

THE LEGALITY OF QUARANTINE AND LOCKDOWN IN THE MANAGEMENT OF PUBLIC HEALTH EMERGENCY IN NIGERIA ***

Abstract

In December 2019, a global Pandemic referred to as COVID-19 took the world by storm, paralyzing virtually all human activities. It originated from the city of Wuhan in China. The World Health Organization (WHO) declared the outbreak a global pandemic on the 11th day of March 2020. The casualty from the pandemic was enormous. A lot of persons lost their lives as a result of contracting the virus. In the midst of that unprecedented public health crisis, countries across the globe including Nigeria adopted containment measures aimed at halting the spread of the disease. These include lockdown, isolation and quarantine. These measures infringed on human rights of citizens and were heavily criticized. On Sunday the 29th of March, 2020, President Muhammadu Buhari in a televised broadcast imposed a lockdown on two states in Nigeria for 14 days. This was followed by some state Governors who also imposed lockdown on their respective states. Some had argued that the President cannot unilaterally impose lockdown on states in Nigeria without first of all declaring a state of emergency in accordance with Section 305 of the 1999 Constitution of the Federal Republic of Nigeria. This article seeks to examine the legal framework regulating the imposition of quarantine and lockdown in the management of Public health emergency in Nigeria. In particular, the emphasis of the paper is to investigate whether the imposition of quarantine and/or lockdown by the President in the management of Public health emergency like the COVID-19 Pandemic in the country is legal. Secondly, whether a lockdown imposed by the President but not in accordance with Section 305 of the 1999 Constitution of the Federal Republic of Nigeria is illegal. The paper found that there are laws permitting the President to impose lockdown and quarantine in the management of Public health emergency in Nigeria. The paper argues that such lockdown or quarantine imposed by the President as a means of containment of any infectious disease in Nigeria is legal and valid even without the declaration of a state of emergency in accordance with Section 305 of the Constitution. The paper argues further that Section 305 of the 1999 Constitution is just one of the provisions permitting the President to impose such a lockdown or quarantine. The paper contends that by a community reading of Sections 14, 20 and 45 of the 1999 Constitution, Sections 2, 3, 4 and 8 of the quarantine Act 1926, Article 16 of the African Charter on Human and Peoples Right (ACHPR) Article 4 and 12 of the International Covenant on Civil and Political Rights (ICCPR) and Article 12 (1) and (2) of the International Covenant on Economic, Social and Cultural Rights (ICESCR), the President can impose lockdown and quarantine in the management of Public health emergency in Nigeria without recourse to Section 305 of the 1999 Constitution. The researchers made use of the doctrinal approach in carrying out the research. The paper is divided into five sections.. The paper concludes with some recommendations in.

Keywords: Legality, Quarantine, Lockdown, Public Health Emergency.

* **DUSON Nuleera Ambrose, PhD (Nig)**, BL, Lecturer, Institute of Legal and Global Studies, Port – Harcourt Polytechnic Rumuola, Lead Director, African Centre for International Humanitarian law and Human Rights Education, Corresponding Author Email: drnuleera@gmail.com, 08035525300 and

** **JAMES D. Sunny, PhD (RSU)**, BL, Lecturer, Institute of Legal and Global Studies, Port Harcourt, Polytechnic, Rumuola.

1. Introduction

Infectious disease outbreaks have been known to occur for ages with devastating impacts.¹ As human civilizations flourished, so did infectious disease. Large numbers of people living in close proximity to each other and to animals, often with poor sanitation and nutrition provided fertile breeding grounds for disease.² Also new overseas trading routes spread novel infections far and wide.³ In 541 AD, rats on Egyptian grain boats brought a pestilence to the Eastern Roman Empire that ultimately led to the death of approximately 25million people.⁴ The plague of Justinian as it was popularly called quickly tore through the empire and even the emperor himself Justinian I, after whom the plagued was named contracted the disease.⁵ In September 1665, the village of Eyam, an isolated village found in the Derbyshire Valley of Peak District, in the UK was hit by a very serious epidemic, which decimated the small community.⁶ By October 1666, when the epidemic ended, 257 of the approximately 700 people living in Eyam had died.⁷ In 19th Century, Cholera tore through England, killing tens of thousands. The prevailing scientific theory of the day postulated that the disease was spread through foul air known as 'Miasma'.⁸ But a British doctor named John Snow suspected that the mysterious disease, which killed its victims within days of the first symptoms, lurked in London's drinking water. He created a geographic chart of Cholera deaths over a Ten (10) day period and found a cluster of (Five Hundred) 500 fatal infection surrounding the Broad street pump, a popular city well for drinking water.⁹ With dogged effort, Snow convinced local officials to remove the pump handle on the Broad Street drinking well, rendering it unusable, and like magic the infection dried up.¹⁰ Snow's work did not cure Cholera immediately but it brought about the global effort to improve urban sanitation and protect drinking water from contamination.

