

Executive orders and Fundamental Human Rights Regime in the wake of Corona Virus Pandemic in Nigeria: An Evolving Regime

Nnawulezi Uche* and C.G.C Ukanwa,**

Abstract

Fundamental Human Right's issues to a large extent have been neglected and violated in the wake of Corona Virus Pandemic in Nigeria. The Nigerian fundamental rights regime is today bedeviled with series of challenges such as issues of suspension of laws and the introduction of several measures needed to deal with the spread of the virus that undermines human rights and rule of law. Fact reveals other issues include powers given to the security forces to monitor and enforce the lockdown orders are not always understood or obeyed. This study analyzes the reasons and legal issues in line with the incessant complaints by Nigerians that the stay at home restriction orders have had deleterious consequences on the poor, the low income earners and the millions of Nigerians who rely on informal activities to make a living for themselves. However, this paper argues that the emergence and the application of executive orders in Nigeria is responsible for the current challenges on fundamental rights regime in the wake of corona virus pandemic. This article applies a doctrinal legal research methodology, and adopts analytical and qualitative approach and builds its argument on existing literatures which is achieved by a synthesis of ideas. More importantly, necessary recommendations are made. This paper concludes that the essence of re-examining the executive orders is to ensure that it will be used in a manner that it will not undermine the gains made in the last three decades in recognizing, protecting human rights and respect for the rule of law in Nigeria.

Keywords: Executive Order, Fundamental Rights, Regime, Corona Virus, Pandemic.

* Nnawulezi Uche, Ph.D Faculty of Law Alex Ekwueme Federal University Ndufu-Alike Ikwo, Ebonyi State 08035494913 uchennawulezi@gmail.com and nnawulezi.uche@funai.edu.ng

** C.G.C Ukanwa, LLM, ACI Arb (UK), Faculty of Law Alex Ekwueme Federal University Ndufu-Alike Ikwo, Ebonyi State 07064769440; charisgodson@gmail.com

1. Introduction

Freedom to a meaningful access to justice and the right to a fair trial are considered a foundational pillar of the rule of law and of any fundamental rights regime in operation around the globe. It is fundamental and universally recognized human rights that has been enshrined in the key international and regional human rights instruments.¹ Maintaining adequate fair trial and achieving respect for, and protection of everyone charged with an offence to be treated equally and fairly throughout the process of determining his or her innocence or guilt where the concerns behind the foundation of fundamental rights regime.² These concerns played a pivotal role in the development of national regimes in Nigeria. Importantly, the consequences of COVID-19 Pandemic and the corresponding executive orders from both States and Federal Government as a measure to control or enforce the lockdown has raised the question on how to determine the scope of application of the executive orders on human rights laws, which is not only a substantive question, but also a procedural one since different courts are entrusted with the protection of these rights. It is also a sensitive and controversial issue since the operational reality in today's fundamental right regime is that the executive orders and other emergency rules have severally violated human rights in Nigeria. It should be noted that the application of these emergency rule and executive orders clearly shows that these concerns remain of timely relevance, as insecurity and violence associated with executive orders or other emergency rule have a major impact on fundamental rights regime in Nigeria in the wake of COVID-19 Pandemic.

While it is clear that the federal government's action is comprehensively bound by the Constitution,³ the applicability of these executive orders during any period of emergency which undermines human rights remains controversial. Furthermore, it should be noted that chapter IV⁴ of the constitution of Nigeria provides for all categories of rights under fundamental rights. This notwithstanding, is also given further effects on the convention rights. These rights are predominantly what is known as Civil and Political Rights, and given that the African Charter on Human and People's Rights⁵ came into

¹ Article 10 of the Universal Declaration of Human Rights (1948).

² Article 14 of the International Covenant on Civil and Political Rights (1966).

³ Section 45 (1) (2) and (3) of the Constitution of the Federal Republic of Nigeria (1999).

⁴ See Chapter IV of the Constitution of the Federal Republic of Nigeria (1999).

⁵ African Charter on Human and Peoples Rights (1979)

force on 21 October 1986 and was ratified by all member States of the African Union, are obviously not the most modern list of rights that could be given effect in domestic law.⁶ However, it is often observed that these are the most fundamental and important rights.

In addition, it is clear that the rights and freedoms guaranteed under the constitution of the Federal Republic of Nigeria are once with which the people of Nigeria are plainly comfortable.⁷ There remain a divergence of views over whether the executive orders in any way is compatible with Chapter IV of the Constitution of the Federal Republic of Nigeria. This paper noted that where such emergency rule is itself incompatible with the constitution, the courts have only two alternatives. First, they must apply section 45 of the constitution and read and give effect to the legislation in a way which is compatible with Chapter IV of the constitution, so far it is possible to do so. If this is not possible, the court may make a declaration of incompatibility under Chapter IV of the constitution.

More particularly, the recent ban on Almajiris system by the Northern Governors from the 19 states of Nigeria that led to forced migration and deportation of the almajiris to the South-East and South – South of Nigeria has been declared illegal and unconstitutional by scholars and human rights practitioners in Nigeria, with particular reference to their fundamental rights in the constitution. It should be pointed out that the constitution guarantees the right of every Nigerian to reside anywhere in the country.⁸ However, this executive orders by the Northern States Governors is one of those terrible decisions, as a clear proof of policy without social content.⁹

In light of the above development, and on the legality of the executive orders, this paper noted that the fundamental rights to freedom of movement, like other rights under the 1999 constitution of the Federal Republic of Nigeria might be derogated from or abridged in defence of public health, public safety or public morality.¹⁰ The section provide thus:

Nothing in sections 37,38,39 and 40 of this Constitution shall invalidate any law that is reasonable justifiable in a democratic society: (a) In the interest of defence, public safety, public order, public morality, public health or (b)

⁶ Ibid

⁷ See the Preamble of the Constitution of Federal Republic of Nigeria (1999)

⁸ Section 41 of the Constitution of the Federal Republic of Nigeria (1999)

⁹ U. Orizu, "More Pains for Nigerian's Children Living under Difficult Circumstance" This Day Newspaper (Lagos May 18, 2020)

¹⁰ Section 45 of the Constitution of the Federal Republic of Nigeria (1999)

For the purpose of protecting the rights and freedoms of other persons.¹¹

In a similar vein, the constitution also provides that:

An act of the National Assembly shall not be invalidated by reasons only that it provides for taking, during periods of emergency, or measures that derogate from the provisions of sections 33 or 35 of this constitution, but no measures shall be taken in pursuance of any such Act during any period of emergency save to the extent that those measures are reasonably justifiable for the purpose of dealing with the situation that exists during that period of emergency.¹²

In order to provide clarity as to the legality or illegality of the executive orders of the Northern States Governors, the above provisions of the Constitution has shown that the actions of Governors “cannot be questioned since it is based on the protection of public health. In that sense, Section 45 of the 1999 Constitution allows such derogation, which of course, is based on public interest. Subsequently, such an actions would have been declared illegal, if it was applied in a discriminatory or selective manner, noting that even though the Nigerian Governors Forum suggested that policy and the Federal Government approved it.

