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APPRAISING THE POWERS OF THE PRESIDENT TO RESTRICT THE MOVEMENT AND ASSEMBLY OF PEOPLE AS A MEANS OF CURBING THE SPREAD OF COVID-19 PANDEMIC IN NIGERIA

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Abstract

The order of restriction of movement of people resident in the Federal Capital Territory (FCT), Abuja, Lagos and Ogun States, as part of the measures designed to curb the spread of the novel coronavirus pandemic, contained in a nationwide broadcast by President Muhammadu Buhari on 29 March 2020 has attracted criticisms from some human rights lawyers and activists who contend that the action is illegal and unconstitutional. This article appraised the legal basis for the presidential directive with a view to determining whether it is valid in law. The study adopted the doctrinal research methodology and relied on the provisions of the relevant laws such as, the Constitution of the Federal Republic of Nigeria 1999 (as amended), the Quarantine Act, African Charter on Human and Peoples' Rights and International Covenant on Civil and Political Rights. The study reveals that having regard to the powers vested in the President under section 4 of the Quarantine Act, the order shutting down the affected areas for the initial period of 14 days is valid under both municipal and international law. It further reveals, however, that the Quarantine Act relied upon by the President may not, from the naturalist perspective, measure up to the requirement of the derogation clause (section 45) of the Constitution. For this reason, the study recommends an amendment of the Act in a way that the powers to order a lockdown of an affected area will be made subject to the provision of sufficient palliatives to the affected citizens to mitigate the pains of such an action.

Introduction

When the index case of the dreaded coronavirus (COVID-19) pandemic was reported in Nigeria on 27 February 2020, there were palpable fears that the disease, which broke out in China by the end of December 2019, could spread like bush fire in the country, if not promptly contained. Consequent upon this, several measures were taken by both the Federal and many State Governments to curb the spread of the disease but the one that attracted criticisms from human rights lawyers and activists like Ebun- Olu Adegboruwa, SAN, Femi Falana, SAN and the Nobel Laureate, Professor Wole Soyinka, was the lockdown of the Federal Capital Territory (FCT),

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Abuja and two States, Lagos and Ogun, by President Muhammadu Bahari, for an initial period of 14 days, effective from 1 April 2020. The lockdown was announced by the President in a nationwide broadcast in the evening of Sunday 29 March 2020.¹

The controversy centred on the legality of the step taken by the President. The commentators were of the view that while the lockdown itself might be necessary and expedient given the real danger to public health that a community spread of COVID-19 could pose, the measure ought to be backed by law. It is intended in this paper to examine the legality of the lockdown ordered by the Nigerian President. Since the critics are not challenging the propriety of the presidential order but its alleged illegality, this paper aims at appraising the action in relation to the relevant laws with a view to ascertaining whether there is legal justification for it.

Background to the study

The announcement of the lockdown by the President attracted a prompt response from Adegboruwa, SAN, who argued that the Nigerian leader does not have the right to do so without a legal backing. In a statement titled ‘Buhari lacks power to restrict movement in Lagos, Abuja, Ogun,’ the Senior Advocate of Nigeria contended that the restriction of movement without lawmakers’ approval is illegal². According to him, the Constitution requires that the President should first declare a state of emergency which must be approved by the National Assembly before shutting down States. In his words:

We are running a constitutional democracy and it is illegal for the President to take over the affairs of any State of the Federation without the express consent of that State through their elected representatives. It is only the Governor of the State through the House of Assembly of the State that can make any declaration concerning the people of that State. Little wonder that the President could not cite any law that he relied upon for his declaration. I support every measure taken to contain the coronavirus pandemic but such must be in accordance with law. If we allow this to stay, then tomorrow the President may just impose total restriction on all States of the Federation for whatever reason.

Adegboruwa advised the President to reverse the restrictions and work with the States concerned in accordance with the laws of the land.

¹For more details on the presidential broadcast see ‘Lagos and Abuja on lockdown to stop coronavirus in Nigeria’ <https://www.cfr.org> accessed 22 April 2020.

