



ATLANTA JOURNAL OF LAW

(COVID-19 EDITION)

VOLUME 1

2021

NUMBER 1

Recommended Citation:

Atlanta Journal of Law, Atlanta Graduate School, Vol. 1, No. 1. (2021)
(Vol. 1, No. 1. (2021). AJL)

IBADAN UNIVERSITY LIBRARY

Copyright © 2021 by Atlanta Graduate School Georgia. All rights reserved. Published in the United States of America. Permission to reprint materials in this journal may be granted upon written request to *Atlanta Graduate School Journals*. Attn: Copyright Permissions. Please address correspondence and payments to:

Atlanta Graduate School Journals
3588 Hwy 138 SE
Suite 304 Stockbridge, GA 30281
USA

Subscriptions: An annual subscription is \$14. Back issues are \$7.50. Subscriptions are automatically renewed on an annual basis unless *Atlanta Graduate School Journals* receives a timely notice of termination.

Undelivered Copies: Claims for undelivered copies must be made to *Atlanta Graduate School Journals* no later than three months following the period of publication. A replacement copy will be provided only for timely claims, except as provided by the change of address policy.

Publication Information: *Atlanta Journal of Law* publishes articles relating to law and interdisciplinary related issues.

Disclaimer: The views expressed herein are those of the respective authors and do not necessarily reflect the views of members of this journal or the Atlanta Graduate School.

Manuscript Submissions

The Atlanta Graduate School, Georgia periodically calls for papers in law and contemporary issues on management, leadership and humanities for the under-listed two internationally peer-reviewed journals.

1. Atlanta Journal of Leadership, Management and Humanities
2. Atlanta Journal of Law

The contributors should comply with the following guidelines:

1. Papers must be well researched and original, i.e., not published before, and as much as possible, deal with contemporary issues bordering on Covid-19, crime, corporate management, leadership, entrepreneurship, climate change, finance, economy, government (global, regional, corporate), etc.
2. Contributors are to provide a short abstract of the paper of not more than 250 words.
3. Author(s) should state on a separate page, title of the paper, brief personal details, affiliation, e-mail, and an undertaking that the paper has not been published or is being considered for publication elsewhere.
4. CITATIONS should follow the Chicago referencing style.¹Chicago is a citation style that uses footnotes at the bottom of the page rather than in the in-text citation styles used by Harvard and A.P.A. In the Chicago style, a superscript number is inserted at the point in your essay where you cite an author's work. See the attached guidelines for details.

¹ Chicago Manual of Style, 17th ed. (Chicago: University of Chicago Press, 2017).

5. **CONTENT SIZE:** papers should be typed on A4 paper size: Processed in MS word; 1.5 line spacing of no less than 7000-10,000 words with corresponding (automatic) footnotes, although shorter papers with strong impact relating to innovation and depth policy analysis may be considered.
6. **OTHER FORMAT:** Font: Times New Roman, Size: body text 12, Footnotes 10. Empirical or field studies, statute, and case review should be between 2000 – 5000 words. The peer-review process and decision on publication will normally be completed within 90 days from the date of close of submissions.
7. **REFERRAL:** We particularly welcome submissions relating to more recent and emerging areas in the field of law and management. Articles will be Peer Reviewed for accuracy and relevance. Thus, contributors should do thorough proofreading of their works before submission.
8. **BENEFITS TO AUTHORS:** We also provide many author benefits, visibility, and online access, free PDFs, publication certificates, a liberal author-friendly copyright policy, special discounts in processing, and publication charges.
9. **SUBMISSIONS:** Soft copies should be sent by e-mail to the AGS Research and Journal Unit as indicated below:

Atlanta Graduate School Journals, E-mail:

mcms@atlantagraduateschool.com or journal@atlantagraduateschool.com

Note: Atlanta Graduate School Journals acknowledges all mails. If after 7 days your mail is not acknowledged, please resend your article; and hardcopy may be sent to:

The Editor, Atlanta Graduate School Journals
3588 Hwy 138 SE, Suite 304 Stockbridge, GA 30281, USA

Please you must include the author's biography, mailing address, email address, and daytime telephone number. Atlanta Graduate School Journals regrets it cannot return manuscripts unless accompanied by a stamped, self-addressed envelope. Submissions are reviewed by the Board of Editors to determine their suitability for publication. Accepted articles undergo an extensive editorial process that may include textual modifications. Atlanta Graduate School Journals reserves the right to postpone or refuse publication of accepted articles if publication deadlines do not allow for adequate time to correct citation, style, substantive, or other similar deficiencies. If selected for publication, manuscripts should be submitted by email in a Word document.



ATLANTA JOURNAL OF LAW

VOLUME 1

2021

NUMBER 1

BOARD OF EDITORS

PROF AMARI C. OMAKA, SAN
Editor-in-Chief

DREW MOSLEY
Associate Editor

RAYMOND ONYEGU
Production Editor

Georgina N. Iberi
Faculty Adviser (Production)

INTERNATIONAL ADVISORY EDITORS

Prof Lisa Radtke Bliss
*Clinical Professor, Co-Director of
Health Law Partnership (HeLP)
Legal Services Clinic
Georgia State University College of
Law, downtown Atlanta,
Georgia, USA.*

Prof Robin Palmer
*Professor of Law
Director of Clinical Legal Studies,
School of Law
University of Canterbury Christchurch,
New Zealand.*

Prof Zuhail M. Elamin
*Professor of International Law,
Elzaiem Alazhari University
Khartoum*

Prof (Dr) S. Sivakumar
*Professor of Law, Indian Law
Institute/ Former Member, Law
Commission of India
Chairman of the Commonwealth
Law Reform Commission (CLRC)*

Prof Ved Kumari
*Professor of Law
& Vice Chancellor National Law
University, India*

Prof David McQuoid-Mason
*Professor of Law
University of KwaZulu-Natal Republic
of South Africa*

Prof Bruce Lasky
*Professor of Law
BABSEA, Thailand, South East Asia*



ATLANTA JOURNAL OF LAW

VOLUME 1

2021

NUMBER 1

Main Articles

1. Legal Response to The Outbreak of Covid-19 Pandemic: The Impact on Human Rights - *Grace A. Arowolo* 9
2. Rape and Sexual Violence Against Women and Children During the Covid-19 Lockdown in Nigeria - *Mary-Ann O. Ajayi & Matthias O. Ikokoh* 33
3. The Effect of Covid-19 On Marine Environment - Evolving the Law and Securing the Health - *Amari C. Omaka, SAN & Lois N. Omaka- Amari* 53
4. Covid-19 And the Advent of Virtual Court Hearing - *David T. Eyongndi* 70
5. Covid -19 Pandemic: Appraising the Powers of The President to Restrict the Movement and Assembly of People - *Ifeolu J. Koni* 88
6. Legal and Contemporary Issues on Covid-19 In Nigeria - *Adeniyi I. Olatunbosun, Oluyemisi A. Bamgbose, Simisola O. Akintola, Olusegun O. Onakoya, Jadesola Lokulo-Sodipe, Omolade Olomola, Folake Tafita, Kazeem O. Olaniyan, Afolasade A. Adewumi, Ibijoke P. Byron, Bukola O. Ochei, and Opeyemi A. Gbadegesin* 102
7. From Warsaw to Montreal Conventions: A Review of The Law on Air Carrier's Liability for Safety of Passengers and Goods in The Post Covid-19 Pandemic Era - *Raymond C. Onyegu* 131

Legal And Contemporary Issues on Covid-19 In Nigeria

*Adeniyi I. Olatunbosun, Oluyemisi A. Bamgbose, Simisola O. Akintola, Olusegun O. Onakoya, Jadesola Lokulo-Sodipe, Omolade Olomola, Folake Tafita, Kazeem O. Olaniyan, Afolasade A. Adewumi, Ibijoke P. Byron, Bukola O. Ochei, and Opeyemi A. Gbadegesin

ABSTRACT

The effect of the Covid-19 pandemic outbreak on the legal landscape in Nigeria is diverse and multifaceted. Its effect has gone way beyond every conceivable outcome and has affected not only the health of the individuals in any given community and the health sector, but movement, travel, social interactions, businesses, and the day-to-day lives of the Nigerian people. Adopting the sociological jurisprudence school of legal theory which recognizes the relationship betwixt and among law, society, technology, and accepted social culture, this paper charts the effect of Covid-19 on identified segments of the legal landscape and the society viz: health, labor, tourism, criminal law, and procedure, family law, as presented by legal scholars in various legal subfields. A holistic approach to resolving the legal issues brought about by Covid-19 is recommended as the best foot forward such as: respecting the basic human rights of citizens would ensure that the vulnerable can access medical care; health data accumulated based on the pandemic is managed wisely (and not subject to abuse); defaulters of Covid-19 regulations are handled in a manner that reflects respect for the rule of law and due process; medical waste management is handled in such a way that it does not affect the community and result in the spread of disease, inter alia.

ESSAY CONTENTS

I. INTRODUCTION.....	103
II. COVID-19 AND THE HEALTH LANDSCAPE.....	105
A. Health Data Protection in Nigeria during the Covid-19 Pandemic.....	105
B. Vulnerabilities and Health Inequalities in a Global Pandemic	109
C. An Environmental Perception of Covid-19.....	110
D. Covid-19, Pharmaceutical Patents & Compulsory Licensing	112
III. COVID-19 AND THE LABOUR LANDSCAPE.....	112
A. Employment Contract in Domestic and International Transaction.....	114
IV. COVID-19 AND THE TOURISM LANDSCAPE.....	116
A. Legal Status of Tourists Affected by Travel Bans and Lockdown.....	116

V. COVID -19 AND THE HUMAN RIGHTS LANDSCAPE...	118
A. Human Rights Concern of Covid-19.....	118
Litigation during the Pandemic	119
VI. COVID-19 AND THE CRIMINAL LAW AND PROCEDURE LANDSCAPE	121
A. Correctional Institutions in the Covid-19 Pandemic Era.....	121
B. Covid-19 and the Prosecutorial Powers of the Attorney General.....	123
VII. IMPACT OF COVID-19 ON FAMILY LIFE AND SOCIAL RELATIONS	124
VIII. SUSTAINING THE RIGHT TO EDUCATION DURING A PANDEMIC	128
IX. CONCLUSION	130

I. INTRODUCTION

Most pandemic outbreaks, which have arisen in the last 50 years, have been successfully contained; with the world counting the loss of lives, and acknowledging the devastating effect of the pandemic on the affected persons, their families, the direct society of the affected group of people and health institutions.¹ However, nothing in recent times can be compared to the effect of the Coronavirus (Covid-19) pandemic outbreak, which has not just affected the physical wellbeing of Nigerian citizens and health institutions, but also impacted the social, economic, developmental, legal, day to day activities, and interactions of Nigerians, along with citizens of most countries of the world.

A pandemic outbreak, as with any disease, hits the human body which suffers the ravages that the disease can wreck. This impact is then multiplied across a vast multitude of affected persons who have to deal with the debilitating effect of the pandemic on themselves, their families, society in general, and the health institutions of the affected locale.² The novel Covid-19 was identified in Wuhan, China in December 2019 and confirmed by the World Health Organization (WHO)

*Adeniyi I. Olatunbosun, Olujemisi A. Bamgbose, Simisola O. Akintola, Olusegun O. Onakoya, Jadesola Lokulo-Sodipe, Omolade Olomola, Folake Tafita, Kazeem O. Olaniyan, Afolasade A. Adewumi, Ibijoke P. Byron, Bukola O. Ochei, and Opeyemi A. Gbadegesin are lecturers, Faculty of Law University of Ibadan. **Corresponding author:** Adeniyi Olatunbosun E-mail: tunbosuniyi@yahoo.com Mobile no.: +234 (0)80 3725 3088

¹Eleesha Lockett. "What is a pandemic?" Assessed July 13, 2020, https://www.healthline.com/health/what_is_a_pandemic

²See generally, Wuqi Qiu, Shannon Rutherford, Ayan Mao, and Cordelia Chu. "The pandemic and its impacts," *Health, Culture and Society*, no 9-10(2017):1 World Health Organization. "Infection prevention and control of epidemic-and pandemic-prone acute respiratory diseases in health care." WHO Interim Guidelines, assessed July 10, 2020, https://www.who.int/csr/resources/publications/who_CDS_EPR_2007_6c.pdf?ua=1

as a pandemic outbreak in January 2020³. It subsequently spread to the whole world and found its way into Nigeria: on February 27, 2020, the Federal Ministry of Health reported the first confirmed case of Covid-19 in Lagos State-an Italian who works in Nigeria and who had shortly returned from Milan⁴. The pandemic outbreak has since spread to the thirty-six states of the federation and the Federal Capital Territory and the country has consequently recorded cases in the thousands with a growing number of fatalities.