In recent times, the world has witnessed an increase in the outbreak of deadly and contagious diseases such as Ebola virus disease, Lassa fever and coronavirus. The coronavirus which is the most recent broke out in 2019. According to the World Health Organization (WHO)¹¹ Coronavirus (Covid-19) is an infectious disease caused by a newly discovered virus. Coronavirus (CoV) are a large family of viruses that cause illness ranging from the common cold to more severe diseases such as Middle East Respiratory Syndrome (MERS-COV) and severe Acute Respiratory Syndrome (SARS-COV). The 2019 novel coronavirus is a new strain of coronavirus (covid-19) that was first identified during an investigation into an outbreak in Wuhan, China.¹²

¹ OA Markinde and C Odimegwu, 'A qualitative inquiry on the status and adequacy of legal instruments establishing infectious disease surveillance in Nigeria' *Pan African Medical Journal*, 2018, P.2. Available at < <https://www.researchgate.net/publication/327588604>,> accessed 6/10/2022.

² D Roos, How 5 of History's worst pandemics finally ended, available at < <https://www.history.com/news/pan>.> accessed 6/10/2022.

³ *Ibid.*

⁴ Robert Word John Foundation, The Five Deadliest outbreaks and pandemics in History 2013, available at < <https://www.rwjf.org>.> accessed 6/10/2022.

⁵ *Ibid.*

⁶ L K Whittles and X Didelot, Epidemiological Analysis of the Eyam plague outbreak of 1665 – 1666, proceedings: Biological Sciences 283, 2016, P. 1.

⁷ *Ibid.*

⁸ D Roos, (n2)

⁹ *Ibid.*

¹⁰ *Ibid.*

¹¹ A Specialized Agency of the United Nations responsible for International Public Health.

¹² Coronavirus-World Health Organization, Available at < <https://www.who.int/healthtopics>> accessed 8/10/2021.

Most people infected with the virus experienced mild to moderate respiratory illness and recover without requiring special treatment.¹³ Older people and those with underlying medical problems like cardiovascular disease, diabetes, chronic respiratory disease and cancer are more likely to develop serious illness.¹⁴ The covid-19 virus spreads primarily through droplets of saliva discharge from the nose when an infected person coughs or sneezes.¹⁵ On 11th March, 2020, the World Health Organization (WHO) declared the outbreak as a public health emergency of international concern and recognized it as a pandemic.¹⁶

These infectious diseases, at most times do not usually have any vaccines or effective treatment during its initial outbreak. Due to the danger posed by the diseases, local and International Public Health authorities usually devise various means to contain the spread pending the discovery of a cure or vaccine. Public Health measures such as, tracing contacts of infected persons, identifying and Quarantining of possibly infected persons, isolation of confined cases, ban on international travels, closure of schools, cancellation of public events and sustained public awareness and lockdown are usually adopted by affected countries. Following the outbreak of the COVID-19 Pandemic, President Muhammadu Buhari on the 29th of March, 2020 in a televised broadcast imposed a lockdown on two states in Nigeria namely: Lagos, Ogun and Abuja, the Federal Capital Territory for an initial period of Fourteen (14) days. It was later extended to the whole federation as the various state Governors also imposed lockdown in their respective states. The President in his broadcast stated that the period of the lockdown will be used to contain, identify, trace and isolate all individuals that have come in contact with confirmed cases while restricting further spread to other states.

The purpose of this article is to examine the legality of the used of quarantine and lockdown in the management of Public health emergency in Nigeria. The discussion centers on two key questions. They are: (1) Is the used of quarantine or lockdown in the management of Public Health Emergency in Nigeria legal? and (2) Whether a lockdown imposed by the President but not in accordance with Section 305 of the 1999 Constitution of the Federal Republic of Nigeria is illegal?

2. (a) The Concept and Evolution of Quarantine

Quarantine is a well-established containment strategy used whenever there is disease outbreak.

