



**HUMAN RIGHTS PROTECTION, FUNDAMENTAL FREEDOMS AND SECURITY DURING  
PANDEMICS IN AFRICA: THE IMPERATIVE OF EFFECTIVE LEGAL RESPONSE**

ISSN 2957-8647

**Ferdinand Onwe Agama PhD\***  
National Open University Of Nigeria

Vol. 2  
pp. 1-21, March 2023

[www.cavendish.ac.ug](http://www.cavendish.ac.ug)

email: [secretaryculj@cavendish.ac.ug](mailto:secretaryculj@cavendish.ac.ug)

**How to cite this article:**

*Agama, F. (2023). Human Rights Protection, Fundamental Freedoms and Security During Pandemics in Africa: The Imperative of Effective Legal Response. CULJ Vol 2.*

**Abstract**

*Outbreak of pandemics like Coronavirus Disease and Ebola has occasioned shockwaves in the affected regions. While Ebola affected parts of Africa region, disruptions from Covid-19 pandemic are global. Covid-19 engendered an unprecedented and severe disruptions than the world has experienced in recent memory, affecting governments, non-governmental organisations, international institutions and the entire global public. Although the record of Covid-19 incidents and fatalities was comparatively low in Africa than other regions of the world, the pandemic profoundly altered the economic, socio-political and legal conditions of African States as in the rest of the world. This impacted negatively on nations' economies, overwhelmed the health-care, socio-political and legal systems, thereby precipitating human rights challenges in every front, particularly in fragile-economy nations of Africa. This paper examines the socio-economic and governance fallout of pandemics in Africa and questions whether measures adopted to control pandemics and the associated crises complied with the emergency provisions and limitations permitted under human rights treaties. It further examines the impact of some pandemic control measures/responses introduced in African countries on human rights and their effects on human rights protection and fundamental freedoms. The work finds that disruptions by pandemics were exacerbated by fragile systems of governance, weak economy, corruption and abusive culture of security institutions in the guise of maintenance of law and order in Africa. This ultimately occasioned extreme injustice, inequality, insecurity and human rights abuses due to poor responses by relevant authorities. On this basis, the paper recommends among others, the need for effective legal and governance approach by authorities in Africa while responding to emergency and crisis situations as in the case of Covid-19 and other global pandemics like Ebola.*

**Key words:** Human Rights, Fundamental Freedoms, Pandemics, Security, Legal Response

---

\*Department of Public Law, Faculty of Law, National Open University Of Nigeria, Plot 91 Cadastral Zone NnamdiAzikiwe Expressway, Jabi Abuja Nigeria.fedinchrist@yahoo.com, fagama@noun.edu.ng 08039368014

## Introduction

Since the beginning of the twentieth century, the world has witnessed some notable pandemics such as the 1918 ‘Spanish’ Flu, caused by an influenza A (H1N1) virus, 1957 influenza A (H2N2) virus, 1968 influenza A (H3N2) virus, 2002 Severe Acute Respiratory Syndrome (SARS) caused by SARS coronavirus, and the 2009 Swine Flu caused by an influenza A (H1N1) virus<sup>1</sup>. Although, not declared a pandemic in itself, the Ebola Virus Disease (EVD) epidemic ravaged the West African region between 2013 and 2016, claiming an estimated 11,300 lives<sup>2</sup>. However, in December 2019, the Coronavirus Disease (Covid-19) caused by infection with the Severe Acute Respiratory Syndrome Coronavirus 2 (SARS-CoV-2) was discovered in Wuhan city in China<sup>3</sup>. Research has shown that the coronaviruses of zoonotic origin have in the past twenty years, resulted in many outbreaks of severe respiratory infections which had been regarded as major pathogens of public health importance<sup>4</sup>. Covid-19 is a communicable disease caused by a new coronavirus which belongs to a family of viruses that cause respiratory infections in man<sup>5</sup>. The first documented case of Coronavirus disease in Africa was reported on 14th February, 2020 in Egypt, followed by Algeria on 25th February, 2020, and then Nigeria on 27th February, 2020<sup>6</sup>. Nigeria’s first case of the virus was an Italian citizen who flew to Lagos from Milan, although he had no symptoms when he landed at the airport<sup>7</sup>. Precisely on 11th March 2020, the World Health Organisation (WHO) declared the COVID-19 outbreak a

<sup>1</sup> JW LeDuc and MA Barry., ‘SARS, the First Pandemic of the 21st Century’ (2004) 10(11) *Emerg Infect Dis.* 26.

<sup>2</sup>Centers for Disease Control and Prevention. 2014–2016 Ebola Outbreak in West Africa. (Ebola Virus Disease)’, (2016) <<https://www.cdc.gov/vhf/ebola/history/2014-2016-outbreak/index.html>>. Accessed on 6 January, 2023.

<sup>3</sup> B S Mohan and V Nambiar, ‘Covid-19: An Insight into SARS - CoV – 2 Pandemic Originated at Wuhan City in Hubei Province of China’ (2020) *Journal of Infectious diseases and Epidemiology*, 6:146.

<sup>4</sup>World Health Organisation (2020) Director-General’s remarks at the media briefing on 2019-nCoV on 11 February 2020.

<sup>5</sup>J Gui F Li and Z L Shi, ‘Origin and evolution of Pathogenic Coronaviruses’, (2019) *Nature Review Microbiology* 19(3):181-192.

<sup>6</sup>N Kapata, C Ihekweazu, *et al.* ‘Is Africa prepared for tackling the COVID-19 (SARS-CoV-2) epidemic. Lessons from past outbreaks, ongoing Pan-African public health efforts, and implications for the future’ (2020) *Int J Infect Dis.* 93:233–6.

