

POLITICS OF COVID-19 RESPONSE AND HUMAN RIGHTS IN NIGERIA AND KENYA

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Introduction

The Covid-19 pandemic has prompted governments all over the world to respond in diverse ways, including through preventive/containment measures. These include social distancing, use of face masks, regular hand washing, total/partial/selective lockdowns, travel restrictions, curfews, and stoppage of businesses, sporting and nonessential commercial activities, among others. In ensuring effectiveness, legislation has been enacted and introduced in support of the measures, and government security personnel have had the additional responsibility of ensuring compliance with the measures. This paper, therefore, examines how Nigerian and Kenyan governments have responded to the Covid-19 pandemic, with the aim of investigating the implications of the responses for human rights, in addition to assessing the human rights impact of Covid-19 crisis itself. This is done with the understanding that policies and actions of governments that impact fundamental rights in Nigeria and Kenya, like any African country, are not new but historical, given plethora of structural and systemic problems arising from efforts at nation-building, including weak legislative institutions, and that responses of governments across the world to Covid-19 have impacted fundamental rights in diverse ways.

The goal is to have some insights into the more general question of the impact of Covid-19 on peace and security; since enjoyment and exercise of human rights is a *sine-qua-non* for peace and security. The paper adopts a qualitative research method, using secondary data sources. These include newspapers, particularly online newspapers, and social media platforms. This is complemented with official publications of government and local and international non-govern-

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ment agencies, books, and journals, especially their online versions, and information gathered and content analysed. The paper begins with a brief reflection on the Covid-19 pandemic. Next, the paper analyses official state responses to Covid-19 in Nigeria and Kenya, and their impact on human rights, focusing on counter-Covid-19 policy measures (emergency measures) adopted in both countries, with emphasis on the features of these measures and impact on fundamental rights. The paper concludes with the recommendation that governments need to adopt emergency measures that respect and foster human rights.

Covid-19 pandemic: an overview

The outbreak of the novel coronavirus in Wuhan, Hubei province, China in December 2019 was initially considered something of concern only to the Chinese government, as little was known by the international community until January 3rd 2020 when the Chinese authorities officially provided information to the World Health Organisation (WHO) (WHO 2020a). Within a month, however, the outbreak in China had reached an alarming level, with 170 deaths and 7,736 confirmed cases (WHO 2020b), resulting in the Chinese government's introduction of strict measures, including lockdown. However, as the number of infections and deaths increased in China, and in 18 other countries, including Thailand, Japan, US, France, and United Arab Emirate (UAE), which recorded their index cases on the 13th, 16th, 21st, 24th and 29th of January 2020, respectively (WHO 2020a), the WHO designated the outbreak as a public health emergency of international concern (i.e. a pandemic) on January 30th 2020 (WHO 2020c), and labelled the virus the Coronavirus Disease 2019 (COVID-19) on February 11th 2020 (WHO 2020a).

Like the rest of the world, African countries recorded cases of Covid-19 in the first quarter of 2020, starting with Egypt, which recorded the first case of the virus on the continent on February 14th 2020 (Bwire 2022, 3; Loembé et al 2020, 999; Hagan et al 2020, 2). This was followed by other countries on the continent to the extent that, by May 22nd 2020, 54 out of 55 African Union (AU) member countries (except Western Sahara) had cumulatively recorded 100,000 cases of infections and 3,100 deaths (Loembé et al 2020, 1000). Although the first index case of the virus in Africa was from a person with travel history to China, most index cases in other countries on the continent originated in Europe, which had become the epicentre of the pandemic by early March 2020 (Loembé et al 2020, 1000). However, by the end of 2021, South Africa had become the country with the highest number of infections and deaths in Africa, with about 48% of the total number of cases on the continent at the time, and Chad with the least number of cases (Bwire 2022, 3).

In response to the cases, WHO issued guidelines and health advisory/protocols on how to prevent the spread of the Covid-19, and emphasised the absence of any known cure or vaccine for it. Some of the health guidelines/protocols are social distance of between one and a half meters and two meters, regular hand washing with soap and running water, use of hand sanitizers, where washing of hands is not feasible, coughing and sneezing into disposable tissue paper or bent elbow, and restriction of movement, except where it is practically unavoidable.

These measures became part of the new normal in the world, as the WHO insisted that the Covid-19 would remain for a long while. Also, the cliché, “stay home, stay safe”, promoted by the WHO, which emphasises the need to prioritise personal safety against Covid-19 by minimising contacts with other people, became a universal maxim. However, late/delayed response and indifference to the health protocols resulted in community spread of the virus in many countries, evident in high infection and fatality rates. Thus, while the number of Covid-19 infections and deaths in China were 85,278 and 4,648 respectively by 10:52am CEST by July 3rd, 2020 (WHO 2020c), after the country had succeeded in flattening the curves of the infection, the number of cases and deaths in many other countries had spiralled. For example, by 10:52am CEST in July 3rd, 2020, the number of Covid-19 infections and deaths respectively in the United Kingdom (UK) were 313,487 and 43,906; the US, 2,617,220 and 127,858; Brazil, 1,448,753 and 60,632; Russian Federation, 661,165 and 9,683, and India, 625,544 and 18,213 (WHO 2020c). In Africa, the number of infections and deaths by the end of 2021 was cumulatively at 7,110,817 and 155,505 respectively, with South Africa accounting for 3,417,318 of the infections (Bwire 2022, 3).

