



**WHY THE LOCKDOWN  
MEASURES AND CURFEWS  
IMPOSED BY THE NIGERIAN  
GOVERNMENT INFRINGES  
ON THE FUNDAMENTAL  
RIGHTS OF NIGERIANS  
AND BUSINESSES**

## Abstract

Like the rest of the world, Nigeria is currently battling the COVID-19 pandemic. Naturally, the Nigerian government would be expected to take steps to protect the health and safety of Nigerian citizens; however, unlike other countries in the global community, the government has taken these steps in total disregard of Constitutional provisions. The measures adopted by the government which includes state-wide lockdowns, imposition of curfews, closure of businesses and banning of inter-state trips are all actions that directly derogate from one's fundamental rights as guaranteed by the 1999 Constitution of Nigeria (as amended). It is therefore disheartening that in implementing these measures, the government had recourse not to the Constitution that created these rights, but to a public health enabling law that stemmed its root from Section 35(1) (e) of the 1999 Constitution (as amended). The said provision (i.e. Section 35(1) (e)) however, only allows for the deprivation of a person's right to liberty where in the event that they are sick or infected by contagious diseases. While the usefulness and the possibility of positive results from these measures are not in question, our contention however, is that a democratic government cannot make directives and orders which when effected, would serve to violate guaranteed fundamental rights of its citizens. This article therefore seeks to highlight the ripple effects of the lockdown/stay at home directives and curfews imposed by the Nigerian government as a result of their failure to adhere strictly to the laid down provisions of the 1999 Constitution of Nigeria (as amended).

# INTRODUCTION

President Buhari, on the 29th March, 2020, ordered the cessation of all movement in Lagos State, Ogun State and the Federal Capital Territory (FCT) for an initial period of fourteen (14) days, directing all citizens within these states to stay at home. In giving legal backing to his actions, the President, on 30th March 2020, signed the Federal Government's COVID-19 Regulations of 2020 ("the Regulation").<sup>1</sup> More recently, the President also issued new guidelines making it an offence to appear in public without a face mask or face covering; proscribing gatherings of more than 20 persons; imposing an 8pm-6am curfew in Lagos State; and outrightly locking down Kano State amongst other directives. Surprisingly, the President, in the Regulation's preamble, cited not the Constitution of the Federal Republic of Nigeria (as amended), but a health law- the Quarantine Act<sup>2</sup>, a legislation entirely limited in its intend-

ed scope<sup>3</sup> to authorize a lockdown on Nigerians. Far reaching on this decision was that business and enterprises not designated as essential services within the states of the imposed lockdown were prevented from their right to operate and function optimally. However, it should be stated that the Quarantine Act merely authorizes the President to quarantine or make regulations regarding infected persons in order to limit the spread of any disease. The Act cannot therefore be construed as an enabling authority for any regulation that would affect the rights to liberty, movement, religion and assembly of uninfected citizens, especially where the Constitution clearly stipulates the procedures for any such restriction of rights. To better appreciate this fact, it is necessary to appraise the history and scope of the Quarantine Act in Nigeria.

<sup>1</sup> The Regulation designated COVID-19 as a dangerous infectious disease and also attempts to grant legal backing to the directives earlier issued by the President.

<sup>2</sup> CAP Q2 LFN 2004

<sup>3</sup> The President cited sections 2, 3 and 4 of the Quarantine Act as the enabling law. These sections cited only enables the President, the power to declare any place an infected local area.

# THE QUARANTINE ACT AND THE PUBLIC HEALTH LAW OF LAGOS STATE

In 1926, under colonial rule, the British government enacted the Quarantine Act of 1926 in order to provide legal backing for its measures taken to curtail the outbreak of diseases like cholera and the Spanish flu<sup>4</sup> in Nigeria. The Quarantine Act principally was enacted to limit the spread of infectious diseases from sick and infected persons to healthy persons. Furthermore, in realization of the threat posed by infectious diseases, the Constitution of Nigeria (as amended) under Section 35 (1) (e) formed the basis and gave legal authority to the powers exercisable by the President under the Quarantine Act to issue regulations to check against the spread of infectious diseases<sup>5</sup>.