In contrast, International human rights law protects all individuals under a state’s jurisdiction on a non-discriminatory basis.¹³ Therefore, the almajiris would generally enjoy international human rights law protection as would everyone else under a state’s jurisdiction, including from arbitrary deprivations of their right to freedom life, from torture, cruel, inhuman, or degrading treatment or punishment or from arbitrary interference with their freedom of movement.¹⁴ It must be borne in mind that the significance of citizenship to the Federation of Nigeria, to which a whole Chapter of the 1999 Constitution¹⁵ was devoted which explicitly outlined the rights and privileges attached to the citizenship status ofcourse, has put a question mark on the legality of the actions of the Northern State Governors. In this context, once

¹¹ Ibid

¹² Section 45(2) of the Constitution of the Federal Republic of Nigeria (1999)

¹³ Article 2(1) of the International Covenant on Civil and Political Rights (1966)

¹⁴ Articles 6,7,9 and 12 of the International Covenant on Civil, and Political Rights (1966)

¹⁵ Chapter Three of the Constitution of the Federal Republic of Nigeria (1999)

you are born in Nigeria and can trace any of your parents to Nigerian origin, you are a free born citizen with all rights and privileges attached to that citizenship in line with the provisions of Chapter 3 of the Constitution. In addition, it should be acknowledged that Section 41 of the Constitution that entitled: every citizen of Nigeria the right to reside in any part thereof and shall not be expelled from Nigeria or refused entry or exit is still in force in Nigeria. This provision of the constitution is very sacrosanct to the collective motto of unity and progress.

This paper will commence by providing an overview of the Executive Orders and Fundamental Rights Regime in Nigeria in order to demonstrate the importance of human rights protection. Subsequently, a conceptual clarification of key terms pertaining to fundamental rights regime. In addition, this paper will examine state's restriction of human rights through emergency orders as a measure to control the spread of COVID-19 Pandemic. Also, this paper examine violation of human rights under state of emergency, and an assessment of the legislative framework related to the mitigation of the effects of COVID-19 Pandemic in Nigeria. In this regard, this paper examines notable enforcement challenges of human rights violation. This paper will finalize with a conclusion and recommendations.

2. Results and Analysis

2.1. Executive Orders

According to Black's Law Dictionary:¹⁶

executive order is an order issued by or on behalf of the president, intended to direct or instruct the actions of agencies or government officials, or to set policies for the executive branch to follow.

It should be noted that "executive order" is significant in every context where the state deems it necessary. While the exercise of executive order is poor and most times amount to abuse of human rights, it should be acknowledged that executive order is not a law, and does not form part of the Constitution of the Federal Republic of Nigeria,¹⁷ nor claims equality with it. Also, while this trend is broadly true of Nigeria, it is interesting to note that there is a clear separation of powers between the Federal, State and Local Government Areas on

¹⁶ B. A. Garner, Black's Law Dictionary 9th ed (2004)

¹⁷ The Constitution of the Federal Republic of Nigeria (1999).

the one hand, and between the three arms of government i.e. Legislature, Executive and Judiciary.¹⁸

While the exercise of executive orders may be undesirable in a more democratic setting like Nigeria having a Federal Structure, it appears appropriate to state that the exercise of executive orders many a times brazenly make incursions into the sacred precincts of the constitution, attempting to modify, abridge or even outrightly annul its sacrosanct provisions. Similarly, many of the flaws that have been identified about the executive orders are too numerous to mention. However, it should be noted that President Muhammadu Buhari's Executive Order No.6 2018¹⁹, which sought to curtail certain liberties and fundamental rights of Nigerians under the guise of fighting corruption has been viewed unconstitutional. In other vein, when an executive order merely reaffirms the provision of the constitution, then such an order is acceptable.

Furthermore, the argument against Executive Orders in Nigeria is that Executive Orders most times overrides the provisions of the 1999 Constitution which over time has been condemned. To that extent, it is contended that Executive Order runs foul of relevant sections of the constitution. More so, this paper noted that if Executive Orders have the force of laws, it then means the President make laws by issuing Executive orders. This circumvents the clear processes of lawmaking in the Constitution. Also, it will vest on the President additional power that tilts the delicate balance in the power dynamics of a constitutional democracy, especially one with a written constitution. In examining the complimentary role of the Executive Order, it must be borne in mind that state Intervention, in the form of Executive Order is constantly invoked to remedy a situation. However, a poorly conceived and under-regulated orders may be counter-productive by offering opportunities to security agencies for extortive practices and human rights violations. In order to provide clarity on this concept, it is significant to note that Executive orders are products of the exercise of presidential power under the constitution. So, it is important to understand presidential power under the Constitution in order to understand the legal dimensions of these orders. Basically, in that sense, these two legal regimes may mutually reinforce each other to provide human rights protection.

¹⁸ See Sections 4,5,6 of the Constitution of the Federal Republic of Nigeria (1999).

¹⁹ See Executive Order No.6 of 2018.

2.1.1 Corona Virus Pandemic

To understand the term “COVID-19” as used in this paper, it is important to understand that the above term is commonly referred to as “Coronavirus disease 2019”. In other words, COVID-19 is a new disease, and details of its spread are still under investigation.²⁰ It must be emphasized that the ongoing Corona Virus Pandemic is caused by severe acute respiratory syndrome coronavirus 2 (SARSCOV.2).²¹ This paper noted that the outbreak of this pandemic was first identified in Wuhan, China, in December 2019.²² The first step taken by the World Health Organization (WHO) in this regard was to declare the outbreak a Public Health Emergency of International concern on 39th January 2020, and a pandemic on 11th March.²³ However, available research has shown that as at 17 May, 2020. More than 4.66 million case of Covid-19 have been reported in more than 188 countries and territories, resulting in more than 312,000 deaths. More than 1 - 7 million people have recovered.²⁴

It should be noted that the virus is primarily spread between people during close contact, most often via small droplets produced by coughing, sneezing and talking.²⁵ It is most contagious during the first three days after the onset of symptoms, although spread is possible before symptoms appear, and from people who do not show symptoms.²⁶ Of course, common symptoms include fever, cough, fatigue, shortness of breath, and loss of smell.²⁷ Also, complications may include pneumonia and acute respiratory distress syndrome.²⁸ In this context, it is worth noting that the time from exposure to onset of symptoms is typically around five days, but may range from two to

²⁰ World Health Organization, “Coronavirus very likely of animal origin, no sign of lab manipulation” Reuters 21 April 2020 accessed 19 May 2020.