In response to the pandemic outbreak and in light of the debilitating effect that it can wreak, the Federal government invoked Section 305 of the Constitution, the Quarantine Act,⁵ and signed a Quarantine Order pronouncing a state of emergency under the perceived public health danger. State governments also swung into action to contain the spread of the pandemic and enacted Infectious Diseases (Emergency Prevention) Regulations to try to ensure that health institutions and other concerned agents of the Nigerian legal system were able to combat the pandemic outbreak effectively. These regulations include the lockdown of land and air borders, movement restrictions, social distancing, and instructions on personal hygiene. Federal and State action did not end with regulations to combat the disease alone, as other regulatory responses include those by the Legislature, the Judiciary⁶ and the following Ministries, Departments and Agencies of the government amongst others: Nigerian Centre for Disease Control (NCDC);⁷ Central Bank of Nigeria (CBN);⁸ Securities Exchange Commission (SEC);⁹ Federal Inland Revenue Service (FIRS),¹⁰ and Nigeria Stock Exchange (SEC).¹¹

This research holistically adopted the sociological jurisprudence model of legal theory, because of its ability to incorporate other theories and in recognition of the relationship shared by law, society, technology, and accepted social culture¹². In

³ World Health Organization, assessed June 22, 2020, <http://www.who.int>

⁴ It was also the first reported case in Africa

⁵ Cap. C23 Laws of the Federation of Nigeria 2004

⁶ National Judicial Council "Re: National Judicial Council Covid-19 Report Guidelines for Court Sittings and Related Matters in the Covid-19 period" assessed June 20, 2020, <https://njc.gov.ng/30/news-details>

⁷ Nigerian Centre for Disease Control, "Guidelines," assessed June 20, 2020, <https://covid19.nedc.gov.ng/guideline/>

⁸ Central Bank of Nigeria, "Circular to all other financial institutions," assessed June 20, 2020, <https://www.cbn.gov.ng/Out/2020/CCD/CBN%20CIRCULAR%20TO%20OFS-%20REGULATORY%20FORBEARANCE%20FOR%20THE%20RESTRUCTURING%20OF%20CREDIT%20FACILITIES%20OF%20OFS%20IMPACTED%20BY%20COVID-%2019.pdf>

⁹ Securities and Exchange Commission, "Circular to all Regulated Entities and the Market-Update on COVID 19," assessed June 20, 2020, <https://sec.gov.ng/circular-to-all-regulated-entities-and-the-market-update-on-covid-19/>

¹⁰ Federal Inland Revenue Service, "Press Release," assessed June 20, 2020, <https://www.firs.gov.ng/PressRelease/COVID19ECFIRS>;

¹¹ http://www.nse.com.ng/mediacenter/news_and_events/Pages/covid-19-our-response.aspx

¹² See generally, Mathieu Deflem, *Sociology of law: visions of a scholarly tradition*, (New York: Cambridge University Press, 2008); James A. Gardner, *The sociological jurisprudence of Roscoe Pound*, *Villanova Law Review*, 7, no.1(1961):1-26. Here the historical origins of Sociological jurisprudence is traced from Montesquieu, to Rudolph Von Jhering, to Roscoe Pound who is recognized for stabilizing the theory. According to Pound, Sociological jurisprudence takes into account the social facts that the law comes from and to which it is meant for. Particularly, Pound avers that sociological jurisprudence consists of six programmatic guidelines: 1. Studying the actual social effects of law; 2. Focusing on the effect of law to prepare for adequate legislation; 3. Seeking to contribute to an equitable application of law in all cases; 4. Seeking to make the rule of law more

that vein, this paper demonstrates how the law and society interface during the Covid-19 pandemic outbreak and makes recommendations on how the law can be adapted to adequately respond to the current social conditions, in recognition of the fact that law is a means to an end.¹³ Roscoe Pound is recognized as expounding on the law as “*experience developed by reason and reason tested by experience*,”¹⁴ and it is in this context that this research aims to show the way that law can be used to navigate the current legal and social landscape brought about by the Covid-19 pandemic outbreak. Nigeria presently has to confront and overcome the complexities that the pandemic has wrought on various sectors of the economy and life of the nation from the legal standpoint- from health, environment, labor, criminal justice, tourism, family relations, and patents to human rights. This article highlights research done by some legal scholars on the effect of Covid-19 on identified segments of the Nigerian legal landscape viz: health, labor, tourism, human rights, family relations, and criminal and procedural laws in Nigeria.

This article is divided into eight parts; the first being this introduction. The second part examines the effect of the Covid-19 pandemic on health-related issues. Here four topics discuss the following legal issues: (i) Health Data Privacy during Public Health Crisis (ii) Vulnerabilities and Health Inequities, (iii) An Environmental Perspective of Covid-19 and; (iv) Patents and Herbal Medicine. The third part considers the influence of Covid-19 on Labor law and assesses the effect on Employment Contracts in Domestic and International Transactions. The fourth section analyses the Legal Status of Tourists Affected by Travel Bans and Lockdowns. The fifth part explores Human Rights in two contexts: (i) Human rights concerns of Covid-19, (ii) Human Rights Litigation. And the sixth part considers criminal law and procedure viz: (i) Covid-19 and Correctional institutions, and (ii) Covid-19 and the prosecutorial powers of the Attorney General. The seventh part assesses the effect of the Covid-19 pandemic on family life and social relations, and the eight-part assesses the effect of Covid-19 on education. Each of the segments discussed will contain recommendations on overcoming the identified legal issue, then the last part will conclude on the work.

II. COVID-19 AND THE HEALTH LANDSCAPE

A. *Health Data Protection in Nigeria during the COVID- 19 Pandemic*

Sharing of health data poses legal, ethical, and technical challenges to privacy management particularly in health emergencies. Large-scale health databases acquired during health pandemics such as the present Covid-19 pandemic outbreak cannot be understood simply as up-scaled versions of previous collections of data; they generally bring together much larger and more diverse sets of information creating higher risks of privacy infringement. This calls for an assessment of

effective in light of the law's enforcement function; 5. Seeking to contribute to an equitable application of law in all cases; and 6. Aiming to advance the ultimate purpose of law in terms of social control.

¹³Mathieu Deflem, *Sociology of law*. Cambridge University Press 2012: 1-14 Accessed April 12 2020. Sociology of Law (cambridge.org)

¹⁴Roscoe Pound, *New Paths of the Law* (Nebraska: University of Nebraska Press, 1950)

existing data protection ethical, and legal frameworks and the protection they offer to data subjects during health pandemics.

Novel technologies enable the automated and quasi-autonomous collection and analysis of data across different technological and geographical domains, connecting different data collections more easily, while storage technologies allow these data to be kept for undefined lengths of time conflicting in important ways with individual privacy rights. This is because the subjects of the data are no longer aware of the extent of data collected and the uses that data collected from them can be deployed. Anonymization is also not a guarantee in large data collections such as data amassed during pandemics, which in turn may affect not only the privacy rights of individuals but also the rights of whole groups for cultural ethnic, or geographic reasons. Furthermore, Covid-19 interventions like contact tracing create an avenue for access into otherwise private and confidential spheres of an individual.

The research highlights the importance of protecting the privacy and confidentiality of data subjects because privacy is lost when confidentiality is breached and people gain access to an individual's health record or data; or when the individual can no longer control the information. The privacy of citizens, their homes, and correspondences is protected by Section 37 of the Constitution of the Federal Republic of Nigeria (CFRN). However, containing Covid-19 spread necessitates the use of personal information without the consent of the person and sometimes invasion of homes of persons.¹⁵ Contact tracing is also an important tool in combating pandemics.¹⁶ During a public health crisis, are there situations where the state through medical personnel can divulge personal health records or data of patients? In *Medical and Dental Practitioners Disciplinary Tribunal v. Okonkwo*,¹⁷ it was held that a clear and compelling overriding public interest is the only justification for overriding the choice of an individual. Furthermore, the National Health Act¹⁸ provides that a healthcare worker or provider may disclose personal record or data of an individual to any other person, health care provider, or health establishment as is necessary for any legitimate purpose within the ordinary course and scope of his or her duties where such access or disclosure is in the interest of the user.

Preparation for and implementation of the protection of health data are important steps towards ensuring protection. In the current situation, not enough attention has been given to exactly how confidentiality is protected, and what will happen if it is breached. The National Health Act provides that a health care provider may examine a user's health records for treatment with the authorization of the user; and for the purposes of study, teaching, or research with the authorization of the

¹⁵ See generally, Schwab, A.P., Frank, L., & Gligorov, N. Saying Privacy, Meaning Confidentiality. *The American Journal of Bioethics* 11 no.11, 44-45 (2011); Solove, D. J. *Understanding privacy*. (Harvard University Press: Cambridge, MA, 2008); Solove, D.J. *Conceptualizing Privacy*. *California Law Review*. 90, 1087 (2002); Gostin, L.O. *Public Health Law: Power, duty, Restraint*. (University of California Press: Berkeley, 2008).

¹⁶Ferretti, L. Wymant, C., Kendall, M., Zhao, L., Nurtay, A., Abeler-Dörner, L., Parker, M., Bonsall, D., Fraser, C. Quantifying SARS-CoV-2 transmission suggests epidemic control with digital contact tracing. *Science*, accessed March 31, 2020, DOI: 10.1126/science.abb6936

¹⁷ (2001) LPELR-1856(SC)

¹⁸ Section 27 of the National Health Act, 2014

user, head of the health establishment concerned, and the relevant health research ethics committee.¹⁹ Where the study, teaching or research reflects or obtains no information as to the identity of the user concerned, the Act dispenses with the necessity of obtaining the authorizations of the user, head of the health establishment concerned, and the relevant health research ethics committee.²⁰

The National Health Act provides a framework for the regulation, development, and management of a health system and sets standards for rendering health services in Nigeria. Section 26(1) of the Act provides that all information concerning a health care user, including information relating to his or her health status, treatment or stay in a health establishment is confidential. This presupposes that all health records or data of individuals, without exception, are confidential and should not be divulged to third parties by medical practitioners. It imposes responsibility on persons in charge of health establishments to set up control measures to prevent unauthorized access to those records and to the storage facility in which, or system by which, records are kept.²¹ Failure to carry out this responsibility is an offense that can make such persons in charge liable on conviction to imprisonment for a period not exceeding two years or to a fine of N250,000.00 or both.²²

(i) The Freedom of Information Act, 2011

The intent of the Freedom of Information (FOI) Act is to make public records and information more freely available and accessible to the public. The Act is also enacted to protect public records and information to the extent consistent with the public interest and the protection of personal privacy.²³ The Act²⁴ provides that application for information that contains personal data of patients among others must be denied. The health records of individuals are information that contains private data and are thus not contemplated by the drafters of the act as part of records or information to be made more freely available and accessible to the public. To buttress this, Section 16(b) of the Act provides that an application for information that is subject to health workers-client privilege may be denied. This Section also takes patient health data or record out of the purview of the disclosure and accessibility. However, such information although consisting of private data can be disclosed if the individual to whom it relates consents to the disclosure;²⁵ or the information is publicly available.²⁶

The Act further provides that where disclosure of any information containing personal data would be in the public interest, and if the public interest in the disclosure of such information far outweighs the protection of the privacy of the individual to whom such information relates, the public institution to whom a request for disclosure is made shall disclose such information.²⁷ This implies that there must be justification and evidence to prove that the public interest in the

¹⁹ Section 28(1) of the National Health Act, 2014

²⁰ Section 28(2) of the National Health Act, 2014

²¹ Section 29(1) of the National Health Act, 2014

²² Section 29(2) of the National Health Act, 2014

²³ Preamble to the Freedom of Information Act, 2011

²⁴ Section 14(1)(a) of the Freedom of Information Act, 2011

²⁵ Section 14(2)(a) of the Freedom of Information Act, 2011

²⁶ Section 14(2)(b) of the Freedom of Information Act, 2011

²⁷ Section 14(3) of the Freedom of Information Act, 2011

disclosure of such information outweighs the protection of the privacy rights and interests of the owner of such information.