²Ebu-Olu Adegboruwa, ‘Buhari Lacks Power to Restrict Movement in Lagos, Abuja, Ogun’ www.newspotng.com accessed 22 April 2020.

Also reacting to the lockdown, another human rights lawyer and Senior Advocate of Nigeria, Femi Falana, insisted that the presidential order is not enforceable without legal backing.³In a press statement issued on the lockdown, the Senior Advocate of Nigeria was reported to have said as follows:

It is my view that democracy thrives more on obeying and promoting the rule of law rather than the whims and caprices of the leaders against the led.

He argued that although the President is empowered to adopt any measures he deemed fit to combat the dangerous disease, nonetheless such measures have to be spelt out in a Regulation made pursuant to section 305 of the Constitution or under the Quarantine Act ‘otherwise the presidential order on restriction of movement in the affected areas cannot be enforced by the police’. Falana expressed concern that even though civil rule was restored 21 years ago, the psyche of the political class has not been demilitarized; hence decisions taken by rulers are required to be obeyed with immediate effect and without any legal backing. In support of his view, he cited the case of *Okafor v Governor of Lagos State*,⁴ where the Court of Appeal called on all authorities to appreciate the need to govern the country under the rule of law. Falana recalled that in that case, the directive of Governor of Lagos State restricting the movements of citizens and residents during the State’s monthly environmental sanitation exercise was struck down because of its unconstitutionality.

However, in a well-researched reaction to the foregoing criticisms, the Minister of Justice and Attorney General of the Federation, Abubakar Malami, SAN, argued that the critics were wrong and that they misconstrued the law⁵. The learned Attorney General contended that by a community reading of sections 5, 14, 20 and 45 of the 1999 Constitution, sections 2, 6 and 8 of the Quarantine Act and article 4 of the International Covenant on Civil and Political Right (ICCPR) and article 11 of the African Charter on Human and Peoples’ Rights, the President’s declaration is valid, legal and enforceable. The Chief Law Officer of the country made a clarification in the statement that the President did not make a declaration of a state of emergency under section 305 (1) of the Constitution which would have required the concurrence of the National Assembly. He further argued that even at that, section 305 (6) (b) permits a proclamation of a state of emergency for a period of ten days without the approval of the National Assembly when the Parliament is not in session, as in the present situation wherein the National assembly has shut down.

³Femi Falana, ‘Presidential Order not Enforceable without Legal Backing’ <http://saharareporters.com/2020/03/30> accessed 22 April 2020.

⁴(2016) LPELR 41066 CA.

⁵Eric Ikhillae, ‘AGF Slams Adegboruwa, other Critics’ (The Nation, Abuja, 30 march 2020) 1.

The Vice-President of Nigeria, Professor Yemi Osinbajo, a professor of law and former university lecturer, also lent his voice to the debate while speaking at a Google Hangout organized by Covid 19 call centre in Abuja, Nigeria.⁶ He opined that it is unnecessary for anyone to question the legality of the President's order because it is backed by an Act of the National Assembly. According to him, under the Act, the President has powers to make regulations of any kind that could curb infectious diseases. He stated further, on the legality of the shutdown:

Regarding the legality of the shutdown announced by the President yesterday, I think it is entirely legal. These steps are proactive, very relevant, important and backed by law. I am not sure some of the people who have commented on the issue have come across the Quarantine Act of 1926; it's been published in all of the laws of Nigeria, every edition of the Laws of the Federation of Nigeria, it is there.

Appraisal of the Relevant Laws

The primary objective of this paper is to determine whether or not the declaration made by the Nigerian President on Sunday, 29 March 2020, for the lockdown of the FCT, Abuja, and the two Western States of Lagos and Ogun, is valid in law. We intend to do this by examining the provisions of the relevant laws, against the groundswell of opinions and criticisms that have attended the issue. The laws considered relevant to this subject matter are:

- (a) The Constitution of the Federal Republic of Nigeria, 1999 (as amended).⁷
- (b) The Quarantine Act.⁸
- (c) African Charter on Human and Peoples' Rights.⁹
- (d) International Covenant on Civil and Political Rights.

