

COVID-19 AND THE RIGHT TO HEALTHCARE IN NIGERIA: AN ANALYSIS OF THE 1999 CONSTITUTION (AS AMENDED)

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Abstract

Contemporary Nigeria is characterized with an inadequate healthcare system, which has taken a worrisome dimension and has led to the mass exodus of Nigerian doctors to more developed countries. This reality has become the subject of discussion in recent times following the current travel restrictions across the world due to the coronavirus (COVID-19) pandemic. Healthcare facilities across Nigeria are convincingly not enough to contain the spread of COVID-19; and the healthcare workers are poorly remunerated and insured to motivate an adequate response, especially in a time of public health emergency. In this paper, the COVID-19 public health emergency is examined under the auspices of Nigerian constitutional human rights provisions in order to ascertain whether critical related international human rights are respected in Nigeria. The paper recommends among other things that Nigeria constitution should be amended to recognise the right to healthcare as an enforceable right, which implies the legislative expansion of government responsibilities to provide healthcare facilities and protection of healthcare workers at all time.

Keywords: 1999 Constitution; Coronavirus; Nigeria; Right to Healthcare; Human Rights

1. Introduction and Background

Following the declaration by the World Health Organisation (WHO) on March 11, 2020 that the coronavirus (COVID-19) is a public health emergency of international concern,¹ the spread of COVID-19 has overwhelmed several countries.² Virtually all continents have recorded cases of the COVID-19 except Antarctica since COVID-19 first case was registered in China sometime in December, and infecting over 2.3 million people and leaving over 146,000 people dead across the world.³ In

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¹ World Health Organisation, 'WHO Director-General Opening Remarks at the Media Briefing on COVID-19: 11 March 2020', available at ><https://www.who.int/dg/speeches/detail/who-director-general-s-opening-remarks-at-the-media-briefing-on-covid-19---11-march-2020>< accessed 12 April 2020.

² World Health Organisation, 'Coronavirus Disease 2019 (COVID-19) Situation Report-82', available at >https://www.who.int/docs/default-source/coronaviruse/situation-reports/20200411-sitrep-82-covid-19.pdf?sfvrsn=74a5d15_2< accessed 12 April 2020.

³ A Canibe, 'COVID-19: Antarctica the only Coronavirus-free Continent Left', available at >https://en.as.com/en/2020/04/11/other_sports/1586607691_521116.html< assessed 12 April 2020. See also, World Health Organisation, 'Coronavirus Disease 2019 (COVID-19) Situation Report-89', available at >https://www.who.int/docs/default-source/coronaviruse/situation-reports/20200418-sitrep-89-covid-19.pdf?sfvrsn=3643dd38_2< accessed 19 April 2020; Nigeria

response to this spread, governments have imposed international and national travel restrictions, even against WHO recommendation.⁴ Some contemporary international reactions that limit human rights enjoyment include disruption of movement and economic activities, and selective testing. It therefore, should be noted that COVID-19 and human rights are inextricably linked. While it is arguable that international travel restriction and internal movement restrictions are the main drivers in containing the spread of the COVID-19, inadequate constitutional protection of the right to healthcare can undermine a country's progress in containing the spread of the COVID-19. This situation therefore necessitates the need for WHO to issue a substantive guidance on how countries can take public health measures that achieve health protections while respecting human rights.⁵

An apparent massive difference in how the COVID-19 has spread in different countries is either due to slow and selective test or delay to announce test results. The test process not only impacted on COVID-19 spread, it somewhat dictated government response to COVID-19 pandemic.⁶ However, steep rise in COVID-19 cases in countries such as the United Kingdom, United States of America, Spain, Italy and Nigeria have prompted common aspects of control to stop the spread of the disease, which include travel bans, quarantine order, social distancing and lockdown. As much as these measures have the potential to reduce the spread of COVID-19, strict enforcement implies that government should ensure the availability of food, medicine and other essentials for good standard of living. For

Centre for Disease Control, 'Coronavirus (COVID-19) Highlights' available at ><https://covid19.ncdc.gov.ng/>< accessed 18 April 2020.