It is the oldest containment strategy dating back to the 14th century.¹⁷ Quarantine is derived from the Italian word ‘**Quaranta**’ a sanitary measure introduced for the first time by the most serene republic of Venice in 1377, during a plague outbreak in Dubrovnik and on the Dalmatian coast.¹⁸

Plague was spread by ships sailing from the Eastern Mediterranean, and thus, ‘if there was suspicion of disease on any ship, the captain was ordered to proceed to the quarantine station, where passengers and crew were isolated and the vessel thoroughly fumigated and retained for 40days’.¹⁹

¹³*Ibid.*

¹⁴*Ibid.*

¹⁵*Ibid.*

¹⁶WHO, WHO Director-General’s opening remarks at the media briefing on Covid-19 on 11th March, 2020, available at < <https://www.who.int/dg/speeches/detail/who-director-general-s-opening-remarks-at-the-media-briefing-on-covid-19...11.march-2020> > accessed 8/10/2020.

¹⁷MS Cetron and P Simone, ‘Battling 21st – Century Scourges with a 14th century toolbox’. Emerging infectious disease, 2004: 10(11):2053-2054, available at <https://doi.org/10.3201/eid1011040797-12>. accessed 10/10/2021.

¹⁸E Tognotti, ‘Lessons from the History of Quarantine, from plague to influenza’ Emerging infectious disease, 19(2): 254-259. available at <https://doi.org/10.3201/eid1902.120312>. accessed 10/10/2021.

¹⁹*Ibid.*

The concept of quarantine applies to someone who may have been exposed to or was in contact with an infected person.²⁰ Quarantine is the restriction of movement of persons suspected to have been infected with a disease as a result of their exposure to a disease agent in special health facilities or requiring them to restrict their movements or to remain at home for a period of time usually long enough to cover the known incubation period of the disease in order to determine whether they will develop the symptoms of the disease.²¹ It is the restriction of the movement of a healthy person who may have been exposed to a virus, usually for the incubation period prior to symptoms or a positive test for the illness and at which point the person would be put in isolation. This measure is usually for a specific period of time to enable health authorities ascertain the health status of the suspected persons. In this case, Quarantine differs from isolation which is the separation of already symptomatic persons from the general society.²²

Quarantine performs essentially two functions (i) it stops the chain of transmission by removing possibly infected persons from circulation and (ii) it facilitates early detection of symptoms and treatment which often results in better management of the disease.²³ This is more important where there is pre-symptomatic shedding of virus.²⁴ Justification of quarantine and quarantine laws stems from a general moral obligation to prevent harm.²⁵ Accordingly Ross Upshur²⁶ identified and authorized four principles that must be met to justify Quarantine. First, under the harm principle, there must be clear scientific evidence of person-to-person spread of the disease and the necessity of Quarantine as a containment measure. Second, under the proportionality principle, the least restrictive means or measures proportional to the goal of achieving Disease control should be used. In essence, Quarantine should first be made voluntary before the adoption of more restrictive means and sanctions such as arrest and or the imposition of fines.

Third, upholding the principle of reciprocity points to the community's obligation to provide necessary support services to those in quarantine. In essence, if society compels individuals to curtail their liberties for the good of others, the society should assist the individuals to discharge their obligation.

Fourth, the obligation of public health authorities is to communicate the reasons for their action and to allow a process of appeal. In essence public health authorities owe it as a duty to communicate clearly the justification for their actions and make necessary provision for a process of appeal.

(b) The Concept of Lockdown

Lockdown is a temporary condition imposed by Governmental authorities (as during the outbreak of an epidemic disease) in which people are required to stay in their homes and refrain from or limit activities outside the home involving public contact such as dining out or attending gatherings.²⁷ A lockdown

²⁰MS Cetron and P Simone, (n17).

²¹CF Flu Pandemic Mitigation 'Quarantine and Isolation' available at <https://www.globalsecurity.org/security/ops/hsc-scen-3-flu-pandemic-quarantine-htm>. accessed 11/10/2021.

²²*Ibid.*

²³O Amaka, *etal*, 'Examining the consequences of Ebola outbreak in Nigeria on Personal Rights and Commercial Transactions' in M O Izunwa and DR Izumwa, (ed) *Law and Ethics of Healthcare*, (Great-M Prints & Ideas, Onitsha-Nigeria, 2016) P. 235

²⁴R Upshur, 'The Ethics of Quarantine' (2003) *American Medical Journal of Ethics*, available at <https://www.malofethic.ama.assn.org>. accessed 15/10/2021.

²⁵R Upshur, 'Principles for Justification of Public Health Intervention' (2002) 93 *Can J. Public Health* 101.

