

PUBLIC LOCKDOWN DURING COVID-19: AN INSTRUMENT OF PROTECTION AND OR VIOLATION OF HUMAN RIGHTS

Abstract

The venom of the recently declared pandemic; Corona Virus Disease 2019 (COVID-19) spitted across the globe necessitated a reasonable proportion of the state of the world to declare public lockdown among other measures and even put machinery in motion to enforce the measures which raise the question as to whether the public lockdown during pandemic amounts to protection or breach of human rights of people living within the state that declared and enforced public lockdown. The general objective of the study is to examine the effect of public lockdown during a pandemic on human rights protection while the specific objectives are to examine public lockdown as a measure of human right protection during a pandemic, public lockdown simultaneously as a measure of protection and violation of human right during the pandemic as well as public lockdown as a measure of breach of human rights during a pandemic. The study adopted qualitative method of data collection and analysis and by so doing, relied heavily on extant literature from journal articles, official documents, workshop and seminar papers, newspapers, magazines and internet sources. The study revealed that public lockdown during pandemic amount to human rights protection as well as contemporaneously amount to protection and violation of human rights. Also, the study revealed that public lockdown during pandemic did not amount to protection or violation of human rights as well as the amount to a breach of human rights but all depends on the surrounding circumstances.

KEYWORDS: *COVID-19, Human Rights, Pandemic, Public lockdown, restrictive measures.*

1. INTRODUCTION

History repeated itself with the outbreak of another lethal pandemic¹ called Corona Virus Disease 2019 (COVID-19) which was declared by the World Health Organisation (WHO) as a pandemic on 11th March 2020². As at the time it was declared a pandemic, it had spread its tentacles to 114 states and

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¹ Other pandemics that have emerged in the World include Spanish Influenza of 1918 – 1919, Asian flu of 1957, 1958 pandemic of 1968, 2002 severe acute respiratory syndrome (SARS), H1N1 pdm09 virus of 2009, 2012 Middle East Respiratory Syndrome (MERS) epidemic and 2014 Ebola outbreak.

² Pradip Dashraath, and others, Coronavirus disease 2019 (Covid-19) pandemic and pregnancy [2020] American Journal of Obstetrics and Gynecology, 1.

infected more than 118,000 people with a death rate of not less than 4,290 people³ but as of 9:56 am Central European Time (CET) of 2 May 2021, it had infected more than 110,609,979 people with more than 2,452,510 deaths.⁴ COVID-19 being a communicable disease continuously spreading its tentacles across the globe and within affected states; therefore require proper attention and management.

As part of an effort towards its management, stakeholders in the affairs of global health in general; WHO inclusive and the affairs of the respective states, in particular, the respective Centre for Diseases Control (CDC) inclusive continuously playing their role towards curbing COVID-19 tentacles in particular and its eradication in general in form of restrictive measures aimed at preventing human to human contact transmission such as public lockdown, prevention of social gathering, curfew as well as usage of personal protective equipment (PPE). During the cause of enforcing the said restrictive measures; issues arise which include the issue on human rights of the people and side effect of prolonging home-stay on the economy⁵ as well as the likelihood of jeopardizing people's health.

The side effects of the prolonged home-stay include but not limited to; physically inactive, weight gain, behavioural change; addiction disorder, insufficient sunlight exposure and social isolation⁶ as well as hunger in states such as Nigeria that Government fail to provide palliatives for the populace that were locked down.⁷ It is consequential upon this; the need arose to examine the human rights violations and implications during the enforcement of public lockdown of COVID-19 during the cause of which reference shall be made to Universal Declaration of Human Rights 1948 (UDHR) and other Regional Human Rights Instruments based on their universal application to concerned states coupled with duty vested on the respective states to domesticate the respective human rights instruments.

As a result of this, this paper is divided into 5 parts with the first part focusing on introduction while the second part focuses on conceptual clarification of human rights and COVID-19 with the third part focusing on public lockdown as a measure for protection and violations of human rights while the fourth part focuses on the implication of human rights violations due to public lockdown of COVID-19 and the fifth part focus on conclusion.

2. CONCEPTUAL CLARIFICATION ON HUMAN RIGHTS AND COVID-19

The consequential effect of restrictive measures put in place to discontinue the spread of tentacles of COVID-19 within the affected states and across the globe on human rights therefore call for the x-ray of human rights and COVID-19.

³ United Nations Human Rights, 'Protection and Human Rights Considerations: Preparedness and Response to COVID-19 for South Sudan' Humanitarian Response (South Sudan, 23 March 2020) <<https://humanitarianresponse.info/en/operations/south-sudan/document/human-rightss-and-protection-considerations-covid-19>> accessed on 9 May 2020.