⁴ World Health Organisation, 'Updated WHO Recommendations for International Traffic in Relation to COVID-19 Outbreak', available at ><https://www.who.int/news-room/articles-detail/updated-who-recommendations-for-international-traffic-in-relation-to-covid-19-outbreak>< accessed 18 April 2020. According to WHO, traffic restriction may have significant economic, social and health impact. See also, CNN, 'Nigeria Bans Entry for Travelers from 13 Countries as it announces Five New Cases of Coronavirus', available at ><https://edition.cnn.com/2020/03/18/africa/nigeria-coronavirus-travel-restrictions-intl/index.html>< accessed 18 April 2020.

⁵ World Health Organisation, 'Country and Technical Guidance-Coronavirus (COVID-19)', available at > <https://www.who.int/emergencies/diseases/novel-coronavirus-2019/technical-guidance>< accessed 12 April 2020; A Yamin and R Habibi, Human Rights and Coronavirus: What's at Stake for Truth, Trust and Democracy?' Health and Human Rights Journal, available at > <https://www.hhrjournal.org/2020/03/human-rights-and-coronavirus-whats-at-stake-for-truth-trust-and-democracy/>< accessed 12 April 2020.

⁶ E Graham-Harrison, 'Experience of SARS a Key Factor in Countries' Response to Coronavirus' (The Guardian) available at > <https://www.theguardian.com/world/2020/mar/15/experience-of-sars-key-factor-in-response-to-coronavirus>< accessed 12 April 2020.

instance, the Universal Declaration of Human Rights 1948 (UDHR) recognises the right to food, healthcare, movement, and equality of persons as inherent rights of persons across the globe.

Related to the foregoing, it should be noted that COVID-19 pandemic has sprung up national and state barriers to the enjoyment of some International Covenant on Civil and Political Rights 1966 (ICCPR) and the International Covenant on Economic, Social, and Cultural Rights 1966 (ICESCR) provisions.⁷ These barriers arise from domestic laws and policies in place to expedite lifesaving health emergency in time of COVID-19, in line with domestic statutes that allow countries to derogate or limit human rights in times of public health or national emergencies. Under international law and treaties, such measures need be necessary, proportionate and reasonable, legitimate in time of public emergency and with regards to rights of others, common interest, morality and collective security.⁸ However, it is not enough for the government to avail itself of the right of derogation without adequate conviction that a public emergency that threatens the life of its nation and existence is imminent. The government must communicate justifications for the measures taken, especially where it derogates on its international or regional human rights obligations. This is because the essence of human rights is to ensure that the authority of the government resides in the people.⁹ Evidently, this makes promoting, protecting and respecting human rights crucial in a time of peace, non-emergencies and emergencies.

Human rights in the context of COVID-19 does not solely concern the right to appropriate healthcare. Denial of appropriate healthcare and discrimination and inequality in treating persons with certain health conditions by both the society and healthcare givers, whether due to the non-justiciability of the right to health in the 1999 Constitution of the Federal Republic of Nigeria (1999 Constitution), lack of Personal Protection Equipment (PPE) and medical equipment are critical constraints in low- and middle-income countries such as Nigeria. For instance, Nigerian government has for decades failed to invest adequately in the healthcare

⁷ The ICESCR was adopted on 16 December 1966 and came into force on 3rd January 1976.

⁸ See ICCPR, Art. 4; ICESCR, Art. 27; African Charter on Human and Peoples' Right 1981, Art. 27 (2); and UDHR, Art. 29.