²⁶*Ibid.*

²⁷Available at <https://www.merriam-webster.com/lockd>.>accessed 9/7/2021.

basically means that people need to stay indoors but they can go out to buy essential commodities and essential services.²⁸ There are curbs on passengers travel by road as well as railways and people can venture out only if they have state-issued self-declaration affidavits or curfew passes.²⁹ Persons who are employed in various occupational fields (such as healthcare, public works, law enforcement and food supply) considered essential to public health and safety may continue working outside home during lockdown. The purpose of a lockdown is to reduce reproduction of the infectious disease. In essence, it is to reduce the number of people each confirm cases infects. It is a prime quarantine strategy to control the spread of infectious diseases.

(c) Public Health Emergency

Generally, emergencies are events that require an immediate response, including disasters, nuclear accidents, terrorist attacks (such as bombing) and bioterrorism.³⁰ Public health emergencies encompasses the broad spectrum of natural and environmental problems, as well as deliberate and other human-made problems, often acute and affecting the public's health on a relatively large scale.³¹ A Public health emergency is an occurrence or imminent threat of an illness or health condition, caused by bioterrorism, epidemic or pandemic disease, or an infectious agent or biological toxin, that poses a substantial risk to humans by either causing a significant number of human fatalities or permanent or long term disability.³² It is any adverse effect (natural or man-made) that compromises the health of the population and has the potential to cause widespread illness.³³ Some of what could be considered public health emergency are: Disease outbreaks such as Influenza, Botulism, SARS etc., natural disasters such as severe weather (storms, heavy rains, lightning strikes), tornado, flood and hurricane.

Public health issues encompasses the provision of healthcare services, surveillance and control of communicable diseases, as well as safe and healthy working conditions, healthy living environment, access to safe drinking water and sanitation, health-related information and education.³⁴ Factors leading to the breakdown of any of these safety measures could be classified as public health emergency depending on the impact and circumstances of such development.³⁵ A public health emergency usually require public health interventions by health authorities, Government and even international organizations such as the World Health Organization. When such public health emergency transcends the boundary of one state or various states, it is classified as being of international concern. A public health emergency of international concern is an extraordinary event that may constitute a public health risk to other countries through international spread of disease and may or potentially require coordinated response.³⁶ Such extraordinary situation that is serious, unusual or unexpected that bears adverse

²⁸ P Adlakha and N Nagparl, "India: understanding Lockdown During covid-19", available at <https://www.mondaq.com/India/understanding>, accessed. 9/7/2021.

²⁹ *Ibid.*

³⁰ B J Healey and K T Walker, *Introduction to Occupational Health in Public Health Practice*, (San Francisco: Jossey-Bass, 2009), P. 162.

³¹ G W Matthews *e'tal*, "Legal Authorities for interventions in public health emergencies" in R A Goodman *et al*, (ed) *Public Health Practice*, 2nd edn, (New York: Oxford University press. 2007) P. 263.

³² Available at <http://www.mass.gov/info-details> accessed 6/1/2023.

³³ Available at <http://www.chicago.gov/supp-info>, accessed 6/1/2023.

³⁴ School of public health, University of Maryland, 'what is public health' Available at <https://sph.und.edu/content/definition-of-public-health>, accessed on 6/6/2022..

³⁵ C A Ekechi-Agwu, 'Regulating Public Health Emergency in Nigeria: prospects and constraints' *Journal of Law and Judicial System*, Volume 2, Issue 4, 2019, Pp. 9-16.

³⁶ What is public health of emergency concern' Available at <http://www.igi-global.com>, accessed 6/1/2023

implication for public health beyond the affected state's national borders, and requires urgent intervention of the international community.³⁷

3. Some Constitutional concerns about Quarantine and lockdown in Nigeria

Lockdown, quarantine and isolation are basically civil measures aimed at preventing the spread of a disease. Lockdown and quarantine when imposed usually infringe on the rights of citizens. In Nigeria, citizens are entitled to move freely from one destination to the other. Section 41(1) of the 1999 constitution of the Federal Republic of Nigeria (as amended) provides for the right to freedom of movement as follows:

“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.”³⁸

Based on the foregoing constitutional provision, lockdown when imposed violates the constitutional rights of citizens to movement. But suffice to say that the constitutional right to movement under the Nigerian constitution is not absolute. Certain other sections of the constitution permit the curtailing of freedom of movement of citizens particularly in times of emergency and which public health is one.

4. Legal Authority of the President to Take Extraordinary Measures such as Lockdown and Quarantine in the Management of Public Health Emergency in Nigeria

There are three major sources of legal authority that permits the president of the Federal Republic of Nigeria to take preventative and suppressive measures in dealing with public health emergency in Nigeria. They include: the Constitution of the Federal Republic of Nigeria, the Federal Quarantine Act 1926 and international law. They shall now be treated in seriatim.