⁴ WHO, 'WHO Coronavirus Disease (COVID-19) Dashboard' WHO (21 February 2021) <https://covid19.who.int/?gclid=Cj0KCQiApsiBBhCKARIsAN8o_4idndxbOiS10aJTtoX_QpFFjjXKNBV2pAeGvd3DeFI3exp_ErOSfrCUaAi7NEALw_wcB> accessed on 21 February 2021.

⁵ Giuseppe Lippi, and others, 'Health risks and potential remedies during prolonged lockdowns for coronavirus disease 2019 (COVID-19)' (2020) De Gruyter <www.degruyter.com/downloadpdf/journals/dx/7/2/article-p85.pdf> accessed on 9 May 2020.

⁶ Ibid.

⁷ This is due to the failure of the Nigeria Government to provide palliatives for Nigerians that were locked down.

2.1 Human Rights

The phrase 'human rights' are used interchangeably with natural rights, common rights, basic rights and fundamental rights⁸ and sometimes led to confusion but the inalienable nature of the rights is the major denomination that is the basis for being interchangeably used while the confusion of its usage is based on the ordinary meaning of each of the phrases. Despite the above, human rights just like some other legal concept suffer precise definition due to their nebulous content and cultural relativism or specificity of human rights.⁹

Despite the ascribed reasons for the non-existence of a precise definition of human right, United Nation in its contribution described human rights as those rights which are inherent in nature and helps to fully develop human qualities ranging from intelligence, talents, conscience and satisfaction of human spiritual needs based on human increasing demand for a life in which the inherent dignity and worth of each human being will receive respect and protection.¹⁰ Osita Eze perceived human rights as individual or groups demands or claims from the society; some of which are protected by law and have become part of the law while others remain aspirations to be attained.¹¹

It appears to Gerwith as claim-rights which entail correlative duties of other persons or groups to act or to refrain from acting in ways required for the right-holders having that to which they have rights¹². In the word of Oputa J.S.C (as he then was), human rights are those rights that belong to all men and women because of their human nature which confers on them moral and rational values.¹³ It can therefore be submitted that the dominant factor of human right is that its absence only make human being appear like slave or little above slave while its the determinant factor is its application to human beings without the need to possess any other qualifications. This is coupled with the fact that the rights are not conferred by the political authorities rather its existence are recognised as well as may be declared on the basis of citizens agitation for recognition of more human rights.¹⁴

Towards ensuring the guarantee of human rights, different instruments were put in place at the international and regional plane as well as at each of the states of the world. Such an instrument at the international plane is UDHR with other Protocols¹⁵ as International Bill of Right while the Regional instruments are the African Charter on Human and Peoples' Rights of 1986 (Banjul Charter), American Declaration on the Rights and Duties of 1948 (ADRD), European Convention on Human Rights of 1950 (ECHR) and Association of Southeast Asian Nations (ASEAN) Human Rights Declarations of 2012

⁸ John C. Mubangizi, 'Towards a new approach to the classification of human rights with specific reference to the African context' [2004] 4(1) *AHRLJ* 93.

⁹ A. N. Nwazuoke, 'The Concept and classification of Human Rights' in A. N. Nwazuoke (ed), *Essays in Human Right Law* (Ebonyi State University, Nigeria: 2004) 1-10.

¹⁰ United Nations Human Rights, Questions and answers (UNHR, 1987) 4.

¹¹ Osita Eze, *Human Rights in Africa* (Macmillan, 1984) 5.

¹² A Gerwith, 'The Epistemology of Human Rights in Lloyd' in Lloyd and Freeman (eds), *Introduction to Jurisprudence* (London: Stevens) 229-245.

¹³ C A Oputa, *Human Rights in the Political and Legal Culture of Nigeria: 2nd Idigbe Memorial Lectures* (Lagos: Nigeria Law Publications Ltd: 1988) 38 – 39.

¹⁴ Benjamin Igwenyi, 'The relevance of the rule of law to the protection of Human Rights in Nigeria' in A. N. Nwazuoke (ed), *Essays in Human Right Law* (Ebonyi State University, Nigeria: 2004) 11-36.

¹⁵ The Protocols are International Covenant on Civil and Political Rights (ICCPR) and International Covenant on Economic, Social and Cultural Rights (ICESCR).

(AHRD) and that of respective States of the world were contained in their respective Constitution under a different heading.¹⁶

Each of the instruments contains series of human rights provisions but the one that is uniform to them are right to life, liberty and personal security; right to equality before the law; right to religious freedom and worship; right to freedom of investigation, opinion, expression and dissemination; right to a family and protection; right to residence and movement; right to education; right to work and to fair remuneration; right to a fair trial; right of assembly; right of association; right to property and right of protection from arbitrary arrest. The outbreak of COVID-19 and its consequential effects thwart the existence of human rights in question.