The 1999 Constitution of Nigeria

The provisions of the Constitution that are relevant to this discourse are: Sections 5 (1) (2) & (3), 14 (2)(b), 38, 40, 41, 45 and 315 (1)(a) & (4)(b). They will be considered in turn.

Section 5 (1) (2) & (3) The section reads as follows:

5 (1) Subject to the provisions of this Constitution, the executive powers of the Federation-

⁶Buhan's Lockdown Order is Legal, says Osinbajo <https://thenigerialawyer.com> accessed 22 April 2020.

⁷This document is referred to subsequently in this paper as "the Constitution" or "the 1999 Constitution" or "the Nigerian Constitution."

⁸Cap Q2, Laws of the Federation of Nigeria 2004.

⁹Cap A9, Laws of the Federation of Nigeria 1990.

- (a) shall be vested in the President and may, subject as aforesaid and to the provisions of any law made by the National Assembly, be exercised by him either directly or through the Vice President and Ministers of the Government of the Federation or officers of the public service of the Federation; and
 - (b) shall extend to the execution and maintenance of this Constitution, all laws made by the National Assembly and to all matters with respect to which the National Assembly has, for the time being, power to make laws.
- (1) Subject to the provisions of this Constitution, the executive powers of a State-
- (a) shall be vested in the Governor of that State and may, subject as aforesaid and to the provisions of any law made by a House of Assembly, be exercised by him either directly or through the Deputy Governor and Commissioners of the Government of that State or officers in the public service of the State; and
 - (b) shall extend to the execution and maintenance of this Constitution, all laws made by the House of Assembly of the State and to all matters with respect to which the House of Assembly has, for the time being, power to make laws.
- (2) The executive powers vested in a State under subsection (2) of this section shall be so exercised as not to –
- (a) impede or prejudice the exercise of the executive powers of the Federation;
 - (b) endanger any asset or investment of the Government of the Federation in that State; or
 - (c) endanger the continuance of a federal government in Nigeria.

Let us examine these provisions in the light of the declaration made by the President on restriction of movement in some parts of the country. The declaration made by the President can be situated within section 5 (1) (a) i.e. he did it in the exercise of his executive powers as the President of Nigeria. The subsection also says the powers can be exercised subject to the ‘provisions of any law made by the National Assembly.’ The relevant law here will be the *Quarantine Act* since the order signed by the President two days after making the declaration was made pursuant to the Act. According to news reports, President Buhari on Tuesday 31 March 2020 signed the *Quarantine Order* which empowers him to lockdown and extend lockdown as President of the country.¹⁰ The Constitution says he can exercise the executive powers either directly or indirectly through the Vice President or any of his Ministers or any

¹⁰Levi Johnson, ‘Buhari Signs Quarantine Order for Lockdown’ <<https://www.thecheernews.com>> accessed 23 April 2020.

officer of the public service of the Federation. In the instant case, the President did exercise his constitutional powers directly.

The presidential declaration can also be situated within section 5 (1) (b) since the matters dealt with in the order relate to issues in the *Quarantine Act*, which is deemed to be a law made by the National Assembly by virtue of section 315 (1) (a) of the Constitution.

The Governor of a State enjoys similar executive powers under section (5) (2) of the Constitution but the draftsman was careful in not creating conflict or confusion between the President and the Governor by inserting subsection (3) in the same section which emphasizes the need for the latter not to impede or prejudice the actions of the President or endanger any asset or investment of the federal government in his State while exercising the executive powers vested in him by the Constitution. The intention of the legislature by this restriction placed on a State Governor is to give priority or supremacy to the President when decisions bordering on national interest, such as the Quarantine Declaration, are to be taken. It is instructive to note that the President mentioned in his nationwide broadcast that he carried the governors of Lagos and Ogun States along in taking the decision to order a lockdown of the two States, along with the Federal Capital Territory (FCT), Abuja.

Section 14 (2) b This section provides as follows:

- (2) It is thereby, accordingly, declared that –
- (b) the security and welfare of the people shall be the primary purpose of government.

