2020

<sup>36</sup> CR, Section 1 (1)

<sup>37</sup> CR, section 1 (4)

<sup>38</sup> Public Health Act of Ghana, 2012

The Minister is empowered to 'declare that a disease is communicable, infectious or contagious in nature;<sup>39</sup> pronounce an area where a transmissible disease has happened as an infected area; and may decree the evacuation or removal of all or class (es) of people from the infected area.<sup>40</sup> Still in a bid to protect Ghanaians' right to health, a doctor or an accredited medical practitioner may order the disinfection,<sup>41</sup> or destruction of a house, structure or an area in which a suspected case of a transmissible disease has occurred.<sup>42</sup> Likewise, a doctor or an accredited medical practitioner may 'cause a person suffering or suspected to be suffering from a communicable disease,' to be 'removed to a health facility or designated place;' and also detain such a person till it is medically certified that such a person can be safely discharged.<sup>43</sup> This is necessary for the purposes of giving the affected person adequate health care (protection of the rights to life and health of the patient), and curtailing the spread to others, that is, protection of the rights to life and health of other citizens.

The right to life and health of the people is further protected as remains of deceased persons (suspected to be agents in the spread of an infectious disease) are to be disposed in a certain way as determined by an accredited medical practitioner or doctor.<sup>44</sup> Also, persons who have come in contact with a 'person suffering or suspected to be suffering from a communicable disease,' such as people living in the same house or compound with them may be ordered to be isolated in a selected place provided by the Government till such contact is considered safe to be discharged.<sup>45</sup> However, reasonable force may be used to compel a (contact) person to obey the order of isolation in case he or she is reluctant to do so.<sup>46</sup> This is necessary in order for the contact not to have contact with other citizens, thus, further transmitting the disease and infringing upon their rights to life and health.

Moreover, every citizen owes the government a duty to report the existence or suspected existence of a disease in a person or animal he or she is living with, attending to, or in charge of;<sup>47</sup> but where such reporting is not made, such citizen shall be tried and where found guilty of committing an offence, shall be 'liable on summary conviction to a fine of not more than fifty penalty units or to a term of imprisonment of not more than three months, or to both.'<sup>48</sup> Also, the purpose of these sections are to ensure that people's rights to life and health, as enshrine in the laws are adequately secured, either knowingly or unknowingly, from external forces.

<sup>39</sup> PHAG, Section 1. See also sections 16 and 17 on the regulations the Minister can make in ensuring the safety of his people from transmitting and/or dying from infectious diseases

<sup>40</sup> PHAG, Section 2

<sup>41</sup> PHAG, Section 7

<sup>42</sup> PHAG, Section 8

<sup>43</sup> PHAG, Section 10 (1)

<sup>44</sup> PHAG, Section 10 (2)

<sup>45</sup> PHAG, Section 11 (1)

<sup>46</sup> PHAG, Section 11 (2)

<sup>47</sup> PHAG, Section 14

<sup>48</sup> PHAG, Section 15

On quarantine, section 34 empowers the Minister of Health to declare a place as quarantine area in order to prevent a disease from being introduced into or transmitted across the country.<sup>49</sup> He also has power to 'declare an area as a sanitary station or sanitary anchorage for the purposes of this Part.'<sup>50</sup> Similarly, provisions are to be made for 'appropriate equipment, houses, structures and sanitary stations.'<sup>51</sup> Nevertheless, the government is empowered to punish with 'a fine of not more than two hundred penalty units or to a term of imprisonment of not more than one year or to both' whoever fails to comply with the quarantine directives.<sup>52</sup>

### **South Africa**

The Disaster Management Act was introduced in 2002 to oversee matters relating to the integration and co-ordination of disaster management policy that focuses on the prevention or reduction of risk of disasters, mitigation of the severity of disasters, emergency preparedness, rapid and effective response to disasters and post-disaster recovery; and the establishment of national, provincial and municipal disaster management centres.<sup>53</sup> The word 'Disaster' implies

a progressive or sudden, widespread or localised natural or human-caused occurrence which-

(a) causes or threatens to cause-

(i) death, injury or disease;

(ii) damage to property, infrastructure or the environment; or

(iii) disruption of the life of a community; and

(b) is of a magnitude that exceeds the ability of those affected by the disaster to cope with its effects using only their own resources...<sup>54</sup>