(ii) Nigeria Data Protection Regulation, 2019

The objectives of the Nigeria Data Protection Regulation (NDPR) include the safeguard of the rights of natural persons to data privacy and the prevention of manipulation of personal data which includes patient information and health record.²⁸ Article 2.1 of NDPR provides that personal data shall be collected and processed in accordance with specific, legitimate, and lawful purposes consented to by the Data Subject. However, further processing may be done only for archiving purposes in the public interest, scientific or historical research purposes, or statistical purposes; and any person or entity carrying out or purporting to carry out such data processing shall not transfer any personal data to any other person. Such persons who are entrusted with the personal data of a data subject or who are in possession of the personal data of a data subject owe a duty of care to the said data subject and shall be accountable for his acts and omissions concerning such data.

There will be lawful processing of personal data where the data subject gives consent²⁹ or where there is a need to protect vital interests of the data subject or another natural person³⁰ or where there is a need to perform a task in the public interest or the exercise of official public mandate vested in the controller.³¹ Obtaining the consent of the data subject requires the disclosure of every material information as well as ensuring that the data subject has the legal capacity to give such consent. The consent must also be obtained without fraud, coercion, or undue influence. The data subject should also be informed of the probability of transferring his data to a third party for any reason whatsoever.³² For instance, where a health care practitioner or institution suspects or makes a diagnosis that a patient has an infectious disease, the patient must be informed of the suspicion or diagnosis and the fact that same is reportable to the public health department or the center for disease control.

The Regulation also imposed on the data controller or processor liability for the actions and inactions of third parties handling personal data of data subjects. Thus, if a medical practitioner or institution discloses his patient's health data to a third party for any reason whatsoever, the health care practitioner or institution will be held liable for the outcome of how the third party handles such information. This is buttressed by the requirement for a third-party processing contract between the third party and the data controller.³³ For instance, disclosing the identity of a patient with an infectious disease like Covid-19 may subject such an individual to stigmatization and discrimination even after the patient has been discharged. If such disclosure was done without the consent of the patient and does not come within any of the exceptions provided by law, the health care practitioner or

²⁸ Article 1 of the Nigeria Data Protection Regulation, 2019

²⁹ Article 2.2(a) of the Nigeria Data Protection Regulation, 2019

³⁰ Article 2.2(d) of the Nigeria Data Protection Regulation, 2019

³¹ Article 2.2(e) of the Nigeria Data Protection Regulation, 2019

³² Article 2.3 of the Nigeria Data Protection Regulation, 2019

³³ Article 2.7 of the Nigeria Data Protection Regulation, 2019

institution will be held liable for the stigmatization or discriminatory acts.³⁴ The regulation further provides that data controllers or processors should develop security measures to protect personal, sensitive, and confidential data.³⁵ In addition, the regulation provides that the privacy right of a data subject shall be interpreted to advance and never to restrict the safeguards the Data Subject is entitled to under any data protection instrument made in furtherance of fundamental rights and the Nigerian laws.³⁶

Generally, ethics involves judgments about the way we ought to live our lives, including our actions, intentions, and habitual behavior. Analyzing issues with ethical undertone involves the identification of relevant principles, the ability to apply the principles to the particular situation, and making judgments on the weight to be attached to competing principles where it is impossible to satisfy them all giving credence to the provisions of relevant laws. Thus, adherence to the principle of autonomy as it touches the concept of informed consent, privacy, confidentiality, and the protection of private and sensitive data particularly during a public health crisis should be weighed on the scale of the provisions of the relevant laws and balanced with the ethical value of protecting public health and wellbeing.

B. Vulnerabilities and Health Inequities in a Global Pandemic

Covid-19 is an exposition that no country is without a vulnerable population that is exposed to the risk of the pandemic. Every class, social strata, and race is affected; however, the effect and fatality are more within the vulnerable population. Racial/ethnic disparities, economic and social inequality in access to healthcare, and non-implementation of the right to health have contributed to health inequities and vulnerability to the risk of the infection.

In the United States, the healthcare system's long-term structural and systemic inequities have contributed to the high risk of infection and fatality in the Black community³⁷ with the likelihood of a rapid community-to-community transfer to the whole population.³⁸ In South Africa, extreme inequality puts the poorest population at risk,³⁹ while in Nigeria, the risk of infection is higher among low-income groups who are less likely to take the necessary precautions.⁴⁰ Health inequities and vulnerabilities are the difference in health status and accessibility to health care in population groups,⁴¹ due to social, economic, and political factors;

³⁴ Article 2.4(b) of the Nigeria Data Protection Regulation, 2019

³⁵ Article 2.6 of the Nigeria Data Protection Regulation, 2019

³⁶ Article 2.9 of the Nigeria Data Protection Regulation, 2019

³⁷Gassam J. "Covid-19 Reveals Racial Inequities in U.S. Healthcare System: Strategies for Solutions," *Forbes Diversity & Inclusion*, accessed May 4, 2020, <https://www.forbes.com>

³⁸BMJ. "Covid-19: the Painful Price of Ignoring Health Inequities." *Thebmjopinion*, assessed May 4, 2020, <https://blogs.bmj.com>

³⁹Alyssa, H. "Covid-19 Pandemic: In a Nation of Extreme Inequality, South Africa's Poorest are Most at Risk" assessed, May 4, 2020, <https://www.atlanticcouncil.org>

⁴⁰Most of the people in this group live in overcrowded residence with no basic amenities like water and healthcare facilities. Going by the recent directive of government that come May 4, 2020, there will strict enforcement on the use of face masks in public, it is unlikely that low-income households will be able to afford or sustain the use of masks for every member of the household.

⁴¹ World Health Organization. "Definition of Health Inequities" Assessed May 4, 2020, <https://www.who.int>.

such as lack of education, low employment status, low income, gender, and racial inequality, low-quality healthcare, poor housing, sanitation, and environment.

Covid-19 as a global pandemic is no doubt an exhibition of the vulnerabilities and health inequities within populations spanning across countries irrespective of the level of economic development. Vulnerable populations due to poverty and lack of access to healthcare are at a higher risk of the pandemic. In addressing vulnerability and health inequities among population groups, governments need to acknowledge the fact and existence of health inequities, commit to social and economic rights as fundamental human rights,⁴² redesign and restructure the health care systems to encompass the content and features of the right to health and finally, prioritize health care in national budgets to provide health care for all in the prevention, treatment, and control of not only the Covid-19 epidemic but also other diseases.⁴³

C. *An Environmental Perspective of Covid-19 in Nigeria*

Health care facilities produce, particularly during the Covid-19 pandemic, various waste products, including medical waste, and with it, the increased risk of transmitting Covid-19 and other infections such as Hepatitis B and C (HBV and HCV), the Human Immunodeficiency Virus (HIV), and Hemorrhagic diseases such as Lassa fever and Ebola, if the disposal is not handled properly.⁴⁴ Thus, the waste generated because of the non-pharmaceutical interventions, particularly health care waste may have far-reaching consequences for public health and the environment. The World Health Organization (WHO) has stated that 15% of healthcare wastes are hazardous and infectious, and that unsatisfactory medical waste management can lead to a significant risk of new infectious diseases globally.⁴⁵

In a country where scavenging of dump-sites is common, the manual handling and sorting of waste may lead to the risk of needle-stick injuries and the risk of getting infected with the virus as well as other associated infectious diseases such as hepatitis B, hepatitis C, and HIV.⁴⁶ The wearing of face masks which is now the norm would further increase the quantity of waste to be handled.

Regular waste collection and sound waste sorting, processing, treatment, and final disposal are therefore crucial elements for maintaining the protection of human health and the environment during the time of the Covid-19 Pandemic. The World Health Organization in the wake of the Covid-19 pandemic, released guidelines be followed, including assigning responsibility and sufficient human and material

⁴²Chapter II, Fundamental Objectives and Directive Principles of States Policy, Constitution of the Federal Republic of Nigeria 1999

⁴³Economic Covenant, Op cit, Art.12

⁴⁴ Tobin, E.A., Ediagbonya, T.F., Asogun, D.A. & Oteri, A.J. "Assessment of Healthcare Waste Management Practices in Primary Health Care Facilities in a Lassa Fever Endemic Local Government Area of Edo state, Nigeria." *AFRIMEDIC Journal* 4 (no.2):16-24 (2013)

⁴⁵World Health Organization, "Fact sheet: Health care waste," World Health Organization, assessed May 6, 2020, <https://www.who.int/news-room/fact-sheets/detail/health-care-waste>

⁴⁶ Ijeoma, U.C., Sansam, S., Srun, S., Vannara, H., Sanith, S., Sopheap, T., Newman, R.D., Gadde, R., Dejana, S., Hassani, A.S. & Ly, V. Notes from the Field: Public Health Response to a Human Immunodeficiency Virus Outbreak Associated with Unsafe Injection Practices — Roka Commune, Cambodia. *Morbidity and Mortality Weekly Report* 67(4):135-136 (2016)

resources to segregate and dispose of waste safely.⁴⁷ These guidelines were developed on the basis that with the spread of the virus and the non-pharmaceutical interventions, the volume of waste particularly infectious waste during the Covid-19 outbreak is expected to increase, especially through the use of PPE. Therefore, it is important to increase the capacity to handle and treat this healthcare waste. This research seeks to examine the legal framework for the management of waste and pollution in Nigeria, viz: The Nigerian Constitution⁴⁸; The National Health Care Waste Management Policy 2013; The National Environmental Standards and Regulations Enforcement Agency (NESREA)⁴⁹ and; The Environmental Sanitation and Waste Control Regulations 2009⁵⁰.

Although the Control of Infectious Diseases Bill 2020, the Covid-19 Regulations⁵¹, Lagos State Infectious Diseases (Emergency Prevention) Regulations 2020⁵² all represent legislation made according to the emergence of the Covid-19 pandemic and the need to slow its spread, it is important to note that none of these regulations make any mention of waste management or how the waste generated from the quarantine should be managed.

In the wake of the current pandemic, it is obvious that there are provisions of the law that provide an enabling environment for the effective management of waste in Nigeria. The problem which is characteristic of environmental laws in Nigeria is the problem of enforcement. Another identifiable gap is the failure of the existing legislation to provide a framework to deal with the waste generated by the non-pharmaceutical intervention to Covid-19. These include the use of face masks, sanitizers, and the regular washing of hands. There is also the identified gap of how waste generated at home by a person under quarantine or isolation are to be treated bearing in mind that such waste may have the potential of being contaminated and if not well managed may lead to the spread of the virus.

There is no better time than the present for NESREA to ensure that the draft National Environmental (Healthcare Waste Control) Regulations expands the definition of health care waste and how it can be generated. Also, it is necessary for all personnel involved in waste management to be trained on the peculiarity of the current pandemic, particularly those involved in the day-to-day waste collection. It is recommended that all staff involved in handling potential infectious solid waste be equipped with personal protective equipment used for medical waste handling as every waste should now be regarded as potential infectious solid waste.