²¹ World Health Organization, “Novel Corona Virus – China” accessed on May, 2020

²² See “The World Health Organization Director – General’s Opening Remarks at the media Briefing on Covid-19, 11 March, 2020” accessed may 19, 2020.

²³ See “COVID -19 Dashboard by the Centre for systems science and Engineering at John Hopkins University”, Arcegis John Hopkins University accessed 19 May, 2020.

²⁴ See Centres for Disease Central Spreads”, 2 April 2020. Accessed 19 May 2020

²⁵ J. Hopkins, “Loss of sense of smell as marker of COVID-19 Infection”. Ear, Nose and Throat Surgery Body of United Kingdom 2020. Accessed 19 May, 2020.

²⁶ United States Centre for Disease Control and Prevention, “Corona Virus Disease 2019 (COVID-19) Symptoms” 20 March, 2020, accessed 19 May, 2020.

²⁷ See United States Centres for Disease Control and prevention, “Interim Clinical Guidance for Management of patients with Confirmed Coronavirus Disease. (COVID-19)” 4 April 2020 accessed 19 May, 2020.

²⁸ United States Centres for Disease Control and Prevention, “Symptoms of Novel Coronavirus (2019-NCOV)” 10 February 2020, accessed 10 May, 2020.

fourteen days.²⁹ More importantly, there is no known vaccine or specific antiviral treatment. Thus, primary treatment is symptomatic and supportive therapy.³⁰

As seen above, it is clear that the pandemic has caused severe global economic disruption,³¹ including the largest global recession which has led to the postponement or cancellation of sporting, religious, political and cultural events,³² wide spread shortages exacerbated by panic buying,³³ and decreased emissions of pollutants and greenhouse gases.³⁴ The further implications of this pandemic was the closure of schools, universities, colleges, and churches either on a nationwide or local basis in 186 countries, affecting approximately 98.5 per cent of the worlds student population.³⁵ It is important to emphasized that the general notion about this virus has spread online,³⁶ and there have been incidence of xenophobia and discrimination against Chinese people and against those perceived as being from areas with high infection rates. It is significant to note that the Pandemic has resulted to many conspiracy theories and misinformation about the scale of the Pandemic and the origin, prevention, diagnosis, and treat of disease.

2.1.2. Concept of Human Rights.

Basically, the most common categorization of human rights is to split them into civil, political, economic, social and cultural rights. In this regard, civil and political rights are enshrined in articles 3 to 21 of the Universal Declaration of Human Rights,³⁷ and also provided in the International Covenant on Economic, Social and Cultural Rights.³⁸

²⁹ T.P Valavan and C.G Meyer, "The COVID-19 Epidemic" *Tropical Medicine and International Health* 25(3) (200) pp.278-280

³⁰ International Momentary Fund Report on COVID-19, "The Great Lockdown: Worst Economic Downturn Since the Great Depression" 2020.

³¹ "A List of What's Been Canceled Because of the Coronavirus" *The New York Times* acceded 19 May, 2020.

³² S.Jade, "Why there will soon be tons of toilet papers, and what food may be scarce, according to supply chain exports". 18 March, 2020.

³³ J. watts and N. Kommenda, "Coronavirus Pandemic leading to huge drop in Air Pollution" *The Guardian Newspaper* (London, 23 March, 2020).

³⁴ United Nations Educational, Scientific, Cultural Organization (UNESCO), "COVID-19 Educational Disruption and Response" 4 March 2020 accessed 19 May, 2020

³⁵ R. Clamp, "Coronavirus and the Black Death: Spread of Misinformation and Xenophia shows we haven't Learned from our past" 5 March, 2020.

³⁶ S. Tavenise and R.A Oppel, "Spit on, Yelled at, Attacked: Chinese Americans Fear for Their Safet" *The New York Times* (New York, 23 March 2020) <<http://newyorktimes>

³⁷ Articles 3-21 of the Universal Declaration of Human Rights (1948).

³⁸ International Covenant on Economic, Social and Cultural Rights (1966).

Also, in this context, Economic, Social and Cultural Rights are enshrined in articles 22 to 28 of the Universal Declaration of Human Rights,³⁹ and in the International Covenant on Economic, Social and Cultural Rights. It should be noted that the United Nations Declaration on Human Rights (UDHR) included both Economic, Social and Cultural Rights and Civil and Political rights because it was based on the principle that the different rights could only successfully exist in combination.

In the same vein, it is true that without Civil and Political Rights, the public cannot assert their Economic, Social and Cultural Rights. On the other hand, there is another categorization of human rights which is based on three generations of human rights. First-generation which is Civil and Political Rights comprising (right to life and political participation), second-generation Economic, Social and Cultural Rights (right to subsistence) and third-generation solidarity rights (right to peace, right to clean environment). It must be emphasized that: If every possible human rights element is deemed to be essential or necessary, then nothing will be treated as though it is truly important.⁴⁰ More concretely, the philosophical precursor of this idea of human rights as being basic and intrinsic to humanity can be found in the old jurisprudence of natural law and natural rights. One should also bear in mind that from ideological pedestal, human rights cannot but be inalienable, proceeding as they did from the laws of nature and not as the gift of the civil authority.⁴¹ Similarly, the profundity and essentiality of human rights in human condition was expressed in *Ransome-Kuti v. Attorney General of the Federation*⁴² wherein Justice Kayode Eso (JSC) (RTD) held as follows: But what is the nature of a Fundamental Right? It is a right which stands above the ordinary laws of the land and which in fact is antecedent to the Political Society.

Moreover, the fact that human rights are ultimate, universal, eternal and inalienable does not mean that there are no limitations to those rights. Also, the connection between providing essential levels of economic, social and cultural rights and the survival of a person under the right to life, recognized by human beings,⁴³ makes it especially

³⁹ See Articles 22 to 28 of the Universal Declaration of Human Rights (1948).

⁴⁰ P. Alston, "Concepts in Human Rights", (2005)

⁴¹ T. Jefferson, 'International Human rights in Context' in J. Henry and P. Alston, eds. 2 edition, Oxford, (2000) P. 325.

⁴² (1985) 5WWLR (pt.10) 211, 229-230; (1985) 6 SC 245, 267 – 277.

⁴³ See Committee on Economic, Social and Cultural Rights, General Comment No. 14 (1989) Para . 3

hard to justify wide-reaching limitations under Article 4 of the International Covenant on Economic, Social and Cultural Rights (ICESCR).⁴⁴ In this context, states parties have the burden of proof of justifying the legitimacy of any limitation in relation to these elements, and must show that measures adopted to that effect are proportional; these measures should also be of limited duration and can be changed.⁴⁵

In other words, given that human rights are inherent and basic, municipal, regional and International Legal regimes had to pose and address such questions as: what are human rights? Are there exceptions or limitations? Which rights should be prioritized for legal protection? Are some rights more basic than others? Is there a hierarchy of rights? Are there generations of rights? In order to address these questions, the legal systems, municipal, regional and international came up with various bills of rights to address the “accountability gap” that may arise. It should be noted that the Nigerian Bill of Rights in this context is Chapter IV of the Constitution.⁴⁶ Also, it is imperative to understand that by virtue of the growth of International Human Rights legislation, principally through the United Nations instrumentality, the question as to the substantive and concrete ingredients of human rights jurisprudence can now be answered without resort to metaphysics. That being the case, it then suggests that Chapter IV (Fundamental Rights) of the Nigerian Constitution is not a closed list of all the human rights Nigerians may enjoy.