In response to the pandemic, several countries, such as Italy, France, Spain, China, the US, UK and Saudi Arabia, as well as most African countries, such as South Africa, Kenya and Nigeria introduced diverse measures, including ban on international and domestic flights, restriction on intra-country movement, and lockdowns (of schools, businesses, etc). All over the world, the health security threats of Covid-19 disrupted socio-economic activities. For instance, major international, regional and sporting activities, such as the English Premier League, LaLiga (the Italian League), and German Bundesliga (German League) were suspended, while the 2020 Tokyo Olympics and Paralympics were, for the first time in the history of the modern games, postponed to 2021 (UN 2020).

Sports in Africa, like other regions, were also disrupted by the Covid-19 pandemic. The Confederation of African Football (CAF), for example, had to suspend the qualifying rounds of the 2021 edition of the African Cup of Nations (AFCON, known in French as *Coupe d'Afrique des Nations*), and post-

poned the African Nations Championship, popularly called CHAN (i.e. *Championnat d'Afrique des Nations*, in French), slated for Cameroon in April 2020 to a later date due to the Covid-19 pandemic (Oteng 2020). Also, the Africa Basketball League was postponed twice in 2020 due to the pandemic (SportenCommun 2021). Though the impact of the pandemic has been felt in all sports, it is arguably even more present in football (soccer). This is because of the financial implications of the disruption on players, clubs, leagues and referees (Webb 2020). Similarly, the International Labor Organisation (ILO) points to the devastating impact of the pandemic on workers and jobs, projecting an equivalent of 195 million full-time job losses globally by the second quarter of 2020 (ILO 2020). For Africa, the economic impact of the pandemic has been huge, as the continent has witnessed “declining employment, livelihoods, food security, and human capital” (Paci 2021). In Kenya, Nigeria and Ethiopia, for example, “almost 1 in 3 household enterprises closed at the outset of the pandemic, while in Gabon, South Sudan, Malawi, Uganda, Mali, Madagascar, and Zambia, revenue declined for more than 70 percent of household businesses” (Paci 2021).

State response to Covid-19 and the impact on human rights in Nigeria

Nigeria has responded to Covid-19 pandemic through a series of emergency measures: preventive/containment measures, including non-pharmaceutical measures, and socioeconomic measures (also called palliative measures). Although a federation, with three-tiered governance structure consisting of a federal government, 36 state governments, and 774 local government areas, Nigeria’s response has been both federal and state governments-led. This is in view of the country’s Constitution (the 1999 Constitution [as amended]), which places certain health issues (those on the exclusive legislative list), such as quarantine, exclusively within the purview of the federal government, and others (those on the concurrent list) in the purview of both federal and state governments (Federal Government of Nigeria [FGN] 1999).

It is however pertinent to note two things. The first is that the conditions and capacity to enforce fundamental rights in full, particularly socioeconomic rights, are largely non-existent in Nigeria, first because socioeconomic rights are non-justiciable rights under the 1999 Constitution (as amended) and second because of unresolved systemic challenges, including widespread poverty, unemployment and weak legislative institution, being faced by the country, like any African country. The second is that national actions/measures against serious health issues are not new in Nigeria. A broad range of

measures were, for example, adopted to address HIV/AIDS, starting from 1986 (National Agency for the Control of AIDS [NACA] 2005), and the Ebola virus disease between 2014 and 2015 (WHO 2015). These include introduction of national policy on HIV/AIDS (adopted 1997, revised in 2003), monitoring of HIV/AIDS through biennial sentinel survey of pregnant women attending antenatal clinics, public sensitisation, provision of antiretroviral (ARV) drugs and facilities for HIV/AIDS test (Federal Ministry of Health 2010; NACA 2005). Also, in response to the Ebola virus epidemic, the federal government of Nigeria established emergency operation centres and isolation facilities, embarked on house-to-house campaigns and broadcasted messages on radio [and television] stations in local dialects, and deployed GPS for contact tracing (WHO 2015). These measures helped Nigeria to successfully eradicate Ebola (WHO 2015), and manage the issue of HIV/AIDS (Federal Ministry of Health 2010). Almost the same way, the Nigerian State has responded to the Covid-19 pandemic.