4.1 Constitutional Provisions

The Constitution of the Federal Republic of Nigeria is the Supreme law of the land. It is usually referred to as the ground norm. The constitution has several provisions that empowers the president to take certain measures including lockdown and quarantine in the management of public health emergency. These includes: sections 14 (b), 20, 45 and 305 of the 1999 constitution.

(a) Section 14(b) of the 1999 Constitution.

Section 14(b) of the 1999 Constitution of the Federal Republic of Nigeria borders on the security and welfare of the citizens of the nation. It provides as follows:

... the security and welfare of the people shall be the primary purpose of government...³⁹

“Security and welfare” as used in this constitutional provision are all encompassing. It includes health, safety, protection of lives and properties of citizens etc. Public health emergency such as the outbreak of infectious diseases border on the welfare of the people. The president has sworn to defend and maintain the constitution.⁴⁰ The president cannot close his eyes to any such public health emergency particularly one of such as dreadful nature as covid-19. The president must take immediate action by

³⁷World Health Organization International Health Regulations (2005): 2nd edn, available at <<https://www.who.int/ihr/publications/9787241596664/en/>>

³⁸ Section 41(1) of the 1999 constitution of the Federal Republic of Nigeria.

³⁹ Section 14(b) of the 1999 Constitution.

⁴⁰ Section 5(b) of the 1999 Constitution.

embarking on measures that can contain the spread and anchoring such action on section 14 (b) of the constitution.

(b) Section 20 of the 1999 Constitution

In order to justify the importance attached to living in a healthy environment, the 1999 Constitution specifically makes protection of the environment a state objective and accommodated in its chapter two aptly titled ‘Fundamental objectives and Directive principle of state policy’

The section provides as follows:

The state shall protect and improve the environment and safeguard the water, air and land, forest and wild life of Nigeria⁴¹

The main aim of the section is, to ensure a healthy environment for Nigerian citizens.⁴² Safeguarding the air, water, land and wild life as stated in Section 20 would enhance a pollution free environment.⁴³ A clean and healthy environment is crucial to human existence. A clean, healthy and sustainable environment is necessary for the full enjoyment of a wide range of human rights. The right to a healthy environment protects the elements of a natural environment that enable a dignified life. It includes the preservation of basic human rights such as the right to life, clean water, food etc.⁴⁴ Most public health emergencies such as outbreak of infectious diseases are usually airborne thereby contaminating the environment. This is the reason why the Constitution of the Federal Republic of Nigeria places premium on the protection and improvement of the environment. It is obligatory for the president at all times to take measures that protects the environment.

(c) Section 45 the 1999 Constitution

Section 45 of the 1999 constitution is basically a restriction on and derogation from fundamental rights. The section permits that the rights found in sections 37, 38, 39, 40 and 41 be restricted in the interest of defence, public safety, public order, public morality, public health or protect the rights and freedom of others. The section provides as follows:

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.
2. In the interest of defence, public safety, public order, public morality or public health; or...⁴⁵

Section 45 (1) (a) (b) actually border on when an existing law empowers such derogation for purposes of public safety and public health without a declaration of state of emergency. Section 45 (2) and (3) validates an act of the National Assembly which provides for “reasonably justifiable” curtailment or derogation from constitutional rights under section 33 (right to life) or section 35 (right to personal

⁴¹ Section 20 of the 1999 Constitution.

⁴² G Ogbodo, ‘Environmental protection in Nigeria: Two Decades after Koko incidence’ (2010) 15 (1) *Animal survey of International and Comparative Law* 1, P. 18

⁴³ A B Abdulkadir, ‘The right to a Healthful Environment in Nigeria: A review of Alternative Pathways to Environment Justice in Nigeria’ Afe Babalola University, *Journal of sustainable Development law and policy* (2014) 3: 1

⁴⁴ Y Aguila, ‘The Right to a Healthy Environment’ International union for conservation, available at <https://www.iucn.org>, accessed 12/6/2022.