2.2 COVID-19

COVID-19 belongs to order Nidovirales as a member of coronaviridae from the subfamily of orthocoronavirinae with 4 genera namely alpha, beta, delta and gamma coronaviruses (CoVs).¹⁷ Alpha CoVs and beta CoVs were traced to bats and rodents but delta CoVs and gamma CoVs were traced to avian species¹⁸ while COVID-19 was traced to wild mammals. This is because COVID-19 was firstly isolated from stallholders who worked at the South China Seafood Market in Wuhan, China as the markets specialized in the selling of wild animals or mammals hence the suspicion that the infected wild animals may have been sold to the seafood market in Wuhan.¹⁹

COVID-19 transmission is human to human through respiratory droplets which are formed by water and various inclusions from sneezing, coughing, breathing and talking with symptomatic people being the major source of transmission.²⁰ Other agents of transmission are direct contact with the infected environment such as the history of journey to COVID-19 affected area or residing within 14 days of detection of the symptoms or biological materials such as faeces or saliva with a respiratory droplet as major agents of transmission.²¹ While symptoms of COVID-19 has been credited to fever and at least symptoms of cough or shortness of breathing without no other medical history that explain the cause.

At present, there is no medical evidence to affirm that certain people are immune to COVID-19 but older people and those with underlying medical conditions are at higher risk than others. This therefore led to aggressive restrictive measures²² to curb transmissions from animals to human being and from human being to human being which is not limited to detection, treatment and creation of awareness about the existence of COVID-19. It also entails prevention method which include good respiratory hygiene, hand washing, contact tracing, isolation of affected persons, closure of borders, public lockdown including restriction of movements with a ban on social and religious gathering such as

¹⁶ By chapter II and IV of the Constitution of the Federal Republic of Nigeria 1999 (as amended), It is respectively known as Fundamental Objectives and Directive Principles of State Policy as well as Fundamental Rights while some states classified it as the Universal Declaration of Human Rights.

¹⁷ WHO, 'Novel Coronavirus' WHO <<https://www.who.int/health-topics/coronavirus>> accessed 9 May 2020.

¹⁸ M Cascella and M Rajnik and A Cuomo, Features, evaluation and treatment coronavirus (COVID-19) (Treasure Island (FL): StatPearls Publishing; 2020).

¹⁹ Abdulazeez A. Anjorin, 'The coronavirus disease 2019 (COVID-19) pandemic: A review and an update on the case in Africa' [2020] Asian Pacific Journal of Tropical Medicine 1.

²⁰ Ibid.

²¹ Lippi, and others (n. 5).

²² Sarah Johansson, 'Coronavirus: nearly a billion people in lockdown' Brussels Times (23 March 2020) <<https://www.brusselstimes.com/all-news/world-all-news/102043/nearly-a-billion-people-in-lockdownacross-the-world>> accessed 9 May 2020.

schools all aimed to curb those with a handful number of cases from becoming clusters and those with clusters from becoming community transmission.

It is based on the inalienable nature of human rights with the consequential effect of the restrictive measures put in place to fight COVID-19 including public lockdown that led to the need to examine the effect of lockdown on the protection and enforcement of human rights during COVID-19. The necessity was foreseen by South Sudan during the cause of preparing for likely break-down of COVID-19 to ensure the mechanism put in place to fight COVID-19 is a human rights-based approach.²³

3. PUBLIC LOCKDOWN AS A MEASURE FOR PROTECTION AND VIOLATION OF HUMAN RIGHTS

The diverse opinion as to the effect of public lockdown put in place to curb the spread of COVID-19 on human rights was the basis of the need to examine whether the restrictive measures put in place; public lockdown inclusive is necessary during the cause of which various implications of public lockdown on human rights will be examined. The implication of the public lockdown put in place on human rights can be categorized into 4. Namely; public lockdown during COVID-19 as a measure of human right protection, public lockdown simultaneously during COVID-19 as a measure of protection and violation of human right, public lockdown during COVID-19 as neither protective nor breach measures of human rights and public lockdown during COVID-19 as a measure of breach of human rights.

3.1 Public lockdown during COVID-19 as a measure of human right protection

The public lockdown major objective is to curb continuous transmission of COVID-19 which as of 18 February 2021 had caused the death of 2,407,469 across the globe.²⁴ The main aim of public lockdown during COVID-19 is to protect life despite the International Bill of Rights and Regional Instruments on human rights as well as the respective Constitution did not foresee any pandemic that will affect the whole World let alone of express provision relating to it as an exception around rights to life. But there are various limiting clauses as regard other rights limiting the enjoyment of individual rights for the sake of public health.²⁵ This paved way for the United Nations response to the question on why human rights are so important to the COVID-19 response that the world is facing an unprecedented crisis in which global public health emergency play a vital role on a scale not seen for a century and therefore requiring response with far-reaching consequences for economic, social and political lives with priority to save lives.²⁶

It is the high degree of infection of COVID-19 that call for quick response to save the life that makes most states of the world not to have a choice but to adopt extraordinary measures; lockdown inclusive to curb the transmission. This was the basis of United Nations submission that life to health is inherent

²³ United Nations Human Rights, 'Protection and Human Rights Considerations: Preparedness and Response to COVID-19 for South Sudan' Humanitarian Response <<https://humanitarianresponse.info/en/operations/south-sudan/document/human-rightss-and-protection-considerations-covid-19>> accessed on 9 May 2020.