Therefore, an infectious disease like Covid-19 fits within the description of 'Disaster' that requires a robust prevention and management policy in order to protect the rights to life and health of South Africans. In realising the objectives of the Preamble, the National Disaster Management Centre was established.<sup>55</sup> Furthermore, where a national disaster occurs, the Minister is empowered to declare a national state of disaster where extant laws make no adequate provisions, or where special situations warrant a declaration.<sup>56</sup> In view of the fact that existing laws do not satisfactorily provide for the challenges of Covid-19 and a National state of Disaster that was pronounced by the Minister of Cooperative Governance and Traditional Affairs, an amendment was passed

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<sup>49</sup> PHAG, See also section 38

<sup>50</sup> PHAG, Section 36 (2)

<sup>51</sup> PHAG, Section 36 (1)

<sup>52</sup> PHAG, Section 37

<sup>53</sup> The Disaster Management Act No. 57 of 2002 (South Africa). See the Preamble, and Section 9

<sup>54</sup> DMA, Section 1

<sup>55</sup> DMA, Section 8

<sup>56</sup> DMA, Section 27

in March 2020<sup>57</sup> providing regulations to address, prevent and combat the spread of Coronavirus.

Thus, regulation 4 ensures that persons suspected or clinically confirmed to have contracted the virus, or persons in contact with carriers of coronavirus cannot refuse consent for a medical examination; admission to a hospital, quarantine or isolation site; submission to compulsory prophylaxis, treatment, isolation or quarantine so as to hinder spread of the disease. Similarly, regulation 11B places restriction on the movement of persons and goods for the period of lockdown and only essential workers are permitted to leave their residences. Similarly, businesses are to be on hold, except for those involved in the manufacturing, supply, or provision of essential goods or services. Also, all public transport services are prohibited except those needed for 'purposes of rendering essential services, obtaining essential goods or services, seeking medical attention, funeral services and for collecting payment of grants and pensions.'<sup>58</sup> Also, because the protection of life is germane to the government, a person that refuses 'to be evacuated from any place subject to lockdown, may be evacuated by an enforcement officer to a temporary shelter, if such action is necessary for the preservation of life.'<sup>59</sup> To protect the lives and health of everyone, the National Department of Health must 'maintain a national database to enable the tracing of persons...suspected to have come into contact with any person known or reasonably suspected to have contracted COVID-19.'<sup>60</sup> Parties found guilty of non-compliance shall be liable to a fine or to imprisonment for a period not exceeding six months or to both.<sup>61</sup>

### Ethiopia

On the 24th January, 2014; the Council of Ministers issued a regulation titled 'the Food, Medicine and Health Care Administration and Control Council of Ministers Regulation No. 299/2013.'<sup>62</sup> Its Part 4 relates to Hygiene, Environmental Health and Communicable Diseases Control. The entering or leaving of Ethiopia by people on foot at the time of epidemic and public health emergency is subject to health inspection and obtaining of permission at a frontier port.<sup>63</sup> If any individual is entering the country through air transportation, he or she shall also be subject to 'quarantine inspection through verbal or written request for protection of public health.' During the journey, if any 'passenger is suspected to be infected with any communicable disease, the conveyance operator shall inform the head of the nearest or destination frontier port about the type of the disease, principal symptoms and any other relevant information.'

<sup>57</sup> Disaster Management Act, 2002: Amendment of Regulations Issued in terms of Section 27 (2); Regulation Gazette No. 43148 (DMAAR)

<[https://www.gov.za/sites/default/files/geis\\_document/202003/4314825-3cogta.pdf](https://www.gov.za/sites/default/files/geis_document/202003/4314825-3cogta.pdf)> 22 April 2020

<sup>58</sup> DMAAR, Regulation 11C

<sup>59</sup> DMAAR, Regulation 11 D (1)

<sup>60</sup> DMAAR, Regulation 11H (2)

<sup>61</sup> DMAAR, Regulation 11G

<sup>62</sup> Council of Ministers Regulation No. 299/2013: the 'Food, Medicine and Health Care Administration and Control Council of Ministers Regulation No. 299/2013' (FMHCACCMR)

<sup>63</sup> FMHCACCMR, Section 45

Subsequently, the head of the frontier port shall immediately inform the inspector at the port.<sup>64</sup>

Generally on quarantine and isolation, section 47 provides that 'suspected person shall be quarantined immediately. The Authority shall immediately send the suspected person to the public health emergency management body for quarantine.' Thereafter, the Authority shall take steps to certify that a suspected person is actually medically confirmed to be so. Then, the Authority shall ensure that the patient is 'transferred to an isolation room in a health institution and provided with the necessary curative and rehabilitative treatment' in order to properly care and treat the affected person. This is the duty of the government to ensure that the rights of every individual to life and health are enjoyed and secured. The public health emergency management body is responsible for organising quarantine centres in the main frontier ports or designating the closest hospitals as isolation centres.