⁴⁵ See Section 45 (1) (a) of the Constitution.

liberty) during a period wherein there is in force a proclamation of a state of emergency under section 305 of the Constitution.⁴⁶

(d) Section 305 of the 1999 Constitution

Section 305 of the Constitution of the Federal republic of Nigeria extensively provides for the procedure for the declaration of a state of emergency. The section also provides for the condition that will necessitate such declaration, when it will cease to have effect, the role of the National Assembly, the state Governors and the role of the state houses of Assembly. Section 305 (3) succinctly and lucidly spelt out the condition that can necessitate or warrant the declaration of a state of emergency as follows:

- (a) The federation is at war;
- (b) The federation is in imminent danger of invasion or involvement in a state of war;
- (c) There is actual breakdown of public safety in the federation or any part thereof to such extent as to require extraordinary measures to restore peace and security;
- (d) There is a clear and present danger of an actual breakdown of public order and public safety in the federation or any part thereof requiring extraordinary measures to avert such danger;
- (e) There is an occurrence or imminent danger, or the occurrence of any disaster or natural calamity, affecting the community or a section of the community in the federation;
- (f) There is any other public danger which clearly constitutes a threat to the existence of the federation;
- or
- (g) The president receives a request to do so in accordance with the provision of subsection (4) of the section⁴⁷

The above section places premium on public safety. An infectious disease that can cause harm or imminent danger to the nation is an issue of safety. The president can therefore declare a state of emergency in order to tackle such public health emergency.

4.2 The Federal Quarantine Act 1926

The quarantine Act 1926 has remained for a long time now, the primary law governing or regulating the prevention and suppression of dangerous infectious disease in Nigeria. It is also the law governing public health in emergencies. The Act spelt out what qualifies as dangerous infectious disease. It defines “dangerous infectious disease” to mean 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 dangerous infectious disease within the meaning of this Act.⁴⁸ The Act is intended to regulate the imposition of quarantine and to make other provision for preventing the introduction into and spread in Nigeria.⁴⁹ The Act permits or authorizes the president of Nigeria to declare any place in or outside of Nigeria to be an infected area.⁵⁰

The Act further authorizes the president to issue regulations for the purpose of preventing or suppressing a dangerous infectious disease in an infected area, any other area in Nigeria, or any area outside of Nigeria.⁵¹ Some of the purposes for which the president is permitted or authorized to make regulations are:

⁴⁶ R Abdulahi, ‘Legality of Government Regulation Restricting Fundamental Rights: A Disruptive Argument: Available at <https://www.thisdaylive.com>> accessed 12/7/2022.

⁴⁷ Section 305 (3) of the 1999 Constitution.

⁴⁸ Section 2 of the Quarantine Act 1926.

⁴⁹ S U Ortuanya, *Public Health law and policy in Nigeria*, Princeton & Associate publishing Co. Ltd, 2022, P. 266

⁵⁰ Section 3 of the Quarantine Act 1926.

⁵¹ Section 4 of the Quarantine Act 1926.

- (a) Preventing the spread of any infectious disease from any place within Nigeria, whether an infected local area or not, to any other place within Nigeria;⁵²
- (b) Preventing the transmission of any dangerous infectious disease from Nigeria or from any place within Nigeria, whether an infected local area or not, to any place without Nigeria.⁵³

Flowing from section 4 (c) and (d) of the quarantine Act above, the president may make regulations for the purpose of preventing the spread and transmission of any dangerous infectious disease that occur in any place in Nigeria. State Governors are accorded the same powers as the president to categorize diseases as dangerous infectious diseases, declare a particular location an infected area or issue regulations for similar purposes to that of the president, in the absence of presidential action on the matter.⁵⁴

4.3 International law

One other veritable source of legal authority for the president to adopt lockdown and or quarantine as measures in the management of public health emergency in Nigeria is international law. Nigeria is a signatory to several international treaties. It has also ratified some of them. When a state ratifies a treaty, more so, an international human rights treaty, it assumes a legal obligation to implement the rights recognized in the treaty.⁵⁵ Through ratification, states undertake to put in place domestic measures and legislations compatible with their treaty obligation.⁵⁶ The state also commits to submitting regular reports on how the rights are being implemented to the monitoring committee under that treaty.⁵⁷ By ratification the treaty is officially binding on the state. Some of the treaties that touch on the subject under discussion and which Nigeria has ratified are: The African Charter on Human and Peoples' Rights 1981.⁵⁸ International Covenant on Civil and Political Rights 1966⁵⁹ and International Covenant on Economic, Social and Cultural Rights 1966⁶⁰

Nigeria ratified the African Charter on Human and Peoples' Rights on 22nd June, 1983 in accordance with section 12 (1) of the 1979 now 1999 Constitution of the federal Republic of Nigeria. It went further to domesticate it by enacting the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act Cap 10 LFN, 2004⁶¹.

Nigeria is the first country in Africa to incorporate the African Charter wholesale into its national laws. The African charter in Article 16 provides as follows:

1. Every individual shall have the right to enjoy the best attainable state of physical and mental health.⁶²

⁵² Section 4 (c) of the quarantine Act 1926.

