

**Being the text of the lecture delivered by Kazeem A. Oyinwola Esq., Managing Partner, Amofin Solicitors, Abuja at an online event organized by Tawakkul Multi-purpose Cooperative Society Limited, Ilorin in April 2020.**

## **LEGAL ANALYSIS OF THE CHALLENGES OF COVID-19 PANDEMIC IN NIGERIA**

**By**

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### **1.0 INTRODUCTION**

Nigeria confirmed its first index case on 27<sup>th</sup> February 2020. Information in the public domain has it that he is an Italian man and that is much we know about him. The World Health Organization (WHO) declared covid-19 a pandemic on 11<sup>th</sup> March 2020 and as at Thursday, 16<sup>th</sup> April, 2020 the official figures of COVID-19 cases in Nigeria were 407 confirmed case, 128 discharges and 12 deaths.

Lagos is the epicenter of the virus but so far it has spread to at least 20 states as at April 2020. The outbreak has claimed many lives globally; it has disrupted businesses and economic activities, it has even altered our life styles and it is currently keeping us under quarantine, isolation and shelter-in-peace depending on our individual conditions and where we are currently lockdown. Undoubtedly, a pandemic that has disrupted almost every known business, supply and value chains cannot but have legal consequences. So, the question is: what are the ranging legal issues surrounding COVID-19 pandemic in Nigeria?

There are many legal issues involved but this discourse identified and discussed five key areas of focus. The choice of these areas was informed by the fact that they constitute common areas of concern. These areas are;

1. Legal framework for the control of epidemic/pandemic in Nigeria
2. Derogation/suspension of human rights during epidemic/pandemic in Nigeria
3. Doctor-patients relationship during epidemic/pandemic in Nigeria
4. Implications of COVID-19 on various contractual obligations and commercial activities
5. Necessary Reform for better management of epidemic and pandemic in the future

This discourse therefore examines the challenges posed by the COVID-19 pandemic and analyzed the legal issues surrounding the pandemic.

## **2.0 LEGAL FRAMEWORK FOR THE CONTROL OF EPIDEMIC/PANDEMIC IN NIGERIA**

The following Laws/Act/Regulations constitute legal frameworks for the control of epidemic/pandemic in Nigeria. While some apply generally, some apply specifically to COVID-19 pandemic. These are;

- 1999 Constitution of the Federal Republic of Nigeria (CFRN)
- Quarantine Act 1926
- The various COVID-19 Regulations, 2020 of state and Federal Government
- Nigeria Center for Disease Control and Prevention Act 2018 (NCDC Act)
- National Health Act 2014 (NHA Act)

- **1999 Constitution of the Federal Republic of Nigeria (as amended)**

Section 305(1) of the 1999 Constitution empowers the president to issue a proclamation of a state of emergency in the federation or in any part thereof. This is done by an instrument published in the official Gazette declaring state of emergency. The power can be exercised;

- when Nigeria is at war, or
- there is an imminent danger of invasion or involvement in a state of war, or
- there is imminent or actual break down of public order and public safety, or
- there is occurrence or imminent danger of any disaster or natural calamity affecting the community or
- there is any other public health which constitutes a threat to the existence of the federation.

The declaration of COVID-19 as a pandemic constitutes imminent and actual danger to public order, public health and public safety and therefore, by section 305(1) CFRN, the President has the power to issue a proclamation for a state of emergency. However, section 305(2) and (6) 1999 CFRN requires the approval of the National Assembly within 2 days when it is in session

or within 10 days when it is not in session. This is problematic at this period because even the National Assembly members cannot physically come together to consider the proclamation; they are also to do social distancing, self-isolation, quarantine or shelter in place and I doubt if they have teleconferencing yet! The Galaxy Backbone being devised to be used to provide teleconferencing by the Nigerian Communications Commission (NCC) is, to my knowledge, yet to be automated with the National Assembly as at the date hereof.

- **Quarantine Act of 1926**

This when Quarantine Act of 1926 comes in. Sections 1, 2, 3, 4, 5, and 6 of Act empower the President to make regulations, declare any place as an infected areas, prescribes steps to be taken to prevent the spread or transmission of the infectious disease, prescribes powers and duties of officers to be charged with enforcement of the regulations and designate such sanitary stations, places, equipment and buildings to curtail the disease as they may deem fit. Section 7 of the Act gives the Governors (in respect of their states,) the same power as the President to make declaration and regulations in the event the President has not made one in respect of their states. The Quarantine Act 1926 provides a reasonable degree of power for the president to handle a pandemic of this nature. However, it should be noted that the Act is old and its provisions would require modifications to bring it in tune with the reality. As a result of this, the covid-19 regulations were made pursuant to the Act.