It is arguable that the declaration made by the President was in pursuance of this fundamental objective. The purpose of the order, as contained in the broadcast, is to curb further spread of the deadly Covid-19 disease which, as of the time of making the declaration, had reached 97 in confirmed cases, with one fatality.¹¹

It is important to state that section 14 (2)(b) under consideration is under Chapter II of the Constitution which deals with the Fundamental Objectives and Directive Principles of State Policy that are not justiciable, that is, not enforceable in court.¹² Nonetheless, the subsection underscores one of the fundamental obligations of

¹¹Full Address of President Buhari on COVID-19 ><https://www.youtube.com> accessed 23 April 2020. The number of confirmed cases as of 7 May 2020 had risen to 3145 while no fewer than 103 people had lost their lives to the pandemic.

¹²See CFRN 1999, S6 (6) (c). See also *Attorney-General of Ondo State v Attorney-General of the Federation (2002) 10 NSCQR 1035*.

Government i.e. to address with all seriousness issues bordering on the security and safety of the citizens. Its non-justiciability does not in any way affect the duty placed on Government to discharge this obligation.

The Constitution provides under *section 38 (1)* as follows:

38 (1) Every person shall be entitled to freedom of thought, conscience and religion, including freedom to change his religion or belief, and freedom (either alone or in community with others, and in public or in private) to manifest and propagate his religion or belief in worship, teaching, practice and observance.

The foregoing is the provision of the Constitution that allows religious organizations like churches and mosques to organize crusades, open air services etc. without let or hindrance. One of the measures contained in the presidential order is the prohibition of large gatherings that can facilitate a community spread of this disease. The question then is, can the presidential directive amount to a violation of the constitutional right of religious faithful to assemble or congregate freely to manifest and propagate their religion? The question must be answered in the negative having regard to section 45 (1) of the Constitution which lists right to freedom of religion as one of the fundamental human rights from which there could be a derogation, through a legislative process, on such grounds as public safety and public health.

Section 40 reads as follows:

40. Every person shall be entitled to assemble freely and associate with other persons, and in particular he may form or belong to any political party, trade union or any other association for the protection of his interests:
Provided that the provisions of this section shall not derogate from the powers conferred by this Constitution on the Independent National Electoral Commission with respect to political parties to which that Commission does not accord recognition.

The right guaranteed the individuals by this provision- to assemble freely and associate with other persons- is in direct conflict with the social and physical distancing measure contained in the presidential order; and for that matter in all the measures adopted by many State Governments to curb the spread of this disease. In fact, the legality of what has now become a global campaign for social (physical) distancing can be tested against this provision. The draftsman must have taken this into consideration by including this particular right among the fundamental human rights that are violable on grounds of national security, public safety, public order,

public morality or public health.¹³ Section 45 (1) of the Constitution specifically states that nothing in this section (among other sections) shall ‘invalidate any law that is reasonably justifiable in a democratic society in the interest of defence, public safety...public health...’ With respect to this provision, the presidential order can be justified on grounds of public safety and public health, and, in this connection also, the *Quarantine Act* under which the President made his declaration, can qualify as a ‘law that is reasonably justifiable in a democratic society’ embodying those grounds.

Section 41 (1) states that:

41 (1) Every citizen of Nigeria is entitled to move freely throughout Nigeria and to reside in any part thereof, and no citizen of Nigeria shall be expelled from Nigeria or refused entry thereto or exit therefrom.

Any order restricting the movement of people, such as the one contained in the presidential declaration, is an infringement of this provision of the Constitution. But as argued with respect to section 40 and even section 38, the right to freedom of movement is not undeniable, having regard to section 45 of the Constitution. The argument in respect of those provisions cited earlier is hereby adopted.

Section 45 is the saving provision for a number of instances that would have amounted to a violation of people’s fundamental human rights as entrenched in Chapter IV of the Constitution. It imposes restrictions on or derogation from some selected fundamental rights.