Lastly, in curtailing the spread of the disease, thus, protecting the rights to life and health of all citizens, the government may take some measures to control contagious disease, such as, ordering the closure of schools and other public places for a certain period; and establishing temporary controlling posts in any part of the country.<sup>65</sup>

#### **Kenya**

The Public Health Act of 2012<sup>66</sup> is the recent Kenya law on quarantine, in particular, Parts III and IV. The Minister is empowered under section 17 to declare any infectious disease a notifiable disease by giving notice in the Gazette. The head of the family, nearest relatives of a patient, or any occupier of the building where a patient suffering from any infectious disease is residing, has the duty of notifying the closest health practitioner of the presence of an infectious diseases.<sup>67</sup> Subsequently, the health practitioner shall send a medical certificate to the nearest medical officer of health stating the necessary information about the patient, and the disease. He or she would also inform 'the head of the household or the occupier of the premises or any person in attendance on such patient of the infectious nature of the disease and the precautions to be taken to prevent its conveyance to others.'<sup>68</sup> Further, by section 21, a medical officer of health is empowered to inspect an infected premises and examine individuals suspected to be suffering from infectious disease. Then, Kenya Health Authority may cause the infected premises to be cleansed and disinfected.<sup>69</sup>

Further, in order to prevent the spread of an infectious disease, a patient that is not duly treated and whom a medical officer of health views may aid the spread of the disease, may cause such patient to be moved to a hospital or suitable temporary place; and detained there till he is certified medically free from the infection and can be discharged

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<sup>64</sup> FMHCACCMR, Section 46

<sup>65</sup> FMHCACCMR, Section 48

<sup>66</sup> The Public Health Act, Chapter 242, Laws of Kenya, 2012 (PHAK)

<sup>67</sup> PHAK, Section 18 (1)

<sup>68</sup> PHAK, Section 18 (2)

<sup>69</sup> PHAK, Section 22

without posing harm to the health of the public.<sup>70</sup> Another reason for removing a patient from his house to hospital or suitable temporary place is to give the patient proper medical care and attention, thus, safeguarding his/her rights to life and health.

Similarly, while protecting the health interests of all citizens and in a bid to curtail the spread of the disease, the medical officer of health has the authority to isolate any person who has been exposed to an infection and such person is not housed in a way that would ensure adequate guard against its spread; and the affected person can only be released if certified free from the infection or disabled from spreading the disease.<sup>71</sup> The penalty of 'a fine not exceeding thirty thousand shillings or to imprisonment for a term not exceeding three years or to both' is available to anyone who exposes people and things to infectious diseases.<sup>72</sup> Lastly, section 36 reinforces the protection of citizens' rights to life and health by empowering the Minister to make rules for various purposes, including, the provision of medical aid and accommodation to infected persons.

#### **Preparedness of Selected African States against Covid-19 Pandemic**

The outbreak of Covid-19 in China in December, 2019 caused many countries to strategize how to safeguard the lives of their citizens in line with tenets of international, regional, and domestic instruments on rights to life and health of the citizens. It is the statutory duties and obligations of the states to proactively protect the lives of citizens during any pandemic. The state is liable when it allows private persons or group to act freely and with impunity to the detriment of the rights recognized by the Convention.<sup>73</sup> It is responsibility of a State to take proactive measures to protect rights to life and health, the obligation... to take 'appropriate steps' to protect life also requires the state, in some circumstances, to take preventive measures.<sup>74</sup> The preparedness of the selected African States against Covid-19 Pandemic before its outbreaks in the various States will be considered.