There is a need for regulatory agencies on environmental protection to rise to the challenge of proper monitoring and compliance with environmental policies and laws. As enlightenment is ongoing about the virus, its causes, and symptoms, it is

⁴⁷World Health Organization. "Interim Guidance: Water, Sanitation, Hygiene, and Waste Management for The Covid-19 Virus." World Health Organization, assessed May 9, 2020 <https://www.who.int/publications-detail/water-sanitation-hygiene-and-waste-management-for-covid19>.

⁴⁸ 1999 (as amended).

⁴⁹ National Environmental Standard and Regulations Enforcement Agency (Establishment) Act 2007

⁵⁰ Regulations No. 28 of 2009, Vol. 96, No. 60.

⁵¹ The Regulations were made pursuant to The Quarantine Act, Cap Q2 Laws of the Federation 2004

⁵² The Regulations were made pursuant to the Public Health Law Cap P16 Laws of Lagos State 2015

also necessary that public enlightenment on specific guidance for waste collection in infected households and the provisions of services, in general, is carried out. There is also the need to focus attention on the disposal of non-pharmaceutical interventions such as masks, surgical gloves, used bottles of hand sanitizers, and water used to wash hands in public places. This can be done by providing special cans or bins in public places and designated areas in residential areas. These special bins carefully marked will be for the collection of used masks and other related waste. Such waste will be collected separately and delivered for treatment and disposed of properly as though it were waste emanating from a health care facility.

D. COVID-19 and Pharmaceutical Patents and Compulsory Licensing

A new strain of the Coronavirus (Covid-19) was discovered in Wuhan, China in December 2019. Since then, it has spread outside China and affected all countries economically, socially, and physically.⁵³ Nigeria is not left out, as the effect of the pandemic is being felt daily, and the country is now fighting against the disease.⁵⁴ As a result of the deleterious effect of the pandemic, countries are in a race to find a cure or a vaccine that will manage and if possible, eliminate the virus. The Covid-19 pandemic has created untold hardship worldwide. The ongoing rapid spread of the virus is challenging the capacity of governments and the World Health Organization (WHO) to quickly put in place, a globally coordinated response to the pandemic.⁵⁵ There is currently no proven and safe cure against covid-19, but if there is, intellectual property rights would arise and government must ensure that there are legislative and procedural frameworks in place to ensure that pharmaceutical patents, data exclusivity, and trade secrets are protected.⁵⁶

This research discusses pharmaceutical patents in line with the importation of the “Madagascar Cure” for Covid-19 and possibly any other “touted” cure for Covid-19. It has been stated that least developed countries are not required to provide patents for pharmaceutical products or processes simply because if they grant such patents, there may be obstacles to its accessibility.⁵⁷ Pharmaceutical patents have however been controversial where the high cost of drugs and medicines protected by patents can work against the proper address of public health issues in developing countries.⁵⁸

In a bid to cut down the high cost of medicine, the World Trade Organization tackled the issue through the Doha Declaration which uses compulsory licensing and parallel importation to cut the cost of pharmaceutical products.⁵⁹ A challenge that may arise is that compulsory licensing is not statutorily used in Nigeria

⁵³ Southcentre. “The Covid-19 Pandemic: R&D and Intellectual Property Management for Access to Diagnostics, Medicines and Vaccines.” Southcentre, accessed, May 11, 2020, https://www.southcentre.int/wp-content/uploads/2020/04/PB73_The_COVID-19-Pandemic-RD-Intellectual-Property-Management/

⁵⁴ Southcentre: The outbreak of the virus was declared a public health emergency by the World Health Organization on 30 January 2020 but it was later declared to be a pandemic on 11 March 2020

⁵⁵ Tellez, V.M. The Covid-19 Pandemic: R&D and Intellectual Property Management for Access to Diagnostics, Medicines and Vaccines. Policy Brief, No.73, accessed May 12, 2020, <https://www.southcentre.int/wp-content/uploads/2020/04>

⁵⁶ Tellez, V.M., “The Covid-19 Pandemic.”

⁵⁷ Article 66, Trade-Related Aspects of Intellectual Property (TRIPs) Agreement 1995

⁵⁸ Bainbridge, D.I. Intellectual Property. (London: Pearson Publishing, 2012) 19..

⁵⁹ Bainbridge, “Intellectual Property.”

because of its low pharmaceutical manufacturing capacity. Compulsory licensing is more effective in countries that can manufacture drugs locally. The trade-related aspect of intellectual property (TRIPs) addresses this problem by enabling countries such as Nigeria to issue compulsory licensing for drugs and vaccines to be imported from overseas under a TRIPs compulsory licensing framework.⁶⁰ The flexibilities of TRIPs will however be required for its incorporation under the Constitution of the Federal Republic of Nigeria.⁶¹

The protection that is afforded under a patent, is that it stimulates technological development as it encourages indigenous inventive activity. Investment in the inventive effort is however perceived favorably by prospective investors when it is backed by legal protection.⁶² A viable patent regime would help to enable the transfer of technology from technologically advanced countries to less developed countries. There seems however to be a wide gap between indigenous capabilities and the astounding developments in advanced countries. Nigeria, as a developing country, is yet to catch up in the area of scientific, technological capacity, and innovation, and this is noted by the low rate of patenting activity in the country.

In a bid to curtail the virus, world leaders have propelled various treatment modalities that have not been clinically tried by necessary agencies to prevent and cure acute respiratory syndrome. To date, there are no evidence-based treatments for covid-19.⁶³ The President of Nigeria, Muhammed Buhari has validated the import of Madagascar cure which is meant to cure covid-19. The World Health Organization (WHO) had warned against the use of CVO without any medical supervision and has cautioned against self-medication. The WHO further said that the concoction for the patients suffering from Covid-19 has not been approved.⁶⁴ This could also raise Public Health issues under the National Health Act.⁶⁵

The importation of the Madagascar cure for Covid-19 raises several issues as medical experts including Doctors, Pharmacists, and Nurses have opposed the plan by the Federal Government to import the herbal cure for the treatment of Covid-19 patients in Nigeria. This is because there is a belief that if Nigerian researchers are given adequate financial and technical support, they would be able to come up

⁶⁰ Adewopo, A. 2020. Intellectual property rights, pharmaceutical patents and Public Health: Adopting Compulsory and Government Use Licenses in COVID-19 Emergency. Nigerian Institute of Advanced Legal Studies, accessed May 14, 2020 https://www.nials.edu.ng/pdf/2020_jpr_covid_19_report.pdf; Lehman, B. 2003. The Pharmaceutical Industry and the Patent System. International Intellectual Property Institute, 2003; Oyewumi, A.O. Nigerian Law of Intellectual Property. (Lagos: University of Lagos Press and Bookshop Ltd. 2015) 142-143.

⁶¹ Section 12, The Constitution of the Federal Republic of Nigeria, 1999 (As amended)

⁶² Nigerian Constitution, 1999.

⁶³ American Journal of Emergency Medicine. Non-evidenced based treatment: An unintended cause of morbidity and mortality related to ZCOVID-19. American Journal of Emergency Medicine, accessed May 13, 2020, [https://www.ajemjournal.com/article/50735-6757\(20\)30317-X/pdf](https://www.ajemjournal.com/article/50735-6757(20)30317-X/pdf)

⁶⁴ The Guardian. Nigeria: COVID-19- Buhari directs validation of Madagascar Herbal Mixture's Efficacy. The Guardian, accessed May 13, 2020, <http://allafrica.com/stories/202005/20119.html>

⁶⁵ Section 1, National Health Act 2014

with a cure or vaccine to combat the Covid-19 pandemic and be at par with developed countries.⁶⁶

Patents may be validly obtained in respect of improvements to existing inventions. The provision of improvement of patents is useful in a developing country such as Nigeria because of its capacity of stimulating indigenous inventors to adapt or improve upon foreign inventions to suit local conditions, which would render the product or process, useable in local practice but in guaranteeing the supply of needed vaccinations and drugs for Nigerians, it should be within the reach of citizens, concerning it's being affordable. The mechanism which should, therefore, be put in place is to ensure compulsory licensing under the Nigerian Patents and Designs Act to cut the cost of imported drugs and medicine. Also, for a patent to be applicable, therefore, it must satisfy the three requirements which are newness, inventive activity, and its capability of industrial application.⁶⁷ The Federal and State governments should issue appropriate legal instruments pursuant to a provision under the Patents and Designs Act for compulsory licenses. There should also be regulatory action so that, such drugs and vaccines would be available and affordable to the Nigerian public.

III. COVID-19 AND THE LABOUR LANDSCAPE

A. *Employment contracts in domestic and international transactions*

Following the global spread of the Coronavirus (Covid-19), pandemic,⁶⁸ the nations of the world are exploring proactive measures including physical distancing, lockdowns, and border closure, among others, to contain the spread of the disease. Many offices have been shut, while some businesses are being carried out virtually, and some employees are requested to work from home, although not every type of work can be performed effectively online, albeit public institutions and civil service by virtue of their job schedules are yet to fully integrate the concept of working remotely from home⁶⁹. The reality of the moment brings about productivity decline with corresponding incapacitation of employers to sustain current payroll costs, especially in the private sector.

Employment contracts may be frustrated due to an occurrence beyond the control of the parties, like an outbreak of disease, among other incidents capable of discharging the parties from their contractual obligations. Modern employment relations expect both the employer and employee to make reasonable adjustments to ensure there is a sustained exercise of rights and fulfillment of obligations as permitted in the circumstance, in order to avoid strained relationships. What remains controversial is whether the nature of Covid-19 can be appropriately regarded as a *force majeure* condition that envisages the stay safe and keeps well

⁶⁶ Chukwuma, Muanya, Adelowo Adebumiti, Azimazi Momoh Jimoh & Nkechi, Onyedika-Ugoeze, "Why Nigeria should avoid Madagascar's COVID-19 drug" 13 May 2020, <https://guardian.ng/news/why-Nigeria-should-avoid-Madagascar's-Covid-19-drug/>

⁶⁷ Section 1 (1) (b) Nigerian Patents and Designs Act, Laws of the Federation 2004

⁶⁸ The World Health Organization has declared as a pandemic on the 30th January, 2020. In order to contain the spread of COVID-19 in Nigeria, the President Gen. Muhammadu Buhari issued the COVID-19 Regulations 2020 and the Governor of Lagos state, Babajide Sanwo-Olu issued the Infectious Disease (Emergency Prevention) Regulations 2020 implementing a total lockdown of activities and a ban on all public gatherings, exempting only essential services personnel from the restrictions.

⁶⁹ In Nigeria, many business arrangements still require presence of employees to resume at a physical office in order to carry out their job schedule from 8a.m to 4p.m.

practices occasioning the situation that impedes or prevents an employer or the employee from performing one or more of their respective contractual obligations.

The position of law is that a *force majeure* clause may be relied upon as a defense by the employer in suspending employees' right to be remunerated and discharging obligation on the employer to pay salaries in such circumstance, provided the clause has been expressly stated and duly signed in the contract of employment⁷⁰. Failure to do so means that a supervening event such as the Covid-19 pandemic cannot be described as a *force majeure* event, to provide a legal defense for non-performance by the employer. Employers in the private sector economy may have to take tough decisions on how to manage this challenge which may include offering a pay cut to their staff, downsizing, withholding salary, shutting down and massive retrenchment of non-essential staff. Invariably, the situation will have an adverse impact on employment relationships globally.