However, legal proponents have suggested that section 45(1) of the 1999 Constitution of Nigeria legalizes the regulations passed by President Muhammadu Buhari<sup>6</sup> as the said regulations can be justified as a reasonably justifiable law in the interest of public order, public safety and public health<sup>7</sup>. Respectfully, the argument is manifestly flawed. It must be understood that the requirement of reasonable justifiability in a democratic society denotes that such law must have been passed in compliance with *due process* as is obtainable in a democratic society and

must be capable of vesting the powers it purports to authorize. Therefore, a law that authorizes an ultra vires act cannot be construed as reasonably justified in a democratic society- see Supreme Court authority of *Ekanem & Ors v. Obu*<sup>8</sup> wherein the Court held that an ultra vires act would be invalid no matter how purportedly well conducted. For this reason, it is submitted that the President acted in excess of his powers by issuing a lockdown and imposing a curfew within states in Nigeria.

Sadly, the Attorney General of the Federation, Abubakar Malami (SAN), in support of the President's actions opined that the President had acted correctly under the powers conferred on him by the Quarantine Act<sup>9</sup>. Again, it must be submitted respectfully, that the Attorney General of the Federation failed to address the issue concerning the lack thereof of the Quarantine Act to deprive citizens and/ or restrict their fundamental rights to freely move and associate. It must thus be emphasized that such powers exercised by the President can only be exercised in strict adherence to constitutional provisions and not the provisions of the Quarantine Act.

<sup>4</sup> These measures mainly included quarantining infected ships and persons.

<sup>5</sup> Section 35(1)(e) of the 1999 Constitution (as amended) allows the restriction of the right to personal liberty of persons suffering from infectious or contagious disease, persons of unsound mind, persons addicted to drugs or alcohol or vagrants, for the purpose of their care or treatment or the protection of the community. Under this section the corona virus is classifiable as an infectious or contagious disease.

<sup>6</sup> Section 45(1)(a) makes provisions to the effect that the fundamental rights to religion, assembly and movement, among others, shall not 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.

<sup>7</sup> "Why the quarantine Act of 1926 cannot legalize restriction of movement by the president- a reply by Joseph Anele Esq." BUSINESS DAY, 1st April 2020

<sup>8</sup> (2010) LPELR-SC. 47/1995

<sup>9</sup> "AGF slams Adegboruwa for faulting Buhari's lockdown order", PUNCH, March 30, 2020. The Attorney General Federation made reference to Section 4 of the Quarantine Act which empowers the President to make regulations to prevent the introduction, spread and transmission of any dangerous infectious disease.



Interestingly, the Quarantine Act has been caught up in another grossly extra-judicial set of directives- the Lagos State Infectious Diseases Regulations 2020<sup>10</sup> (“the Lagos State Regulation”). The Lagos State Regulation cites the Lagos State Public Health Law<sup>11</sup> and sections 8, 2, 3 and 4 of the Quarantine Act as its enabling legislation<sup>12</sup>, and like the Quarantine Act, the Infectious Diseases Regulations lacks constitutional endorsement to restrict the fundamental rights of citizens to go about their daily activities. Again, this view is characterized by the fact that the Public Health Law of Lagos State cannot in any way be interpreted as applying to persons who are neither infected nor contagious. It must however be stated at this juncture that the Public Health Law is simply limited to concerns of the health of persons in Lagos State. A review of the law will show amongst other health concerns that the Commissioner for Health of Lagos State can only seek to deprive an individual’s personal liberty in situations where such person(s) is diagnosed with an infectious disease. The Commissioner for Health in this regard can thus declare areas within Lagos State as an infected area and consequently order evacuation in whole or in part of such areas. The Public Health Law also authorizes a medical officer of health, the

owner of a private health facility or any medical practitioner involved in such a facility to quarantine any person suffering or reasonably suspected to be suffering from an infectious disease and those with whom such person might have come in contact with<sup>13</sup>. The Commissioner of Lagos State may also make regulations isolating all persons suffering or suspected to be suffering from infectious diseases and anyone whom they might have come in contact with<sup>14</sup>.

Consequently, whilst the Public Health Law of Lagos State allows the impositions of restrictions on infected persons or persons suspected to be infected or contagious, there is nothing in the said Law that authorizes the imposition of a locking down on the free rights of persons (who are healthy and well) to associate or propagate their religious beliefs in gatherings. In view of this, the Governor of Lagos State cannot therefore make regulations pursuant to the Quarantine Act or its Public Health Law to impose restrictions on persons who are uninfected within Lagos State. By conflicting with the provisions of the Constitution, the Infectious Disease Regulations of Lagos State made pursuant to the Public Health Law of Lagos State is void, unenforceable, and so are the offences created by it<sup>15</sup>.