#### **Nigeria**

Around 1 AM on Friday 28 January 2020, Nigeria announced sub-Saharan Africa's first confirmed case of the coronavirus disease COVID-19, and the confirmation led to activation of the country's National Coronavirus Emergency Operation Centre. Nigeria's quick mobilization of resources and manpower to combat the Ebola virus disease in 2014, led by the Nigeria Centre for Disease Control (NCDC), received praise from the international community and from the World Health Organization (WHO).<sup>75</sup> The country's experience from the outbreak of Ebola and subsequent victory over it

<sup>70</sup> PHAK, Section 26

<sup>71</sup> PHAK, Section 27

<sup>72</sup> PHAK, Section 28

<sup>73</sup> The American Court of Human Rights stated the position in the case of *Velasquez Rodriguez v Honduras (Merits)*, IACt HR Series C No. 4(29) July 1988, Para. 176. This matter is also referred to in Frederic Megret, 'Nature of Obligations' in Daniel Moeckli and others, (eds), *The International Human Rights Law* (Oxford University Press, 2010), 131

<sup>74</sup> D.J. Harris, and others, *Law of the Convention on Human Rights* (2<sup>nd</sup> edn, Oxford University 2009), 42

<sup>75</sup> Paul Adepoju, 'Nigeria responds to COVID-19; first case detected in sub-Saharan Africa' *Nature medicine* (11 March 2020) <<https://www.nature.com/articles/d41591-020-00004-2>> accessed 28 April, 2020



aided the moderate risk and reduced number of fatalities is in the country. The State's response to contain the pandemic is in nexus with the State's obligation to protect lives and health of its citizens.

#### **Ghana**

The Ghanaian Government also took proactive measure in preparedness for the Covid-19 Pandemic. According to the Ghanaian President who stated that,

Scientists at the University of Ghana have successfully sequenced genomes of the virus responsible for the COVID-19 pandemic, obtaining important information about the genetic composition of viral strains in fifteen (15) of the confirmed cases in Ghana. This is a significant milestone in Ghana's response to the pandemic, as it will strengthen surveillance for tracking mutations of the virus, and aid in the tracing of the sources of community infections in people with no known contact with confirmed cases. The Ghanaian scientific community is to be warmly applauded for this advance and contribution to global knowledge.<sup>76</sup>

The response in the country also indicates that measures and resources are geared up to caution and suppress the spread of the pandemic in the country within short period.

#### **South Africa**

South Africa has the most confirmed cases in Africa with more than 1,900.<sup>77</sup> Confirmed COVID-19 cases in South Africa have passed the 2000 mark. Figures released on April 10 put the figure at 2003 from 73,028 cases. The death toll has also hit 24 from 18 with 95 recoveries as of April 9.<sup>78</sup> South Africa may be considered to have less measures and schemes in place to contain the pandemic. It is imperative to note that South African economy is better than most of the African States' economies. The State is expected to proactively take holistic efforts to protect to life and health of its citizens under international and domestic obligations to protect their rights.

#### **Ethiopia**

On the Covid-19 Pandemic, Ethiopia's case count as of April 24, 2020 stood at 117, an increase of one from the previous tally. The number of recoveries reached 25 after 4 new patients recovered in the last 24 hrs. Ethiopia has so far conducted a total of 11, 669.<sup>79</sup> Ethiopia national government did not declared lock down in the country, but on the 10<sup>th</sup> April, 2020, after multiple cases of the virus were reported, several regions of

<sup>76</sup> Anon, 'Ghana lifts lockdown on key regions as COVID-19 cases reach 1,042' *CNBC Africa* (20 April, 2020) <<https://www.cnbc.com/news/2020/04/20/ghana-lifts-lockdown-on-key-regions-as-covid-19-cases-reach-1042/>> accessed 28 April 2020

<sup>77</sup> Abdur Rahman Alfa Shaban and Daniel Mumbere, 'COVID-19: WHO warns of virus acceleration in Africa' *Africanews* (Africa 24 April 2020) <<https://www.africanews.com/2020/04/24/coronavirus-updates-across-africa-africanews-hub/>> accessed 28 April 2020

<sup>78</sup> Africanews

<sup>79</sup> Abdur Rahman Alfa Shaban, 'Ethiopia coronavirus: Key updates between March 16 - May 16' *Africanews* (Africa 24 April 2020) <<https://www.africanews.com/2020/04/24/ethiopia-s-coronavirus-rules-crowd-ban-free-transport-regulate-essentials-etc/>> accessed 28 April 2020

the country took measures to prevent further spread of the virus and lock down was imposed by the regional governments. From the looks of the spread of Covid-19 in the country, the national government did not proactively prepare for the pandemic in the country.