²⁴ European Centre for Disease Prevention and Control. 'COVID-19 situation update worldwide, as of week 6, updated 18 February 2021' ECDC (21 February 2021) <<https://www.ecdc.europa.eu/en/geographical-distribution-2019-ncov-cases>> accessed 14 May 2020.

²⁵ UDHR art 3,9,12,19 and 20; Banjul Charter art 6,9,10 and 18; ADRD, art iv, vi, xxii and xxv; AHRD art 12, 19 and 23 as well as ECHR art 5, 8, 10 and 11.

²⁶ United Nations, 'COVID-19 and Human Rights: We are all in this together' United Nations Sustainable Development Group (April 2020) <<https://unsdg.un.org/resources/covid-19-and-human-rights-we-are-all-together>> accessed on 8 May 2020.

to the right to life. The implication, therefore, is that public lockdown due to COVID-19 been a product of protection to public health, therefore, amount to a measure of protection of the right to life of people of affected states.

3.2 Public lockdown during COVID-19 as measure of protection and violation of human right simultaneously

There are certain human rights that public lockdown due to COVID-19 pandemic serve as it protective measures due to its protective role to certain individuals in the society and at the same time as violation measures due to deprivation of other individuals' rights. The protective role of public lockdown due to COVID-19 to human rights is to curb transmission to non-infected persons and the environment as well as where there are infected within a particular environment, to curb handful numbers from becoming clusters and clusters from becoming community transmission while the violation role of it affect individual enjoyments of their respective rights.

The rights are right to a family and protection,²⁷ right to residence,²⁸ right to work and remuneration²⁹ as well as the property right.³⁰ While the public lockdown itself is a protection against spread of COVID-19 on non infected family members and therefore amount to non-violation into ongoing activities within each of the family. But, an in-depth examination revealed shackle interference because no family can take decision that will conflict with the public lockdown declaration. Equally; as regard right to residence, while the public lockdown did not affect the residency of any person living within a particular state and/or province, state and region before the declaration of public lockdown but have overwhelming effects on the residency of the person living outside the state but intend to live in such state where lockdown exist. It also make citizens of some state such as Nigeria,³¹ the United State of America,³² the United Kingdom,³³ South Africa,³⁴ Canada,³⁵ and without exclusion of Japan, New Zealand, Indonesia,

²⁷ UDHR art 12; Banjul Charter art 18; ADRD art vi; AHRD art 19 and ECHR art 8.

²⁸ UDHR art 13; Banjul Charter art 12; ADRD art viii, AHRD art 15 and Protocol No. 4 to the ECHR for the Protection of Human Rights and Fundamental Freedoms securing certain rights and freedoms other than those already included in the Convention and the First Protocol thereto ECHR art 2.

²⁹ UDHR art 23; Banjul Charter art 15; ADRD art xiv and AHRD art 27.

³⁰ UDHR art 17; Banjul Charter art 14; ADRD art xxiii; AHRD art 17 and ECHR art 2.

1 ³¹ Aljazeera, 'Nigeria repatriates stranded nationals amid coronavirus pandemic' Aljazeera (6 May 2020) <<https://www.aljazeera.com/news/2020/05/nigeria-repatriates-stranded-nationals-coronavirus-pandemic-200506111234192.html>> accessed on 15 May 2020.

2 ³² Thisday, 'UK, US Evacuate 886 from Abuja, Lagos Airports' Thisday (19 April 2020) <<https://www.thisdaylive.com/index.php/2020/04/19/uk-us-evacuate-886-from-abuja-lagos-airports/>> accessed on 8 May 2020 and Dharamshala' (Times of India, 8 April 2020) <<https://timesofindia.indiatimes.com/city/chandigarh/387-us-canadian-nationals-evacuated-from-region/articleshow/75037891.cms>> accessed 8 May 2020.

3 ³³ Thisday, 'UK, US Evacuate 886 from Abuja, Lagos Airports' Thisday (19 April 2020) <<https://www.thisdaylive.com/index.php/2020/04/19/uk-us-evacuate-886-from-abuja-lagos-airports/>> accessed on 8 May 2020; NDTV, 'UK Lays On More Flights To Evacuate COVID-19 Stranded British Nationals From India' NDTV (30 April 2020) <<https://www.ndtv.com/india-news/uk-lays-on-more-flights-to-evacuate-covid-19-stranded-british-nationals-from-india-2221248>> accessed 9th May 2020.