Counter-Covid-19 measures/response in Nigeria

Nigeria recorded its Covid-19 index case on February 27th 2020 from an Italian who works in Nigeria but with a travel history to Italy (Nigeria Centre for Disease Control [NCDC] 2020a). Eight months after, precisely by October 25th 2020, Nigeria had recorded 61,992 infections and 1,130 deaths (NCDC 2020b), and by February 28th 2021, a year after the index case, the total number of infections had risen to 155,657 while the total number of deaths was 1,097 (NCDC 2021). Preparatory measures to counter the virus, however, commenced in December 2019. These include the setting up and training of coronavirus rapid response team across the 36 states of the country by the NCDC; creation of a national emergency operations centre, and establishment and constitution of the Coronavirus Preparedness Group, a multi-sector group led by the NCDC with the task of actuating the national emergency operations centre (NCDC 2020a). Consequently, the immediate response to the index case was that the NCDC activated the national emergency operation centre, commenced contact tracing and sensitisation of the public on the health protocols/precautions that should be followed. These include:

- i. regular and thorough washing of hands with soap and water, and use of alcohol-based hand sanitiser;
- ii. maintenance of at least one and half meters (5 feet) distance between oneself and anyone coughing or sneezing;
- iii. persons with persistent cough or sneezing should stay home or keep social distance, but not mix in crowd;

- iv. need to follow good respiratory hygiene by covering mouth and nose with a tissue or sneeze into sleeve at bent elbow;
- v. need to stay home if unwell with symptoms like fever, cough and difficulty in breathing, and need to call NCDC toll free, 24/7 number, and
- vi. stay informed about Covid-19 through officials on TV, Radio etc (NCDC 2020a).

As the number of cases increased, the response broadened, with more emergency measures introduced by both the federal and state governments. It is however important to note that while recognising the powers of the states to legislate on and respond to issues in their jurisdictions, sections 4(5) and 5(3a) of the 1999 Constitution (as amended) makes the federal government (comprising executive, legislative and judicial arms) superior to other tiers of government. Hence, the executive arm of the federal government (hereafter federal government), through the Federal Ministry of Health and the NCDC, coordinated the national response to Covid-19 by introducing emergency policy measures and providing guidelines. To oversee the national response, the federal government constituted a Presidential Task force on Covid-19 pandemic, led by the Secretary to the Government of the Federation (NCDC 2020a). On their part, the executive arm of state governments (hereafter state government[s]) such as Lagos, Oyo, Ondo, Ogun, Bayelsa and Kano and Kaduna, each instituted State Task force on Covid-19 to coordinate responses at individual state level within the ambit of the federal framework and guidelines and to complement efforts of the federal government. It is important to note that these efforts were purely those of the federal and state executive arm of government.

Some of the federal preventive measures included ban on entry into Nigeria for travellers from 13 countries (China, Italy, Iran, South Korea, Spain, Japan, France, Germany, Norway, Netherland, Switzerland, UK and the US) on March 18th (Busari and Adebayo 2020), which later extended to all countries after the closure of borders and ban on international flights on March 23rd (Dixit, Ogundeji, and Onwujekwe 2020). The federal government also ordered closure of all public and private schools (nursery to tertiary) on March 19th, 2020 and total lockdown of Lagos state, Ogun state and Abuja, the federal capital territory, on March 30th, 2020 (Dixit, Ogundeji, and Onwujekwe 2020), being the most affected parts of the country at the time. Similarly, the federal government banned domestic flights on April 20th, 2020; imposed nationwide overnight curfew between 8pm and 6am; banned public gatherings, including social and religious gatherings, and introduced the policy of mandatory use of face masks in public on May 4th, 2020 (Punch 2020; Dixit, Ogundeji, and Onwujekwe 2020).

In addition, restrictions on interstate travel and movement were introduced on May 4th, 2020 (Ailemen 2020), except for essential services, including food, petroleum and pharmaceutical supplies, and for those on essential services, such as security, media and medical personnel. Though introduced by the federal government for nationwide implementation by the Nigeria Police, the state governments proposed the policy of interstate travel restriction at the Governors' Forum meeting of April 23rd, 2020 (Adams 2020). Emergency economic measures were also introduced by the executive arm of the federal government to cushion the effects of the lockdowns and movement restrictions on the people, including approving an economic stimulus package; food assistance programme for the needy and cash transfer of \$52 to the poor that were registered on the National Social Register (NSR) (Dixit, Ogundeji, and Onwujekwe 2020).

Complementing the federal efforts, and as part of their constitutional responsibilities to the people, state governments, including Oyo, Lagos, Ondo, Bauchi, Kaduna, Kano, Osun, Ekiti, Benue, and Rivers states, introduced a number of preventive measures. These include ban on mass gatherings and religious activities for over 50 persons, later reduced to 20 persons, by Lagos and Ogun states; lockdowns (partial/total) and movement restrictions in Taraba, Borno, Delta, Ebonyi, Kano, and Bauchi, Ekiti, Osun, Rivers, Niger, Kwara and Kaduna states respectively, and night curfews in Oyo state. These were in addition to the health advisory/protocols prescribed by the Federal Ministry of Health and the NCDC. Also, a number of states, such as Lagos and Oyo states, introduced emergency economic measures, particularly food distribution to the poor, to mitigate the economic effects of the movement restrictions and lockdown policies on the people. Lagos state, for example, introduced a food distribution programme for 200,000 poor households (Okon 2020).

To give the federal and state measures a legal backing, a number of new legislations/regulations were introduced by the executives (federal and state) to complement existing ones, particularly the Quarantine Act. These include the Federal Government of Nigeria COVID-19 Regulations, 2020 (Federal Government of Nigeria [FGN] 2020), Lagos State Infectious Diseases (Emergency Prevention) Regulations 2020 (Lagos State Government 2020), and Ekiti State Coronavirus (Prevention of Infection) Regulations, 2020 (Ekiti State Government 2020). Though laudable for aiming to curb the spread of Covid-19 and cushion the socioeconomic effects on the people, the emergency measures of the federal and state governments have had direct and indirect impact on human rights in Nigeria. This was, however, possible because the legislatures (federal and state) were sidelined by the executives (federal and state), as there was no parliamentary participation in the formulation of the regulations and proper parliamentary oversight of their implementation.