### Kenya

Kenya put in place several precautionary measures to mitigate the pandemic in its early stages. However, the economic status of the population of country will not be simple to control COVID-19, if government will integrate the realistic feasible timely plans.<sup>80</sup> Kenya has reported 110 confirmed COVID-19 cases (as at 2nd April, 2020), three persons have succumbed and 2 people have fully recovered.<sup>81</sup> There is lower rate of confirmed cases of Covid-19 in Kenya, this shows that the country prepared enough for the pandemic.

### Breaches of Rights to Life and Health by Security Agencies during Covid-19

Rights to life and health are sacrosanct at all time, and particularly during the outbreak of the Covid-19 pandemic. Nevertheless, there are various degrees of breaches of the rights among the selected States in African. It is imperative to note that there are variances of the breaches of right to life and right to health among the States.

The right to health must be enjoyed without discrimination on the grounds of race, age, ethnicity or any other status. Non-discrimination and equality requires states to take steps to redress any discriminatory law, practice or policy.<sup>82</sup> Likewise, the right to life is essential during health challenge like Covid-19. The incidences of these breaches from the States under consideration in this article will be considered one after the other.

### Nigeria

The National Human Rights Commission (NHRC) has raised the alarm over the alleged high number of extra judicial killing arising from the enforcement of the lockdown from the security agencies. The NHRC said that the commission has received too many calls from civilians on molestation and inhuman treatment perpetrated by security agencies, noting that the figure of extra judicial killing was worrisome.<sup>83</sup> This is against the basic fundamental laws that protect the rights of the citizen in the Country. Human rights obligations have a life of their own that takes over as soon as states have manifested their commitment to be bound.<sup>84</sup> The State security ought to uphold the obligations of the States. As at 15<sup>th</sup> April, 2020, The National Human Rights

<sup>80</sup> MA Aluga, 'Coronavirus Disease 2019 (COVID-19) in Kenya: Preparedness, response and transmissibility'

(2020) J Microbiol Immunol Infect

<[https://www.ncbi.nlm.nih.gov/pubmed/?term=Aluga%20MA%5BAuthor%5D&cauthor=true&cauthor\\_uid=32331980](https://www.ncbi.nlm.nih.gov/pubmed/?term=Aluga%20MA%5BAuthor%5D&cauthor=true&cauthor_uid=32331980)> accessed 29 April 2020

<sup>81</sup> Ibid

<sup>82</sup> WHO, 'Human rights and health' (29 December 2017) <<https://www.who.int/news-room/factsheets/detail/human-rights-and-health>> accessed 1 May 2020

<sup>83</sup> Johnbosco Agbakwuru, 'COVID-19: Extra judicial killing by security agencies worrisome' *Vanguard* (Abuja April 25 2020) <<https://www.vanguardngr.com/2020/04/covid-19-extra-judicial-killing-by-security-agencies-worrisome-nhrc/>> accessed 1 May 2020

<sup>84</sup> Frederic Megret, *Nature of Obligations*, 129

Commission (NHRC) says Nigeria's security agencies have killed 18 citizens since the lockdown regulations on the COVID-19 pandemic were enforced — more than the disease itself.<sup>85</sup> While the Country locked down to safeguard the health of the citizens, the security agencies killed some of the citizens without just causes.

#### **Ghana**

There is a record of killing by a military officer in Ghana in the attempt to arrest a young Ghanaian citizen. The report states that, 'Investigations have commenced into the case in which a soldier is said to have accidentally shot a civilian at Ashaiman in Accra on Sunday, April 5, 2020. The incident led to the death of Eric Ofotsu after he allegedly struggled with a military officer while enforcing a lockdown directive in the area.'<sup>86</sup> The rate of extra-judicial killing in this country is minimal in comparison to Nigeria, Kenya and South Africa.

#### **South Africa**

There are incidences of extra-judicial killing by the security outfits in South Africa as well. While in South Africa, which has recorded the highest number of Covid-19 cases on the continent, at least eight people have been killed by police since a nationwide lockdown was imposed on 26 March, the country's Independent Police Investigative Directorate said.<sup>87</sup> The country government quest to contain the covid-19 pandemic was in line with protection of the right to health of the citizens but for the security agencies take lives of the citizens in the country.