<sup>7</sup>Reuters Staff, (2020) <<https://www.reuters.com/article/us-china-health-nigeria-virus-idUKKCN20M1EC>>. Accessed on 13 April, 2023; A Akwagyiram and C Eboh, ‘The Italian with coronavirus in Nigeria was not isolated for almost 48 hours’ (2020) <<https://www.reuters.com/article/us-china-health-nigeria-idUSKCN20M07D>>. accessed on 13 April, 2023.

pandemic<sup>8</sup>. The outbreak of the pandemic resulted in an unprecedented global health and humanitarian crises and exerted serious pressure on governments, precipitating new governance challenges around the world. In response to this development, African governments like the rest of the world, adopted various security and emergency measures as part of general efforts to curtail the spread and impact of the disease. These steps are actually in line with international human rights law which both guarantees everyone the right to the highest attainable standard of health, and mandates governments to adopt measures to prevent serious threats to public health<sup>9</sup>. Interestingly, the Nigerian 1999 constitution equally makes provision for such emergency situations<sup>10</sup>. The law also recognises that, in situations of serious public health threats and public emergencies threatening the life of the nation, restrictions on certain human rights are justifiable<sup>11</sup>. Such restrictions however, must be within the parameters of the law and strictly necessary, in line with scientific evidence, and must not be arbitrary or discriminatory in application, be of limited duration, have respect for human dignity, subject to review, and proportionate to achieve the objective<sup>12</sup>. The outbreak of, and devastation by Covid-19 pandemic in effect, constituted public emergency and reached the level of a public health threat to the life of nations that required restrictions on certain rights, thereby justifying the actions of the world governments in this regard. Some of the measures adopted by various governments of the world, and Africa as emergency response to Covid-19 outbreak include the ‘lockdown’ rules and ban on travel, social and economic activities<sup>13</sup>. These invariably placed restrictions on the people’s rights to freedom of movement and rights to food. The idea was to curtail the spread of the deadly virus. Although these measures are justified by the Nigerian Constitution, under section 305 (3) (e) & (f) and International Human Rights Laws, particularly, article 4(1) of the

---

<sup>8</sup>WHO. ‘WHO Director-General’s opening remarks at the media briefing on COVID-19,’ (11 March 2020) <<https://www.who.int/dg/speeches/detail/who-director-general-s-opening-remarks-at-the-media-briefing-on-covid-19---11-march-2020>>. Accessed on January 6, 2023.

<sup>9</sup>The WHO Constitution, 1946.Sections 1 (e) and 3 (a); Universal Declaration of Human Rights, UDHR (1948).Article 25 (1), 12 (1) and (2).

<sup>10</sup>The Constitution FRN 1999.Sec. 305 (3) (e) & (f).

<sup>11</sup>International Covenant on Civil and Political Rights (ICCPR), Art. 4(1),

<sup>12</sup>J J Amon and M Wurth, ‘A Virtual Roundtable on Covid-19 and Human Rights with Human Rights Watch Researchers’ (2020) <<https://www.hhrjournal.org/2020/04/a-virtual-roundtable-on-covid-19-and-human-rights-with-human-rights-watch-staff/>> accessed 29 November 2022.

<sup>13</sup>R L Ibrahim, K B Ajide and O O Julius, ‘Easing of Lockdown Measures in Nigeria: Implication for the Healthcare System’ (2020) *Health Policy Technol* 9(4) 399-404.



International Covenant on Civil and Political Rights, they were taken without due observance of the clear provisions of the law relating to the situation. Hence, they have significant implications for human rights, security and fundamental freedoms of the people. Following the global practice, authorities in Africa, declared states of emergency<sup>14</sup>, restricting and affecting people's fundamental human rights and freedoms, especially as it relates to freedom of movement, association, assembly, expression and access to information as well as personal liberty. As noted earlier, a public health threat of COVID-19 magnitude would be considered an imminent danger to the existence of a nation and declaration of an emergency in this regard necessarily required the passing of a resolution by the National Assembly after the President's proclamation, in line with the relevant section of the Nigerian 1999 Constitution<sup>15</sup>, otherwise such a proclamation would expire in 10 days. The Nigerian President, instead of passing a proclamation of emergency as was necessary in the circumstance, decided to issue regulations under the *Quarantine Act*, a 1926 law which permits the President to declare a place within the country an "infected local area". The failure to comply with the law and the manner of the implementation of the emergency measures have generated serious legal, constitutional and human rights issues, especially in Nigeria<sup>16</sup>. Although the shockwaves and disruptions by Covid-19 pandemic is global, it is particularly acute in Africa where it actually exposed the weaknesses and fault lines in governance system exemplified in the lack of respect for human rights and the rule of law. Most African States had already been characterised by fragile economy, lack of accountability, weak governance, structural inequalities, and ingrained impunity on the part of the politicians and security forces. These existing factors exacerbated the crisis situations occasioned by Covid-19 and inhibited the ability of African governments to respond effectively to the pandemic in compliance with the rule of law and fundamental human rights norms.

---

<sup>14</sup>For instance, Nigerian government announced a nationwide lockdown in the country on 30 March, 2020 with immediate effect in three states of the federation including Ogun, Lagos and Abuja; the authorities of the Democratic Republic of Congo (DRC) declared theirs on 24 March, 2020, while the President of Malawi declared a state of national disaster, seeking to impose a 21-day nationwide lockdown that was to take effect from 18 April 2020. South Africa declared theirs on 5 of March, while in Uganda, the president announced 14-day nationwide lockdown from 1 April, 2020. Some of the declaration were unsuccessfully challenged in the court.

<sup>15</sup>Section 305 (3)

<sup>16</sup>C Onyemelukwe, 'The Law and Human Rights in Nigeria's Response to the Covid-19 Pandemic' (2020) <<https://blog.petrieflom.law.harvard.edu/2020/06/04/the-law-and-human-rights-in-nigerias-response-to-the-covid-19-pandemic/>>. Accessed on 13 April, 2023.



This work addresses the preexisting and new human rights challenges precipitated by the outbreak of coronavirus drawing on African situations, particularly, how governments and relevant authorities in the region responded to the disruptions during the pandemics. The work also suggests ways African governments and other authorities can still respect human rights in their adoption and implementation of measures in response to emergency situations as occasioned by global pandemics like Covid-19 and Ebola. It is expected that, while imposing some restrictions on human rights as one of the measures to fight the coronavirus, authorities in Africa should equally pay careful attention to those recognised human rights norms and principles including transparency and respect for human dignity. Only these can foster effective response to the huge disruptions occasioned by the disease and efficiently tackle the crisis situations with minimal injury to the fundamental rights and freedoms of the people. Every measure and response during pandemics must put human rights at the front burner, both for purposes of public health emergency and the general impact on the people's lives and livelihoods. The paper began with introduction which laid the background to the whole work and thereafter discussed the position of security and human rights in the present Africa. It further discussed the incidences and causes of human rights violations and how covid-19 has further impacted on human rights of African people. The work also, addressed the emergency and security measures adopted by African authorities and lastly recommended the effective legal responses in times of emergencies that would be human rights oriented and adhere to both national and international human rights laws. Although, the work did not identify and discuss every State in Africa, it is believed that the situations in the States examined here adequately represent the entire African case on human rights issues.