Impact of counter-Covid-19 measures on human rights in Nigeria

The intersection of response (by federal and state governments) to Covid-19 and human rights in Nigeria is diverse. However, it is first and foremost important to note that the failure of the federal government, like governments of most other countries, to ensure that Covid-19 was not imported into Nigeria was a serious negligence that compromised the right of Nigerians to protection and security, including against infectious diseases like Covid-19, contrary to section 14(2b) of the 1999 Constitution (as amended), which states that “the security and welfare of the people shall be the primary purpose of government” (FGN 1999, 37). The negligence was directly related to the late closure of major ports of entry for international travellers, and late introduction of concrete policies to ensure adequate and proper screening and monitoring of travellers into the country, despite calls by the federal legislature (the National Assembly) to the executive to take proactive measures before the index case was recorded in February (Yiaga Africa 2020).

Furthermore, the regulations/legislation that birthed the preventive measures of governments (federal and state) declared Covid-19 a dangerous infectious disease and consequently allowed the governments to assume emergency powers, which, in the absence of parliamentary oversight and marginalization of parliaments in their formulation, impacted fundamental rights of people. For example, section 10 of the Ekiti State Coronavirus (Prevention of Infectious) Regulations, 2020, which provides that “no person is entitled to compensation for any loss or damage arising from any bona fide action or omission by a [an] authorised official under these regulations” (Ekiti State Government 2020, 6), is inimical to human rights. This is because it allows for impunity, as it means that the state government and its officials, acting in respect of the Ekiti State Coronavirus (Prevention of Infectious) Regulations, can impair human rights of people without any sanction or repercussion.

However, right to judicial redress for violation of human rights and to compensation theretofore is a fundamental human right recognised by both the 1999 Constitution (as amended) of Nigeria (under section 36, on right to fair hearing), and international human rights instruments, including the International Covenant on Civil and Political Rights (ICCPR), particularly article 4 (2) relating to non-derogation by states in time of public emergency from article 6 (on right to life), article 7 (on freedom from torture/inhuman treatment) and article 2(3a) (UN 1976, 3-5). Specifically, the ICCPR, to which Nigeria is a signatory, in article 2(3a), obligates State Party to the Covenant to ensure that “any person whose rights or freedoms as herein recognised are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity” (UN 1976a, 3).

Thus, denying people right to compensation, as in the case of the Ekiti State Coronavirus (Prevention of Infectious) Regulations 2020, undermines the right to judicial redress, and is, on the one hand, an affront to human rights and freedoms, and on the other hand, an assault on one of the bedrocks of democracy. Also, the Lagos State Infectious Diseases (Emergency Prevention) Regulations, 2020, which stipulates fines and/or imprisonment for offences committed against the state's counter-Covid-19 regulations (Lagos State Government 2020, 12), fails to specify the number of days for which offenders can be detained and the amount to be paid as fines, thereby leaving room for abuse of power by the implementers of the regulations.

In addition, some of the preventive measures of governments (federal and state) impacted socioeconomic rights, as they limited people's access to jobs. It is important to note that though socioeconomic rights are non-justiciable rights in Nigeria, and as such the government cannot be held accountable for any breach, they are universally recognised rights that should be given some attention. In particular, governments' (federal and state) policies of lockdowns (total/partial), restriction of movement and overnight curfews failed to take into cognisance the fact that Nigeria has a large informal sector, about 65% of the economy (Melinda, Jonelis and Cangul 2016, 13), whose employees' subsistence is dependent on incomes from mostly small-scale businesses. Hence, the measures led to a situation where, according to the World Bank Rapid Response Phone Surveys of households and firms in 41 sub-Saharan countries, including Nigeria, "almost 1 in 3 household businesses in the country closed at the outset of the pandemic" (Paci 2021). The closure of businesses meant job and income losses, and invariably reduction in consumption for workers, especially in the informal sector of the economy. The National Bureau of Statistics (NBS) alluded to this when it, for example, notes that 76.8% and 68% of Nigerian households experienced moderate or severe food insecurity in June and August 2020 respectively due to the movement restrictions introduced to curb the spread of the coronavirus (Abass 2020).

The consequences of the movement restrictions were compounded by the emergency economic measures (i.e. palliative measures) introduced by the governments (federal and state) to cushion the economic effects of the pandemic, but which were riddled with inadequacies. For example, the food distribution policy of both the federal and several state governments was defective, as the number of targeted beneficiaries was far less than the total number of poor and vulnerable. While the Lagos state government, for instance, introduced a food distribution programme for 200,000 households (Okon 2020), where each household is assumed to comprise at least five persons, making a million beneficiaries in all, over 50% of its estimated 23.3

million population was below the poverty line of \$1 a day as of 2014 (Lagos Bureau of Statistics 2014, 24). Given that there is no evidence to suggest that Lagos state has witnessed economic improvement as to reduce the poverty level, it means the food distribution measure for 200,000 households excluded the majority of the poor and vulnerable in the state.