The International Labor Organization maintains a system of international labor standards (ILS) aimed at promoting opportunities for workers to obtain decent and productive work, under conditions of freedom, equity, security, and dignity. The ILS provides a useful decent work compass within the context of the crisis response to the Covid-19 outbreak. The ILS upholds provisions respecting safety and health, working arrangements, protection of specific categories of workers, non-discrimination by ensuring compliance with social security or employment mechanism protection⁷¹. The aim of these provisions is to guarantee that workers, employers, and government maintain decent work ethics while adjusting to the Covid-19 pandemic. In this regard, the ILO labor standards on employment, social protection, wage protection, SMEs promotion, or workplace cooperation contain specific guidance and formulate policy measures that would encourage a human-based approach to the crisis and its recovery⁷². In the same vein, the objectives of ILS are geared towards promoting and contributing to a culture of social dialogue and workplace cooperation that are key to building recovery and preventing a downward spiral in employment and labor conditions during and after the crisis.⁷³

Averting job losses and sustaining income levels is the major concern of the ILO, estimating that up to 25 million jobs could be lost worldwide because of the Covid-

⁷⁰ If employment contracts provide for the *force majeure* condition, the employer can, in exercising this power, notify the employee that the parties are discharged from carrying out their obligations from the date of occurrence of the event. As such, issues like payment in lieu of notice requirement, severance packages, terminal benefits, or consultation with union representatives must be strictly followed in line with international best practices in compensating an employee for the loss of earnings incurred as a consequence of the termination.

⁷¹ In 2019, the Centenary Declaration for the Future of Work reaffirmed that the setting, promotion, ratification and supervision of international labor standards is of fundamental importance to the ILO.

⁷² Their guidance extends to the specific situation of certain categories of workers, such as nursing personnel, domestic workers, migrant workers, sea farers or fishers, who we know are very vulnerable in the current context.

⁷³ International labor standards illustrate expected conduct and embody resilience in front of concrete situations in the world of work and are fundamental to any long-lasting and sustainable response to pandemics including the Covid-19. Developed and periodically reviewed and where needed revised over the past century, international labor standards respond to the changing patterns of the world of work, for the purpose of the protection of workers and considering the needs of sustainable enterprises.

19 pandemic⁷⁴. In this regard, the ILS further enjoins social dialogue by the parties on the compelling need to include selective measures to stabilize economies and address employment problems, including fiscal and monetary stimulus measures aimed at stabilizing livelihoods and income as well as safeguarding business continuity.

Generally, all ILO legal instruments lay down the basic minimum social standards agreed upon by all the players in the global economy, however, countries may implement higher levels of protection and enhanced measures to better mitigate the impact of the crisis. It is within this context that, the federal and states governments are adopting different measures; total or partial lockdowns to restrict movement of people with attendant consequential effects on job performance and by extension labor relations.

IV. COVID-19 AND THE TOURISM LANDSCAPE

A. The legal status of tourists affected by travel bans and lockdown

The tourism industry which accounts for 10 percent of global GDP and jobs,⁷⁵ has led the globalization process in the areas of transportation, communications, and financial systems;⁷⁶ while also contributing to the increase of regional development in various regions of the world.⁷⁷ Cultural tourism is an aspect of tourism that involves 'the movement of persons to cultural attractions away from their normal place of residence, to gather new information and experiences to satisfy their cultural needs⁷⁸. Thereby qualifying as an expression of the right to cultural life.⁷⁹ Representing around 40% of all global tourism,⁸⁰ cultural tourism plays a vital role in economic development⁸¹, and the Covid-19 lockdown has led to some tourists becoming stranded in foreign countries. Will such foreigners automatically become illegal immigrants at the expiration of their visas? Where they are regarded as illegal immigrants, what are the options available to such immigrants to prevent the risk of prosecution by the host country?

⁷⁴ See the Employment Policy Convention, 1964 (No.122)

⁷⁵The Nation. Lockdown: More woes for tourism industry (1). The Nation, April 13, 2020. <https://www.thenationonline.net/lockdown-more-woes-for-tourism-industry-1/>

⁷⁶ Lee, Pera & Deborah, McLaren. "Globalization, Tourism, and Indigenous Peoples: What You Should Know About the World's Largest Industry," Planeta, November 1999. <https://www.planeta.com/globalization-1999/>.

⁷⁷OECD. The Impact of Culture on Tourism. OECD, accessed, May 6 2020. https://www.oecd-ilibrary.org/industry-and-services/the-impact-of-culture-on-tourism_9789264040731-en.

⁷⁸ Greg Richards, Cultural Tourism in Europe (Wallingford: CABI, 1996), accessed May 6, 2020. www.tram-research.com/atlas: Office of National Tourism. "Fact Sheet No 10 Cultural Tourism: ICOMOS Charter for Cultural Tourism," accessed, May 6 2020. <http://www.icomos.org/tourism/>

⁷⁹ ICESR. General Comment 21, para 50(e); Borowiecki, K.J. and Castiglione, C. Cultural participation and tourism flows: An empirical investigation of Italian provinces. *Tourism Economics*, 20(2): 241-62 Accessed 14 April, 2020 www.dcita.gov.au/swg/publicationscultour.html.

⁸⁰OECD: The Impact of Culture on Tourism Paris," OECD, p.159. Accessed, May 6, 2020 http://www.em.gov.lv/images/modules/items/OECD_Tourism_Culture.pdfParis

⁸¹Richards G. Tourism Development Trajectories – From Culture to Creativity? Tourism Research and Marketing. Barcelona. Paper presented to the Asia-Pacific Creativity Forum on Culture and Tourism. Jeju Island, Republic of Korea. 3-5 June 2009. Accessed, May 6, 2020 <http://www.tram-research.com/atlas/APC%20Paper%20Greg%20Richards.PDF>

Adopting the legal theory of jural relations under international law, the status of an individual is an important concept in appreciating the implications of jural relations.⁸² Status is sought because of the psychological benefit it confers on the holder.⁸³ Status determines whether an individual enjoys a right or privilege. It identifies whether such a person is under a legal disability or the liability of a duty. Status can be defined as the attributes and descriptions that determine the identity of a person in society.⁸⁴ The Supreme Court of Nigeria in *Okulate & Ors v Awosanya & Ors* defined status as 'the legal standing or position of a person as determined by his membership of some class of persons legally enjoying certain rights or subject to certain limitations.'⁸⁵

Where there is a right, there is a corresponding duty. An individual enjoys liberty or privilege when he does not have a strict right and as such the other party has no duty towards him.⁸⁶ A tourist who enters a foreign country with a valid visa has a legal right to be in that territory since he keeps to the terms and conditions of the contractual relationship guiding the issuance of the visa between him and the host country. A breach of which attracts a remedy. In the case of the breach of terms of a visa by a foreigner, the State is usually entitled to the automatic right of deportation.⁸⁷ In Nigeria, once a foreigner overstays on an expired visa, the Minister charged with responsibility for immigration has the discretion to prosecute and deport him.⁸⁸

However, the Covid-19 travel bans and lockdown may be relied on to warrant the application of the doctrine of *force majeure* which connotes that the performance of the terms of a contract is rendered impracticable by the occurrence of certain events outside the control of the party in breach of the contract.⁸⁹ On the strength of the above, two alternatives can be made available to this class of persons. First, provisions can be made to convey such people back to their countries of origin through the host State liaising with the embassy bearing the flag of the foreign nationals.⁹⁰ This can be premised on the need to ensure the reunification of such persons with their family which is a principle recognized under international law.⁹¹ Such people are allowed to go back to their home country where they have access to the required financial resources to cater for themselves and to access resources

⁸² Adaramola, F. *Jurisprudence*, 4TH Edition (Durban: Lexis Nexis Butterworths, 2008) 143.

⁸³ Renshon J. *Fighting for Status: Hierarchy and Conflict in World Politics* (Princeton: Oxford: Princeton University Press, 2017) 3

⁸⁴ Mohammad, A., Ramazani, B., & Zadeh, M. Personal status and exceptions of the national law enforcement regarding it. *Macapa* 7(1), 61-70 (2017).

⁸⁵ *Okulate & Ors v Awosanya & Ors* (2000) LPELR 2529 (SC)

⁸⁶ *Cole v. PC* 443A (1936) 3ALL ER 107

⁸⁷ Gibney, M.J. & Hansen, R. Deportation and the liberal state: the forcible return of asylum seekers and unlawful migrants in Canada, Germany, and the United Kingdom. *New Issues in Refugee Research*, Working Paper No 77.

⁸⁸ Immigration Act (amended version of 1990) Section 19(4) Cap. 11 Laws of the Federation of Nigeria (LFN) 2004

⁸⁹ Katsivela, M. Contracts: Force Majeure Concept or Force Majeure Clauses? *Uniform Law Review* 12(1), 101-119 (2007).

⁹⁰ Evacuation of Nigerians stranded in COVID-19 wracked U.S. begins. Accessed, May 6 2020 from Evacuation of Nigerians stranded in COVID-19 wracked U.S. begins - P.M. News (pmnewsnigeria.com)

⁹¹ Maddali, A.O. Left Behind: The Dying Principle of Family Reunification Under Immigration Law. *University of Michigan Journal of Law Reform* 50(1), 107 (2016).

that might have been available by their National government to cater for its resident citizens. Secondly, the host country can ensure that the foreigners within the host country are given the opportunity of extending their visas so that they can be returned to the status of legal immigrants.⁹²

Therefore, though the continued presence of a tourist with expired travel documents on the soil of the host State is illegal and strips him of his rights while giving the host state the right to prosecute and deport him. The doctrine of *force majeure* will come into play and the host state will exercise their discretion to confer a privilege on such immigrant to prevent prosecution and deportation while other avenues may be exercised to put an end to his illegal status.

V. COVID-19 AND THE HUMAN RIGHTS LANDSCAPE

A. Human Rights Concerns of Covid-19

As a response to the Covid-19 pandemic, the federal and state governments in Nigeria have put in place several measures including Covid-19 Regulations 2020 and other Directives to cope with the pandemic. The Regulations and Directives also empower the security agencies to ensure compliance and enforcement of the stay-at-home order following the lockdown. President Muhammadu Buhari announced on April 13, 2020, that a lockdown that had been in place since March 30, 2020, in Lagos state, neighboring Ogun state, and the Federal Capital Territory, Abuja, would continue for another 14 days. Several other state governments have also initiated full or partial lockdowns involving a variety of restrictions, which have seen the police and army called out to enforce them. These measures have no doubt, thrown up some incidences of human rights concerns.

The Covid-19 pandemic outbreak is laying bare some of the most glaring vulnerabilities of our societies: Millions of the people at greatest risk of the contagion are those whose needs are often overlooked. To uphold their fundamental rights to life and health and prevent the pandemic from spreading rapidly across the whole of the country, urgent measures must be taken to resolve the specific risks and impacts of Covid-19 on these vulnerable groups. Remarkably, International human rights law guarantees everyone the right to the highest attainable standard of health and obligates governments to take steps to prevent threats to public health and to provide medical care to those who need it. Human rights law also recognizes that in the context of serious public health threats and public emergencies threatening the life of the nation, restrictions on some rights can be justified only when they have a legal basis, are strictly necessary, based on scientific evidence, and neither arbitrary nor discriminatory in the application, of limited duration, respectful of human dignity, subject to review, and proportionate to achieve the objective.