⁹ Office of the High Commissioner for Human Rights. 'Universal Declaration of Human Rights at 70: 30 Articles on 30 Articles- Article 21', available at > <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=23957&LangID=E> accessed 13 April 2020.

system because the elites seek medical treatment abroad.¹⁰ Currently, countries with even advanced healthcare system such as the USA and Italy are overwhelmed with COVID-19 pandemic thereby showing how tragic it is. Hence, Nigeria's wish not to experience the swathes of deaths similar to the USA and Italy amid a neglected healthcare system conflicts with its healthcare system reality which may crumble under the weight of a larger outbreak. In this paper, COVID-19 health emergency is examined under the auspices of Nigeria constitutional human rights provisions in order to ascertain whether Nigeria's obligation under relevant human rights treaty provisions are respected.

2. Constitutional Protection of the Right to Healthcare in Nigeria

The right to adequate healthcare emanates from international, regional and the 1999 Constitution. For instance, the ICESCR, which Nigeria ratified on 29 July 1993, requires state parties under Article 12 to recognise the right of everyone to the highest attainable standard of physical and mental health. The ICESCR requires state parties to ensure the prevention, treatment and control of epidemics, endemic, occupational and other diseases while creating conditions which would ensure all medical services and attention in the event of sickness. Recognition of this right by the ICESCR takes a more comprehensive dimension from Article 25 of the UDHR. However, Article 2 (3) of the ICESCR gives low- and middle-income countries more room to manoeuvre and determine the extent of the implementation of the ICESCR provisions with regard to their national economy. As will be discussed later in this paper, this provision has been used negatively in the 1999 Constitution leading to the contemporary weak healthcare system in Nigeria.

At the regional level, the African Charter on Human and Peoples Rights 1981 (African Charter), which Nigeria ratified on 22 June 1983, requires state parties under Article 16 to take necessary measures to protect the health of their people and ensure they receive medical attention when they are sick. This African Charter provision protects the individual right to enjoy the best attainable state of physical and mental health. Emphatically, the African Charter, although contain clawback clauses and a general limitation clause in Article 27, it fails to adopt any economic and resource disparity in its implementation by state parties as seen in the ICESCR. This implies that all rights under the African Charter are enforceable by the African Court and the African Commission. Furthermore, as a member of the African Union (AU), Nigeria is obligated as a regional principle to promote and protect human

¹⁰ Bloomberg, 'Trapped by Coronavirus, Nigeria's Elites faces Squalid Hospitals' (02 April, 2020), available at > <https://www.bloomberg.com/news/articles/2020-04-02/trapped-by-coronavirus-nigeria-s-elite-faces-squalid-hospitals>< accessed 18 April 2020.

rights in accordance with the African Charter,¹¹ raise the living standard of its citizenry,¹² eradicate diseases and promote good health on the continent.¹³ As such, Nigeria has a duty emanating from both international and regional legal instruments, to which it is a party, to provide adequate healthcare to its citizenry. In Nigeria, the right to healthcare is part of the socioeconomic rights protected under the Fundamental Objectives and Directive Principles of State Policy under Chapter 2 of the 1999 Constitution. Section 17 (3) (d) of the 1999 Constitution provides that ‘the state shall direct its policy towards ensuring that there are adequate medical and healthcare facilities for all persons.’ At the same time, section 17 (3) (b) states that conditions of work are just and humane, while section 17 (3) (c) ensures that the health, safety and welfare of all persons in employment are safeguarded and not endangered or abused. These provisions necessitate that the Nigerian government take decisive action to ensure the right to healthcare for Nigerians. However, while this Fundamental Objectives and Directive Principles of State Policy chapter make the provisions therein the duty and responsibilities of all organs of government and of all authorities and persons, the provisions on judicial powers under section 6 (6) (c) remove the judicial powers vested in the court to issues or questions as to whether any of omission by any authority or person conforms with the Fundamental Objectives and Directive Principles of State Policy set out in chapter 2 of the 1999 Constitution.¹⁴ Evidently, this constitutional approach contradicts Nigeria’s obligation both under article 1 of the African Charter and AU principles.