### **Human Rights and Security Situations in Africa**

In accordance with the natural law perspective, the term 'human rights' refers to those rights everyone is entitled to, simply because they belong to human family<sup>17</sup>. These include the privileges and civil liberties that are innate in every person without prejudice to ethnicity,

---

<sup>17</sup>D Jack. *Universal Human Rights in Theory and Practice*. (2nd edition, Ithaca, NY: Cornell University Press; 2003) 1.

nationality, gender, skin color, cultural origin, language, religious or political affiliation<sup>18</sup>. Human rights refer to those standards that recognise and protect the dignity of every individual, as a member of human family<sup>19</sup>. They include the rights to life, personal liberty and security of persons; freedom from slavery or servitude; freedom from torture, cruel, inhuman or degrading treatment<sup>20</sup>; freedom of association, opinion and expression, as well as the right to work and education, and many others<sup>21</sup>. Both international and regional human rights instruments place obligations on governments to act in certain ways or refrain from certain acts in their decisions and steps to promote and protect human rights and fundamental freedoms of the people within their territory. In this regard, the *Universal Declaration of Human Rights* (UDHR) established by the United Nations in 1948, in its preamble recognises ‘the inherent dignity and of the equal and inalienable rights of all members of the human family’, as ‘the foundation of freedom, justice and peace in the world’. The Declaration equally notes that, disregard and contempt for human rights and fundamental freedoms result in barbarous acts which outrage the conscience of humankind and warns that to prevent man from having recourse, as a last resort, to rebellion against tyranny and oppressive rule, human rights should be protected through respect for the rule of law<sup>22</sup>. Also, in the continental level, Africa has several regional treaties and instruments that tend to guarantee the protection for human rights and fundamental freedoms. These regional treaties include the *Banjul Charter*<sup>23</sup> which came into effect in 1986. The Charter is particularly essential in addressing human rights issues in Africa because, it recognizes most of the universally accepted civil and political rights, such as the right to freedom from discrimination<sup>24</sup>, equality<sup>25</sup>, right to life and personal integrity<sup>26</sup>, rights to dignity and right to freedom from slavery, freedom from cruel, inhuman or degrading treatment or punishment<sup>27</sup>, rights to due

---

<sup>18</sup>Universal Declaration of Human Rights, 1948. Art. 2.

<sup>19</sup>‘Human rights belongs to each and every one of us equally’.<<https://www.unicef.org/child-rights-convention/what-are-human-rights>>. Accessed on 13 April 2023.

<sup>20</sup>Universal Declaration of Human Rights, Arts. 3-5

<sup>21</sup>*Ibid.*

<sup>22</sup>Preamble to the Universal Declaration of Human Rights, 1948

<sup>23</sup>Known as African Charter on Human and Peoples’ Rights, 1986

<sup>24</sup>*Ibid* Arts. 2 and 18(3)

<sup>25</sup>*Ibid* Art 3

<sup>26</sup>*Ibid* Art 4

<sup>27</sup>*Ibid* Art 5

process concerning arrest and detention<sup>28</sup>, the right to a fair trial<sup>29</sup>, freedom of religion<sup>30</sup>, freedom of information and expression<sup>31</sup>, freedom of association<sup>32</sup>, freedom of assembly, movement and freedom to political participation<sup>33</sup>. Next is the African Charter on the Rights and Welfare of the Child, adopted in 1990 and came into force in 1999. The Charter is particularly concerned with the welfare of the African child. Its relevant articles also provide for the protection, education, freedoms and non-discrimination against children among others<sup>34</sup>. The Maputo Protocol (supplementary protocol to the African Charter on Human and Peoples' Rights on the Rights of Women) 2005 was also established to ensure gender balance in the struggle for promotion of fundamental human rights in Africa. Another of such treaties is the African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention) 2012. The Convention also has important role in ensuring protection of human rights in Africa. Article III in particular gives general charge to State Parties regarding human rights issues. These instruments, through their relevant articles have reaffirmed the need for African States to prioritise human rights issues. Ratification of these treaties and commitment to the provisions of the articles by African leaders will certainly enhance the promotion and protection of human rights and fundamental freedoms of the peoples of Africa. However, despite the existence of these treaties and their numerous human rights mandates, human rights situations in Africa are still abysmally poor. This stems from the apathy and general lack of commitment on the part African States and their governments, to ratifying the treaties, as well as their failure to comply with the rulings of regional Human Rights bodies<sup>35</sup>. These paint the picture of the general attitude of African authorities towards protection of human rights or guaranteeing freedoms and security of individuals and groups within their borders in the negative.

---

<sup>28</sup>*Ibid* Art 6

<sup>29</sup>*Ibid* Arts.7 and 25

<sup>30</sup>*Ibid* Art 8

<sup>31</sup>*Ibid* Art 9

<sup>32</sup>*Ibid* Art10

<sup>33</sup>*Ibid* Arts. 11,12 and 13 respectively

<sup>34</sup>African Charter on the Rights and Welfare of the Child, 1990.Arts.9, 10 and 11.

<sup>35</sup>J M Royo, *et all*, 'The Human Rights Situation in Sub-Sahara Africa: Progress, Violations and Remaining Challenges in Times of Pandemic' (2021) <<https://revistaidees.cat/en/the-human-rights-situation-in-sub-saharan-africa-progress-violations-and-remaining-challenges-in-times-of-pandemic/>> accessed 4 December 2022.