- **COVID-19 Regulations**

The President made the COVID-19 Regulations, 2020 and COVID-19 Regulations No. 2 2020 pursuant to the Quarantine Act of 1926. While COVID-19 Regulations, 2020 prescribed restriction/cessation of movements in and outside Lagos and Ogun States and the FCT, Abuja among other things, COVID-19 Regulations No. 2 2020 extended the lockdown.

COVID-19 Regulations, 2020 also empowered the Chief Justice of Nigeria to and validated the circulars sent to all heads of court directing the suspension of court sittings In Nigeria. There were arguments back and forth on the constitutionality or otherwise of what the President and the CJN did. The critics argued that it is only by declaration of state of emergency that the president can restrict movement or take over the affairs of a state. However, these critics probably did not avert their minds to the provision of the Quarantine Act of 1926, sections 315 and 318 of the

1999 CFRN. They also probably forget that by virtue of section 315 of the Constitution, the Quarantine Act 1926 is preserved as an existing legislation/law and the section gives the president and the governor the power to make modification, alteration and even an addition in order to bring it in line with the constitution.

Thus, my own submission is that the President can rely on the provisions of 315 CFRN and sections 1-7 of the Quarantine Act 1926 to make the COVID-19 Regulations 2020 and COVID-19 Regulations No.2 2020 and the Regulations so made are valid and constitutional.

As regards the power of the CJN to direct the suspension of court sittings, the CJN is the Chairman of the National Judicial Council (NJC) by virtue of section 20 of Item I, Third Schedule, Part I to the 1999 CFRN. Section 21(a) to (e) of Item I, Third Schedule, Part I to the Constitution makes the NJC the regulatory body for the Nigerian judiciary and also gives NJC many powers with respect to the appointment, discipline of judicial officers, budgetary allocations etc.

Furthermore, section 21(e) of the Schedule then gives the NJC the power to deal with all matters relating to broad issues of policy and administration. My position is that it is under this broad power that the NJC's power to direct the suspension of court sittings is subsumed and needless to say that the power to direct the suspension of court sittings can be exercised by the NJC through its Chairman which is the CJN.

More so, Regulations 1(7) of the COVID-19 Regulations 2020 also allows the CJN to suspend court sittings with the instrumentality of circulars. So, by the combined effect of section 21(a) to (e) of Item I, Third Schedule, Part 1 to the Constitution and Regulations 1(7) of COVID-19 Regulations 2020, the suspension of court sitting via two separate circulars issued by the CJN is legal and constitutional in my opinion.

- **National Health Act of 2014**

Another legal frameworks for control of epidemic/pandemic in Nigeria are the Nigeria Center for Disease Control and Prevention Act of 2018 and the National Health Act of 2014. Section 1 and 2 of the NH Act establishes the National Health System and empower the Ministry of Health to perform supervisory and regulatory functions. We have the National Council of Health and Technical Committee on National Council of Health, we also have National Tertiary Health

Institutions Standard Committee and Health Care Provision Fund (see. S. 1-10 of the Act). Our National Health System is versioned in a way that it comprises the followings

- The Federal Ministry of Health
- The States/FCT Ministries/Departments of Health
- Parastatals under the Federal/States Ministry of Health
- All Local Governments Health Authorities
- The Ward Health Committees
- The Village Health Committees
- The Private Health Care Providers
- Traditional Health Care Providers
- Alternative Health Care Providers

This is all encompassing. Let us pause a moment and imagine how fantastic our health care system would have been if this system is working properly. But we all know this COVID-19 must not get to the grass root and this says a lot that the system is good only as provided by the law, it is not yet working practically and effectively .

- **Nigeria Center for Disease Control and Prevention Act of 2018**

Lastly on the framework, we have Nigeria Center for Disease Control and Prevention Act 2018 (NCDC Act, 2018). The core functions of NCDC by virtue of NCDC Act 2018 include to:

- Prevent, detect, and control diseases of public health importance.
- Coordinate surveillance systems to collect, analyse and interpret data on diseases of public health importance.
- Support States in responding to small outbreaks, and lead the response to large disease outbreaks.
- Develop and maintain a network of reference and specialized laboratories.
- Conduct, collate, synthesize and disseminate public health research to inform policy.
- Lead Nigeria's engagement with the international community on diseases of public health relevance.