## Declaration of a State of Emergency: The Constitutional Approach

An important feature of a state of emergency is its well-defined duration, which informs citizens that the derogations to their rights will only be for a limited time ascertainable under law. This holds the government to account and ensures that a period of human rights restrictions is not subject to the government’s whims and caprices. The Constitution, as the creator of the fundamental rights, stipulates the procedures that are to guide any restriction or derogation from these rights. Section 35(1)(e) of the 1999 Constitution of Nigeria

<sup>10</sup> *This Regulations designates all local government areas in the state as local areas and allows the Governor to issue directives over potentially infectious persons, movements of residents, public gatherings, event centers, bars, conduct of trade, businesses, and commercial activities within the local area for such a period as he deems necessary.*

<sup>11</sup> CAP Ch. P16. *Laws of Lagos State 2015*

<sup>12</sup> *Section 8 of the Quarantine Act makes provisions for State quarantine and powers. For sections 2, 3 and 4, see note 3 above*

<sup>13</sup> *See generally, Sections 21 to 28 of the Public Health Law of Lagos State*

<sup>14</sup> *Section 43; the general purposes for which Regulations and bye-laws may be made are listed in Section 53.*

<sup>15</sup> *Section 1(3) of the Constitution. In addition, the Court of Appeal has held in the case of Faith Okafor v. Governor of Lagos (2016) LPELR-41066 (CA) that the directive or order of a Governor or President is not a law and that violation of same cannot result in criminal liability.*

(as amended), which is the basis of the powers granted under the Quarantine Act, only authorizes the restriction of the rights to personal liberty of persons suffering from infectious or contagious diseases and no more. Where however, a total lockdown or a curfew is anticipated, the 1999 Constitution of Nigeria (as amended) envisages the procedure to be adopted. Section 45(1) (a), (b) and Section 45(2) of the 1999 Constitution of Nigeria allows the taking of measures that derogate from the provisions of the rights of persons to enjoy their personal liberty; rights of persons to manifest and propagate his/her religion or belief in worship, teaching, practice and observance; right to peaceful assembly and association, right to life etc. only in situations of an emergency declared by the President<sup>16</sup>. Accordingly, Section 305(3)(a)-(f) empowers the President to issue a proclamation of a state of emergency where there is a threat or a clear and present danger of a breakdown of public order and safety; or an occurrence of any disaster or natural calamity affecting the community or a section of it. Similarly, by virtue of Section 305 (3) (g) and (4) of the 1999 Constitution (as amended), the Governor of a State can equally request the President to declare a state of emergency in his/her state where the state is in imminent danger of invasion, breakdown of public order or public safety or the occurrence of imminent danger, disaster or natural calamity affecting a community within the state. However, such request by the Governor of the affected state can only be made by a two-thirds majority of the House of Assembly of the particular state concerned.

Certainly, the COVID-19 pandemic having caused a death toll of over 185 persons and further caused a total of over 6000 infections as at 19th May, 2020 in Nigeria, qualifies aptly as a case of imminent danger and threat to the public health and safety of Nigerians. As was held by the Supreme Court in *Co-operative Bank Nig. Ltd. v. Anambra State*<sup>17</sup>, where a law or a statute provides for a particular method of performing a duty regulated by the law or statute; that method, and no other, ought to and must be adopted. It therefore follows, that the President ought to have applied the provisions of Section 305 of the Constitution to the government's response to the COVID-19 Pandemic being an issue of imminent danger to the public health and safety of Nigerians and even more so, a disaster capable of causing a breakdown of public order and safety in Nigeria.<sup>18</sup> Hence, until a proper proclamation of a state of emergency is declared, the measures taken by the President or the respective Governors of states affected by the lockdown or curfew can be said to be ultra vires, null and void and a breach of the fundamental rights of persons and businesses in the respective states affected by the lockdown directives.

We must note at this point that the dangers of extra-judicial directives cannot be overemphasized, especially in view of the risks it portends—history records that the rise of the Nazi regime in Germany was aided by measures that were supposedly put in place in response to emergencies in the Weimar Republic. Furthermore, aggrieved persons and businesses affected by the lockdown can competently sue the Federal

<sup>16</sup> Defined by the Section as any period during which there is in force, a Proclamation of a state of emergency declared by the President under Section 305 which provides that the President may issue by an instrument published in the Official Gazette, a state of emergency in the Federation or in any part thereof and shall immediately after its publication, transmit same to the President of the Senate and the Speaker of the House of Representatives and both Houses shall consider the situation and decide whether or not to pass a resolution approving the proclamation.

<sup>17</sup> (1992) 8 NWLR (Pt 261) 528 at 556. See also *Chief Berthrand Nonye v. D.N. Anyichie & ors* S.C.265/2000 where the Court emphasized the importance of conditions precedent.