There is no gainsaying the fact that Africa has been a hotbed not only for armed conflicts<sup>36</sup> but for undemocratic and oppressive rule. Political and social freedoms in Africa are mostly conditioned by armed conflicts with worsening security situations in the region over the past years<sup>37</sup>, especially with the emergence of Covid-19. The prevalence of armed violence in most parts of Africa<sup>38</sup>, coupled with the undemocratic disposition of the various authorities have continued to encourage human rights violations in every front within the region. There is unusual quest and propensity to hold on to power especially ‘the presidential mandates’ by some African leaders as recently demonstrated in Burundi, Rwanda<sup>39</sup>, the Republic of the Congo<sup>40</sup>, or the attempt to prolong the term in the office, as experienced in Ivory Coast, Uganda<sup>41</sup>, Cameroon and Togo<sup>42</sup>. For instance, a constitutional referendum was proposed in Burundi in 2022 that could prolong president Pierre Nkurunziza’s term in office until 2034 and, according to the country’s electoral commission, over 73% of the 4.7 million voters supported amendments that increased the current five-year presidential term limits to seven<sup>43</sup>. The new law allows Nkurunziza to seek two more terms, beginning in 2020. However, opposition party and even the United States have criticized the alleged referendum, stating that ‘it was marred by voter intimidation and lack of transparency’<sup>44</sup>. There are also cases of deepening corruption, highhandedness by law enforcement agents as is the case in Nigeria<sup>45</sup> and lack of positive

---

<sup>36</sup> For instance, Libya, South Africa Central African Republic, Northern Mozambique, Ethiopia and parts of Cameroun were named conflict hotbeds by PSC Report in 2021. <<https://issafrica.org/pscreport/psc-insights/african-conflicts-to-watch-in-2022>>. Accessed on 13 April, 2023.

<sup>37</sup> J M Royo, *et all* (n35).

<sup>38</sup> In Nigeria for example, the armed violence occasioned by the emergence of the deadly sect (Boko haram) has worsened the human rights situation of the Nigerian citizens, particularly in the north.

<sup>39</sup> T McVeigh, ‘Rwanda votes to give president Paul Kagame right to rule until 2034’ (2015) <<https://www.theguardian.com/world/2015/dec/20/rwanda-vote-gives-president-paul-kagame-extended-powers>>. Accessed on 14 April 2023.

<sup>40</sup> K Roth and I Sawyer, ‘Joseph Kabila forever: The dangers of an extended presidency in the democratic Republic of Congo’ (2015) *Foreign Policy*. <<https://www.hrw.org/news/2015/07/28/joseph-kabila-forever-dangers-extended-presidency-democratic-republic-congo>>. Accessed on 14 April 2023.

<sup>41</sup> T Ojoye, ‘Museveni rises to tenure elongation bait’ (2018) <<https://punchng.com/museveni-rises-to-tenure-elongation-bait/>>. Accessed on 14 April, 2023.

<sup>42</sup> J M Royo *et all* (n37).

<sup>43</sup> A L Dahir, ‘Burundi has backed constitutional changes that could see its president rule till 2034’ (2022) <<https://qz.com/africa/1284514/burundi-backs-new-constitution-extending-president-term-limit>>. Accessed on 14 April 2023.

<sup>44</sup> *Ibid*.

<sup>45</sup> Uwazuruike and A R Orcid, ‘#ENDSARS: The Movement Against Police Brutality in Nigeria, (2020) *Harvard Human Rights Journal*. ISSN 1057-5057



response by the authorities regarding the demands of the electorate<sup>46</sup>. These situations cause serious governance issue for African States as they usually spark off social protests that invariably attract harsh suppression by the security forces. In a system where these situations hold sway, the protection of human rights and fundamental freedoms of the people cannot be assured or guaranteed. Unfortunately, such is the case with African society.

### **Circumstances for Human Rights Violations in Africa**

Situations that foster human rights violations especially in Africa include, though not limited to the followings:

#### **i. Violation of Human Rights in Situations of Armed Violence**

Cases and incidences of armed violence in Africa are on escalating rate. In 2020 alone, a total of 15<sup>47</sup> armed conflicts and many other civil unrests were witnessed in Africa, all of which generate several significant humanitarian crises. Unfortunately, these armed conflicts situations act as a precursor to various human rights violations perpetrated by both parties to the armed conflicts including State security forces. Such violations come in form of physical abuse, sexual and gender-based violence against the civil population. Due to the worsening human rights situations in Africa and the rest of the world precipitated by armed violence, the UN Secretary-General *AntónioGuterres*, on 23 March 2020, made a global call for a ceasefire to all warring regions to enable governments combat the coronavirus pandemic more effectively<sup>48</sup>. Although this call received initial audience from governments around the world, it did not stop violent activities especially in African region. Ironically, findings from the *Armed Conflict Location & Event Data Project (ACLED)* research centre revealed that violent activities involving community militias increased in the Eastern and

---

<sup>46</sup>*Ibid.*

<sup>47</sup>These took place in Libya, Mali, western Sahel region, Lake Chad region, Somalia, Mozambique –north–, Ethiopia –Tigray–, Sudan –Darfur and South Kordofan and Blue Nile–, South Sudan, Cameroon –Ambazonia–, CAR, DRC –east–, DRC –ADF– and Burundi. Escola de Cultura de, including Nigeria.

<sup>48</sup>J M Royo, *et all*, (n7)

Western African regions than it was before the Covid-19 pandemic.<sup>49</sup> There were however, no empirical evidence attributing such increase to the coronavirus outbreak.

**ii. Violence and Repressive Actions by Security Forces During Riots and Protests**

Unfortunately, there is in Africa, structural and systemic propensity on the part of the authorities and security forces to unleash violence on the defenseless civilians at any slightest offence. Incidence of violence, abuses and violations of human rights by law enforcement agents especially the police and even now, the military<sup>50</sup> have continued to increase in many African countries. Police in Africa, particularly, Nigeria have gained notorious record of violence, brutality and other forms of human rights abuses including extra-judicial killings.<sup>51</sup> Apart from violence in the situations involving armed conflicts as discussed above, there are also likelihood of human rights violations ‘in situations where there have been changes of government due to popular pressure’ as was the case in Sudan and Mali, ‘election processes’ as witnessed in Ivory Coast, Guinea and Uganda, and other countries bedeviled by structural political crises.’<sup>52</sup> The hashtag protest in Nigeria, popularly known on social media as #EndSARS in 2020 was a spontaneous public reaction to series of police violence, brutality, abuse of human rights and impunity in the country. Special Anti-Robbery Squad (SARS) is a unit in Nigeria Police Force drafted to fight armed robbery and other hard offences. Unfortunately, there are extensive record of complaints against SARS bothering on human rights abuses, particularly torture, extrajudicial killing and suspects going missing in their custody<sup>53</sup>. A scary video that went viral showing a police unit from the SARS, fatally shooting an unarmed, defenseless civilian in

<sup>49</sup>United Nations, ‘Despite Calls for Ceasefire Amid COVID-19 Pandemic, Unabated Fighting Could Push Libya to New Depths of Violence, Acting Special Representative Warns Security Council’, (2020) New York: United Nations. <<https://www.un.org/press/en/2020/sc14190.doc.htm>>. Accessed on 9 November, 2022.