34 Ankara, 'COVID-19: South Africa evacuates nationals from Nigeria' AA (13 April 2020) <<https://www.aa.com.tr/en/africa/covid-19-south-africa-evacuates-nationals-from-nigeria/1802620>> accessed 9 May 2020.

4 ³⁵ Ankara, 'COVID-19: 137 Canadians evacuated from Nigeria' AA (6 April 2020) <<https://www.aa.com.tr/en/africa/covid-19-137-canadians-evacuated-from-nigeria-1794467>> accessed 9 May 2020; Esteban Duarte, 'Canada to Send Second Plane to Evacuate Nationals From Wuhan' Bloomberg (9 February 2020) <<https://www.bloomberg.com/news/articles/2020-02-09/canada-to-send-second-plane-to-evacuate-nationals-from-wuhan>> accessed 9 May 2020 and TNN, ' 387 US, Canadian Nationals evacuated from Punjab, Chandigarh and Dharamshala' TNN (8 April 2020)

Ukraine, Uzbekistan, Brazil, Saudi Arabia, Singapore, Italy, Bangladesh and Nepal³⁶ to mention a few to be stranded in another state and therefore led those state to evacuated their nationals.

Furthermore, in respect of the right to work, public lockdown amounts to deprivation of individuals' right to work and fair remuneration and even in few developed economy where some are working from home, the conditions attached to the right to work and fair remuneration is not limited to access to occupation. The conditions also include favourable conditions of work which may not be in existence due to the emergency situation. The worst of all is that even the health workers that are unavoidable actors during such emergency situation that was reported by Sokol³⁷ to entitled to protection through reduction of health risk and enforcement measures cannot boost of such entitled condition.

Finally, as regards the property right, different measures put in place did not in any way restrain people of their rights to own property either alone or in association with others including rights to use, dispose of and give that person's lawfully acquired possessions alone or in association with others but public lockdown greatly affect pre-sale arrangement such as inspection among others that are the foundation of the transaction. The implication of all is that why it served as protection in certain degree, it amount to breach at the same time in another degree.

3.3 Public lockdown during COVID-19 as neither protective nor breach measures of human right

Certain human rights were not affected in any degree by the public lockdown due to COVID-19 which are the right to freedom of opinion, expression and dissemination³⁸ as well as a right of protection from arbitrary arrest.³⁹ To be specific, the right to freedom of opinion, expression and dissemination were neither protected nor breach as the public lockdown put in place to curb transmission of COVID-19 did not in any way affect the right to freedom of opinion, expression and dissemination even though measures put in place towards curbing the pandemic itself outside public lockdown include spreading of information about its existence create an avenue for the abuse of this right.⁴⁰ It is the abuse that made United Nations Secretary-General; Antonio Guterres to warn that growing surge of information is another reigning enemy which influenced WHO to conclude that 'infodemic⁴¹' as a second disease to COVID-19 pandemic was the order of the day to the extent that it makes it hard for people to find trustworthy sources and reliable guidance when they need information.⁴²

This was the basis when the Philippines and Thailand as part of the declared states of emergency granted temporary greater powers to the government to crack down on the sharing of false information which

<<https://timesofindia.indiatimes.com/city/chandigarh/387-us-canadian-nationals-evacuated-from-region/articleshow/75037891.cms>> accessed 8 May 2020.

5 ³⁶ Reuters, 'States evacuating nationals from coronavirus-hit areas' Reuters (5 March 2020) <<https://www.reuters.com/article/uk-health-coronavirus-evacuation-factbox/states-evacuating-nationals-from-coronavirus-hit-areas-idUKKBN20S0ZS>> accessed 8 May 2020.

³⁷ Sokol D, 'Virulent epidemics and scope of healthcare workers duty of care [2006] 12 Emerg Infect Dis, 1238 – 41.

³⁸ UDHR art 19; Banjul Charter art 9; ADRD art iv; AHRD art 23 and ECHR art 10.

³⁹ UDHR art 3 and 9; Banjul Charter art 6; ADRD art xxv and AHRD art 12 and ECHR art 5.

⁴⁰ UDHR art 9; Banjul Charter art 9; ADRD art iv; AHRD art 23 and ECHR art 10.

⁴¹ WHO perceived 'infodemic' as overabundant of information with some to be accurate while some are not accurate.