The section states as follows:

- 45 (1) Nothing in sections 37, 38, 39, 40 and 41 of this Constitution shall invalidate any law that is reasonably justifiable in a democratic society-
- (a) in the interest of defence, public safety, public order, public morality or public health; or
 - (b) for the purpose of protecting the rights and freedom of other persons

This provision has been referred to repeatedly during our consideration of sections 38, 40 and 41 of the Constitution. The intention of the draftsman in inserting this section in the 1999 Constitution is detectable from the marginal note to this section, namely to operate as a restriction on or derogation from some fundamental human rights. It states the grounds upon which the affected rights can be suspended. It is important to state, however, that these rights cannot be denied or suspended or derogated from without legislative backing. In other words, the President cannot by a mere announcement in a radio and television broadcast make any order which

¹³See again CFRN, s 45 (1).

violates any of those rights without the backing of law, namely a law made by the National assembly. But with the Regulation made by the President two days after the declaration it seems that the order has the backing of law, that is, the *Quarantine Act*.

Section 315 (1)(a) & 4(b) is another saving provision for all existing laws, prior to the coming into force of the 1999 Constitution.

The section reads thus:

315 (1) Subject to the provisions of this Constitution, an existing law shall have effect with such modifications as may be necessary to bring it into conformity with the provisions of this Constitution and shall be deemed to be –

(a) an Act of the National Assembly to the extent that it is a law with respect to any matter on which the National Assembly is empowered by this Constitution to make laws.

(4) In this section, the following expressions shall have the meanings assigned to them, respectively;

(b) “existing law” means any law and includes any rule of law or any enactment or instrument whatsoever which is in force immediately before the date when this section comes into force after that date.

The history of this provision dates back to 1960 when Nigeria became a sovereign State. Section 3 (1) of the Nigerian (Constitution) Order-in-Council 1960 preserved and protected all existing laws, including statutes of general application that were in force in England on the 1st day of January 1900 and all enactments made pursuant to the Order. The 1963 Republican Constitution which repealed the 1960 Independence Act and the Nigerian (Constitution) Order-in-Council 1960 equally preserved all existing laws, subject to the provisions of the said Constitution.¹⁴ Furthermore, the Constitution of the Federal Republic of Nigeria, 1979, which was in operation during the Second Republic, contained a provision, preserving all existing laws.¹⁵

It is significant that subsection (4)(b) of section 315 of the 1999 Constitution defines what is meant by ‘existing law’. Simply put, it means any law or enactment or rule of law which is in force immediately before the date that this section of the Constitution came into force. The question now is, can the *Quarantine Act* that the President relied upon to make regulations backing the Restriction Order be described as an existing law within the meaning of this provision? The question must be answered in the

¹⁴See Osita N Ogbu, *Modern Nigerian Legal System* (3rd edn, SNAAP Press Ltd 2013) 60.

¹⁵See the Constitution of the Federal Republic of Nigeria 1979, s 274.

affirmative as the Act itself is included in the laws of the Federation of Nigeria, 2004 edition.¹⁶

The Quarantine Act

The objective of the Act is inferable from its long title. It reads as follows:

An Act to provide for and regulate the imposition of quarantine and to make other provisions for preventing the introduction into and spread in Nigeria, and the transmission from Nigeria, of dangerous infectious diseases.

The provisions material to this paper are contained in sections 2, 3, 4 & 8.

Section 2, Quarantine Act, deals with the interpretation of some key words and phrases in the Act. The ones that are of relevance to us here are: ‘dangerous infectious disease’ and ‘local area’. According to the section, ‘dangerous infectious disease’ means “cholera, plague, yellow fever, small pox and typhus, and includes any disease of an infectious or contagious nature which the President may, by notice, declare to be a dangerous infectious disease within the meaning of this Act”.

Although the ravaging coronavirus is not specifically mentioned it can be argued that this disease is contemplated for two reasons. One, the use of the word ‘plague’ envisages a contagion of coronavirus’ nature. There is no better way of describing this pandemic that has brought the entire world literally on its knees than to call it a plague. In any event, there is no particular disease that is named ‘plague’; the term simply means ‘an epidemic disease that causes high mortality; pestilence, an infectious disease caused by a bacterium...’¹⁷ Two, the use of the words “includes any disease” implies that more diseases not specifically named in this section can be accommodated provided they can be adjudged dangerous and/or infectious. It is a basic rule of interpretation of statutes that when the word ‘include’ is used in an enactment it means more items of the same kind can be accommodated. In the light of the foregoing, the description of the ravaging COVID-19 as a dangerous and infectious disease is proper and valid.