2.2. Restriction of Human Rights and Executive orders in the Wake of Corona Virus Pandemic in Nigeria.

One issue that also generally needs to be addressed in terms of the scope of application of the Executive Orders is the issue of human rights, such as the prohibition of torture and slavery, are absolute. Moreover, the fact that restrictions or limitations must be compatible with the nature of the rights in question constitutes a further restriction on invoking this clause.

Basically, under a state of emergency arising from an Executive Order from the President or Governor in Nigeria, especially in the face

⁴⁴ Article of the International Covenant on Economic, Social and Cultural Rights (1966)

⁴⁵ Committee on Economic, Social and Cultural Rights, General Comment No. 14 (1989) Para 28-29

⁴⁶ See Chapter IV of the Constitution of the Federal Republic of Nigeria (1999)

of this COVID – 19 Pandemic, this paper noted that there has been police brutalities across the country ranging from electric shocks and other methods causing severe physical pain or mental sufferings which is not justified on any grounds has remained unabated. It should be noted that some human rights such as the prohibition of torture and slavery are absolute. However, in times of emergency situation like Corona virus pandemic, most countries invoke several Executive Orders as measures to control the spread of the virus through its agencies like the police and military personnel to enforce the lockdown orders.

In light of the above development, it is pertinent to note that the application of interrogation techniques by the police officers or military in the guise of executing the “Executive Orders” severally amounts to torture which ofcourse, a human rights violation.⁴⁷ In other words, human rights are deemed almost sacrosanct in most part of the world that practice democracy, but however, it should be acknowledged that there are certain situations where these rights have been restricted or suspended in Nigeria. Thus, the instances are during war situation, state of emergencies, coup and/or outbreak of pandemics such as Corona virus.

Fundamentally, the Constitution of the Federal Republic of Nigeria⁴⁸ as amended, in its Chapter Four(IV) thereof, provide for certain rights that cannot be easily extinguished. In that regard, these rights includes, right to life,⁴⁹ right to dignity of person,⁵⁰ right to fair hearing,⁵¹ right to private and family life,⁵² right to freedom of thought, conscience and religion,⁵³ right to peaceful assembly and association,⁵⁴ right to freedom of movement,⁵⁵ right to freedom from discrimination,⁵⁶ right to freedom of expression,⁵⁷ right to acquire and own immovable property⁵⁸ anywhere in Nigeria.

⁴⁷ See Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (1987)

⁴⁸ See Constitution of the Federal Republic of Nigeria (1999)

⁴⁹ Section 33(1) and (2) of CFRN (1999)

⁵⁰ Section 34(1) and (2) of CFRN (1999)

⁵¹ Section 35(1) (2) (3) (4) (5) (6) and (7) of CFRN (1999)

⁵² Section 36(1) – (12) of the CFRN (1999)

⁵³ Section 37 of the CFRN (1999)

⁵⁴ Section 38(1) – (4) of the CFRN (1999)

⁵⁵ Section 40 of the CFRN (1999)

⁵⁶ Section 41 of the CFRN (1999)

⁵⁷ Section 42 (1) – (3) of the CFRN (1999)

⁵⁸ Section 39 (1) – (3) of the CFRN (1999)

In view of this broad understanding of certain rights provided under the Constitution of the Federal Republic of Nigeria, 1999, as amended, at chapter Four(iv),⁵⁹ this paper will focus on the exception to some of these rights with regard to the application of executive orders during emergency situations, or/an outbreak of a pandemic. It seems worthwhile to confine our study here which has a direct bearing on the subject matter of this paper. Indeed, it may be argued that even when there are no extraordinary circumstances like state of emergencies or a pandemic, human rights are rarely respected in Nigeria as this paper noted daily extrajudicial killings of citizens by law enforcement officials and unlawful arrest of Nigerian citizens.

Obviously, in Nigeria, all the fundamental human rights are contained in section 33 up to 46 of the Constitution of the Federal Republic of Nigeria. As explained above, the better view is that, these rights have been held to be sacrosanct, save for instances that are equally provided in the grundnorm, as aptly captured in omnibus part of section 45 of the Constitution⁶⁰ which restricts the fundamental human rights guaranteed under sections 37 to 41, for instance, the rights to private and family life, rights to freedom of thought, conscience and religion, rights to freedom of expression and the press, rights to peaceful assembly and association and rights to freedom of movement.

More importantly, it would be pertinent to state that section 45 of the Constitution⁶¹ provides that:

Nothing in the aforementioned sections shall invalidate any law that is reasonably justifiable in a democratic society in the interest of defense, public safety, public order, public morality or public health or for the purpose of protecting the rights and freedom of other persons.

From these different dynamics and discussions, a Nigerian Court, in the case of *National Union of Electricity Employees v. Bureau of Public Enterprises*,⁶² where the court while considering the provision of section 45 of the Constitution of the Federal Republic of Nigeria held as follows:

That the fundamental rights under section 40 as well as others, that is, under section 37, 38, 39 and 41 has to be

⁵⁹ Section 43 of the CFRN (1999)

⁶⁰ See Section 45 of the Constitution of the Federal Republic of Nigeria (1999)

⁶¹ Sections 37, 38, 39, 40 and 41 of the CFRN (1999).

⁶² Sections 45 of the CFRN (1999).

read subject to what is reasonable within the democratic society. That is to say, the defendant appellant rights under section 37 and rights to privacy, among other fundamental rights under the constitution of the Federal Republic of Nigeria 1999 are not absolute.

Another significant development where fundamental human rights of citizens can be subject to restriction is that provided under section 33 of the Constitution⁶³ on the right to life. Also at S. 33(3) of the Constitution⁶⁴ as amended, this paper noted that the fundamental rights to life is restricted if such life is taken in a manner permitted by law, that is, in defense of self, property or others, in order to effect a lawful arrest or to prevent the escape of a person lawfully determined. In the same vein, it suffices for the moment to say that at section 35(1) (E), the rights to personal liberty can be derogated from in the case of a person suffering infectious or contagious disease, persons of unsound mind, persons addicted to drugs or alcohol. It is also crucially important to note that in light of the foregoing, that the Supreme Court of Nigeria in the case of *Osawe Vs Registrar of Trade Unions*⁶⁵ held that one has to bear in mind, that the rights guaranteed under sections 34, 35, 37 and 38 of the Constitution of the Federal Republic of Nigeria are “qualified rights” and not absolute rights.