#### **Kenya**

April 10 marked two weeks since Kenya's COVID-19 curfew began, and so far the police have already killed more people than the illness. The youngest victim, a 13-year-old boy was shot dead while watching the police enforce the curfew from the balcony of his own family home in the Mathare informal settlement of Nairobi.<sup>88</sup> The Kenyan police have killed 12 people in an attempt to enforce a dawn to dusk curfew in the wake of coronavirus.<sup>89</sup> The lives of citizens are wasted by the police in the country without recourse to the rights to life.

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<sup>85</sup> Chinedu Asadu, 'Security agencies 'kill 18' Nigerians during lockdown — more than COVID-19' *The Cable* (April 15 2020) <<https://www.thecable.ng/security-agencies-kill-18-nigerians-during-lockdown-more-than-covid-19>> accessed 1 May 2020

<sup>86</sup> Kojo Emmanuel, 'COVID-19 lockdown: Ashaiman MP describes death of civilian shot by soldier as "wicked and barbaric' *pulse.com.gh* (April 4 2020) <<https://www.pulse.com.gh/news/local/covid-19-lockdown-ashaiman-mp-describes-death-of-civilian-shot-by-soldier-as-wicked/dncbme8>> accessed 1 May 2020

<sup>87</sup> Dickens Olewe, 'Coronavirus in Africa: Whipping, shooting and snooping' *BBC News* (April 9 2020) <<https://www.bbc.com/news/world-africa-52214740>> accessed 1 May 2020

<sup>88</sup> Nanjala Nyabola, 'Police violence in the time of pandemic' *Ajazeera* (Apr 10 2020) <<https://www.aljazeera.com/indepth/opinion/police-line-defence-covid-19-200410135620723.html>> accessed 1 May 2020

<sup>89</sup> Andrew Wasike, 'Kenya police kill more during curfew than COVID-19' *AA* (Nairobi April 16 2020) <<https://www.aa.com.tr/en/africa/kenya-police-kill-more-during-curfew-than-covid-19/1807930>> accessed 1 May 2020

## Ethiopia

There is no report of extra judicial killing in Ethiopia. This may be as result of lower number of reported cases in the country. With this development, one will see that the level of security agencies' tolerances towards the citizen in the country is commendable unlike other four States earlier considered. The Ethiopian government has adopted a reasonable policy that allows movement of people by balancing the interests of work, health and societal concerns. Houses of faith have voluntarily cooperated in keeping their members at home or maintaining social distance in places of worship.<sup>90</sup>

### Comparative Analysis on Security Agencies' Roles during Covid-19 in Other Continents

In most developed that had the experience of Covid-19 pandemic, their security outfits were involved for containment of spread of the virus within the countries. The citizens in these countries complied with lockdown rules and regulations.

In the United States of American, the security outfits of States and the federal governments joined hands together during the lockdown to contain the spread of the virus in the country. When governments, federal or state, do have the authority to order mass quarantines, constitutional and ethical principles—as well as American values—require that these orders be balanced against long-standing safeguards of personal liberty and privacy. Such orders would impose extreme limitations on individual liberties including the right to travel and associate. Their enforcement could entail invasions on personal privacy, such as government use of electronic surveillance to monitor individuals' movements. Even so, courts would likely uphold containment orders against individuals that are based on sound science (including testing positive for the virus) and are proportionate. Individuals hold liberties, such as freedom of movement, only up to the point where they pose a risk to others.<sup>91</sup>

In China, The severity of China's lockdown varied from one area to the next. In most cities, each household was allowed to send one person to do the shopping every two or three days. In severely infected areas, people were completely housebound. The key considerations behind the lockdown were policymakers' estimates of the risks posed by the virus and how difficult it would be to maintain social distancing. The anticipated travel of around three billion Chinese citizens and frequent social gatherings during the Lunar New Year drove the decision.<sup>92</sup> In all, China security officers were civic in enforcing the lockdowns.

<sup>90</sup> Alemayehu Mariam, 'Ethiopia: Desperate Times Call for Extraordinary Constitutional Measures (Proclamation 3/2020) (Part I)' *Satenaw News* (Ethiopia April 27 2020) <<https://www.satenaw.com/ethiopia-desperate-times-call-for-extraordinary-constitutional-measures-proclamation-3-2020-part-i/>> accessed 1 May 2020

<sup>91</sup> Lawrence Gostin and Sarah Wetter, 'Why There's No National Lockdown' *The Atlantic* (March 31 2020) <<https://www.theatlantic.com/ideas/archive/2020/03/why-theres-no-national-lockdown/609127/>> accessed 1 May 2020