The second term is ‘local area’ which is defined by section 2 of the Act to mean ‘a well-defined area, such as a local government area, a department, a canton, an island, a commune, a town, a quarter of a town, a village, a port, an agglomeration, whatever may be the extent and population of such areas.’ From the wordings of this section, as pertaining to the definition of ‘local area’, it seems the delimitation of the FCT,

¹⁶It is titled Cap Q2, Laws of the Federation of Nigeria 2004.

¹⁷Definition of Plague at Dictionary.com <https://www.dictionary.com> accessed 6 May 2020.

Abuja, Lagos and Ogun States as more or less epic centres, can be situated within this definition. Having regard to the phrase ‘whatever may be the extent and population of such areas’, it is submitted that there is really no limit as to the geographical area that can be declared as ‘local area’ under Act.

Section 3. This section deals with the power of the President to declare any place as an infected area. It states as follows: The President may, by notice, declare any place whether within or without Nigeria to be an infected local area, and thereupon such place shall be an infected local area within the meaning of this Act.

In the order made by the President, the FCT, Abuja, Lagos and Ogun States were effectively declared as infected areas. It is submitted that the power to do that flows from section 3 of this Act.

Section 4. This section confers on the President extensive powers to make regulations on measures designed to contain the spread of a dangerous or infectious disease. The section is reproduced hereunder for ease of reference:

The President may make regulations for all or any of the following purposes

–

- (a) prescribing the steps to be taken within Nigeria upon any place, whether within or without Nigeria to be an infected local area;
- (b) prescribing the introduction of any dangerous infectious disease into Nigeria or any part thereof from any place without Nigeria, whether such place is an infected local area or not;
- (c) preventing the spread of any dangerous infectious disease from any place within Nigeria, whether an infected local area or not, to any other place within ‘Nigeria’;
- (d) preventing the transmission of any dangerous infectious disease in Nigeria from any place within Nigeria, whether an infected local area or not, to any place without Nigeria;
- (e) prescribing the powers and duties of such officers as may be charged with carrying out such regulations;
- (f) fixing the fees and charges to be paid for any matter or thing to be done under such regulations, and prescribing the persons by whom such fees and charges shall be paid, and the persons by whom the expenses of carrying out any such regulations shall be borne, and the persons from whom any such expenses incurred by the Government may be recovered; and
- (g) generally for carrying out the purposes of this Act.

The regulations under which the President made an order of restriction of movement in the affected states were anchored on the provisions of this section. The fatal question is, can the President rely on the powers vested in him under this section to order a restriction on movement? One of the human rights lawyers who challenged the legality of the President's order, Ebu- Olu Adegboruwa, has equally argued that the President cannot rely on the *Quarantine Act* to deny the people of their right to freedom of movement as guaranteed under section 41 of the Constitution.¹⁸ The learned Senior Advocate argued that the Act only permits the President to quarantine those already infected while those not infected with the disease should be allowed to move about freely. With the greatest respect to the learned Silk, this argument is both morally and legally defective. It is either the senior lawyer did not advert his mind to section 4 of the *Quarantine Act* or he completely misconstrued the law. The overarching purpose of the Act is to save lives by curbing the spread of a dangerous and infectious disease, like COVID- 19. And all the powers vested in the President under section 4 of the Act are tailored towards the accomplishment of this objective.

By section 4(b), the President has a compelling obligation to make regulations generally for carrying out the purposes of the Act. It is not stated anywhere in section 4 that the President can only adopt measures that affect the infected. It is a standard practice in public health that human- to- human transmission can only be curbed through physical distancing and, in pandemic cases, restriction of movement. 'This is well captured under section 4 of the Act on the basis of which the measures contained in the presidential order can be validated in law.