<sup>50</sup>For instance, on 20 October, 2020 the Nigerian army allegedly opened fire on EndSARS protesters in Lagos, killing at least 10 persons.

<sup>51</sup>P Egwu, ‘As the World Marches for American Victims, Police Brutality in Africa Goes Unnoticed’ (2020) <<https://foreignpolicy.com/2020/06/17/black-lives-matter-protests-africa-police-brutality/>>. Accessed on 27 October 2022.

<sup>52</sup>J M Royo, *et all*, (n11)

<sup>53</sup>*Ibid*.



*Ughelli*, Delta State in Nigeria in October 2020 was the last straw that finally broke the camel's back resulting in demonstrations and protests against police maltreatments and human rights violations in Nigeria. Reports from artificial intelligence (AI) documentations show that there was at least 82 cases of maltreatment, torture and extrajudicial killing by men of SARS between January 2017 and May 2020.<sup>54</sup> The reports also revealed the existence of an entrenched pattern of abuse of power by men of SARS agents, and the failure of the Nigerian authorities to prosecute the erring officers. Such impunity and lack of accountability on the part of the police no doubt, have contributed to the existence and worsening human rights situations in Nigeria and the rest of African countries.

**iii. Repression of Human Rights Activists and Anti-government Social Movements**

Significant political changes due to the processes of consolidation of democratic rules in African countries, have over the years, resulted in the expansion of participation mechanisms in Africa politics. This has also led to greater demand by the civil society, for more 'political openness, accountability and limiting of terms' on the part of politicians and political office holders in the region. These transitional processes have invariably orchestrated extensive public demonstrations and social protests and movements usually spearheaded by human rights activists and the teaming young Africans<sup>55</sup>. The processes have also, in recent times, led to the defeat and fall of notorious presidential regimes that had remained in power for just too long<sup>56</sup>. The situation has however, created fresh incidents of political violence in Africa as a result of increased demonstrations, protests and riots, with attendant harsh repression from the authorities. An instance is the steps taken by the former Gambian president, *Adama Barrow*, to elongate his term in office from three to five years which sparked off serious protests in the country. The protests were repressed by the Gambian

---

<sup>54</sup>*Ibid.*

<sup>55</sup>*Ibid.*

<sup>56</sup>Examples are Angola, Burkina Faso, the Democratic Republic of Congo (DRC), Gambia, Zimbabwe, etc.

security agents through mass arrests, torture and detentions<sup>57</sup>. Recall that Barrow's predecessor, *YahayaJammeh* had ruled the Gambia for 22 years. According to the Armed Conflict Location & Event Data Project(ACLED), between 2015 and 2020, there were 30,000 protests in Africa, which claimed a total of 6,566 lives. The reports further revealed that in 2020 alone, there were around 7,500 protests and demonstrations in Africa especially in DRC, Ethiopia, Guinea, Kenya, Nigeria, South Africa and Uganda, resulting in about 1,500 deaths.<sup>58</sup>

#### iv. Corruption-Indulging Regimes in Africa

Regimes associated with high corruption rate go with the risk of poor human rights records. Invariably, corruption undermines human rights norms while promotion of human rights can be employed as a normative framework to denounce and fight corruption<sup>59</sup>. Corruption not only undermine human rights but also has negative and devastating effects on the enjoyment of these rights<sup>60</sup>. Investigation show that corruption in governments, institutions and the general society pose a major obstacle to the accessing and enjoyment of human rights<sup>61</sup>. Corruption abound more in crisis situations and can come in form of embezzlement and misappropriation of funds as well as other relief materials meant to address the crisis and assuage the human suffering. This practice is common in Africa and widely witnessed in the heat of the pandemic<sup>62</sup>. Law enforcement agents in Africa saw the emergency laws during the

<sup>57</sup>A Thomas, 'Three years is Enough': Why are Gambians Protesting? (2019) <<https://www.aljazeera.com/news/2019/12/16/three-years-is-enough-why-are-gambians-protesting>>. Accessed 11 January, 2023.

<sup>58</sup>J M Royo, *et al*, (n15)

<sup>59</sup> A Peters, 'Corruption as a Violation of International Human Rights' (2018) *European Journal of International Law*, Vol. 29, 1251-1287.

<sup>60</sup>N Pillay, 'High Commissioner for Human Rights, Opening Statement of the Panel on the Negative Impact of Corruption on Human Rights', (2013) 8–10.

<sup>61</sup>Report of the Special Rapporteur on the Right of Everyone to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health (Report on Health), UN Doc. GA 72/137, 14 July 2017, para.2 and summary.

<sup>62</sup>In Kenya for instance, businessmen and government officials had been accused of misappropriating \$400 million earmarked to fight the COVID-19 pandemic. France24 'Kenya ministry told to publish Covid-19 deals amid graft scandal', (2020) <<https://www.google.com/search?channel=crow5&client=firefox-b-d&q=France24+%282020%29%3B+%E2%80%9CKenya+ministry+told+to+publish+Covid-19+deals+amid+graft+scandal>>. Accessed 11 December, 2022.

pandemic as opportunity to take bribe and extort money and other valuables from the helpless citizens<sup>63</sup>. Violations of human rights are facilitated and prevalent where there are no adequate safeguards to address the issue of corruption on the part of public officials and private individuals. Seeing that African governments and society are laden with corruption, it is safe therefore, to argue that numerous human rights challenges witnessed in Africa are associated with the high rate of corruption in the region. Although the position of the United Nations human rights institutions that corruption and human rights violations are concomitant has been questioned, mainly for ‘lack of conceptual clarity’<sup>64</sup>, there can be no doubt that effective protection of human rights and fundamental freedoms cannot be guaranteed in an environment fraught with corruption.