The scale and severity of the Covid-19 pandemic rise to the level of a public health threat that could justify restrictions on certain rights, such as those that result in the imposition of quarantine or isolation, limiting freedom of movement. At the same

⁹² Anumeha Chaturvedi COVID-19: 4000 Foreign Tourists stuck in India following VISA suspension. Retrieved May 6 2020 from [tourists: COVID-19: 4000 foreign tourists stuck in India following visa suspension - The Economic Times \(indiatimes.com\)](https://www.indiatimes.com)

time, careful attention to human rights such as is contained under chapter four of the 1999 Constitution of the Federal Republic of Nigeria (as amended), as it relates to non-discrimination, right to life, right to movement, rights to association, respect for human dignity and other human rights principles such as transparency. This is in a bid to foster an effective response amidst the turmoil and disruption that inevitably results in times of crisis and limit the harms that can come from the imposition of overly broad measures that do not meet the criteria, as set by the international human rights principles. Many people outside of the formal system are devastatingly affected by the measures. In its report about Nigeria's Coronavirus lockdown period, the Nigerian Human Rights Commission (NHRC), a government agency, noted that Nigerian security forces have a reputation for brutality, and it claimed to have received more than 100 complaints across 24 of Nigeria's 36 states - including Lagos, Ogun, and Abuja.⁹³

Moreover, millions of Nigerians, observing the Covid-19 lockdown, lack the food and income that their families need to survive. The lockdown prevented many Nigerians working in informal sectors from traveling to work or conducting their businesses. An increase in food prices as a result of the lockdown also means that many cannot stock up on necessities and any disruption to their daily livelihood has a huge and significant impact on their ability to meet their most basic needs. Nigeria's other major economic responses to Covid-19 may not adequately protect the rights of the people most likely to lack adequate food, shelter, and other essentials.

The government needs to combine public health measures with efforts to prevent the pandemic from destroying the lives and livelihoods of society's poorest and most vulnerable people in the country. Under international human rights law, Nigeria's government has an obligation to protect people's right to an adequate standard of living, including adequate food and nutrition, the highest attainable standard of health, and the right to social security. In times of economic crisis, countries must demonstrate that they have made every effort to mobilize all available resources, including international assistance. Nigeria's federal and state governments should ensure the rights to food, shelter, and other necessities for people losing jobs or income during the Covid-19 pandemic. The economic assistance that the government has announced in response to the virus has exposed inadequacies in Nigeria's social protection systems and risks excluding the country's poorest and most vulnerable people.

A. Human Rights Litigation during a Pandemic

The successive constitution of the Federal Republic of Nigeria since 1979 continues to provide for the fundamental rights of persons. The constitution of the Federal Republic of Nigeria (CFRN) 1999 (as amended) in chapter IV provides for the inalienable rights of persons which are twelve (12) in number. Under this provision, any person whose right is being infringed or likely to be infringed shall have the *locus* to bring an action to enforce such rights in court by either seeking a restraining order or damages in line with the Fundamental Rights Enforcement Procedure Rules. The rights are Right to life (i) Respect for the dignity of persons

⁹³ It had also found "8 separate incidents of extrajudicial killings leading to 18 deaths" as at the time when the total number of deaths resulting from COVID-19 are just 12.

(iii) Right to personal liberty (iv) Right to a fair hearing (v) Right to private and family life (vi) Freedom of thought, conscience, and religion (vii) Right to freedom of expression and the press (viii) Right to peaceful assembly and association (ix) Right to freedom of movement (x) Right to freedom from discrimination (xi) Right to acquire and own immovable property, and (xii) freedom from compulsory acquisition of property.

These rights are no doubt very essential for the all-round development and well-being of persons and the country. As a result of the importance of these rights, the provisions are always enshrined in the constitution and are enforceable except in some developing countries that experienced *coup d'etat*. For example, during the past military *regimes in Nigeria*, the junta usually promulgated the constitution suspension and modification decree which primary target was to render the provisions on fundamental rights inoperative. It is instructive to note that Section 45 of CFRN 1999 (as amended) provides for situations that may give rise to restriction on, and or derogation from fundamental rights. The law provides *inter-alia* as follows:

- (1) Nothing in sections 37, 38, 39, 40, and 41 of this Constitution shall invalidate any law that is reasonably justifiable in a democratic society-
 - (a) In the interest of defense, public safety, public order, public morality, or public health; or
 - (b) For the purpose of protecting the rights and freedom of other persons.
- (2) An act of the National Assembly shall not be invalidated by reason that only that it provides for the taking during periods of emergency, of measures that derogate from the provisions of section 33 or 35 of this constitution, but no such measures shall be taken in pursuance of any such Act during any periods of emergency save to the extent that those measures are reasonably justifiable for the purpose of dealing with the situation that exists during that period of emergency.

The “period of emergency” is defined as a period during which there is in force a proclamation of a state of emergency declared by the President in the exercise of the power conferred on him under section 305 of the constitution. Remarkably, the emergence and spread of the *Coronavirus* pandemic otherwise known as Covid-19 worldwide, Nigeria inclusive, has brought about countries of the world taking certain measures to contain the spread of the virus. Such measures include restriction of movement (lockdown) imposed on residents of some states of the federation and the Federal Capital Territory, ban on assembly (social gatherings and religious activities), and closure of public offices like courts, etc. The steps taken by the government at both the Federal and state levels are no doubt infractions on fundamental rights as enshrined in the constitution.

A clear violation of the right to a fair hearing is making it impossible for any person to access justice through the court system. The court reiterated this position in the case of *LASEPA v. Mobil Oil Producing Unlimited*⁹⁴ where it held that the doors of the court shall not be shut against anyone who desires to vent his grievances,

⁹⁴ (2000 FWLR Pt.7 P.1202 at P.1216 paras. E-H)

whether real or imaginary. Arguably, the court system can still operate effectively during the pandemic using internet/electronic means without necessarily having the litigants and lawyers in the courtroom. Mostly, people arrested for violation of 'lockdown' are usually meted with excessive punishment without trial. The issue of police and armed forces brutality has become the order of the day. It is however a welcome development that some of the meetings are done through technological devices, but this still falls short of the international best practices.

Significantly, the laws providing for fundamental rights should be made to accommodate an unforeseen situation like the Covid-19 pandemic. Therefore, any violation of the human rights of citizens during the period of Covid-19 should be challenged in the court of law and measures that could have been taken to preserve some of the rights by deploying modern technology.

VI. COVID-19 AND THE CRIMINAL LAW AND PROCEDURE LANDSCAPE

A. *Correctional Institutions in the Covid-19 Pandemic Era*

The outbreak of the COVID-19 pandemic in the early part of the year 2020, affected the 3 components of the Criminal Justice System comprising the law enforcement, the courts, and the correctional institutions also known as prisons. The 3rd component plays a crucial role in upholding the Rule of Law and houses those remanded in custody, which constitutes the majority and those serving sentences of imprisonment. Before the 18th century, correctional institutions were used primarily as a temporary facility for the confinement of persons awaiting trial and debtors and not facilities for serious offenders.⁹⁵ The decline in the use of capital punishment and banishment of offenders made imprisonment the most severe form of punishment and accounted for using prisons as permanent facilities, which resulted in overcrowding and congestion, a menace that strikes most prisons or correctional centers all over the world with occupancy rate standing over 100 percent. The Covid-19 outbreak presents an unprecedented crisis for correctional institutions all over the world. The congestion and overcrowding provide a compromising condition to the virus. The facilities are a ticking time bomb for infection and an incubator for the disease.

The World Health Organization, issued some precautionary measures and advice for the public, to reduce the chances of being infected or spreading Covid-19.⁹⁶ The fundamental rules are the social distancing rule, which requires maintaining at least 1-meter (3 feet) distance between persons; the avoiding overcrowding rule, similar to the social distancing rule; the use of face mask in public rule and the regular/ frequent washing of hand with soap or alcohol-based gel rule. Overcrowding and congestion, a formula for disaster, coupled with inadequate

⁹⁵ Andrew G Coyle, "Prisons: Definition, History and Fact," Encyclopedia Britannica, accessed May, 8, 2020, <https://www.britannica.com/topic/prison>

⁹⁶ World Health Organization, "Coronavirus Disease (Covid-19) Advise for the public" World Health Organization, accessed April, 29, 2020, <https://www.who.int/emergencies/disease/novel-coronavirus-2019/advise-for-public>

funding in most of the correctional institutions globally have made most of the WHO rules impracticable, if not impossible. These facts make the inmates so vulnerable to the Coronavirus. However, it is commendable that the shortage of surgical face masks and hand sanitizers in the Covid-19 period resulted in the prison industry program making the items for the prisons and the community which is commendable as useful, rehabilitative, and money-earning work. To prevent the spread of the virus, there are international guidelines to be adhered to and many countries passed new legislation while others applied some existing laws. Some examples are The United Nations Standard Minimum Rule for the Treatment of Prisoners⁹⁷; in Nigeria, the Lagos State Infectious Diseases (Emergency Prevention) Regulations 2020, and the Oyo State Coronavirus Disease (Emergency Prevention) Regulation 2020. In the United Kingdom, the Health Protection (Coronavirus, Restriction) Regulation 2020 and the Social Security (Coronavirus) (Prisoners) Regulations 2020 apply⁹⁸. In the United States of America, the Public Health Service Act extends and covers correctional institution cases of Covid-19.

The Early Release from Prison Program which is a compassionate scheme where inmates are released from the correctional facility before the completion of the Judicial sentence or due date, has been recommended by the WHO as a precautionary measure to prevent the spread of coronavirus as a result of congestion and overcrowding. It applies to non-violent and non-sexual offenders, inmates with chronic disease, fragile and elderly inmates with complex medical conditions, inmates serving a few years sentence with a few months to serve, and Awaiting Trial Persons that had spent many years in custody. This program can result in “release in error” cases where prisoners are released inadvertently, and such error could result in more damage of an irreparable loss within the short time of the mistaken release. “Freedom Shock” can also result from the program, when the beneficiaries of the early release program are not prepared for the “rushed release” and are not given and allowed a proper re-entry process back to life in the community.⁹⁹

The permanent early release of prisoners in this pandemic era, with no proper re-entry or follow-up program into the community, has societal and criminological implications and should be checked. Globally, governments have continued to release prisoners and detainees to decongest facilities because of the pandemic. Legal suits are emerging on Covid-19 correctional institutions related issues. In *Tre McPherson, Pattkate William-Void, John Doe, John Roe and Thomas Cave (representing themselves and others) v. Ned Lamont and Rollin Cook (in their official capacities)* in the District of Connecticut, USA, some inmates complained that the ongoing Covid-19 pandemic places them at unreasonable risk of infection. *Hafeez v. The United Kingdom*¹⁰⁰ (application 14198/20) is a case relating to the

⁹⁷ United Nations Revised Standard Minimum Rules for the Treatment of Prisoners. A/RES/70/175. (Nelson Mandela Rules) Adopted on 17 December 2015

⁹⁸ www.legislation.gov.uk

⁹⁹ Rivero D. 2016. The Federal Prison System has a Big Problem with a little Number. Splinter News 27 May 2016. Accessed May 10, 2020 from Splinternews.com/the-federal-prison-system-has-a-big-problem-with-a-little-number.

¹⁰⁰ Alex Ewing (2020) “European Court of Human Rights to Consider Impact of Covid-19” UK Human Right Blogs. accessed April 18, 2020.

health condition of a 60-year-old remanded inmate awaiting extradition. In Nigeria, the case of *the State v Olalekan Hameed* (ID/9006C/2019) attracted a lot of national and international reactions, where death sentence by hanging was passed on an inmate on Monday, 4 May 2020, during a virtual court sitting via the zoom app in Lagos State, as part of social distancing measures to combat Covid-19 pandemic.¹⁰¹

Effective testing on prisoners released is highly recommended to ensure they are not carrying the virus back to their communities while Periodic testing for prison workers who come from outside the institution is mandatory. Palliative measures should be given to and must accompany the released beneficiaries, to reduce the recidivism problem. The permanent early release of prisoners in the Covid-19 era, with no proper re-entry or follow-up program into the community, has societal and criminological implications. Therefore, investing in "Second Chance Grants"¹⁰² to credible NGOs for training and follow-up of the beneficiary of early release is highly recommended.

A proactive step to protect the prison official by supplying protective gear is recommended. The introduction of the virtual court sitting in many jurisdictions is welcomed and expedited actions for remand cases and the increase in the use of non-custodial sentences are advocated. Access to necessary information and educational materials on the Covid-19 pandemic should be made available to the inmates without compromising the issue of security and there is the need to invest more in rehabilitative programs before opening the gates of prison and flooding communities with persons who ought not to be there.