Section 8 of the Act deals with the powers vested in a State Governor to adopt similar measures in the event that the President fails to discharge the obligations placed on him under sections 2, 3 and 4 of the Act. The Governor is required to act subject to the same conditions and limitations. In other words, the Governor can only invoke the powers conferred on him by section 8 of the Act where the President fails to act. It is instructive to note that Governors of other States of the Federation have adopted similar measures to contain the spread of this dangerous disease in their States, acting pursuant to this section.

African Charter on Humans and Peoples' Rights (ACHPR)

The African Charter on Human and People's Rights (ACHPR), otherwise known as the Banjul Charter, is an international human rights instrument that is intended to

¹⁸Ebu- OluAdegboruwa, 'Why Quarantine Act of 1926 cannot Legalise Restriction of Movement by the President <<https://www.saharareporters.com>> accessed 24 April 2020.

promote and protect human rights and basic freedoms on the African continent. The provisions of the Charter that are relevant to this paper are Articles 11 and 12.

Article 11 ACHPR. The Article states as follows:

Every individual shall have the right to assemble freely with others. The exercise of this right shall be subject only to necessary restrictions provided for by law, in particular those enacted in the interest of national security, the safety, health, ethics and rights and freedoms of others.

Again, this Article recognizes the salient fact that as important as freedom of assembly is, there can be derogation from it on grounds of national security, public health, safety, etc. What this means is that this right, which is also recognized under section 40 of the 1999 Constitution of Nigeria, is not absolute. In the context of the restriction order made by the President, it can be argued that this Article has not been violated for the reasons already stated in this paper, particularly as they relate to section 40 of the 1999 Constitution.

Article 12 ACHPR. The relevant provisions of this Article are embodied in subsections (1) and (2) which read thus:

- (1) Every individual shall have the right to freedom of movement and residence within the borders of a State provided he abides by the law.
- (2) Every individual shall have the right to leave any country including his own, and to return to his country.

This right may only be subject to restrictions, provided for by law for the protection of national security, law and order, public health or morality.

The freedom guaranteed individuals by this Article is also not absolute but subject to the powers of the Head of State of each country to order restrictions on the grounds enumerated under subsection (2). One important point that must be stressed is that the restrictions recognized by the ACHPR must be sanctioned by law i.e a legislative instrument. Again, it can be argued that the *Quarantine Act* qualifies as such an instrument and the regulations made thereunder by the President to order a lockdown of some parts of the country as part of the measures to curb the spread of the coronavirus are valid in law.

International Covenant on Civil and Political Rights (ICCPR)

The international Covenant on Civil and Political Rights (ICCPR) is a multilateral treaty adopted by the United Nations General Assembly Resolution 2200A (XXI) on 16 December 1966 and in force from 23 March 1976 in accordance with Article 49

of the Covenant.¹⁹ The provisions material to this paper are contained in Article 4 (1) and (2) which state as follows:

Article 4

- (1) In time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the States Parties to the present Charter may take measures derogating from their obligations under the present Charter to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin.
- (2) No derogation from articles 6, 7, 8 (paragraphs 1 and 2), 11, 15, 16 and 18 may be made under this provision.

This Article allows States Parties to the Charter to derogate from some of the civil and political rights created under the instrument. The point should be made that the measures amounting to derogation can only be taken in time of public emergency that is life threatening in nature and must not be inconsistent with their obligations under international law and should not be discriminatory in nature. Another important point to make is that the rights that cannot be violated under any circumstance have been spelt out under Article 4(2).²⁰ It is pertinent to note that freedoms of movement and of assembly are excluded from the category. It seems, therefore, that the presidential order is not inconsistent with the country's obligations under this international instrument vis-à-vis freedom of movement and right to peaceful assembly and association.

Conclusion and Recommendations

The foregoing review of the relevant laws has shown that there is a legal basis for the order made by the Nigerian leader, President Muhammadu Buhari, for the shutdown of the FCT, Abuja, Lagos State and Ogun State as part of the measures adopted to curb the continuous spread of the ravaging Covid-19 pandemic. The review has also revealed that the action is legally valid from the perspectives of both municipal and international law. Little wonder that, apart from the learned Silk, Ebu-Olu Adegboruwa, other commentators who had earlier challenged the legality of the presidential order, seemingly withdrew from further criticisms after the country's

¹⁹International Covenant on Civil and Political Rights <https://treaties.un.org/doc/publication/unit> accessed 24 April 2020.