In contrast, however, the 1999 Constitution permits the legal enforcement of fundamental rights provisions in Chapter IV, which primarily are civil and political. Reinforced by the Supreme Court in *Federal Republic of Nigeria v Ifegwu*, the court herein held that though fundamental rights are part of human rights, the trend in modern society where the rule of law operates is to protect fundamental rights for the enhancement of human dignity and liberty.¹⁵ Furthermore, in *Mustapha v Governor of Lagos State*, the Nigeria Supreme Court similarly noted that human

¹¹ Article 3 (h) of the AU Constitutive Act.

¹² Article 3 (k) of the AU Constitutive Act.

¹³ Article 3 (n) of the AU Constitutive Act.

¹⁴ This was obliterated in the case of *Okojie and others v Attorney General of Lagos State* (1981) NCLR 218. See also, T Olaiya, ‘Interrogating the Non-Justiciability of Constitutional Directive Principles and Public Policy Failure in Nigeria’ (2015) 8 (3) *Journal of Politics and Law* 23; A Shehu, ‘The Enforcement of Social and Economic Rights in Africa: The Nigerian Experience’ (2013) 2 *Afe Babalola University Journal of Sustainable Development Law and Policy* 101.

¹⁵ According to Justice Uwaifo in the case of *Federal Republic of Nigeria v Ifegwu* (2003) FWLR (Pt 167) 703 at 758.

rights must encompass all humans and these rights must be clearly distinguished from civil rights, political rights, economic rights, and so on.¹⁶ It then follows that the 1999 Constitution does not allow a blanket enforceable human rights to its citizenry, which unfortunately excludes the right to healthcare despite its importance to the socioeconomic growth of every country.

The essence of the 1999 Constitution is that sovereignty belongs to the people.¹⁷ Hence, ‘we the people of the Federal Republic of Nigeria’ opening phrase of the 1999 Constitution is arguably inclusive of all gender, race, caste, class, ethnicity, disability, and any other manner of identity that determine everyone’s inclusion and for the promotion of good governance and welfare of all.¹⁸ People need an optimal health care system both to stay healthy and to get care when they are sick. Being part of the socioeconomic rights, the right to health is connected to political, economic and social welfare and security for all citizens, which makes its enforceability crucial for the sustenance of every country. However, enforceable fundamental rights in the Nigerian context entail rights enshrined in Chapter IV of the 1999 Constitution. Unlike the provisions under the Fundamental Objectives of Directive Principles of State Policy, any person who alleges that any the provisions of Chapter IV is being or likely to be contravened may apply to the High Court for redress.¹⁹ The constitution being the *grundnorm* and the supreme law of the land²⁰ ultimately draws a distinction between justiciable and non-justiciable rights, which the African Charter fails to do.²¹

Provisions of the African Charter on Human and Peoples Rights (Ratification and Enforcement) Act of 1983,²² ratified in accordance with section 12 (1) of the then 1979 Constitution (now section 12 of 1999 Constitution) which concerns treaties

¹⁶ (1987) 2 NWLR (Pt 58) 539 at 584. However, the court distinguishes between human rights and fundamental rights by admitting that human rights are derived from the broader concept of natural rights which every society must accept as belonging to each person as a human being.

¹⁷ Section 14 (2) (a) of the 1999 Constitution of the Federal Republic of Nigeria.

¹⁸ See the 1999 Constitution of the Federal Republic of Nigeria preamble.

¹⁹ Specifically, the primary organ for the enforcement of rights in Nigeria being the State High Court or Federal High Court. See, Order 1 Rule 2 of the Fundamental Rights (Enforcement Procedure) Rules 2009.

²⁰ J Dada, ‘Impediments to Human Rights Protection in Nigeria’ (2012) 18 *Annual Survey of International and Comparative Law* 1.

²¹ The justiciable rights are mainly civil and political rights under Chapter IV. At the same time, the non-justiciable are mainly the socio-economic rights listed under chapter II fundamental objectives and directive principles of state policy.