⁴² UNESCO, 'Journalism, press freedom and COVID-19, Issue brief in the UNESCO series: World Trends in Freedom of Expression and Media Development' UNESCO <https://en.unesco.org/sites/default/files/unesco_covid_brief_en.pdf> accessed on 8 May 2020.

has been perceived to be abused.⁴³ Likewise, as regard right of protection from arbitrary arrest, public lockdown did not amount to any form of arrest even though a breach of the declaration may lead to the arrest of non-compliance which amount to lawful arrest. Although, the United Nations on Human Rights discourage arrest and detention due to COVID-19 while some states imposed fines for non-compliance.

3.4 Public lockdown during COVID-19 as a measure of breach of human right

Public lockdown which appears as a blessing to a certain degree also appears opposite in another degree as it breaches certain human rights of individuals. The rights are right to religious freedom and worship, right to movement, right to education, right of association and right of assembly. From the ordinary sense of view, the public lockdown put in place to curb the spread of COVID-19 did not affect anyone's right to religious freedom and worship as non of the restrictive measures change any one religion or belief including the manifestation of the same by way of teaching, practice, worship and observance but rather encourage private manifestation at the detriment of private and public known religious practice.

But technically, the situation is opposite as the restrictive measures in question aside from expressly banning religious gathering engender individual rights to religious freedom and worship because it prohibits acts of congregational worship. Whereas almost all the religions in the world have both private and congregational worship;⁴⁴ while they are certain acts of worship that must be congregational. As related to Christianity as a case study, Sabbath day service, bible studies, among other periodic programmes of each of the denominations with such other weekly programmes as well as Easter services including Palm Sunday Service, Good Friday procession, Easter Sunday Service and Easter Monday Picnic with pilgrims to Israel are the acts of worship involving congregational service.

Also, Islam have other acts of worship which the religion demands to be congregational among whom are daily prayers, Friday prayer, Taraweh,⁴⁵ Umrah,⁴⁶ Hajj,⁴⁷ Salat al-Eid ul Fitr⁴⁸ and Salat al Eid ul Adha⁴⁹ among others. The implication of the above therefore is that public lockdown measures in question permit personal worship and therefore prohibit congregational worship which is an act of deprivation of the individual right to religious freedom and worship. Also as regard right to movement, it is not in doubt that public lockdown measures put in place to curb the spread of COVID-19 hinder individual enjoyment of rights to movement as individual were constrained to stay in the restraining area. The public lockdown equally affects individual rights of education as none of the individuals entitled to the right to education could pursue same as all institutions of learning have been closed as part of compliance to the directives. The same situation also applicable to the right of assembly because

6 ⁴³ The Guardian, 'Teargas, beatings and bleach: the most extreme Covid-19 lockdown controls around the world' The Guardian (1 April 2020) <<https://www.theguardian.com/global-development/2020/apr/01/extreme-coronavirus-lockdown-controls-raise-fears-for-worlds-poorest>> accessed on 8 May 2020.

⁴⁴ The 18 major religion in the world is Atheism/Agnosticism, Bahá'í, Buddhism, Christianity, Confucianism, Druze, Gnosticism, Hinduism, Islam, Jainism, Judaism, Rastafarianism, Shinto, Sikhism, Zoroastrianism, Traditional African Religions, African Diaspora Religions and Indigenous American Religions.

⁴⁵ Additional rituals prayers performed by Muslims at night after the Isha prayer during the holy month of Ramadan.

⁴⁶ The non-mandatory lesser pilgrimage made by Muslims to Mecca may be performed at any time of the year.

⁴⁷ The greater Muslim pilgrimage to Mecca takes place in the last month of the Muslim Calendar year and all Muslims are expected to perform at least once during their lifetime if they can afford to do so.

⁴⁸ Special prayer offered to commemorate the festival marking the end of the fast of Ramadan.

⁴⁹ Special prayer offered to commemorate the festival celebrated the willingness of Prophet Ibrahim to follow Allah's (God) command to sacrifice his son.

individual constrained due to public lockdown also forbid social gathering in some other states while some states limit numbers of people at a gathering at any point in time which affect social, religious and educational activities among others.

4. IMPLICATION OF HUMAN RIGHTS VIOLATION DUE TO PUBLIC LOCKDOWN OF COVID-19

Public lockdown is not only imposed as part of efforts to curb the spread of COVID-19 as the effort was put in place to enforce it in different forms ranging from warning, arrest, the imposition of fine and prosecution of the offenders which gradually led to abuse of human rights of individual. It was credited to United Nations High Commissioner for Human Right (UNHCHR); Michelle Bachelet that there are numerous reports from different regions that police and other security forces have been using excessive and at times lethal to enforce COVID-19 compliance without excluding the poor and most vulnerable segment of the population; including non-compliance that are desperately searching for food. UNHCHR also express worry over some States using COVID-19 as cover for human rights violations by further refusing fundamental freedoms and civil space as well as undermining the rule of law.⁵⁰