²⁰The rights declared to be inviolable are very fatal ones, like right to life (article 6), the rule against torture and degrading treatment (article 7), freedom against slavery and servitude (article 8), freedom from unlawful imprisonment (article 11) and the rule that no person shall be punished for an offence not known to law (article 15).

Attorney-General and Minister of Justice, Malami, and the Vice-President, Osinbajo, explained the legal justification for the action. As noted earlier in this paper, Adegboruwa, who stood by his criticism, either misconstrued the law or did not advert his mind to the relevant provisions of the *Quarantine Act*. There is also the likelihood that the learned Silk anchored his criticism on a stale law, *Quarantine Act 1926*. The operative law is the *Quarantine Act, Cap Q2, Laws of the Federation of Nigeria (LFN) 2004*. Adegboruwa has argued that the Act only empowers the President to isolate the infected individuals while those not infected can move freely. With due respect to the learned Silk, there is no such provision in Cap Q2 LFN 2004. All the steps taken by the President are validated under the provisions of the *Quarantine Act 2004*. The same conclusion applies to the relevant provisions of the 1999 Constitution, African Charter on Human and Peoples' Rights and the International Covenant on Civil and Political Rights already cited and analyzed in this paper.

The foregoing conclusion, notwithstanding, it is important to address the justification or otherwise of the much-talked-about *Quarantine Act* which, from our analysis in this paper, invests the President with the *vires* to do what he did. The derogation clause in the Constitution (section 45) talks of 'any law that is reasonably justifiable in a democratic society.' We have said in this study that the *Quarantine Act* can be situated within this phrase. But can we in all honesty say that this Act is reasonably justifiable in a democratic society? From the point of view of legal positivism, the answer may be yes. This is because to the proponents of positivist jurisprudence, law must be divorced from moral and ethical considerations. Accordingly, law is law, whether good or bad, just or unjust.²¹

However, from the natural law perspective, this law (*Quarantine Act*) needs to 'wear a human face.' The Act was enacted originally in 1926, during the colonial era, although it is published in the current edition of the Nigerian laws as 'Cap Q2, LFN 2004.' It will therefore be correct to describe the Act as one of the 'legal colonial relics', saved by section 315 of the 1999 Constitution. The socio-economic situation of Nigeria in 1926 can never be the same as what obtains in the 22nd century. This is why it is important to take another look at the *Quarantine Act*. Law, as argued by the natural law, and even the Marxist, theorists, must address issues of welfare and economic survival of the people; otherwise it loses its relevance to the society it is meant to serve.²² It is for this reason that the Nigerian Law Commission should

²¹ See, for example, the postulation of Jeremy Bentham as cited in Ebunoluwa P Bamigboye, 'Positive Theory of Law' in Adewale Taiwo and Ifeolu J Koni (edns), *Jurisprudence and Legal Theory in Nigeria* (Princeton & Associates Publishing Co. Ltd 2019) 200-202.

²² See Kazeem Olaniyan, 'The Natural Law School: Another Viewpoint' in Adewale Taiwo and Ifeolu J Koni (edns), *ibid* 171-172.

consider amending sections 4 and 8 of the Act which confer on the President and a State Governor respectively, the powers to make regulations on quarantine. In amending these provisions, a proviso should be introduced to each that will, *inter alia*, make the exercise of the powers conferred by the sections subject to the provision of substantial palliatives, in form of money, food, materials etc, that can relieve the citizens, especially the vulnerable, less privileged members, of the affected local areas of the economic and social pains arising from the quarantine measures adopted by the respective leaders. This is with a view to bringing the *Quarantine Act* in conformity with the requirement of section 45(1) of the Constitution, namely that the law under which derogation from the fundamental rights donated by sections 37-41 can be validated must be ‘reasonably justifiable in a democratic society.’