<sup>92</sup> Bingqin Li and Bei Lu, 'How China made its COVID-19 lockdown work' (Australian National University Canberra 2020) <[https://www.eastasiaforum.org/2020/04/07/how-china-made-its-covid-19-lockdown-work/?fbclid=IwAR3j36NrZVGcFxmTaiJIRZJJg4K3H9daN903F9\\_VJxD-S1nKFILsmnQZU9E](https://www.eastasiaforum.org/2020/04/07/how-china-made-its-covid-19-lockdown-work/?fbclid=IwAR3j36NrZVGcFxmTaiJIRZJJg4K3H9daN903F9_VJxD-S1nKFILsmnQZU9E)> accessed 1 May 2020

In United Kingdom, in a bid to slow the spread of the virus, people were urged to stay at home and not venture out into parks or the coasts, despite the warm sunny weather – unless they were doing the permitted one hour a day of exercise. But with people still flouting the laws and having picnics and barbecues in some locations, police began to use enforcement measures such as on-the-spot fines.<sup>93</sup> That was accompanied by the Health Secretary warning that unless people adhered more closely to the lockdown instructions, more stringent lockdown measures would be enforced along similar lines to those in France, Italy and Spain. One found out that there was no record of extra-judicial killing by the from the British security outfits.

The question is why extra-judicial killings by the security agencies in the African States during the periods of enforcing lockdown orders? The answers may be sourced from different factors among which are inadequate training of the security personnel on the importance of human rights and health of the people. For example, Section 4 of the Nigerian Police Act<sup>94</sup> provides that:

The police shall be employed for the prevention and detection of crime, the apprehension of offenders, the preservation of law and order, the protection of life and property and the due enforcement of all laws and regulations with which they are directly charged, and shall perform such military duties within or outside Nigeria as may be required of them by, or under the authority of this or any other Act.

The Act does provide for the police to take life it is constituted to protect. The Governments of the States considered in this article and other African States who are infringing on the rights to life of the citizens are not operating under the stringent legal instruments to protect the rights.

#### **Conclusion and Recommendations**

The breaches of the citizens' rights to life and health during Covid-19 pandemic in the selected African countries are counter-productive as citizen's lives are lost, and enjoyment of their rights to health denied. The States' Parties to the African Charter on Human and Peoples' Rights have breached the provisions of the Charter on rights to life and health through the States' security agencies. The acts of violations of the rights are contrary to intended motives of the States members as provided in the Preamble of the Charter, reaffirming the obligation of promoting and protecting human rights while taking cognizance of the significance conventionally attached to these rights in Africa.<sup>95</sup> Therefore, it is imperative for the African Commission on Human and Peoples' Rights to take proactive measures against the States that have grossly infringed on the rights of

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<sup>93</sup> Mark Nicholls, 'UK goes into 'controlled lockdown', Boris Johnson infected' *health-in-europe.com* (April 7 2020) <<https://healthcare-in-europe.com/en/news/uk-goes-into-controlled-lockdown-boris-johnson-infected.html>> accessed 1 May 2020

<sup>94</sup> The Police Act, Cap. 349 LFN, 2004.

<sup>95</sup> ACHPR

the citizens during the Corona virus pandemic. The other Sub-Regional Bodies<sup>96</sup> in the Africa Continent must take precautionary measures in ensuring that the States' parties and their security agencies work accordingly to safeguard rights to life, health and other salient human rights in the agreed instruments of the Bodies.

Thus, the acts of the security agencies in the African States should be checked as governments re-orientate their security personnel to protect the lives of the citizens by condemning their use of force, introducing the use of enforcement measures like on-the-spot fines on civilian offenders, and punishing security agents found guilty of breaching civilian's fundamental rights. Furthermore, citizens should be sensitized on the significance of surrendering themselves for quarantine/isolation if they experience symptoms of Covid-19 or test positive in order not to infect others, thus, depriving them of the enjoyment of their rights to health, and probably life. Additionally, medical personnel and centres should be well equipped with appropriate kits and facilities necessary to safeguard lives and health of people and provide viable medical treatments to infected citizens.

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<sup>96</sup> There are major eight bodies of Sub-Regional Organization Africa, these are: Arab Maghreb Union, Common Market for Eastern and Southern Africa, Community of Sahel-Saharan States, East African Community, Economic Community of Central African States, Economic Community of West African States, Intergovernmental Authority on Development, and Southern African Development Community