The abuse in question is in form of beating, grueling and humiliating punishments including exposing non-compliance to chemicals that may affect their health, shooting, and detention among other forms of abuse. Among the States found wanting in the violation of human rights during the COVID-19 restrictive measures are Nigeria,⁵¹ South Africa,⁵² Uganda with the inclusion of Kenya,⁵³ Spain,⁵⁴ India

7 ⁵⁰ Ray Morphy, 'Human Rights and Covid-19 Lockdown enforcement' Leadership (19 May 2020) <<https://leadership.ng/2020/05/19/human-rights-and-covid-19-lockdown-enforcement/>> accessed on 19 May 2020 and Aljazeera, 'UN raises alarm about police brutality in COVID-19 lockdowns' AlJazeera News (20 April 2020) <<https://www.aljazeera.com/news/2020/04/raises-alarm-police-brutality-covid-19-lockdowns-200428070216771.html>> accessed on 8 May 2020.

8 ⁵¹ Ibid; Sahara Reporter, 'Victims of Law Enforcement Brutality during COVID-19 Lockdown Should Seek Compensation, Rights Activists Say' Sahara Reporter (25 April 2020)

9 <<http://saharareporters.com/2020/04/25/victims-law-enforcement-brutality-during-covid-19-lockdown-should-seek-compensation>> accessed on 8 May 2020 and BBC News, 'Coronavirus: Security forces kill more Nigerians than Covid-19' BBC News (19 May 2020) <<https://www.bbc.com/news/world-africa-52317196>> accessed on 19 May 2020.

⁵² Godfrey Maringina, 'Covid-19: Social Distancing and Lockdown In Black Townships In South Africa' Kujenga Amani (7 May 2020) <<https://kujenga-amani.ssrc.org/2020/05/07/covid-19-social-distancing-and-lockdown-in-black-townships-in-south-africa/>> accessed 19 May 2020; William Gumede, 'South Africa: Human Rights Focus Needed in Police and Army's COVID-19 Lockdown Enforcement' Democracy Works Foundation (25 April 2020) <<https://democracyworks.org.za/human-rights-focus-needed-in-police-and-armys-covid-19-lockdown-enforcement/>> accessed on 19 May 2020; Human Right Watch, 'South Africa: Set Rights-Centered COVID-19 Measures: Monitor Lockdown Enforcement; Support Vulnerable Groups' HRW News (7 April 2020) <<https://www.hrw.org/news/2020/04/07/south-africa-set-rights-centered-covid-19-measures>> accessed on 19 May 2020 and CPJ, 'South African police assault, charge journalist Paul Nthoba after he photographs COVID-19 lockdown' CPJ (18 May 2020) <<https://cpj.org/2020/05/south-african-police-assault-charge-journalist-pau.php>> accessed on 19 May 2020.

⁵³ Isaac Mugabi, 'COVID-19: Security forces in Africa brutalizing civilians under lockdown' DW (20 April 2020) <<https://www.dw.com/en/covid-19-security-forces-in-africa-brutalizing-civilians-under-lockdown/a-53192163>> accessed on 19 May 2020.

⁵⁴ ASTV, 'Coronavirus: Police officers in Spain suspended for violent lockdown enforcement' ASTV (19 April 2020) <https://en.as.com/en/2020/04/19/videos/1587321436_244252.html> 19 May 2020.

as well as Paraguay and the Philippines⁵⁵ and Malaysia⁵⁶ among others in various degree. It is the degree of the respective States enforcement measures without regard to human rights which even led to a demonstration in some quarters including some European States⁵⁷ that led to the need to examine whether enforcing lockdown arising out of pandemic can justify non-regard to individual human rights. The juxtaposition of public lockdown towards curbing of COVID-19 pandemic vis-à-vis human rights revealed a conflict between private rights of individuals which is under private law against public rights of the other people or set or group of people in the society as public law because public law is part of the private law of other persons.⁵⁸ This is because the respective rights as applicable to individuals are individual privacy rights while respective delimited clauses of individual human rights represented by restrictive clauses as applicable to each of the human rights and general clauses⁵⁹ represent public rights and therefore led to the existence of conflict between the duos. It is the consequential effects of the pandemic situation vis-à-vis the human rights of respective individuals that call for the need to examine the conflict between private law and public law.

The answer is not far-fetch as various delimiting clauses contained in various human right instruments is not only limited to confirmation of Roscoe Pound's postulation some years back that public law is eating up a private law⁶⁰ and therefore makes private law to function within public law⁶¹ but also established the overriding interest of public law over private law. This was the basis of heating the non-compliance with a sledgehammer that paved way for various abuses. The prevalence of public law over private law should not be sharp as it is rather should be based on what I perceive as the situational approach. The situational approach indicates that the situation of the individual as the beneficiaries of private law should have a greater influence on the consequential effect of the consequential act that surrounds the public law.