Likewise, the federal government's conditional cash transfer of \$52 (20,000 naira) to the poor on the National Social Register (NSR) of Poor and Vulnerable Households was grossly defective. Whereas 11,045,537 Nigerians (from 2.6 million households) were on the National Social Register as at March 31st 2020 (National Social Safety Nets Coordinating Office [NASSCO] 2020), with a presidential directive to increase it to 3.6 million households (Sobowale 2020), not less than 40.1% (i.e. 82.9 million Nigerians, excluding Borno state) of the total population of the country is officially considered poor by national standards (National Bureau of Statistics 2020, 6). This implies that the cash transfer policy excluded a significant proportion (over 70 million) of the country's poor. It is apt to argue, however, that the shortcomings of the palliative measures are not unconnected to the historical problem of bad governance in Nigeria, reflected in the inability of successive governments to fully utilise the country's enormous oil and economic wealth to benefit the people, thereby rendering many poor and vulnerable.

Furthermore, implementations of some of the preventive measures of governments (federal and state) to counter Covid-19 pandemic by government officials and security personnel resulted in the impairment of fundamental rights of people in Nigeria. This is in view of cases of brutality, extortion and assault on civilians by security officials (police, soldiers, and personnel of the Nigeria Security and Civil Defence Corps) and some non-security officials enforcing the government's measures of movement restrictions, curfews, social distancing, and compulsory use of face mask in public. Though not a new phenomenon, as the police and security agencies in Nigeria are known for highhandedness and corruption, which is partly attributable to poverty, low wages and poor working conditions, the implementation of the movement restrictions made this more obvious. Between March and April 2020, for example, the BBC News, citing Nigeria's National Human Rights Commission (NHRC), reported that 18 people were killed in different parts of the country by security personnel enforcing the government's lockdown measures (BBC 2020). The report also indicated that more than 100 complaints of police brutality across 24 states of Nigeria's 36 states were filed with the NHRC during the same period (BBC 2020). Also, the ban on inter-state movement afforded the police and other security personnel, deployed to enforce the measure, the opportunity to extort motorists, as people who had the need to travel were extorted at the interstate borders and on some roads. In

an instance, a police officer was caught on camera extorting \$110 (about N42,707) from a motorist in Lagos state (BBC 2020), while several security officers were observed extorting a little over \$1 (N500) from motorists at various checkpoints or barricades on Lagos-Benin interstate roads (Egbas 2020).

Besides, non-security government officials were also culpable of maltreating people who contravened the lockdown measures. A clear case of this was an assault on a woman by officials of Ifo Local Government Area of Ogun state, southwest Nigeria, in June, 2020 (Folarin 2020). In a video that went viral all over the country, an official of the local government was caught on camera beating a woman, while others deflated the tyres of her vehicle because she had violated the lockdown measures and refused to give a N15,000 (about \$38) bribe (SRTV Reports 2020). Although the relevant authorities, including the police, responded by arresting the culpable officers/officials and encouraged members of the public to report violations of human rights, the highhandedness of the officers/officials was a gross violation of the right of their victims to fair and humane treatment, contrary to provisions of the 1999 Constitution (as amended) and international human rights instruments, particularly articles 9(1) and 10(1) of the ICCPR. Article 10(1) of the ICCPR, for example, clearly states that, "All persons...shall be treated with humanity and with respect for the inherent dignity of the human person" (UN 1976a, 6-7).

Aside from the direct impact, governments' lockdown measures also had some indirect impact on fundamental rights, particularly the rights of women and girls to freedom from all forms of violence, including unwanted or forced sex (i.e. rape) and other forms of sexual abuse, recognised by international human rights instruments to which Nigeria is a signatory, such as the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa. This is in respect of widespread rape and sexual abuse of women and girls, mostly by male relatives or companions, during the Covid-19 lockdowns. According to the Ministry of Women Affairs and Social Development, no less than 3,600 cases of rape were recorded during the lockdown (Aborisade 2020). The upsurge necessitated outcries, including protest marches by civil society groups, demanding urgent action from the government (Aljazeera 2020a).

However, though several factors could explain the upsurge in rape, the failure of the government (federal and state) to take cognisance of the fact that many Nigerians live in crowded residences and neighbourhoods, with high tendency to crimes (Agbola 1997), including rape and other forms of sexual violence, before introducing the lockdown measures was no doubt a contributory factor. This makes the Nigerian government culpable, as its lockdown measures inadvertently encouraged violence against women, contrary to its obligation under the Protocol to the African Charter on Human and Peoples'

Rights on the Rights of Women in Africa, which requires signatory States to adopt measures (legislative, administrative, social and economic) that prevent, punish and eradicate all forms of violence against women (AU 2003, 6). It may be argued that apart from other structural/systemic problems, the impact the emergency measures have had on fundamental rights in Nigeria was because the legislatures (federal and state) neither participated in the formulation of the measures nor were available, due to the lockdown and movement restrictions, to provide requisite oversight and ensure accountability.