²² See *El-Rufia v Senate of the National Assembly* (2016) 1 NWLR (Pt 1464) 506.

and their implementation²³ are part of the Nigerian human rights corpus. The purport of this ratification ordinarily is that all the rights in the African Charter, including the right to healthcare, is enforceable.²⁴ Re-enactment of the African Charter and its domestication according to section 12 (1) of the 1999 Constitution expands the scope of human rights the courts can enforce. At the same time, this domestication has raised some fundamental constitutional issues in Nigeria. The issue here affects the enjoyment of rights where there is a conflict between domesticated rights provisions and the constitution. Consequently, the Supreme Court in *Sani Abacha v Gani Fawehinmi*, unequivocally held that by virtue of the supremacy of the constitution, it has prominence over international law and other national laws in the event of conflicts, to the extent of such inconsistency.²⁵ Going by this decision, it is clear that the constitutional provisions enjoy primacy over domestic legislation in Nigeria. Hence, the right to healthcare even though covered in the African Charter on Human and Peoples Rights (Ratification and Enforcement) Act and the National Health Act 2014 cannot be enforced in Nigeria in line with section 6 (6) of 1999 Constitution.

3. Enforcing Exigent Laws and Policies towards Containing Covid-19 in Nigeria

Section 45 of the 1999 Constitution indicates that fundamental rights in Nigeria are not absolute in all ramifications.²⁶ Nigeria's Supreme Court has interpreted section 45 intent in *Medical and Dental Practitioners Disciplinary Tribunal v Emewulu and Another* by holding that all fundamental rights are limited by state policy, overriding public interest or other factors considered by the constitution in section

²³ Section 12 states that (i) 'no treaty between the Federation and any other country shall have the force of law except to the extent to which any such treaty has been enacted into law by the National Assembly. (ii) The National Assembly make laws for the Federation or for any part thereof with respect to matters not included in the Exclusive List for the purpose of implementing a treaty'.

²⁴ *Abacha v Fawehinmi*, (2000) 6 NWLR, 228. In *Ohakosin v Commissioner of Police* (2009) 15 NWLR (Pt 1164) 229, the Supreme Court stated that the African Charter of Human and Peoples' Rights (Ratification and Enforcement) Act being part of Nigerian laws must be respected and upheld by all courts in the country.

²⁵ (2000) 6 NWLR, 255.

²⁶ Section 45 of the 1999 Constitution of Nigeria. This section enshrines restriction on and derogation from fundamental human rights.

45.²⁷ Furthermore, in *Badejo v Minister of Education*,²⁸ Justice Kutigi of the Nigeria Supreme Court while agreeing that a fundamental right is undoubtedly a right which stands above the ordinary laws of the land, however, added that no fundamental right should stand above the country, state or the people. This principle was further tested in *Dokubo-Asari v Federal Republic of Nigeria* where the Supreme Court reiterated that ‘human rights must be suspended until national security can be protected; the corporate existence of Nigeria as a united harmonious, indivisible and indissoluble sovereignty nation is certainly greater than any citizen’s liberty or right’.²⁹ Again, it is arguable from these court decisions and the constitutional provision that Nigeria’s approach is a drawback to African Charter progress on state party’s mandatory obligation to respect and enforce human and peoples’ rights.³⁰ Evidently, such normative provision in the 1999 Constitution has been relied upon by security agents in Nigeria to violate fundamental rights in the course of suppressing peaceful demonstrations, carrying out arrest, detention and compliance with lawful order, or defence of extra-judicial killings.³¹

The 1999 Constitution provides a varied number of socioeconomic rights which include the right to healthcare.³² These rights are protected under the Fundamental

²⁷ (2001) 3 Supreme Court of Nigeria Journal, 106. Nonetheless, the enforcement of court decisions in Nigeria is regulated under the Sheriff and Civil Process Act of 1990- Sheriff and Civil Process Act, Chapter 407, Laws of the Federation of Nigeria 1990. The provisions of this Act apply only to the High Courts and Magistrate courts in Nigeria. For instance, section 72 of this Act provides that any person who refuses or neglects to comply with an order made against him, other for the payment of money, the court may order that such a person be committed to prison and detained until such an order is obeyed. This section implies that once an order for committal for contempt is made, it is a conviction. However, this legislation is rarely invoked in Nigeria. For instance, the Nigeria Supreme Court in *Boyo v Attorney General of Mid-West* – (1971) 1 ANLR 342, at 352, posited that it is important for the court to bear in mind that its summary powers to punish for contempt must be used sparingly and that the court must always act with restraint at all times. See generally, the decisions in *Military Governor of Kwara State v Rufus Afolabi*, (1991) 6 NWLR, (Pt 196) 212; *Federal Capital Development Authority v Koripamo-Agary* (2010) 14 NWLR (Pt 1213) 377.