⁵³ Section 4 (d) of the quarantine Act 1926.

⁵⁴ Section 8 of the Quarantine Act, 1926.

⁵⁵ United Nation Human Rights 'Ratification of the 18 International Human Rights treaties' available at <https://indicators.ohchi.org>> accessed 2/8/2022.

⁵⁶ *Ibid.*

⁵⁷ *Ibid.*

⁵⁸ See ACHPR 1981.

⁵⁹ See ICCPR 1966.

⁶⁰ See ICESCR 1966.

⁶¹ See African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act Cap 10 LFN 2004.

⁶² See Article 16 (1) of the ACHPR, 1981.

2. State parties to the present Charter shall take the necessary measures to protect the health of their people and to ensure that they receive medical attention when they are sick.⁶³

It is very glaring that by the provision of Article 16 (2) above, State parties to the charter are permitted to take the necessary measures to protect the health of its citizens. So measures such as lockdown and quarantine imposed by the president for containment of the covid-19 is not out of place and is validated based on the country's obligation under the charter.

Similarly, Nigeria has ratified the International Covenant on Civil and Political Rights 1966. Nigeria ratified the covenant on 29th July, 1993. Article 12 (1) and (3) of the covenant provides as follows:

- (1) Everyone lawfully within the territory of a State shall, within that territory have the right to liberty of movement and freedom to choose his residence.
3. The above mentioned rights shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security, public health or morals or the rights and freedoms of others and are consistent with the other rights recognized in the present covenant.⁶⁴

Similarly, Article 4 of the same Covenant equally provides that:

In time of emergency which threatens the life of the nation and the existence of which is officially proclaimed, the state parties to the present covenant may take measures derogating from their obligations under the present covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligation under international law and do not involve discrimination solely on ground of race, colour, sex language, religion or social origin.⁶⁵

It can be deduced from the above that the ICCPR made provision for state parties to take certain measures derogating from their obligation under the covenant to the extent strictly required by the exigencies of the situation in order to address or tackle issues of public emergency.

Freedom of movement is not listed among the items in Article 4 (2) from which a state party cannot derogate in times of public emergency. In fact, Article 12 (3) is very explicit as it clearly allows for infringement on the freedom or liberty of movement when it relates to issues of public health.

In similar vein Nigeria ratified the International Covenant on Economic, Social and Cultural Rights on the 29th of July 1993, same as the ICCPR. Article 12 (1) and 2 of the covenant provides as follows:

1. The states parties to the present covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health
2. The steps to be taken by the states parties to the present covenant to achieve the full realization of this right shall include those necessary for:
 - (a) The provision for the reduction of the stillbirth-rate and of infant mortality and for the healthy development of the child;
 - (b) The improvement of all aspects of environmental and industrial hygiene

⁶³ See Article 16 (2) of the ACHPR, 1981

⁶⁴ See Article 12 (1) and (3) of the ICCPR.

⁶⁵ See Article 4 (1) of the ICCPR.

- (c) The prevention, treatment and control of epidemic, endemic, occupational and other diseases;
- (d) The creation of conditions which would assure to all medical service and medical attention in the event of sickness.⁶⁶

Flowing from Article 12 above particularly 12 (2) (c), states under the covenant are enjoined to take measures to prevent, treat and control epidemic. Covid -19 is one of such epidemic and any step taken by the Nigerian Government to control and contain its spread accord with its obligation under the covenant.

5. Can the President Impose Lockdown and or Quarantine in the Management of Public Health Emergency Without Recourse to Section 305 of the 1999 Constitution?

The answer to this question is in the affirmative. The President of the Federal Republic of Nigeria can impose lockdown and or quarantine in the management of public health emergency without recourse to section 305 of the 1999 Constitution. It is worth noting that as elaborate as section 305, it is only one of the sections among many others empowering the president to take certain measures including lockdown and or quarantine in the management of public health emergencies. Section 305 (3) (c, d, e and f) specifically mention public safety and the occurrence of any disaster or natural calamity affecting any community or section of the Federation.⁶⁷

Public health emergency can affect public safety and as such the President can declare a state of emergency in order to properly manage such, provided the President complies strictly with the requirements of the provision of section 305.

Public health emergencies are usually unanticipated and most time if it involves the outbreak of an infectious disease that the transmission is quite fast and rapid, travelling through the cumbersome route of section 305 will cause irreparable damage. So the generalized argument by some that the powers of the president to impose restrictions which derogate from the referenced rights under chapter 4 of the Constitution can only be validated by a declaration of a state of emergency under section 305 of the Constitution is faulty and unfounded.