The implication of situational approach to conflict between public law and private law is that it is the situation of the individuals vis-à-vis the law of the land that should determine the prevailing one over the other as a result of which its application should be based on individual to the consequence of involving the public law in question. As regard COVID-19 created emergency period, the question therefore, is what you want to say to the situation of someone who is dying of ailment outside the cause of public lockdown and need medical attention more so that the public lockdown is on health ground. While there is no emergency number in place for such or a nearby medical facility for such person like

⁵⁵ The Guardian, 'Teargas, beatings and bleach: the most extreme Covid-19 lockdown controls around the world' The Guardian (1 April 2020) <<https://www.theguardian.com/global-development/2020/apr/01/extreme-coronavirus-lockdown-controls-raise-fears-for-worlds-poorest>> accessed on 9 May 2020 and Marlene Leung, 'Coronavirus: Concerns raised about extreme measures, power abuse during virus lockdowns' CTV News (1 April 2020) <<https://www.ctvnews.ca/health/coronavirus/concerns-raised-about-extreme-measures-power-abuse-during-virus-lockdowns-1.4877776>> accessed on 9 May 2020.

10 ⁵⁶ VOA News, 'Covid-19 Pandemic: Malaysia Arrests Thousands amid Coronavirus Lockdown' VOA News (4 April 2020) <<https://www.voanews.com/science-health/coronavirus-outbreak/malaysia-arrests-thousands-amid-coronavirus-lockdown>> accessed on 8 May 2020.

11 ⁵⁷ TRTWorld, 'Arrests at anti-lockdown demonstrations in UK, Germany and Poland' TRT World (16 May 2020) <<https://www.trtworld.com/europe/arrests-at-anti-lockdown-demonstrations-in-uk-germany-and-poland-36373>> accessed on 19 May 2020.

⁵⁸ Roscoe Pound, 'Public Law and Private Law' [1939] 24 (4 June) Cornell Law Quarterly; 469.

⁵⁹ UDHR art 29(2) and ADRD art xxviii.

⁶⁰ Pound (n.59) 470.

⁶¹ Leslie Arthur Mulholland, 'The Difference between Private and Public Law' [1993] 1 Annual Review of Law and Ethics, 113.

in Nigeria and other Africa state or the situation of someone who needs to assist such person to reach the nearest medical facility for that purpose but will need to return to his home to mention few.

The similar situation occurs in Abigi Area of Ogun State of Nigeria during lockdown period. The husband of the deceased; pregnant woman credited the cause of the death of his wife to unreasonable delay of Police officers enforcing public lockdown in the area when he was rushing his wife to the nearest hospital for delivery.⁶² Applying the situational approach in question to the pandemic situation created by COVID-19, public law can only prevail on any individual in such a situation where the government had put machinery expected of him in motion for such individual not to have cause to breach particular law that gives rise to his personal right over public right.

5. CONCLUSION

The outbreak of COVID-19 and subsequent restrictive measures; declaration of public lockdown inclusive to curb its transmission tampered on human rights of individuals which appear as measures of protection to certain human rights because it serves as a form of guarantee to the right to life and at the same time serve as the measure of protection and violation of certain human rights because it guarantees right to family life, right residence, right to work and remuneration as well as the right to property of individual and equally violates that of others at the same time.

The public lockdown in question equally neither protect nor violates certain human rights because it did not affect any individual right to freedom of opinion, expression and dissemination as well as the right of protection from arbitrary arrest but breaches certain human rights which include the right to religious freedom and worship, right of movement, right of education, right of assembly and right of association. The implication of consequential effect of the public lockdown of COVID-19 on the human right create conflict vis-à-vis the public right and thereby amount to conflict between private law and public law which resulted in a propounded situational approach that is suggesting that it is not always for public law to prevail over private law but should be based on the situation of things which appear as the basis of United Nations Human Rights experts submission that although there is a growing global consensus that efforts to protect public health in the face of the coronavirus pandemic demand temporary sacrifices of some individuals freedoms but urged states to ensure their responses to the pandemic are “proportionate, necessary and non-discriminatory”.⁶³

⁶² James Ogunnaike, ‘Controversy as pregnant woman dies in Ogun’ Vanguard News (21 May 2020) <<https://www.vanguardngr.com/2020/05/controversy-as-pregnant-woman-dies-in-ogun/>> 25 May 2020 and Adejumo Kabir, ‘Covid-19: Pregnant woman dies in Ogun after police checkpoint delay’ Premium Time (22 May 2020) <<https://premiumtimesng.com/regional/ssouth-west/394053-covid-19-pregnant-woman-dies-in-ogun-after-police-checkpoint-delay.html>> accessed 25 May 2020.

⁶³ VOA News (n. 57).