²⁸ (1996) 8 NWLR (Pt 464) 15.

²⁹ (2007) AFWLR, (Pt 375) 588.

³⁰ For instance, the right to life under Section 33 (1) of the 1999 Constitution provides a long list of derogation such as the execution of the sentence of the court, if a person dies as a result of the use of force that is reasonably necessary, for the defence of any person from unlawful violence or for the defence of property, to effect a legal arrest or prevent the escape of a person lawfully detained, for suppressing a riot, insurrection or mutiny.

³¹ Council on Foreign Relations, Nigeria Security Tracker, available at > <https://www.cfr.org/nigeria/nigeria-security-tracker/p29483>< accessed 11 April 2020.

³² Chapter 2, section 17 of the 1999 Constitution of the Federal Republic of Nigeria.

Objectives and Directive Principles of State Policy and cannot be enforced against the government. Thus, despite the importance of healthcare to the people and the socioeconomic growth of the country, there is currently no reported case of anybody suing the government for lack of hospitals or poor healthcare system. Aside the constitutional barrier, it is common knowledge that because of the unpredictable outcome, enormous financial involvement and protracted litigation, Nigerians are de-motivated to seek legal interpretation of the right to healthcare against the government. The more harmful aspect to the constitutional barrier is that the healthcare system in Nigeria is not strong enough because it has been denied normal funding. Currently, many countries and states are making efforts to contain the spread of COVID-19 epidemic by ordering measures such as curfew, lockdown, social distancing and travel ban.³³ With more diagnosis of COVID-19 in many low and middle income countries such as Nigeria, these countries started facing grim decisions. Whether such arrangements are in order or not, one common thing with many of these low- and middle-income countries is the weak health care systems which would struggle to handle an explosion of COVID-19. For instance, at the peak of COVID-19 epidemic in Italy and USA, these countries were overwhelmed and scrambled for more inpatient and Intensive Care Unit (ICU) beds despite having a working healthcare system when compared to Nigeria.³⁴ Without intensive care, countries will record more fatalities. Realising this reality, Nigeria ramped up measures to keep COVID-19 from spreading soon after its reported index case in Lagos state on 27 February 2020.³⁵ Barely six weeks after the reported first COVID-19 case in Lagos, Nigeria, not fewer than 85 patients have been discharged after treatment of COVID-19 out of the 323 cases from 19 states in Nigeria, with ten deaths.³⁶ However, while the Federal Government ordered the lockdown of three states in Nigeria- Lagos, Ogun and Abuja, on 29 March 2020,³⁷

³³ Example of countries where such orders have been implemented include Italy, the United Kingdom, some USA states such as New York, Texas, and Spain.

³⁴ See, A Saglietto, 'et al.', 'COVID-19 in Europe: The Italian Lesson' available at > [https://www.thelancet.com/journals/lancet/article/PIIS0140-6736\(20\)30690-5/fulltext](https://www.thelancet.com/journals/lancet/article/PIIS0140-6736(20)30690-5/fulltext)< accessed 13 April 2020; L Rouran, 'et al.', 'The Demand for Inpatient and ICU Beds for Covid:19 in the US: Lessons from Chinese Cities', available at > <https://www.medrxiv.org/content/10.1101/2020.03.09.20033241v2.full.pdf+html>< accessed 13 April 2020.