Pursuant to the above views expressed by the court, it may be likewise being argued that certain issues stand out, to wit, infectious diseases as a ground upon which fundamental human rights can be restricted. It must be stressed that the court in this context provides an indication that certain acts or rights of a persons or group of persons may be restricted at any time and in any place whatsoever. As regards COVID-19 Pandemic being declared by World Health Organization as a global infectious disease which can spread directly or indirectly from one person to another, has led to the suspension or restriction of some of the otherwise guaranteed fundamental human rights in the Constitution of the Federal Republic of Nigeria. Arguing that President Muhammadu Buhari relying on the Quarantine Act,⁶⁶ the Section under consideration, and Section 45 of the Constitution of the Federal Republic of Nigeria 1999 suspended the rights to freedom of movement, assembly and association in all the parts of the country in

⁶³ (2012) LCN/4022 (SC).

⁶⁴ Sections 33 of the CFRN (1999)

⁶⁵ Sections 33(3) of the CFRN (1999).

⁶⁶ (1985) NWLR (pt.4) 755.

the interest of the public safety, aimed at curtailing the spread of the corona virus pandemic and reducing human sufferings associated with such virus has remained a contentious issue amongst scholars of international human rights law and human rights practitioners. Whatever the state of legal development or public perception on the restriction of some of the fundamental human rights in the constitution, it can no longer be denied that the Constitution of the Federal Republic of Nigeria has undergone a noteworthy process of assimilation of the law protecting public interest, safety and public health, especially with respect to the particularly sensitive area bothering on the spread of the corona virus pandemic.

It should be noted that the Interpretive Guidance under the Constitution was intended to provide public safety. Any interference, restriction or penalty must, however, be carried out in accordance with domestic law and must be necessary for achieving the respective aims and national interests in a democratic society. States must in any case demonstrate the necessity of applying such limitations, and take only those measures which are proportionate to the pursuance of the legitimate aims.⁶⁷

2.2.1. Derogation During State of Emergency

Again, opinions on this issue will differ. But even if it does not justify any reason given by government for such declaration, the obvious reason remains that it is relatively easy to declare a state of emergency under a military government, but quite a tedious process under a civilian government in Nigeria. It is so because the intention of the drafters of the Constitution is that a state of emergency should only be declared when it is absolutely necessary, or there is an occurrence or imminent danger or the occurrence of any disaster or natural calamity or there is any public danger which clearly constitute a threat to the existence of the federation.⁶⁸

Pursuant to another similar view, it is submitted, in keeping with the provisions of the Constitution of the Federal Republic of Nigeria 1999, bothering on declaration of state of emergency, it should be noted that at section 45(2) of the Constitution,⁶⁹ the apex law stipulates that:

An act of the National Assembly shall not be invalidated only by the reason that it provides for the taking, during a

⁶⁷ See Nigerian Quarantine Act (2004).

⁶⁸ See Article 19 of the International Covenant on Civil and Political Rights (1966)

⁶⁹ Section 305(3) of the Constitution of the Federal Republic of Nigeria (1999)

period of emergency, of measures that derogate from the provisions of sections 33 to 35 of the constitution.

It may also be pointed out that the Constitution of the Federal Republic of Nigeria (CFRN 1999) has provided clarity on what amounts to a period of emergency.⁷⁰ On the contrary, this paper noted that in exceptional circumstances, including natural disasters, armed conflict, or public emergencies that threaten the life of a nation, governments may take measures derogating from their human rights obligations provided that the following conditions are met:⁷¹

- i) A state of emergency, which threatens the life of the Nation, must be officially declared.
- ii) The specific measures derogating from an international treaty must be officially notified to the competent international organizations and other states parties.
- iii) Derogation is permissible only to the extent strictly required by the situation.
- iv) The rights subject to derogation must not be among those that admit no derogation.⁷²

Furthermore, it is a different order of legal magnitude to state that this obligation exists in varying forms. For instance, under the African Charter on Human and Peoples Rights, it must be emphasized that the charter does not contain a derogation provision, however, states parties may derogate from certain rights in times of emergency.⁷³

At the international level, a slightly different understanding on derogation during state of emergency has been expressed.⁷⁴ However the human rights committee in its general comment no. 29 on states of emergency stressed that the list of non-derogable rights contained in article 4(2) of the International Covenant on Civil and Political Rights is not necessarily exhaustive. It is submitted that certain rights or elements of rights not listed in article 4(2) of the International Covenant on Civil and Political Rights, such as the rights of all persons deprived of their liberty to be treated with humanity and

⁷⁰ Section 45(2) of the CFRN (1999)

⁷¹ Ibid

⁷² Article 4 of the International Covenant on Civil and Political Rights (1966), Section 45 of the CFRN (1999), Section 305 of the CFRN (1988).

⁷³ Ma Planck, 'Encyclopaedia of Rights Contained in Article 4(2) of Public International Law, African Charter of Human and Peoples Rights (1981)

⁷⁴ See General Comment No. 29 (2001) of the Human Rights Committee on Derogation during State of Emergency.

respect for the inherent dignity of human persons cannot be made subject to lawful derogation.

In addition, the human rights committee maintained that the procedural safeguards such as judicial guarantees, may never be made subject to measures that would circumvent the protection of non-derogable rights. Moreover, it held that the principles of legality and the rule of law that fundamental requirements of fair trials ⁷⁵ must be respected during a state of emergency.

2.2.2. The Right to Life under a State of Emergency

The Right to life is the most fundamental human rights and cannot be subjected to derogation even in war or in states of emergency. Unlike the prohibition of torture or slavery, however, the rights to life is not an absolute right. Thus, article 6(1) of the International Covenant on Civil and Political Rights⁷⁶ provides that; every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.

On the other hand, section 33 of the Constitution of the Federal Republic of Nigeria ⁷⁷ provides that;

Every person has a right to life, and no one shall be deprived intentionally of his life, save in execution of the sentence of a court in respect of a criminal offence of which he has been found guilty in Nigeria.

It is clear that the right to life has explicitly or implicitly been recognized, albeit in differing language, under the human rights standards ratified by Nigeria. In this regard the right to life not only protects individuals arbitrary interference by government agents, but also obliges states to take positive measures to provide protection from arbitrary killings, enforce disappearances and similar violent acts committed by police or military personnel during state of emergency. Adopting a more enlightened approach, this paper maintained that states must therefore criminalize these acts, and implement appropriate measures to prevent, protect an remedy violations of the rights to life

⁷⁵ Article 6(1) of the International Covenant on Civil and Political Rights (1966).

⁷⁶ Section 33(1) of the constitution of the federal republic of Nigeria (1999).

⁷⁷ Human Rights Committee, General Comment No. 29: States of Emergency (2001).