State responses to Covid-19 and the impact on human rights in Kenya

Kenya, unlike Nigeria, operates a two-tiered governance structure consisting of a national government and 47 county governments. The country recorded its first Covid-19 case on March 12th 2020. Like Nigeria, Covid-19 was imported into Kenya. The index case was a person that returned to Nairobi from the US via London on March 5th 2020 (Aluga 2020). By the end of the month, the number of infections had increased to 60, and 3 deaths were recorded (Aluga 2020), while by 7.18pm CEST, July 26th 2022, the cases had risen to 337,339 infections and 5,670 deaths (WHO 2022). As in the case of Nigeria, and more specifically in line with the fourth schedule (parts 1 and 2) of the Constitution of Kenya, which, though in varying degrees, places issues relating to health on both the national and county governments, the Kenyan governments (national and county) responded with a number of measures to contain the spread of the disease. Hence, like in Nigeria, preparation for Covid-19 in Kenya started before the index case, and was also multi-sectoral in nature. This includes actions taken in February 2020 by Kenya's Ministry of Health, such as sensitisation of the public on Covid-19 and its respiratory symptoms; the need to maintain good hygiene and avoid non-essential travel to countries already affected by the virus (Aluga 2020).

In addition, on February 28th 2020, the central government introduced an Executive Order No. 2, which established the National Emergency Response Committee (NERC) to activate and coordinate the national response (Aluga 2020). Consequently, as the crisis of Covid-19 unfolded in the country, with the index case on March 12th and subsequent increases in the number of cases, the national response was activated. This, like in Nigeria, centred on preventive/containment, including non-pharmaceutical, and socioeconomic measures, derived from and backed by extant and new legislations/guidelines, including the Constitution of the Republic of Kenya; Executive Order No. 2 of 2020, Legal Notice 36 of 2020; Public Health Rules 2020, and Public Order Act.

Counter-Covid-19 measures in Kenya

The preventive measures introduced by the central/national government in Kenya to contain the spread of Covid-19 include night curfew (7pm to 5am), except for persons on essential services; movement restriction in Nairobi Metropolitan Area, Kilifi, Mombasa and Kwale Counties (Kimani 2020); social distancing of 1.5 metres in public gatherings, including in bars and supermarkets, and fumigation of local markets and provision of clean water and soap for regular washing of hands in markets (Aluga 2020). Also, the national government directed regular collection of garbage and cleanliness of markets by County Governments; introduced partial lockdowns, as workers were encouraged where possible to work from home, and industries and factories were mandated to use minimum workforce on 24 hours shifting basis (Aluga 2020). Similarly, entry of non-Kenyans and foreigners without residence permit was prohibited; compulsory 14 days quarantine for all travellers into the country was introduced (Aluga 2020), and 50% maximum seating capacity in public and private vehicles and compulsory use of face mask were mandated by the government (Kimani 2020).

In addition, the national government introduced a number of emergency socioeconomic measures designed to mitigate the economic effect of the pandemic on individuals and businesses. The measures include tax relief of 100% for individuals with a gross income of up to Ksh 24,000 (\$221); reduction of resident corporate tax and individual income tax (for income in excess of Ksh 47,059 (about \$433.58) monthly) from 30% to 25%; reduction in Value Added Tax by 2% (from 16% to 14%); and cash transfer to orphans, elderly and other vulnerable people (Deloitte 2020). Moreover, the central government ordered the recruitment of additional health workers, including from outside of Kenya, to provide additional support for the fight against the virus. Hence, a number of Cuban doctors were recruited (Munyao 2020). The central government equally directed an 80% cut in the salaries of the President and Deputy President of the country and 30% in that of cabinet (Deloitte 2020), as a way of increasing the funds available to government for the fight against the pandemic. Compared to Nigeria, which failed to introduce tax relief for any category of individuals, the tax reliefs of the Kenyan government were commendable. Similarly, like in Nigeria, the second tier of government in Kenya introduced measures to complement efforts of the central government. These include Mombasa County, which, among other things, provided a 150-bed field hospital, and Machakos, which introduced special allowance, ranging from Ksh 20,000 to Ksh 5,000 (\$184 - \$46) for different categories of health workers involved in the fight against Covid-19 in the county (Kiruga 2020). The implementation of these measures, however, inadvertently impacted the people, particularly with respect to fundamental rights.

Human rights Impact of emergency Covid-19 measures in Kenya

Like in Nigeria, the human rights impact of counter-Covid-19 measures in Kenya is extensive. In the first place, the inability of the Kenyan authorities to prevent an importation of the virus into the country, despite being aware of its existence, arising from delayed closure of borders and failure to ensure early monitoring of travellers into the country was, as in the case of Nigeria, a serious negligence that caused many Kenyans their lives (especially those who died of the virus) and livelihoods. Like in Nigeria, the negligence was due to late adoption of policies to prevent importation of the virus, including ensuring timely screening and monitoring of travellers into the country. Though the situation was not peculiar to only Kenya (and Nigeria), as most governments were unable to prevent the spread of the virus into their countries, the negligence compromised the fundamental rights of Kenyans to adequate security, including against diseases, contrary to the African Charter on Human and Peoples' Rights, of which Kenya is a signatory, which, in article 6, states that every individual in the State Party has the right to the security of his person (AU 1986, 3).