³⁵ Nigeria Centre for Disease Control, 'First case of Coronavirus Disease Confirmed in Nigeria', available at > <https://ncdc.gov.ng/news/227/first-case-of-corona-virus-disease-confirmed-in-nigeria>< accessed 13 April 2020.

³⁶ Nigeria Centre for Disease Control, 'Case Summary in Nigeria as at April 12, 2020' available at > <https://covid19.ncdc.gov.ng/>< accessed 13 April 2020.

³⁷ F Mbah, 'Nigeria Announces the Lockdown of Major Cities to Curb Coronavirus' (30 March 2020) available at > <https://www.aljazeera.com/news/2020/03/nigeria-announces-lockdown-major->

some states in Nigeria have also taken steps such as the prohibition of social and non-essential activities such as marriages, funerals and other social ceremonies, shutting down schools, government offices, markets, places of worship, and courts.³⁸

Such extraordinary pronouncements during the public health crisis in Nigeria are pursuant to the provisions of the 1999 Constitution. According to section 45 (a) of the 1999 Constitution, nothing shall invalidate any law that is reasonably justifiable in a democratic society in the interest of defence, public safety, public order, public morality, or public health.³⁹ The measures by Nigerian government at various levels have shown limitation of mostly civil and political rights such as the right to movement,⁴⁰ freedom of religion,⁴¹ and the right to assemble freely and associate with other persons.⁴² At the same time, the measures taken by Nigeria to curb the spread of COVID-19 is a derogation from its obligation under Article 5 of the ICCPR, as well as violation of its obligations in the absence of a notification to the other state parties through the Secretary-General of the United Nations pursuant to Article 4 (3) of ICCPR.⁴³ Evidently, Nigeria resorted to domestic emergency powers which typically entails rule by decree whereby the executive assumes law-making powers. However, emergency powers carry the risk of abuse. For instance, in true national emergencies, laws and even the constitution may be set aside, which may also require stringent compliance by law enforcement agents. Although the constitution is not suspended, the security agents in Nigeria have exposed their unprofessionalism and brutality in enforcing various lockdown orders.⁴⁴ Hence, if the exigencies of COVID-19 require exceptional measures such as suspension of

[cities-curb-coronavirus-200330095100706.html](https://punchng.com/anambra-orders-closure-of-schools-over-coronavirus/)< accessed 13 April 2020. This order was originally for 14 days but was subsequently extended to last as long as necessary. See, The Nation: 'Buhari: Lockdown will last as long as Necessary' (April 13, 2020) available at > <https://thenationonlineng.net/buhari-lockdown-will-last-as-long-as-necessary/>< accessed 13 April 2020.

³⁸ See, T Okafor, 'Anambra Orders Closure of Schools over Coronavirus' (March 19, 2020) available at > <https://punchng.com/anambra-orders-closure-of-schools-over-coronavirus/>< accessed 13 April 2020.

³⁹ See also, ICCPR, Art 4.

⁴⁰ Section 41 of the 1999 Constitution of the Federal Republic of Nigeria.

⁴¹ Section 38 of the 1999 Constitution of the Federal Republic of Nigeria.

⁴² Section 40 of the 1999 Constitution of the Federal Republic of Nigeria.

⁴³ Nigeria ratified the ICCPR on 29 July 1993. OpinionJuris, 'COVID-19 Symposium: To Derogate or not to Derogate' available at > <https://opiniojuris.org/2020/04/06/covid-19-symposium-to-derogate-or-not-to-derogate/>< accessed 13 April 2020.

⁴⁴ BBC News, 'Security Forces kill more Nigerians than COVID-19' (16 April 2020), available at > <https://www.bbc.com/news/world-africa-52317196>< accessed 19 April 2020.

individual rights, it is best to introduce such through a framework that commits to legality and restoration of normalcy soon after the pandemic in order to prevent abuse of power.⁴⁵ This is irrespective of the fact that Nigeria has not derogated from the ICCPR,⁴⁶ suggesting that agencies who abuse emergency powers by violating rights of Nigerian citizenry cannot be ignored under permissible restriction or proportionate derogation.