3.2.2. Issues Arising from Human Rights Violation under State of Emergency in Nigeria.

Admittedly, in deciding whether there are rights to be protected, breached or threatened thereto, that amounts to several violations of these rights under a state of emergency in Nigeria of course, cannot be overemphasized. It can be recalled that from 1962 when the first state of emergency was declared in Nigeria up to the present day restriction declared by President Muhammadu Buhari, there have always been attendant violations either by law enforcement personnel or members of the public. Moreso importantly, the greatest among these rights that have been violated is the right to life. It has been pointed out that the right to life is deemed sacrosanct and can only be derogated from in the rarest of circumstance. In addition, some civil and political rights are non-derogable, most importantly, the rights to life and the right to be free from torture or other ill-treatment.⁷⁸ Moreso, even with regard to those rights that are subject to derogation in principle, such as the rights not to be arbitrarily deprived of one's liberty or the right to freedom of movement, states must justify specific measures as been required by the agencies of the situation.⁷⁹ Also, under states of emergency, measures of derogation must not be inconsistent with other obligations of the states under international law and must not involve discrimination.⁸⁰ Another fundamental issue as opposed to treaties enshrining civil and political rights is that treaties on economic, social and cultural rights, in particular, the International Covenant on Economic, Social and Cultural Rights ⁸¹ generally do not contain any expressed provisions on derogation.⁸²

In the light of above development, and in recognition of the provision of section 33 of the constitution of the Federal Republic of Nigeria, it should be noted that the rights to life is perhaps the least respected rights by state actors in Nigeria. It can be recalled that recent additions of security agents in the enforcement of lockdown orders in Nigeria have severally resulted to extra-judicial killings. It would be argued that to what extent has the extra-judicial killings of Nigerian Citizens who flouted the lockdown orders been able to justify the taking of one's life. Therefore, the argument been canvassed in this paper is that the right to life is still deemed sacrosanct and can only be

⁷⁸ Article 4(1) Of The International Covenant On Civil And Political Rights (1966).

⁷⁹ Ibid; human Rights Committee, General Comment no. 29, paras. 8-9.

⁸⁰ International covenant on economic, social and cultural rights 1966 (ratified in Nigeria in 1993).

⁸¹ Article 30 of the European social charter (1965).

⁸² Section 34 of the Constitution of the Republic of Nigeria (1999).

derogated from in the rarest of circumstances. Then, this paper asked whether the said punishment is commensurate to the crime of breaching the lockdown order that warrants the killing? It is also worth pointing out some of the issues arising from human rights violation under a state of emergency in Nigeria. Firstly, on the Right to dignity of Human Persons. It should also be recalled that under section 34 of the Constitution of the Federal Republic of Nigeria,⁸³ “every individual is entitled to have his dignity respected and protected by the state”. The purpose of this is to ensure that no person shall be subjected to torture or to inhuman or degrading treatment, slavery, servitude or required to perform forced or compulsory, labour. But on the contrary, it must be stressed that the implementation of the Coronavirus (COVID-19) Pandemic restriction orders has left much to be desired as it relates to the dignity of Nigerian citizens.

Another notable issue is that all over Nigeria, instances abound where state actors have subjected citizens to inhuman and degrading treatment either by flogging them, or by making them engage in what is popularly called “frog jump” and other “forced” or compulsory labour. This approach notably aims at subjecting citizens to all manner of torture and arrest, all in the guise of implementing the present lockdown orders. However, it is in the light of the above that the court held in *Mogaji & ors v. Board of Customs and Excise*⁸⁴ that it is wrong to torture a Nigerian citizen in the guise of carrying out a search. However, this apparent shift in the enforcement of executive orders is also noticeable in the case of *Goriet v. Union of Postal Workers Union*,⁸⁵ where the Legendary Lord Denning State that “be you ever so high, the law is above you”. Similarly, in 1983, the domestication of African Charter of Human and Peoples Rights with its Article 5,⁸⁶ further boosted the citizen’s rights to freedom from torture and human degradation. The Charter has been declared *primus inter pares* of other domestic statutes in a plethora of cases. Secondly, on the Right to Personal Liberty, it must be noted that by virtue of section 35 of the Constitution of the Federal Republic of Nigeria⁸⁷ every citizen is entitled to his personal liberty and no citizen shall be deprived of such liberty save in a manner provided for in the Constitution. At a deeper level, this right can be derogated from where a person is suffering

⁸³ (1982) 3 NCLR552.

⁸⁴ (1977) 3 All ER 70

⁸⁵ Article 5 of the African Charter on Human and peoples Right (1979)

⁸⁶ Section 36 of the Constitution of the Federal Republic of Nigeria (1999)

⁸⁷ Section of 36(4) of the CFRN (1999)

from infectious or contagious disease, as is presently the case in Nigeria at the moment. The argument here might be whether these rights can be restricted without necessarily subjecting the citizen to inhuman and degrading treatment. Ultimately, the obvious answer is in the affirmative. These restrictions of the rights to personal liberty are of different kinds. On the one hand, there are persons who are ordinarily infected by the infectious disease, while on the other hand, there are equally persons who, though not infected, but have their liberty restricted in the guise of “general good” of the citizens. In other words, in the context of section 35 of the Constitution of the Federal Republic of Nigeria, the rights to personal liberty for these set of persons is of course, a constitutional right that should not be taken away or violated arbitrarily. It is important to underline that persons who may have escaped from an isolation center and forcefully brought back by state actors to isolation centers were faced with several constitutional breaches. It is on this action that the court in *Eze v. Inspector-General of Police & 4 Ors*⁸⁸ held that: “The Police cannot arrest anyone for any offence not criminal in nature”. It is on this reasoning that this paper argue that those who have escaped from isolation center and subsequently re-arrested by the Police has raised fundamental question on their rights to liberty as many of the escapees believed that traditional medicine will cure them from the infectious coronavirus disease.

Thirdly, on the Right to Fair Hearing provided under section 36⁸⁹ of the Constitution of the Federal Republic of Nigeria. It is necessary to mention here briefly that the doctrine of fair hearing is one of the great pillars of human rights which of course, without it, justice cannot be served. In order to understand and correctly appreciate the doctrine of fair hearing, it should be noted that it is largely based on two general principles, to wit, the fact that no man should be a judge in his own case, and every person should be given an opportunity to defend himself. In addition, every citizen who is charged with a criminal offence must be given ample time and opportunity to prepare his defense and equally have a right to engage a legal practitioner of his choice.⁹⁰ It has been rightly observed by this paper that this is one area where the COVID-19 government restriction has largely affected the fundamental human rights of the citizens.