B. COVID-19 and the Prosecutorial Powers of the Attorney General

The position of the Attorney General (AG) is widely accepted and seemingly settled at law¹⁰³ and statute in Nigeria, following the Supreme Court case of *State v. Ilori* and Ors.¹⁰⁴ One important feature of the broad powers of the AG is the unfettered discretion accorded the office in the decision to prosecute, not to prosecute, and to discontinue prosecution¹⁰⁵ in Nigeria. The arrest, public trial, and conviction of Funke Akindele Bello, a popular Nigerian actress, and producer and her husband Abdul Rasheed Bello for hosting a birthday party during the Coronavirus (Covid-19) pandemic outbreak,¹⁰⁶ has brought to the fore questions about the wide powers of the Attorney General of the Federation and Attorneys General of the various states in the country to exercise prosecutorial discretion.

<https://ukhumanrightsblog.com/2020/04/18/european-court-of-human-rights-to-consider-impact-of-covid-19/>

¹⁰¹Onozure Dania (2020) "Lagos Virtual Court Session: Court sentences driver to death by hanging over murder of employer's mother." Vanguard. May 5, 2020 <https://www.vanguardngr.com/2020/05/lagos-virtual-court-session-court-sentences-driver-to-death-by-hanging-over-murder-of-employers-mother/>

¹⁰²Lichtblau, E. 2016. "Obama administration seeks to curb inmates return to prison" The New York Times. April 25, 2016 <https://nytimes.com/2016/04/25/us/politics/Obama-inmates-recidivism>

¹⁰³ See Section 174 and 211 of the 1999 Nigerian Constitution (as amended). Cap.C23. Laws of the Federation of Nigeria. 2004

¹⁰⁴(1983) 14 NSC 69. See also, Fidelis Nwadialo. *The criminal procedure of the Southern States of Nigeria*. 2nd ed. (Lagos: MIJ Publishers, 1987).

¹⁰⁵ Also known as *nolle prosequi*

¹⁰⁶"Nigeria: Nollywood star arraigned for breaching coronavirus rules." *Aljazeera*. April 07, 2020. <https://www.aljazeera.com/2020/04/nigeria-nollywood-star-arraigned-for-breaching-coronavirus-rules-200407074854464.html>

The major bone of contention in respect of selective prosecution during the current lockdown in Nigeria as a result of Covid-19 is that it raises questions about the “public interest” angle of the duties of the AG in relation to ensuring confidence in the integrity of the administration of justice, which is often associated with the statement by Heward C.J. to the effect that: “...Its of fundamental importance that justice should not only be done but should manifestly and undoubtedly be seen to be done”¹⁰⁷. There has been outright condemnation of the actions of the Nigerian AGs, in their perceived selective prosecution of breaches of the lockdown and social distancing orders, in situations where the public expects scrupulous fairness and the complete absence of political interference in the prosecution of criminal infringement. For instance, although some other members of Funke Akindele’s party were arrested, and prosecuted, the charges against them were dropped by the AG, Lagos State¹⁰⁸. Also in the Federal Capital Territory, none of the over one hundred (100) people who attended the televised burial of Mallam Abba Kyari - the Chief of Staff of the President, who died of complications brought on by Covid-19 infection- in breach of the extant lockdown and social distancing orders were prosecuted.

The perceived selective prosecutions raise questions about the objectivity of the AGs in prosecuting cases of infraction of the lockdown and social distancing orders as contained in the Quarantine Act, State (Emergency Prevention) Regulations, its effect on the containment of the spread of the Covid-19 pandemic outbreak, and diminished faith in the ability of the government to effectively manage the disease and the country in general. Subjecting the independence and impartiality of the Attorney General’s prosecutorial decision making, both in perception and reality, during the current lockdown and social distancing orders to judicial review can help uphold the rule of law and improve public confidence in the office of the AG, leading to greater respect for and adherence to lockdown and social distancing orders, thereby, in part, hopefully advancing the fight to successfully eradicate the Covid-19 pandemic in Nigeria.

VII. IMPACT OF COVID-19 ON FAMILY LIFE AND SOCIAL RELATIONS

The family is the smallest unit in the social structure of every society. It is generally accepted that the family is the basis of every human community and the family may be regarded as the nucleus of society. The word family is difficult to define in one sense it means all persons related by blood or marriage, in another it means all members of the household, including parents and children with perhaps other relations, lodgers, and even servants.¹⁰⁹ Black’s Law Dictionary defines family to include the following a group consisting of parents and their children: a group of persons connected by blood, by affinity or by law, and a group of persons, usually

¹⁰⁷ *R. v. Sussex Justices, Ex parte McCarthy* (1924)1 KB 256. 259

¹⁰⁸ Joseph, T. “Breaking: LASG pardons Gbadamosi, Naira Marley for flouting lockdown orders.” Independent Newspaper, Accessed April 08, 2020. <https://www.independent.ng/breaking-lasg-pardons-gbadamosi-Naira-marley-for-flouting-lockdown-orders/>

¹⁰⁹ Lowe N. and Douglas G. *Bromley’s Family Law* (London: Butterworths, 1998) 3.

relations, who live together.¹¹⁰ In the case of *Oloba v. Akereja*¹¹¹ the Supreme Court of Nigeria stated that the concept of family in the Nigeria context is wider than that of the English context. In the Nigerian context, Family includes blood relationships in its widest connotation even to the 100th degree of relationship by marriage and any person whether related to him or not who is wholly or mainly dependent upon him.

In the English context, the family consists of the father and those who reside with him of whom he is in *pater familias*. Family law functions to define and change the status of the parties; resolve disputes; serve as an avenue for protection, and give direction on inheritance and property sharing.¹¹² It is important to state that Marriage is the foundation of a marital relationship and it is a special contract between parties that involves legal relations with rights and obligations.¹¹³ A major consequence of marriage is cohabitation in a family home and the right to a consortium. The consortium is the benefits that one person, especially a spouse, is entitled to receive from another, including companionship, cooperation, affection, aid, financial support, and (between spouses) sexual relations.¹¹⁴ A consortium can also be extended to be filial which covers the relationship between children and parents.¹¹⁵ Thus, living together is a corollary effect of marriage. Apart from married couples, many men and women cohabit with children; though the law does not confer rights and obligations on such practices, it has become a fact of life in Nigeria.¹¹⁶ The foremost significance of the family home (whether the parties are married or not) requires that they should be given special handling.¹¹⁷ The primary function of a family home is to provide shelter for the members.¹¹⁸ On the whole, married couples and cohabiting couples live together with challenges of family life and social relationships.

Family life and social relations are germane to the sustainable development of a country and impact the economy. Family life is defined as the routine interactions and activities that a family has together. When members of a family enjoy each other's company and spend a lot of time doing things together, this is an example of good family life.¹¹⁹ Family life occurrences have an impact on the competence, strength, and general well-being of all.¹²⁰ In essence, the family determines the quality and health of the members.¹²¹ Before the outbreak of the Covid-19 pandemic all over the world, family life had been threatened by a lot of issues ranging from spousal battering/assault, child abuse, and different levels of violence including emotional challenges. Mind-blowing statistics from reliable organizations like WHO revealed a difficult time in family life. According to

¹¹⁰ Garner B.A. Black's Law Dictionary (St. Paul, MN: West Publishing Co., 2009).

¹¹¹ (1988) 3 NWLR (Part 84) page 508

¹¹² Lowe and Douglas, Bromley's, 4-5.

¹¹³ Nwogugu E.I., Family Law in Nigeria (Ibadan: HEBN Publishers Plc, 2014) 3-4.

¹¹⁴ Garner, B.A. Black's Law Dictionary (St. Paul, MN: West Publishing Co., 2009).

¹¹⁵ Garner, Blacks.

¹¹⁶ Nwogugu, Family Law 14-15.

¹¹⁷ Lowe and Douglas, Bromley's, 134.

¹¹⁸ Lowe and Douglas, Bromley's.

¹¹⁹ Your Dictionary, Family Life meaning. Accessed May 18,2020

<https://www.yourdictionary.com/family-life>

¹²⁰Weiss J. "Family Health" 'Encyclopedia of the Social and Behavioral Sciences,' accessed May 20, 2020. sciencedirect.com.

¹²¹ Weiss, Family Health.

WHO, 1 in every 3 women experience a form of physical and sexual violence in their lifetime from an intimate partner or a family member.¹²² Despite the challenges in family and marital relations, the social life of Nigerians was very vibrant and at some point in history: Nigeria was described as one of the happiest people on earth.¹²³ Parts of the activities involved in social life include but are not limited to the naming ceremony, child dedication, marriage celebration, burial ceremony, birthday celebration, house warming celebration, graduation party, and so on. In short, every special achievement deserves to be celebrated, and such was the lifestyle of Nigerians before the advent of Covid-19 and its attendant consequences.

Ever since the discovery of the index case of Covid-19 in February 2020, in Nigeria, family life for some has become an illusion and there are silent prayers that the situation improves so that what they considered normal life would continue. Parts of the measures taken by the Federal Government to curb the spread of the virus are lockdown, restriction of movements, and curfew directions. These directives have brought to the fore the challenges with family life in Nigeria. In settings where the spouses are artisans or daily paid workers, there is financial strain and emotional stress. More so, that the enforcement of lockdown has brought victims of domestic violence and perpetrators proximity for extended periods. The world is in a state of chaos now because of the challenge caused by the aggressive nature of the Coronavirus Pandemic (Covid-19). The impact is mostly felt on the socio-cultural and economic lives of people. Unfortunately, even as the world is grappling with the effects of Covid-19 most vulnerable groups and individuals like the elderly, women, and children suffers the most.¹²⁴ The lockdown is adding another public health crisis to the toll of the new coronavirus: Mounting data suggests that domestic abuse is acting as an opportunistic infection, flourishing in the conditions created by the pandemic. In a survey conducted in 2020, regarding the impact of coronavirus, 41% of respondents in Hong Kong stated that the outbreak of the coronavirus had a major impact on their family life.¹²⁵ Comparatively, 12% of respondents in Japan thought the outbreak of Covid-19 had a major impact on their family life in 2020.¹²⁶

Section 37 of the Constitution provides for the right to private and family life. Interpreting this section in the light of Section 45 of the Constitution on the issue of public health emergencies is a difficult task.¹²⁷ This right does yield itself to an easy interpretation as 'family life is not expressly mentioned in that section and most of the time it is taken to mean personal autonomy. Effective operation of

¹²² World Health Organization. "World Report on Violence and Health." accessed May 20, 2020. https://www.who.int/violence_injury_prevention/en/.

¹²³ In 2003, Nigeria was described as the happiest set of people in the world by World Values Survey. See, "World Happiness Report, Nigeria ranks 85 out of 156 countries." International Centre for Investigative Reporting, accessed May 21, 2020. www.icirnigeria.org.

¹²⁴ Okoro T. C. "COVID-19 lockdown: Rising cases of sexual and gender-based violence against women, girls" The Cable, Accessed April 17, 2020. <https://www.thecable.ng/covid-19-lockdown-rising-cases-of-sexual-and-gender-based-violence-against-women-and-girls>

¹²⁵ Moore M. "Impact of COVID-19 Outbreak on Family Life" APAC 2020 by Country or Region Statista, Accessed April 22, 2020. <https://www.statista.com/statistics/1103363/apac-covid-19-impact-on-family-life-by-country/>.