Exigency measures adopted by the Nigeria government in COVID-19 is not an opportunity for gross human rights abuse by government agencies. The government measures on COVID-19 have somewhat exacerbated various human rights violations such as discrimination in accessing healthcare services. Besides, there have been cases of police and army brutality and physical assault, extortion and murder across the country in the course of enforcing government COVID-19 measures.⁴⁷ For instance, there has been the accusation of preferential treatment for high profile infectees and foreign nationals while ignoring reports from ordinary Nigerians.⁴⁸ While this exacerbates inequality in access to healthcare services in a critical time like this, interstate border closure could hamper the rapid response need for medical and food supplies in this time of lockdown. Evidently, the Nigeria government should be concerned about its shortcoming to conduct a massive test of its citizenry as much as it is about enforcing its lockdown measures. This is because the first crucial exigency strategy for COVID-19 remain extensive testing and treatment irrespective of race, class, gender, background, religion and caste. Of course, this assertion is dependent on the healthcare system which currently lacks adequate supplies of testing kits, PPEs, ventilators, ICU and beds.

4. Conclusion

COVID-19 is not a death sentence, but a lack of adequate healthcare system can be. Justiciability of the right to health in Nigeria is important if the standard of lives of

⁴⁵ See, ICCPR General Comment No. 29 (States of Emergency, Article 4), available at > https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2f21%2fRev.1%2fAdd.11&Lang=en< accessed 13 April 2020.

⁴⁶ Nigeria is not the only country that has failed to derogate, both Italy and Spain have not notified about derogation. See, OpinionJuris, 'COVID-19 Symposium: To Derogate or not to Derogate' available at ><https://opiniojuris.org/2020/04/06/covid-19-symposium-to-derogate-or-not-to-derogate/>< accessed 13 April 2020.

⁴⁷ The Guardian, 'COVID-19 Management and Human and Rights' (06 April, 2020) available at > <https://guardian.ng/opinion/covid-19-management-and-human-rights/>< accessed 13 April 2020.

⁴⁸ Premium Times, 'COVID-19, Human Rights and the Civic Space in Nigeria' available at > <https://opinion.premiumtimesng.com/2020/03/29/covid-19-human-rights-and-the-civic-space-in-nigeria-by-spaces-for-change/>< accessed 13 April 2020.

its citizenry are to be improved. Irrespective of the contemporary weak healthcare system and the constitutional challenges in the 1999 Constitution that makes the right to health a mere directive principle of state policy, the COVID-19 pandemic has shown that the enforcement of this right is essential and long overdue. Without a doubt, this paper agrees that the Nigeria's healthcare system is in dire need of a coordinated response to solve its looming crisis such as non-payment of remuneration, staff development and training, employment and deployment of the healthcare workforce, poor welfare and inadequate facilities. Although funding is the crucial contributory factor, poor administration at various levels of management cannot be ignored. Hence, the public outcry over the proposed slashing of healthcare budget amidst the challenges in containing COVID-19 from 44.49 billion Naira to 26.51 billion Naira is in order.⁴⁹ In sum, this paper has noted that the right to healthcare in Nigeria is not an afterthought and COVID-19 has provided the opportunity to see the reality Nigeria faces without it. Therefore, under the current reality, further amendment of the 1999 Constitution should erase the right to health from Fundamental Objectives and Directive Principles of State provisions to justiciable fundamental human rights. Healthcare is crucial for the sustenance of Nigeria, the lack of which may result in widespread diseases and endemic infection, lack of access to healthcare, poor standard of living and human insecurity of the citizenry.

⁴⁹ Vanguard News: 'ASUU Fault FG's Proposed Slash of Education, Health Budget' (April 12, 2020) available at <https://www.vanguardngr.com/2020/04/asuu-faults-fgs-proposed-slash-of-education-health-budget/> accessed April 13 2020. It is noteworthy that this decision was mulled following the drop in oil revenue, which is Nigeria's primary source of national budget funding.