⁸⁸ Ibid

⁸⁹ Section 36(6)(d) of the CFRN (1999)

⁹⁰ Section 36(6)(c) of the CFRN (1999)

In other words, it can be said that citizens who otherwise have caused to go out in pursuit of essential services or daily bread will found themselves bundled before a speedily constituted mobile court where justice is sacrificed on the altar of speed. In fact, these citizens are denied the constitutional provision contained in section 36⁹¹ and however made to face a body of persons that have no semblance whatsoever to a functional court provided for in the constitution. Additionally, it is relevant to mention that the accused persons in this regard are denied the rights to call witnesses,⁹² denied the right to call their personal legal representative,⁹³ denied the rights to seek for an adjournment all in an attempt to reach a preconceived judgement and enforce the coronavirus restriction orders. This was the contention in *Shugaba v. Minister of Interior Affairs*,⁹⁴ where the court held that the defendant was not given sufficient time and facility to defend himself before a decision was reached to deport him to Cameroun, and a similar case in Zaman “*Lekwot & ors v. Federal Republic of Nigeria*.”⁹⁵

In light of the above development, the United Nations Secretary General made clear that human rights should guide the COVID-19 response and called on governments to ensure that the emergency measures are legal, proportionate, necessary and nondiscriminatory.⁹⁶ Likewise, the African Commission on the Human and Peoples Rights recently urged states to take appropriate measures and ensure that restrictions on human rights under emergency measures are crafted carefully and implemented in a proportionate manner.⁹⁷

Fourthly, on the Right to Privacy, the privacy of citizens, their homes, correspondence, telephone conversations and telegraphic communications in hereby guaranteed and protected.⁹⁸ The point being made here is that except in pursuance of a court order and just cause as provided under section 45(1) of the Constitution of the Federal Republic of Nigeria⁹⁹ as it relates to public interest, public safety, public order, public health, state of emergency and as well as the protection of the rights of others that the aforesaid rights to privacy

⁹¹ (1981) 2NCLR 459

⁹² (1997) SC. 230/1992

⁹³ See United Nations General Secretary Commentary on the Enforcement of Emergency Measure under COVID – 19 Response and Recovery, 23 April, 2020.

⁹⁴ See Africa Commission on Human and Peoples Rights Commentary on the Enforcement of emergency measure under COVID-19 24 March, 2020.

⁹⁵ Section 37 of the CFRN(1999).

⁹⁶ Ibid

⁹⁷ (2012) JELR6197 (CA)

⁹⁸ (2011) SC. 162/2011

⁹⁹ Section of 45 of the Constitution of the Federal Republic of Nigeria (1999)

cannot be derogated from. It is however, relevant to mention that the present restriction orders in Nigeria has overtly threatened the sacrosanctity of section 37 of the constitution, in the guise of searching for infected coronavirus patient who either had escaped from the isolation centre or have refused to submit himself for test. This was provided in the case of *Nigeria Security and Civil Defence Corps & Anor v. Emmanson Ukpeye*,¹⁰⁰ and a similar case in Federal Republic of Nigeria v. Joseph Daniel.¹⁰¹ However, from what otherwise be the consequences of such action, the court are not willing to go beyond the ambit of S.45 of the Constitution¹⁰² in this regard.

Fifthly, on the Right of Freedom of Thought, Conscience and Religion, it provided that:

Every person shall be entitled to freedom of thought, conscience and religion, including freedom to change his religion or believe, and freedom to manifest and propagate his religion or belief in worship, teaching, practice and observance¹⁰³

The important aspect of this section is that except for reasonable cause, the right to freedom of religion shall not be infringed upon. In practice, it should be noted that the Nigerian government COVID-19 restriction order has affected the aforesaid rights. Infact, citizens have been forced to avoid any form of religious gathering which suggests restrictions of their rights to religion, worship and teaching. A possible compromise position would be to accept that state actors are doing this to curtail the spread of the virus, but some will then asked whether the aforesaid actions of state actors in this regard does not amount to derogation from the constitution? Whatever the reason might be, the answer must be in the affirmative.

Sixthly, on the Right to Freedom of Association,¹⁰⁴ every person shall be entitled to assemble freely and associate with others, but yet, this rights have severally been violated by state actors in the guise of enforcing the restriction orders. More fundamentally, even only considering operations carried out by state actors in this regard, the undertaking to ensure respect for fundamental human rights under the Chapter IV of the constitution of the Federal Republic of Nigeria

¹⁰⁰ Section 38(1) of the CFRN (1999)

¹⁰¹ Section of 40 of the CFRN (1999)

¹⁰² (2007) 18 NWLR (Pt.1066) 457 C.A

¹⁰³ International Covenant on Civil and Political Rights (1966)

¹⁰⁴ Article of the International Covenant on Civil and Political Rights (1966)

cannot justify a violation of the right to peaceful and freedom of association, as it is generally agreed that the enforcement of this restriction orders may not be relied upon as a basis for violating human rights. Ironically, this paper noted that the central team of the Nigerian government regulation on COVID-19 is the restriction of freedom of assembly and association. This however, was illustrated in the case of *All Nigerian Peoples Party v. Inspector-General of Police*,¹⁰⁵ where the Court held that: The Public Order Act should be promulgated to compliment sections 39 and 40 of the constitution in context and not to stifle or cripple it.

In view of the above, it should be noted that Nigeria is a state party to the 1966 International Covenant on Civil and Political Rights (ICCPR).¹⁰⁶ However, Article 21 governs that right of peaceful assembly¹⁰⁷ and provide that:

The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others.

Ultimately, to state the obvious, Nigeria is not a state party to the First Optional Protocol to the International Covenant on Civil and Political Rights, which allows individuals to petition the Human Rights Committee if they believe the state has violated their human rights as provided under the covenant. Conversely, at the regional level, Nigeria is a state party to the 1981 African Charter on Human and Peoples Rights.¹⁰⁸ Lastly, on the Right to Access to Court, it has been rightly observed that under section 46 of the Constitution¹⁰⁹ which provides that:

Any person who alleges that any of the provisions of this Chapter has been, is being or likely to be contravened in any state in relation to him may apply to a High Court in that state for redress.

¹⁰⁵ Article 10 of African Charter on Human and Peoples Rights (1979)

¹⁰⁶ Section 46(1) of the CFRN (1999)

¹⁰⁷ Section of 46(1) of the CFRN (1999), Order II Rule I of the Fundamental Rights (Enforcement Procedure) Rules (2009).

¹⁰⁸ Order III Rule I of the Fundamental Rights (Enforcement Procedure) Rules (2009).

¹⁰⁹ *Ekundayo v. University of Ibadan* (2000) 12 NWLR (Pt 681) 220.

But on the contrary, prior to the formal proclamation of the Presidential Order on COVID-19 Pandemic in Nigeria, the Chief Justice of Nigeria had issued a directive directing all courts across the federation to go on a break in the first instance. However, the effect of the foregoing is that in the event of the breach of the citizen's rights arising from the COVID-19 restriction, the right to seek redress in a court of law is extremely restricted in the hurriedly constituted mobile court that lack the powers or jurisdiction to appeal against such conviction as a result of the COVID-19 restriction.