### **Impact of Covid-19 on Human Rights, Security and Fundamental Freedoms in Africa**

Amidst Covid-19 pandemic, guaranteeing human rights, security and fundamental freedoms for everyone became a serious challenge albeit in a varying degree, for governments around the world. The outbreak of the disease not just exacerbated the existing human rights problems as highlighted above, but also, precipitated new human rights challenges in the region of Africa. Responses and measures adopted to combat the pandemic have had far-reaching consequences for human rights in the continent with severe impact on security, social, economic as well as political lives of the people. The disruption from the pandemic indeed, created new risk factor globally, inhibiting the full enjoyment of human rights in many fronts following the adoption and implementation of various emergency laws and extraordinary measures<sup>65</sup> by governments. These disruptions and associated risks are more acute in Africa where respect for and protection of human rights and fundamental freedoms had not been prioritised by the authorities. Extensive lockdowns, travel bans and other measures adopted to limit the spread of the virus, by necessity

---

<sup>63</sup>C Ukpong, ‘Lockdown: Police officer caught on camera extorting N40,000 from motorist’ (2020) <<https://www.premiumtimesng.com/news/top-news/387378-lockdown-police-officer-caught-on-camera-extorting-n40000-from-motorist.html>>. Accessed 18 December, 2022.

<sup>64</sup>C Rose, ‘The Limitations of a Human Rights Approach to Corruption’, (2016) 65 *International and Comparative Law Quarterly*, 405, at 417.

<sup>65</sup>These measures come in the form of restriction from freedom of movement, expression and assembly, including the right to a private and family life as well as the right to work.

placed restrictions on the fundamental rights and freedoms of the people, including the access to food, water, health-care, work, education and even leisure<sup>66</sup>. Expectedly, authorities in Africa, including governments and their agents with track record of undermining human rights, capitalised on the free discretion in the implementation of these emergency measures as an excuse to perpetuate various human rights abuses<sup>67</sup>. Lack of accountability and transparency on the part of authorities and the fear of exposure led to suppression of free press and expression, censorship of critical voices and discrimination against targeted and vulnerable groups.

The record of Covid-19 cases and fatalities was comparatively low in Africa than other regions of the world.<sup>68</sup> Some explanations have been offered for this relatively low incidence of the pandemic in Africa, attributing same to the young population, the quick reaction in response to the spread of the virus in Asia and Europe that resulted in an early closure of borders, the experience from managing earlier contagious diseases such as *Ebola*<sup>69</sup> in certain parts of Africa, the centralized purchase of tests and material; as well as the lower capacity to detect infected people<sup>70</sup>. Despite its relatively low presence, the pandemic however, profoundly disrupted the economic, socio-political and legal conditions of African States with negative effect on governance.

Authorities in Africa since the outbreak of the pandemic, applied immoderate force in their implementation of the emergency measures to combat the virus, resulting in needless death of many citizens<sup>71</sup>. They equally embarked on ‘arbitrary arrests and detentions, restricting the civic

---

<sup>66</sup>This was a common experience of majority in Africa, particularly in Nigeria where security agents blocked every major road, schools and markets were shut down, making it impossible for people to access food and other essentials.

<sup>67</sup>‘African Man Shot Dead for Breaking Virus Curfew’ (2020) <<https://www.courthousenews.com/african-man-shot-dead-for-breaking-virus-curfew/>>. Accessed 11 November, 2022.

<sup>68</sup>‘Covid-19 and Africa: Socio-Economic Implications and Policy Responses’, (May 2020) <<https://www.oecd.org/coronavirus/policy-responses/covid-19-and-africa-socio-economic-implications-and-policy-responses-96e1b282/>>. Accessed on 19 December, 2022.

<sup>69</sup>Ebola Virus Disease (EVD) is a rare and deadly disease in people and nonhuman primates. The viruses that cause EVD are located mainly in sub-Saharan Africa.

<sup>70</sup>N Nyabola, ‘Africa is not Waiting to be saved from coronavirus’, (2020) <<https://www.thenation.com/article/world/coronavirus-colonialism-africa/>>. Accessed 5 January, 2023.

<sup>71</sup>A Kabir, ‘Lockdown: Security agents killed more Nigerians in two weeks than Coronavirus – Commission’ (April, 2020) <<https://www.premiumtimesng.com/news/top-news/387999-lockdown-security-agents-killed-more-nigerians-in-two-weeks-than-coronavirus-commission.html?tztc=1>>. Accessed on 14 April, 2023.

space and in certain cases denied people's right to seek asylum.<sup>72</sup> Covid-19 associated crisis also increased in Africa, cases of forceful or tactical repression of the freedom of the press and expression, through the harassments of journalists as well as organisations and their members involved in the defense of human rights<sup>73</sup>. Authorities in Africa hid under the guise of the pandemic to attack journalists and extensively repress the press and the freedom of expression in general.<sup>74</sup> Many States of Africa including Benin, the Gambia, Mozambique, Nigeria and Tanzania went as far as blocking websites, complete or partial closure of media outlets.<sup>75</sup> The human rights impact of Covid-19 has been more severe on the vulnerable groups including women, unemployed youth, and the indigent members of the society who live by their daily income. The scale and diversity of human rights challenges witnessed in Africa amidst the pandemic prompted the *African Court and Commission on Human and Peoples' Rights* to become 'the first regional human rights body in the world' 'to publish a declaration on the need to produce a coordinated response to the pandemic and take preventive measures focusing on rights and proportionality, the importance of access to information and the centrality of especially vulnerable groups'<sup>76</sup>. Although some of the human rights consequences of the implementation of Covid-19 measures are unintended, authorities in Africa were actually responsible, for not taking adequate steps to avert or mitigate them.

### **Emergency and Security Measures by African Authorities during the Pandemic**

Due to the exceptional situations presented by Covid-19 Pandemic, governments around the world, in line with the international human rights law, adopted emergency and security measures placing restrictions on human rights. The pandemic in effect, precipitated certain extraordinary measures implemented by various authorities in Africa to combat the virus. However, most of these measures were disproportionate and designed without taking the human rights perspective

---

<sup>72</sup>Amnesty International, "The State of African Regional Human Rights Bodies and Mechanisms (2019-2020) <<https://www.google.com/search?client=firefox-b-d&q=Amnesty+International%2C+%E2%80%9CThe+State+of+African+Regional+Human+Rights+Bodies+and+Mechanisms+2019-2020>>. Accessed on 7 December, 2022.