¹²⁶ Moore, Impact of Covid-19

¹²⁷ Section 37 of the 1999 Constitution of the Federal Republic of Nigeria provides for the privacy of citizens, their homes, correspondence, telephone conversations and telegraphic communications.

family and social life is predicated on a good support system and if this is lacking, there is impairment of the general well-being of individuals. Social support is connected to improved quality of life and lesser depressive tendencies.¹²⁸ In addition, the quality of family life sways the development of individual differences in vulnerability for multiple forms of mental illness and addictions.¹²⁹ Several human rights of individuals have been infringed in the course of the Covid-19 pandemic and many more rights are being infringed upon daily. The situation can be likened to two pandemics – the Corona Virus and the hunger cum anger virus. Many social events have been canceled and some are postponed *ad infinitum*. Some marriages were conducted through Zoom and other internet handles¹³⁰, the legality of such contracts is not the major focus here, rather how to live a normal life despite the difficulties. It is important to state that marriages conducted during the Biafra War¹³¹ were later validated after the war.¹³² To give effect to the provisions of the Constitution in a time of public emergency as this is problematic. However, there are other ways of ameliorating the challenges caused by the pandemic on family and social relations. The period of lockdown and restricted movement is a time of loneliness and social isolation which includes social distancing. All hands must be on deck to tackle the situation and restore normalcy as soon as practicable.

A pandemic situation can be compared to war and a disaster. Thus, the level and state of preparedness are very important, soldiers prepare before the war and not during the war. In essence, stakeholders should have foresight in terms of social security like what is happening in some developed countries. The issue of palliation must go hand in hand with lockdowns for effectiveness. In addition, there must be the preservation of shelter accommodations to temporarily house the abused and the vulnerable. The time of pandemic is a period of collective fight and life is sacrosanct thus, the government needs to provide avenues of making distress calls to relevant authorities on time. Taking a cue from the decision of the United States of America Supreme court in *Roe v. Wade*,¹³³ it reasoned that certain areas of private life – marriage, sexual relationships, procreation, the upbringing of children – are so important that they deserve protection even though they are not expressly mentioned in the Bill of Rights. It is important to understand that violence in whatever form or sphere is a significant public health problem and its broad understanding is necessary for successful intervention to prevent it and its

¹²⁸ “Benefits of Family and Social Relationships for Thai Parents.” National Centre for Biotechnology Information, accessed May 7, 2020, www.ncbi.nlm.nih.gov

¹²⁹ Zhang T. Y., Calji, C., Diorio, J.C., Dhir, S., Turecki, G & Meaney M.J. The Epigenetics of Parental Effects. *Epigenetic Regulation in the Nervous System: Basic Mechanisms and Clinical Impact*. Elsevier Academic Press 85-119 (2013)

¹³⁰ Omotayo J. 2020. Covid-19 lockdown: Lagos church holds 1st online wedding using Zoom accessed May 10, 2020 from <https://www.legit.ng/1323197-covid-19-lockdown-lagos-church-hold-1st-online-wedding-using-zoom.html>

¹³¹ The Nigerian Civil War (also known as the Biafran War and the Nigerian-Biafran War) was a civil war in Nigeria fought between the government of Nigeria and the secessionist state of Biafra from 6 July 1967 to 15 January 1970.

¹³² The Marriage (Validation Act of 1971) sought to validate some of the marriages purported to have been celebrated under the Marriage Act between May 30, 1967 and Aug. 11, 1971 in the East Central State of Nigeria. Please note that this Law is no longer in force because it has fulfilled its purpose and as such is not replicated in the 2004 Laws of the Federation.

¹³³ 410 U.S. 113 (1973).

health and social impacts.¹³⁴ On a final note according to the words of the popular song by Gwen Guthrie, 'No Romance without finance' in essence where there is no fund or palliative, living together becomes a mirage.¹³⁵

VIII. SUSTAINING THE RIGHT TO EDUCATION DURING A PANDEMIC

Education plays an important role in human life. It is an integral part of development. It is essential for economic, social, political, and cultural development, building human capacities, and creating opportunities. It is the true essence of human development. Education is a right.¹³⁶ For the complete and harmonious development of the personality of any child or human being, he or she must be given proper education. Without education, no human being will be able to assert his or her rights. The Universal Declaration of Human Rights (UDHR) provides for the right to education for all. It states further that education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory, whilst technical and professional education shall be made generally available and higher education shall be equally accessible to all based on merit.¹³⁷

The Nigerian government is obliged to formalize the education system in Nigeria starting from primary school up to the university level.¹³⁸ Section 18 of the Constitution of the Federal Republic of Nigeria 1999, as amended, makes provisions relating to education. In the section, the government is expected to formalize policies geared towards equal and adequate educational opportunities at all levels, promoting science and technology, eradicating illiteracy, by providing free, compulsory Universal Primary Education, free University Education, and a free Adult Literacy Program. These provisions are however not justiciable. In line with its obligations under Art.26 of the Universal Declaration of Human Rights (UDHR),¹³⁹ the Federal Government has enacted the Universal Basic Education Act, 2004, to provide free and compulsory universal basic education for children up to junior secondary school.¹⁴⁰ So also does section 15 of the Child's Right Act. Read together, they provide for an enforceable right to education for the Nigerian child, up to the junior secondary school.

The effect of Covid-19 is being felt in all sectors worldwide, and its consequences will be felt for years to come. With regards to education, the effects of Covid-19 are expected to destabilize this sector, by truncating whatever efforts are being made to transform and improve it. The worst-hit programs are science and technology, as students will be unable to access laboratories for their practical sessions. Countries including Nigeria had to close their educational institutions as

¹³⁴ Rutherford A. Zwi, A.B., Grove N.J. & Butchart, A. Violence: a glossary. *Journal of Epidemiology and Community Health* 61(8), 676-680 (2007)

¹³⁵ Guthrie G. 1986. Good to Go Lover. Contemporary R&B accessed May 10, 2020. <https://lyrics.az/gwen-guthrie/good-to-go-lover>.

¹³⁶ UDHR 1948

¹³⁷ Art. 26 Universal Declaration of Human Right 1948. See also Art.17 African Charter on Human and Peoples' Rights, Art.13 International Covenant on Economic, Social and Cultural Rights, 1966; Art.28 Convention on the Rights of the Child 1989.

¹³⁸ Amuda, Y J. Child education in Nigeria: hindrances and legal solutions. *Procedia Social and Behavioral Sciences* 15. 3027-3031(2011) 3027.

¹³⁹ Other international instruments are. Art.13 International Covenant on Economic, Social and Cultural Rights, 1966; Art.28 Convention on the Rights of the Child 1989.

¹⁴⁰ Section 2 UBE Act 2004. See also, section 15 Child's Right Act 2003.

part of their lockdown measures to contain the spread of the virus. These institutions have had to resort to using online technologies for distance learning, with the result of laying bare the digital divide within the country. This divide cuts across institutions, some being better equipped and experienced than others, and between students, the rich and urban dwellers, and the poor who live not only in the rural areas but also 'down town' who cannot afford internet, even when available and 24-hour electricity.

To curb the spread of the Covid-19 pandemic, most governments have closed educational institutions. According to UNESCO, these closures are affecting over 72% of the world's student population.¹⁴¹ School closures come at high social and economic costs. The effect however is particularly severe for the most vulnerable and marginalized children and their families. There is a real risk of regression for children whose basic, foundational learning (reading, math, languages, etc.) was not strong, to begin with.¹⁴² Furthermore, millions of children who have already been deprived of their right to education, particularly girls, are being more exposed to health and well-being risks (both psychosocial and physical) during Covid-19.¹⁴³ The resulting disruptions will exacerbate already existing disparities within not only the education system but also in other aspects of their lives. Learning is interrupted, especially for those who have little or no other educational opportunities beyond school. Secondly, not all parents are equipped and prepared for long-distance and homeschooling, especially those with limited education and resources. Thirdly, are the challenges relating to creating, maintaining, and improving distance learning, considering the time constraint.¹⁴⁴ Disruption in learning affects mainly girls, refugees, displaced and migrant children, children and youth with disabilities, young people affected by trauma or mental health issues. For the most vulnerable children, education is lifesaving, as it provides safety and protection, whilst instilling hope for a brighter future.

While learning might continue unimpeded for children from higher-income households, children from lower-income households are likely to struggle to complete homework and online courses because of their precarious housing situations. Beyond the educational challenges, however, low-income families face an additional threat: the ongoing pandemic is expected to lead to a severe economic recession. Previous recessions have exacerbated levels of child poverty with long-lasting consequences for children's health, well-being, and learning outcomes.¹⁴⁵

¹⁴¹ Figures correspond to number of learners enrolled at pre-primary, primary, lower-secondary, and upper-secondary levels of education [ISCED levels 0 to 3], as well as at tertiary education levels [ISCED levels 5 to 8]. Enrolment figures based on latest UNESCO Institute for Statistics data, accessed May 10, 2020 COVID-19 Educational Disruption and Response <https://en.unesco.org/covid19/educationresponse>

¹⁴² Covid-19 and Education in Emergencies, accessed May 10, 2020 <https://www.educationcannotwait.org/covid-19/>

¹⁴³ *Ibid.*

¹⁴⁴ UNESCO. "Covid-19 Educational Disruption and Response." UNESCO, accessed May 10, 2020, <https://en.unesco.org/covid19/educationresponse>.

¹⁴⁵ Gonzalo Fanjul, Children of the Recession The impact of the economic crisis on child well-being in rich countries. *UNICEF Innocenti Report Card 12 Children in the Developed World*. UNICEF Office of Research, Florence (2014), accessed May 10, 2020 from https://www.unicef-irc.org/publications/pdf/Children_of_austerity.pdf

The World Health Organization (WHO) made a call for state parties to “Fulfil the right to education—even if schools are temporarily closed”.¹⁴⁶ Consequently, to ensure education systems respond adequately, UNESCO has recommended that states “adopt a variety of hi-tech, low-tech and no-tech solutions to assure the continuity of learning.” The federal and state governments have adopted various methods to ensure that the children and youth have access to education. These include ‘school on air’ and the use of cable television. Institutions have had to resort to using online technologies for distance learning, with the result of laying bare the digital divide within the country. This divide cuts across institutions, some being better equipped and experienced than others, and between students, the rich and urban dwellers, and the poor who live not only in the rural areas but also ‘down town’ who cannot afford internet, even when available and 24-hour electricity. The adoption of the ICT teaching method raises issues of quality and safety, especially with under-aged children. Quality online learning requires that the teaching materials be prepared by a professional instructional designer that the teachers and lecturers are pedagogically trained for delivering the program and the students are equally exposed to the pedagogy of online learning.¹⁴⁷

While ICT has been recommended and is being used, it has not ensured that education for all is preserved. It is therefore essential to explore other means to guarantee education for all. It is suggested that portable solar radios be provided to each family especially in remote places. This will ensure continuity in learning for most learners who are unable to access digital learning resources during this period. When schools re-open, there should be, in place method of recovering lost time. This could be in form of extended hours of school time by additional 2 hours and weekend class. Institutions should adopt ICT to ensure that tools are in place to protect child rights and privacy.

IX. CONCLUSION

These forays into the effect of Covid-19 on the Nigerian legal and social landscape reveal the far-reaching effects of the pandemic on all sectors in Nigeria. The above discussions have identified the effect of the pandemic on identified aspects of the legal landscape and made recommendations on the best move forward. From all indications, the end of the Covid-19 pandemic is not in sight and Nigeria will have to navigate the current “normal” as best it can. As such, the nation will have to contend with the legal effects of the Covid-19 pandemic for a while to come. The segments of the legal landscape discussed here are in no way exhaustive, they are, however, an indication of some of the effects of the pandemic and the herculean task ahead to stabilize the nation and seek the best possible health, economic, social, and legal outcome for the country. It may be argued that these areas of the law are distinct and should be considered separately, however, it is necessary to recognize that the various sectors of the Nigerian society and economy are intertwined and where there is a problem with one part, it tends to affect other areas of the Nigerian business, legal and regulatory landscape.

¹⁴⁶Human Rights Dimensions of Covid-19 Response. A WHO Publication, retrieved from www.who.int on 8/5/2020, p.13

¹⁴⁷Mohamedbhai G. “Covid-19: What consequences for higher education?” University World News, accessed May 10, 2020, <https://www.universityworldnews.com/post.php?story=20200407064850279>.