Similarly, the preventive measures introduced by the government to contain the spread of Covid-19 impacted a broad range of social and economic rights of Kenyans. Like in some countries such as Belgium (Popelier 2020), where preventive measures were introduced, the lockdown, night curfew, and other movement restriction measures of government impacted access and ability of Kenyans to work and to secure employment, leading to and exacerbating the issue of job and income losses, with implications for people's standard of living. According to reports, the preventive measures had, by June 2020, resulted in job losses of over a million people (Wafula 2020), redundancy for some workers and reduction in incomes and revenues of workers and businesses (Kenya National Bureau of Statistics 2020). Likewise, the counter-Covid-19 policy of the Kenyan government on reduction of the carrying capacity of public and private vehicles to 50% led to an increase in the cost of transportation by 51.7% in May 2020 (Kenya National Bureau of Statistics 2020, 1). This, the Kenyan National Bureau of Statistics revealed, affected people's ability to pay bills, including house rent, with 30.5% households being unable to pay rent at the agreed date with landlords (Kenya National Bureau of Statistics 2020, 1).

Moreover, the economic measures introduced by the government to mitigate the effects of the pandemic failed, due to being inadequate, as access to them was limited to a small fraction of the poor and vulnerable people in the country. The tax reliefs, including the 100% tax relief for individuals with a gross income of up to Ksh 24,000 (\$221), were measures that were not

beneficial to all Kenyans, except those who pay taxes. This is because those outside the targeted income frames, particularly workers in the informal sector including daily wage labourers who do not pay taxes, could not benefit. Also, the cash transfer programme to the poor and vulnerable, including the elderly and orphans, which was a continuation of an existing policy for over a million people in the country (Jerving 2020), was inadequate, as it excluded poor and vulnerable people who were not part of the existing scheme. Besides, the amount (Ksh 10 billion) allocated for the cash transfer was not enough to cater for all the poor people, as the country has 36.1% of its population, estimated at 47.8 million in 2015 (World Population Review 2020), officially designated as living below the national poverty lines (World Bank 2020).

In addition, the government's Covid-19 food distribution programme, which allowed only parents to pick up food items from the distribution centres, marginalised child-headed families, numbering about 13,000 in Nairobi alone, as they stayed away from the distribution centres because of fear and stigma (Abramian 2020). The implication of the shortcomings of these emergency measures (movement restriction and palliatives) is that most Kenyans, particularly the poor and vulnerable, suffered, as they experienced job and income losses, and invariably had difficulties in accessing quality food and other necessities of life. While the intended goal of the emergency measures was good, the fact that they impacted access to job and income, and invariably standard of living of the people, particularly the poor and vulnerable contradicted the obligations of the Kenyan State to its people under international human rights instruments. These include the International Covenant on Economic, Social and Cultural Rights (ICESCR), particularly articles 6(1), 11(1) and 11(2), relating to rights to work; to adequate standard of living, including food, clothing and housing, and to freedom from hunger, respectively (UN 1976b, 2-4), as well as article 43(1-3) of the Constitution of Kenya, relating to citizens' right to food, housing and social security. It is pertinent to note that denial/violation of socioeconomic rights in Kenya, as in Nigeria and most African countries, predates the Covid-19 emergency, as conditions and capacity to enforce the rights are largely non-existent. However, the issue became heightened and compounded by the movement restrictions.

Furthermore, as in the case of Nigeria, implementation of movement restrictions by the police in Kenya resulted in the violation of the rights to life and to fair and humane treatment. Like in Nigeria, police highhandedness in Kenya is not new, but rather common. Efforts to manage the Covid-19 pandemic, however, further brought this to the fore. This is in respect of reported cases of police indiscriminate arrest, brutality and extortion of bribes from those accused of violating the lockdown, social distancing or failing to wear

face masks (Gathara 2020). Reports by Kenya's Independent Policing Oversight Authority (IPOA), a police watchdog, revealed that police highhandedness while enforcing the government measures had resulted in a number of casualties, including deaths of innocent civilians (Human Rights Watch 2020; Fisayo-Bambi 2020). The Human Rights Watch, for example, notes that in different parts of the country, including downtown Nairobi, Embakasi area of eastern Nairobi, and Busia and Kakamega counties, police arrested people on the streets indiscriminately, whipped and kicked them while enforcing the counter-Covid-19 measures (Human Rights Watch 2020).

Apart from maltreatment, several casualties, including 15 deaths and 31 cases of injuries, as a result of police brutality while enforcing the curfew, were reported between March and June 2020, triggering protest by some Kenyans who demanded an end to it, and justice for the victims (Aljazeera 2020b). The police actions were gross violations of the fundamental rights to life of those killed; a threat to right to life of the injured; and a violation of the right to fair and humane treatment of those maltreated and brutalised, contrary to the provisions in the Constitution of Kenya, including articles 26, 28 and 29(c), relating to rights to life, to dignity of human person, and to freedom from any form of violence from either public or private sources, and numerous international human rights instruments to which Kenya is a signatory, including the ICCPR, ICESCR, and the African Charter on Human and Peoples' Rights.