<sup>73</sup>J M Royo, *et all*, (n21)

<sup>74</sup>'Reporters without Borders' (2020); *Round Up 2020. Journalists killed*. <<https://rsf.org/en/rsfs-2020-round-50-journalists-killed-two-thirds-countries-peace>>. Accessed on 11 October 2022.

<sup>75</sup>J M Royo, *et all*, (n31)

<sup>76</sup>*Ibid*.

into consideration. African States exploited the extraordinary situations to suppress social protests, opposition and perpetrate human rights abuses through various coercive and punitive measures<sup>77</sup>. In fact, the region has ugly records of numerous human rights violations ranging from arbitrary arrest, torture, detention, to rape and excessive use of force while enforcing restrictive measures. Under this heading, the work identifies and discusses in brief term, instances of these emergency measures in some African States and how they impinged on the fundamental rights and freedoms of the people. In **Ethiopia** for instance, no fewer than sixteen people were executed extra-judicially by security forces particularly in the *Wolaita* region of the country. These killings occurred during harsh repression of protests against the arrest of local leaders and activists who allegedly held meetings that contravened the pandemic restriction orders. For **Kenya**, police brutality and excessive use of force while implementing the Covid-19 measures resulting in the deaths of dozens of citizens were also recorded. This sparked off several lawsuits and more protests in the country against the government and the security agents.<sup>78</sup> The government of **Uganda**, on the equal note, had been accused, particularly by the Human Rights Watch, of militarising the Covid-19 pandemic measures. Authorities, in pretext of fighting Covid-19, targeted political demonstrations and meetings of the opposition parties ahead of the presidential elections that took place in January 2021.<sup>79</sup> An example is the arrest of the main opposition leader, Bobi Wine, by the Ugandan police on November 18, 2020 on the excuse that he flouted the pandemic restriction orders by encouraging thousands of people to attend his events. The arrest resulted in several protests and demonstrations, which were vehemently repressed by the security forces killing no fewer than sixteen people, whereas the party in power, the *National Resistance Movement* (NRM), in parallel, held several mass rallies without any disturbance from the police.

In **Nigeria**, both the government and security forces committed numerous human rights abuses and use of excessive force while enforcing the Covid-19 emergency measures. Implementations

---

<sup>77</sup>Amnesty International (2020); *Covid-19 Crackdowns. Police Abuse and the Global Pandemic*. <<https://www.amnesty.org/en/documents/act30/3443/2020/en/>>. Accessed 11 November, 2022.

<sup>78</sup>S Kimani, 'Report outlines human rights violations in Kenya during COVID-19 containment', (2020) *SABCNews*,

<sup>79</sup>'Uganda: Authorities Weaponise Covid-19 for Repression', (2020) <<https://www.hrw.org/news/2020/11/20/uganda-authorities-weaponize-covid-19-repression>>. Accessed 5 January, 2023.



of the pandemic measures were in many cases lopsided, targeting only the authorities' oppositions and perceived enemies. The demolition of hotels by Kaduna and River State authorities for allegedly contravening lockdown rules<sup>80</sup> is a sheer demonstration of such politicisation of the pandemic emergency measures in Nigeria. A lot of excessive force and violence were applied by security forces in Nigeria resulting in at least 29 extrajudicial killings<sup>81</sup> and numerous unreported Covid-19-related killings and deaths in the country. In addition, certain emergency laws in response to Covid-19 pandemic have also been viewed and interpreted by advocates as anti-human rights<sup>82</sup>.

### **The Imperative of Effective Legal Response During Pandemics in Africa**

Under International Human Rights Law<sup>83</sup>, everyone has the right 'to the enjoyment of the highest attainable standard of physical and mental health'.<sup>84</sup> Governments therefore, have the obligation to provide enabling environments for the enjoyment of this right. However, in line with the observation of the United Nations Committee on Economic, Social and Cultural Rights, the right to health is concomitant with and dependent upon the attainment of other human rights as set down in the International Bill of Rights<sup>85</sup>. They include the rights to life, work, food, housing, education, human dignity, non-discrimination, equality, the prohibition against torture, privacy, access to information, and the freedoms of association, assembly and movement. The implication is that, the right to health is an integral part of a broad range of human rights recognised and protected by the law.

For the fight against pandemics as witnessed in the wake of Covid-19 to produce the desired objective and restore normalcy, governments and other authorities in Africa must ensure the adoption and inclusion of effective legal measures in their responses. Government responses

---

<sup>80</sup>N Orjinmo, 'Corona virus Lockdown: Two Hotels Demolished in Nigeria for Breach of Rules' (2020) *BBC News, Lagos*. 11 May, 2020.

<sup>81</sup>J M Royo, *et al.*, (n34)

<sup>82</sup>An example is the 'Control of Infectious Diseases Bill, 2020' which elicited worries and concern from activists and analysts in Nigeria and vehemently opposed by many including the Nigeria Governors Forum and the Nigeria Inter-Religious Council for according enormous powers to the President and Director General of Nigeria Centre for Disease Control (NCDC).

<sup>83</sup>Particularly, the International Covenant on Economic, Social and Cultural rights adopted on 11 December, 1966.

<sup>84</sup>*Ibid.*, Art. 12.

<sup>85</sup>Consisting of the Universal Declaration of Human Rights, 1948 and International Covenant on Political and Civil Rights, 1966.

placing restrictions on human rights for reasons of states of emergency or public health must be in accordance with the requirements of the law. In fact, the *Siracusa Principles*<sup>86</sup>, and the United Nations Human Rights Committee general comments on states of emergency<sup>87</sup> and freedom of movement have provided governments with authoritative guidance on the best effective legal responses to addressing emergency situations that might limit human rights. Any extraordinary or emergency measures taken to protect the population which in turn, restrict rights and fundamental freedoms of the people must therefore, be lawful, necessary, and proportionate, limited in duration and take into account, any disproportionate impact on people's rights. Authorities in Africa must ensure the maintenance of the principles of legality and rule of law in their adoption and implementation of measures addressing emergency situations as presented by Covid-19 and other global pandemics. When declaring any emergency measures that could impinge on the rights of the people, States must be careful to act within their constitutional and other provisions of law that govern such declaration and the exercise of emergency powers.<sup>88</sup> Emergency proclamations and measures in response to pandemics should therefore be adopted and enforced in accordance with the law. Such measures should not be politicalised or used as a basis to target or witch-hunt perceived enemies, or be used as a cover for repressive action under the pretext of limiting the transmission or spread of the disease.