<sup>18</sup> In addition, the Doctrine of Necessity would not justify the President's actions. This is because Section 305 of the Constitution allows the President to issue a Proclamation of a state of emergency suo motu before transmitting same to the President of the Senate and the Speaker of the House of Assembly. This renders mute, any argument as to the need for a speedy, emergency response on the President's part.

and State government for breaches of their enshrined rights as codified in the 1999 Constitution of Nigeria (as amended) - *see particularly Section 35(6) of the Constitution which provides that- “Any person who is unlawfully arrested or detained shall be entitled to compensation and public apology from the appropriate authority or person...”*<sup>19</sup> Suffice to say that all arrests effected by the police and the enforcement of regulations restricting gatherings pursuant to the Quarantine Act or the Public Health Law/Infectious Diseases Regulations of any state are wrong and unlawful and as such, affected persons can sue to be compensated adequately.

One wonders why the Nigerian government failed to adhere and take into consideration the due process of the law/rules as provided for in the 1999 Constitution of Nigeria (as amended). Certainly, the argument that the process of declaring a state of emergency is one marred with

cumbersome procedural steps is neither permissible nor qualified to hold any weight in view of the provisions of Section 305 (1) of the 1999 Constitution of Nigeria (as amended) which allows the President to issue a Proclamation of a State of emergency in any part of Nigeria without an immediate recourse to the National Assembly. Other jurisdictions adopted same procedural measures before declaring an emergency and the heavens did not fall- examples of Countries in this regard include the United States<sup>20</sup> , Japan<sup>21</sup> and Australia<sup>22</sup> . In the United Kingdom, the government introduced “The Corona Bill” pursuant to a declaration of a state of emergency as part of its attempts to manage the virus outbreak; handing the government wide-ranging powers to respond to a variety of emergency situations<sup>23</sup>. Despite already having various public health legislations, the UK government enacted a legislation specially tailored to meet its needs in view of the pandemic.

<sup>19</sup> See also Section 46 (1) of the 1999 Constitution

<sup>20</sup> President Trump declared a national emergency on March 13 and the restrictive measures are pursuant to the state of emergency. Earlier on, the Governor of Washington declared a state of emergency on 29th February after the first virus-related death occurred in the country. Other states that have declared state of emergency include California, Maryland, Utah, Kentucky, New York, Oregon, Florida and New Jersey.

<sup>21</sup> Prime Minister Shinzo Abe issued a one-month state of emergency in seven regions. “Coronavirus: Japan declares nationwide state of emergency” BBC NEWS 16th April, 2020

<sup>22</sup> Victoria, a state in Australia, has declared a state of emergency that will give the government officials near unchecked powers to contain the spread of the virus and reduce the risk to the public. See <https://www.straitsames.com/asia/australianz/australias-victoria-state-declares-state-of-emergency-over-coronavirus-outbreak> (accessed 5th May, 2020)

<sup>23</sup> <https://www.google.com/amp/s/theconversation.com/amp/coronavirus-the-uk-governments-new-emergency-powers-explained-134056> (accessed 5th May, 2020)

# CONCLUSION

Opinions vary and somewhat seem to justify the approach adopted by the Nigeria government. However, it must be understood that the concept of Rule of law and Due Process is one that hinges its survival on the democratic thought-out principle that all persons, institutions, and entities are accountable to laws that are: promulgated publicly, enforced uniformly and adjudicated independently from any kind of influence. Worrisomely, the Nigerian Government has over time shown a penchant for ignoring due processes of laws that have been tried and tested.<sup>24</sup> As a result of this careless attitude, persons arrested pursuant to the Regulations issued by the President or the respective Governors of states in Nigeria have a right of action in Court and are justified to seek redress. Even businesses that were forced to close operations due to the lockdown measures have a legitimate right of action to seek damages and be compensated handsomely by the government in a Court of law.

Finally, it must be said that until we as citizens understand and insist on the implementation of measures envisaged by the laws of our land, we may as well continually find ourselves in a state of affairs that permits a dictatorship style of government by leaders that were supposedly elected by the Nigerian people.

<sup>24</sup> For example, the suspension of Justice Walter Onnoghen in January, 2019 who was the Chief Justice of Nigeria. The President acted in execution of an order ex-parte of the Code of Conduct Tribunal and in complete disregard of the Constitution, which in Section 292(1)(a)(i) prescribes the correct procedure to be followed to remove a sitting Chief Justice.



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