Section 4 of the Quarantine Act 1926 permits the president to adopt any measure in containing the spread of an infectious disease. Suffice it to say that the reason for not providing any particular measure to be taken by the president in containing the spread and transmission of a dangerous infectious disease under section 4 of the quarantine Act is because an infectious disease is usually new and unanticipated and as such it is the form or manner of its spread and transmission that will determine the particular and appropriate regulation (s) to be made by the President in containing such spread and transmission.⁶⁸

The Quarantine Act, falls under the category of what the Constitution refers to as existing law. Section 318 recognizes existing law, which is in force before the commencement of the Constitution as an Act of the National Assembly if such law border on any matter which the National Assembly is empowered by the Constitution to legislate on. It is based on the aforesaid recognition of existing law that section 318 of the 1999 Constitution defines “Act of the National Assembly” to include any law which takes effect under the provisions of the Constitution. Therefore, one can conclude that the Quarantine Act, 1926 is an Act of the

⁶⁶ Article 12 (1) and (2) (a) (b) (c) (d) of the ICESCR, 1966.

⁶⁷ Section 305 (3) (c, d, e and f) of the 1999 Constitution.

⁶⁸ Wigwe & partners, “Appraising the legality of President Buhari’s Anti-Coronavirus lockdown order” available at <https://wigweandpartners.com/news/2020/04/08/1668>.

National Assembly under the 1999 Constitution, more so since item 54 of the Second Schedule to part 1 of the 1999 Constitution empowers the National Assembly to exclusively legislate on quarantine.⁶⁹

The Quarantine Act gives the president the authority to make regulations in pursuant of the containment of any infectious disease. Even premised on the powers conferred on the president by the Quarantine Act alone, the president can impose lockdown and or quarantine as containment measures without recourse to section 305 of the Constitution. It must be mentioned also that the provisions of the Quarantine Act enjoy constitutional backing under section 45 (1) (a) of the 1999 constitution being a law that is reasonably justifiable in a democratic society in the interest of public health.

Again by a community reading of sections 5 (1) (a and b), 14 (2) (b), 20 and 45 (1) (a) and (b) of the 1999 Constitution, the president can by acting in accordance with the executive powers conferred on him take certain measures for the containment of any infectious disease which may include restriction of movement of citizens without recourse to section 305 of the constitution after all, the primary purpose of government is the security and welfare of the people. When these sections of the constitution are considered along with the obligations of the country under Article 16 of the African charter on Human and Peoples' Right, Articles 4 (1), 12 (1) and (3), of the International Covenant on civil and political Rights and Article 12 (1) (2) (c) of the International Covenant on Economic, Social and Cultural Rights. The action of the president imposing lockdown and quarantine in the management of public health emergencies like the COVID-19 pandemic is justified and validated.

6. Conclusion and Recommendation.

In recent times, there has been frequent outbreak of infectious diseases across the globe. The Covid-19 outbreak in 2019 came just after the Ebola outbreak of 2014. Public health is consistently threatened by infectious disease. Two things are always crucial when there is an outbreak of a new infectious disease. First, understanding the exact nature of the disease and secondly, how to combat the epidemic. Combating the outbreak of infectious diseases has led nations to enact public health laws and evolve several other measures to contain its spread.

In Nigeria, the Quarantine Act of 1926 is the primary law regulating the prevention and control of infectious disease. This article has attempted to establish the fact that the president has a wide range of powers under the quarantine Act and the Constitution of the Federal Republic of Nigeria to take certain measures including lockdown and quarantine in the management of public health emergencies. Lockdown and quarantine when adopted as part of the measures for managing public health emergencies usually infringe on the constitutional right to freedom of movement of citizens. But in Nigeria, that right is not absolute. The right to movement ends where the necessity to protect the health of citizens arises. Therefore, section 41 of the 1999 Constitution must be read in conjunction with the provisions of section 45 (1) of the Constitution when it relates to protecting health in times of public health emergency.

The Quarantine Act is a specific public health and safety legislation in Nigeria. The argument that greeted the action of President Buhari on 29th March, 2020 for imposing lockdown in some States is premised on the absence of a clear provision in the Act mandating the president to impose lockdown as part of the measures to contain the spread of infectious diseases. This paper therefore recommends that the quarantine Act be amended and a specific provision on restriction of movement be included as part of the measures that the President can take in containing the spread and transmission of dangerous infectious diseases. That way, future legal tussle on the legality or illegality of a presidential order or directive given and which restricts the movement of citizens in order to contain the spread of infectious diseases can be avoided.

⁶⁹ *Ibid* .