### **Need for Justice and Respect for the Rule of Law**

Justice simply means 'just treatment' and is a condition for lasting peace and restoration of it where it is lacking. There can be no peace and order in a system where there is no respect for the rule of law. Justice and respect for the rule of law are concomitant and needed for a healthy and vibrant society. The presence of these two phenomenon guarantees the protection of human rights and fundamental freedoms of the common man. Governments should be concerned and careful to protect, in their emergency responses, the rights of the people in relation to the use of force, arrest and detention, fair trial as well as access to justice. It behooves African governments therefore to sue for justice, respect for the rule of law and human rights norms in the

---

<sup>86</sup>On the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights, adopted by the UN Economic and Social Council in 1984

<sup>87</sup>CCPR General Comment No. 29: Article 4: Derogations during a State of Emergency, 24 July 2021.

<sup>88</sup>*Ibid.* para. 2.

implementation of their programmes against pandemic outbreak. To achieve justice while addressing emergency situations as is the case with coronavirus and other infectious diseases like Ebola in Africa, there are certain key legal points that must guide the governments' decisions. The effective legal and human rights-based responses to pandemics that would achieve the desired objective must incorporate these key legal issues which are also in agreement with the provisions of *SiracusaPrinciples*<sup>89</sup>. Extraordinary responses or measures that could place restrictions on human rights should therefore, at the minimum, be:

- i. adopted and implemented in accordance with the law;
- ii. geared toward a legitimate objective of general interest;
- iii. in effect, be necessary in a democratic society to achieve the objective;
- iv. the least intrusive and restrictive available to reach the objective;
- v. based on scientific evidence and not arbitrary or discriminatory in application; and
- vi. of limited duration, with respect for human dignity, and subject to review.

The need for justice and the rule of law is to build or restore the confidence and trust of the citizens on the government and its effort to fight the pandemic. This will increase the acceptance and support for the government by its people, facilitate a more robust and effective governance, achieve lasting peace, security and generally improve the standard of living for the people including full enjoyment of human rights and fundamental freedoms. Securing compliance with the pandemic measures depends largely on people's trust and confidence in the government which can only be built through justice and the rule of law. Unfortunately, authorities in Africa have adopted excessive coercion and repressive measures while responding to the exceptional situations and disruptions occasioned by pandemics. These measures had been greeted with protests and demonstrations by the people whose rights are being tampered with, leading to stronger repressive actions by governments. The disruption by Covid-19 for instance, jeopardised further, the already deteriorating human rights situations in African continent. Such situation can however, be effectively addressed through human rights-based responses, enabled by strict adherence to the principles of justice and the rule of law.

---

<sup>89</sup>On the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights. (n45)

## Call for Regional Solidarity for Human Rights-based Response to Emergency Situations in Africa

Emergency situations resulting from the coronavirus in particular constituted a global challenge and an affront to the entire human race. Due to the intricacies involved in the pandemic and the interdependent nature of our world today, countries cannot just successfully fight the virus and the attendant crisis in isolation. It does not just take legal expertise or effective legal and political measures to win the war against such pandemic and the disruptions it can create. There are requirements of human, material and financial resources too. Coronavirus outbreak is a trans-border issue which affected and to an extent, still affecting governance and humanity all over the world. Experience during the Covid-19 Pandemic exposed the need for collaboration among African States in the political, legal and material efforts in the fight against any pandemic in the region. There is the need also for regional and global solidarity in response to the ravaging effect of the virus and the huge disruptions it has caused globally, particularly in Africa<sup>90</sup>. The pandemic introduced new and increasing dimensions of human rights challenges<sup>91</sup> around the world and Africa in particular, as revealed in this work. It follows therefore that, to be effective, State policies and strategies in combating pandemics like coronavirus must be human rights-based and reinforced through regional collaboration and mutual assistance in Africa. In essence, effective legal response to pandemics as canvassed in this work requires other factors like cross-border cooperation and collective action to achieve the desired objective<sup>92</sup>. The economically developed and viable States should see it as 'special responsibility to assist the poorer developing States in this regard'<sup>93</sup> all for our collective good.

## Conclusion

<sup>90</sup>S Yaya, A Otu, & R Labonté, 'Globalisation in the time of COVID-19: repositioning Africa to meet the immediate and remote challenges (2020) *Global Health*16, 51.

<sup>91</sup>These challenges are precipitated by the Covid-19 outbreak and require serious attention from governments and other relevant actors.

<sup>92</sup>'Covid-19 and Human Right, we are all in this together' (2020) <[file:///C:/Users/user/Desktop/VAD%202022%20ARTICLE/un\\_human\\_rights\\_and\\_covid\\_april\\_2020.pdf](file:///C:/Users/user/Desktop/VAD%202022%20ARTICLE/un_human_rights_and_covid_april_2020.pdf)>. Accessed on 13 December, 2022.

<sup>93</sup>Committee on Economic, Social and Cultural Rights, Twenty-second session Geneva, (2000) <<https://digitallibrary.un.org/record/425041?ln=en>>. Accessed on 7 December, 2022.



The outbreak of infectious diseases, particularly Covid-19 pandemic posed serious public health challenge with broad range implications for the human rights, fundamental freedoms and security in African region. Although the security forces by their role, are in position to support and facilitate the fight against the pandemic and protect people, the extraordinary measures adopted to achieving this objective unwittingly increased the executive powers without commensurate oversight. This situation inevitably led to high-handedness on the part of the security forces in response to Covid-19 pandemic, a situation which not just exacerbated already existing human rights and security challenges, but created new ones in the region of Africa. To be effective, emergency responses to disruptions accompanying pandemics should therefore be proportionate to the immediate threats they pose, protect human rights and fundamental freedoms as well as ensure the security of the people in accordance with the principle of the rule of law. Findings in this work reveal that emergency responses that are shaped by and respect human rights and dignity produce better and lasting results in accordance with the desired objective in combating any pandemic like Covid-19.

Consequently, this work calls for human rights action in Africa in which governments and relevant authorities must put human rights at the center of their actions in times of formulation and implementation of measures to address emergency situations as presented by Covid-19 and other pandemics like Ebola. This must be done by employing the principle of legality in ensuring adequate protection and promotion of human rights, fundamental freedoms and security while the pandemic lasts, and always.