Also, contrary to its human rights obligations under international human rights instruments, such as the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, the government's Covid-19 restriction measures inadvertently contributed to the increase in violation of the fundamental rights of women and girls to freedom from all forms of violence, including rape. Like in Nigeria, rape and violence against women and girls became rampant in Kenya during the lockdown (Gitau 2020), due to the fact that the restriction measures, coupled with poverty and overcrowded nature of many communities, were implemented without due cognisance of the risks they pose to women and girls. Although violence against women increases during crises, including epidemics (WHO 2020d; UN Women 2020), the extent of the infraction in Kenya during the period of movement restriction was alarming. Over 150,000 cases (about 40% increase from 2019) of teenage pregnancies were reported to have occurred (Yusuf 2020), with Machakos County alone accounting for 4,000 cases, mostly from rape, in three months², and 5,000 rape victims, with children below 18 years constituting 70% of the victims, were officially treated (NTV News 2020).

2 Although the data was released by the Children's Department in Machakos County, authorities of the county refuted the figures, claiming they might be exaggerated (Yusuf 2020; Maema 2020).

While the perpetrators of the crime were mostly close family members and partners, incidences of violence against women by government security personnel also occurred. These included the rape of a female patient in a Covid-19 isolation centre by a prison warden who was guarding the facility (Malalo 2020). Though Kenyan government made efforts to address the problem, including presidential directives to the National Crime Research Centre to investigate the issue, and to the police to prosecute perpetrators (Bhalla 2020), the fact that the measures could, though inadvertently, provide opportunities for the perpetration of the crime of rape to the alarming level that it assumed, runs contrary to the essence and primary responsibility of the Kenyan State to its people, both under the Kenyan Constitution and international human rights instruments, which is to ensure the security, including bodily (physically), mentally and materially, of persons under its jurisdiction. More specifically, the infraction runs contrary to the intent of article 4(2b) of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, which requires signatory States, including Kenya, to adopt measures (legislative, administrative, social and economic) that prevent, punish and eradicate all forms of violence against women (AU 2003). Moreover, as earlier pointed out that the conditions and capacity to enforce socioeconomic rights are largely non-existent in Kenya, like most African countries, the government should, then, have been more careful and circumspect in introducing emergency measures that provide avenues for violations/denial of those rights.

Conclusion

This paper has drawn attention to the human rights impacts of the counter-Covid-19 measures in both Nigeria and Kenya. It has highlighted how some of the preventive/containment measures in the two countries have directly and indirectly impacted fundamental rights and the freedom of people. The emergency Covid-19 measures of the two countries are however similar; essentially geared towards preventing and containing the spread of the coronavirus disease, and mitigating the economic effects on the people. The measures were also almost similar to what almost all the countries affected by the Covid-19 crisis adopted. However, the impacts of the measures, in relation to access to and enjoyment of fundamental rights in both Kenya and Nigeria are diverse. The implementation of the restriction measures, for example, inadvertently contributed to the increase in incidences of rape and sexual abuse of women and girls, and engendered increase in cases of

police brutality, extortion and harassment of civilians. This underscores the fact that the emergency measures were formulated and implemented without due cognisance of their human rights implications.

Arguably, violation/denial of fundamental rights in the two countries, like most African countries, predates Covid-19. Lack of access to quality food and shelter, and adequate standard of living are, for example, social problems that are historically common as a result of structural and systemic challenges being faced by these countries. This suggests that the emergency measures merely exacerbated the problems, including making historically disadvantaged groups more vulnerable. This, notwithstanding, shows the failure of the Nigerian and Kenyan governments to fulfil their obligation under international law to their people, which is to ensure, promote and protect human rights and fundamental freedoms. As signatories to core and several international human rights instruments, including the United Nations Charter, the Universal Declaration of Human Rights, the ICCPR and ICESCR, and the African Charter on Human and Peoples' Rights, which place legal obligations on States in respects of human rights, both Nigeria and Kenya should have introduced and implemented counter-Covid-19 measures that foster and respect human rights. Besides, it is not unexpected that emergency measures would impact fundamental rights and liberties, which makes "legislative control over the acts and actions of emergency authorities important in safeguarding the rule of law and democracy" (Griglio 2020, 52). Thus, Nigeria and Kenya lacked in their response to Covid-19.

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ABSTRACT

This article analyses the intersection of response to Covid-19 and human rights in Nigeria and Kenya, as both countries illustrate two Covid-19 endemic and rapidly responding states to the Covid-19 pandemic. However, in Nigeria and Kenya, response to Covid-19 has to be understood in relation to their respective legal and policy frameworks and policy enforcement mechanisms. The paper notes that cases of police brutality, extortion and assault on civilians during Covid-19 pandemic raise the issue of insecurity and the whole question of human rights. The paper demonstrates that governments’ emergency measures have serious implications for fundamental rights in Nigeria and Kenya, particularly those of perceived violators of the measures, the poor and vulnerable people, and women and girls.

KEYWORDS:

Covid-19. Counter-Covid-19 measures. Human Rights. Nigeria. Kenya.

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