To this end, a pertinent question for consideration in the present circumstance is, should pandemics or any similar extraordinary phenomenon which significantly halts the basic functioning and daily activities of a society, particularly, the courts, be exempted from the computation of time prescribed by a statute, particularly where such event remains unabated for a significant length of time and inhibits public access to court system as well as the ability of the courts to perform its constitutional roles?

2.2.4. Enforcement Challenges on Human Rights Violation Arising from Corona Virus Restriction Orders

Absolutely, there are of course many challenges arising from one form of violation to another especially during the restriction order which has made it difficult for an aggrieved person to seek redress in court. However, the impact of the crisis as well as the legal and policy responses developed by states to counter the spread of COVID-19 have much wider ramification that affect a broad range of human rights, including the ability of people to access justice in a timely, fair, and effective manner.

A key concern is that Courts are closed down or have adjusted their operations, which have negatively impacted on the provision of timely and increased backlogs of cases unattended to give its exigencies. In that sense, those who have been unjustly convicted in the hurriedly constituted mobile court cannot have access to court to appeal against their conviction as a result of the COVID-19 restriction order. In view of this lack of access to court and the rights to access justice and due process orchestrated by the restriction orders, the functionality of the provisions of section 46(1) of the Constitution in this regard has long remained without a clear answer. However, section 46(1) of the Constitution provides thus:

Any person who alleges that any of the provisions of this chapter has been, is being or is likely to be contravened in

any state in relation to him to sue for the enforcement of his fundamental rights.

This clause has raised two important questions: can the person who alleges violation of his rights has locus standi in a human rights action even after the lockdown restriction order? And are there situation where the aggrieved person cannot have a right of action in court? Firstly, from perusal of Order III Rule I,¹¹⁰ an application for the enforcement of Fundamental Rights shall not be affected by any limitation statute what so ever. Moreso, the wordings of section 46(1) of the 1999 Constitution cannot be narrowly construed so as to defeat the intended purpose of the action.¹¹¹ It should be noted that the combined effects of the provisions of sections 6 and 46 of the constitution gave judicial power to courts of law for the determination of civil rights and obligation of any person in relation to another person authority or government.¹¹² Also, in the light of such provisions of the sections, a person has access to court to challenge a violation or imminent violation of his rights.¹¹³ On the second question, the answer must be in the affirmative. It bears emphasizing that one of the tests is that the action must be justiciable and the plaintiff must be able to establish a sufficient interest in the subject matter of the suit before he could be accorded standing, or else, he would be treated as a stranger and, as such, denied the right to maintain the action in court of law.¹¹⁴

Generally speaking, aside from standing rules, there are other emerging challenges on the protection and enforcement of fundamental rights in Nigeria especially during this COVID-19 restriction orders which among other things include lack of access to court, deficiencies in the substantive provisions of the Bill of Rights and other laws as well as inadequate procedural rules for the enforcement of rights. Also, the procedural requirements, such as pre-action notices, limitation periods and outer clauses, have the potential impact and effect of limiting access to court for the enforcement of rights. In a similar vein, instances of court congestion and a delay in trial, which is now a notable factor in the Nigerian judicial system, also constitute formidable constraints on the enforcement of rights in Nigerian Courts.

¹¹⁰ Sofekun v. Akinpelu & ors (1981) 1 NCLR 105

¹¹¹ Shugaba Darman V. Minister of Internal Affairs (1981) INCLR 25

¹¹² Emezi v. Osuagwu (2005) 12NWLR (Pt. 939) 240,362

¹¹³ C. Obiagwu and C.A Odinkalu "Legacies of Colonialism and Militarism" in A.A. An-Na'im (ed) Human Rights under African Constitutions (2003) 230.

3. Conclusion/Recommendation

It is clear that this paper has dealt largely on the ongoing Corona Virus Pandemic in Nigeria as it relates to the effects of executive orders on the fundamental rights regime in Nigeria. What this paper has done therefore is to analyze instances where the policies emanating from Corona Virus Pandemic particularly those of the World Health Organization, as adopted by Nigeria, has infringed on the Citizens aforesaid rights. In addition, this paper has equally examined the justification of restriction of citizen's rights during state of emergencies in Nigeria. Furthermore, while it is accepted that the constitutional provisions are limited and require review, it is, of course, imperative to suggest that the Nigeria judicial system should through a judicial reform relax the restrictive rules of standing by giving section 46 of the Constitution a more elaborate and purposive interpretation.

Moreso, it can be concluded that, since the impact of the crisis as well as the legal and policy responses developed by states to counter the spread of COVID-19 Pandemic which have much wider ramifications that affect a broad range of human rights, including the ability of people to access justice in a timely, fair, and effective manner, this paper however, maintained that emergency powers must be in line with constitutional human rights obligations. Limitations on human rights and fundamental freedoms should be proportionate, nondiscriminatory, time bound, and strictly related to the containment of the contagion, and subject to review. In this sense, legal safeguards and oversight mechanisms must be in place to ensure that any derogation or restrictions/limitations of rights does not continue indefinitely, and that states protect and ensure human dignity and the rights of all people. In this context, the role of the judiciary, as a check on executive actions and as an upholder of the rule of law, is crucial at this time. It can be justifiably concluded that judicial oversight of the implementation of emergency measures by law enforcement and other authorities is necessary to avoid the excessive use of emergency powers to suppress dissenters or to target vulnerable or marginalized groups such as street vendors and street children, or members of social, ethnic, or religious minority groups.

Consequently, it is recommended that due to the nature of judicial processes, such as person participation in proceedings, the formal justice system may not be available to effectively function in the context of a "Lockdown Restriction Order", this paper however recommend that opportunities to innovate and to identity new

processes and procedures to modernize justice systems in the area of enforcement of human rights has become necessary.

Secondly, this paper recommend that support is required to develop strategies to strengthen policies, regulations and capacities of the justice sector in order to continue to provide essential services during the COVID-19 Pandemic, while ensuring that business continuity does not come at the expense of the most marginalized society. However, the COVID-19 context has the justice sector to examine ways in which the justice system can become more efficient and proactive on human rights issues, with long-term impact that can last beyond the crisis period.

Thirdly, this paper also recommend that it has become necessary to develop a strategy for prioritization of critical cases, while continuing to protect the rights of defendants, for instance, priority should be given to cases involving child offenders, detention of children, violence against women and where the statute of limitation may apply.

Fourthly, this paper recommend for the provision of equipment and training to enable court systems to function virtually, where appropriate and finally, this paper also recommend that there should be an enhancement on law enforcement accountability, integrity and oversight. In this case, the judiciary and other state and non-state accountability and oversight mechanisms, should be prepared to monitor the actions of the law enforcement and security actors so that they will enforce their responsibilities within the scope of the emergency regulations and are held accountable for any abuse of authority.