### **3.0 DEROGATION/SUSPENSION OF HUMAN RIGHTS DURING EPIDEMIC/PANDEMIC IN NIGERIA**

Every citizen has fundamental rights enshrined in the 1999 Constitution. These fundamental rights are contained in Chapter IV and are

1. include right to life (s.33),
2. right to human dignity(s.34),
3. right to personal liberty (s.35),
4. right to fair hearing (s. 36),
5. right to private and family life (s.37),
6. right to freedom of thought, conscience and religion (s.38),
7. right to freedom of expression and the press (s. 39),
8. right to peaceful assembly and association (s.40),
9. right to freedom of movement (s. 41)
10. right to freedom from discrimination (s.42), and
11. right to own and acquire immovable property (s.43).

These rights identified above are considered sacrosanct and can only be derogated from as provided by the Constitution itself. To this end, section 45(1) 1999 CFRN however permits derogation from these right especially the following rights;

1. rights to private and family life (s.37),
2. right to freedom of thought, conscience and religion (s.38),
3. right to freedom of expression and the press (s. 39),
4. right to peaceful assembly and association (s.40), and
5. right to freedom of movement (s. 41).

All these rights can be suspended or derogated from. However, for the suspension/derogation to be valid, it must comply with the provisions of the 1999 CFRN (i.e section 45) itself. Therefore, the derogation/suspension must be provided by **any law** that is reasonably justifiable in a democratic society for the purpose of or in the interest of defence, public safety, public order, public morality or public health or the protection of the rights or freedom of others.

Furthermore, by virtue of section 318 CFRN '**any law**' as used in section 45 (1) would mean an Act of the National Assembly or a Law of a State House of Assembly. By section 315 CFRN, the provisions of Quarantine Act, 1926 qualifies as an Act of the National Assembly or the law of a state. And remember that COVID-19 Regulations No, 1 and No, 2 2020 were made pursuant to

the Quarantine Act. Thus, suspension of fundamental rights using the instrumentality of the Regulations is, in my view, valid. This is because regulations made pursuant to an Act is sometimes regarded as delegated legislation having the same legal effect as the principal Act/Law pursuant to which they are made.

Meanwhile, in Lagos State, for regulations to have a force of law as the principal Act/Law pursuant to which they are made such Regulations must have been approved by the Lagos State House of Assembly. Section 1(1) and (2) of the Regulations Approval Laws (CAP R4, Laws of Lagos State) 2011 provide that

“(1) notwithstanding any provision to the contrary in any Law in the state, no regulation shall have effect unless laid before and approved by the House of Assembly.”

This is probably why some lawyers kicked against the conviction of Funke Akindele and her husband who were charged pursuant to the Lagos State COVID-19 Regulations 2020 because they insinuated that the said Regulation under which they were convicted was not been laid before the House of Assembly for approval. People also insinuated that perhaps State government later realized this error and that was why the Lagos State Government decided to withdraw the charges against Naira Marley, Gbadamosi and his wife who were also charged with the same offence on condition that they would publicly apologize. Naira Marley had since apologized.

The point to be noted is that the derogation/suspension of the fundamental rights is what gives the government the right/power to isolate or quarantine suspected cases of COVID-19 or put the rest of the population to isolate or shelter in place even without their consent. It is the same thing that also gives the government the power to restrict movement and direct people not to go to places of worship.

My advice is we should obey the regulations and directive of the government because this is a period in which normal course of events have been suspended. Regular courts are not on session and so the idea of “I want to fight for my fundamental rights” or “no police will beat me if I go out” may not arise. Of course, they are not expected to brutalize or dehumanize the citizens but the enforcement of rights are in abeyance now till after the derogation or suspension is lifted.

#### **4.0 DOCTOR-PATIENTS RELATIONSHIP DURING EPIDEMIC/PANDEMIC IN NIGERIA**

The doctor-patient relationship is a very sacrosanct relationship in the field of medicine/health care and law. The one I will touch here is privacy and confidentiality. A patient is entitled to privacy and confidentiality of all information relating to his/her health. The obligation to keep the patient's information confidential is fundamental in health care and medical law as it is one of the fundamental medical ethics imposed by national laws and international codes.

Section 26(1) of the National Health Act 2014 provides that all information concerning a user, including information relating to his or her health status, treatment or stay in a health establishment is confidential. See also Rule 44 of the Code of Medical Ethics in Nigeria 2008 (made pursuant to section 1(2)(c), of the Medical and Dental Practitioners Act [CAP 221], Laws of the Federal Republic of Nigeria 1990 (Decree No. 23 of 1988).

So, healthcare professionals must take very seriously the ethics of professional secrecy whereby any information about the patient that comes to the knowledge of the practitioner in the course of the patient-doctor relationship constitutes a secret and privileged information which must in no way be divulged by him to a third party.

This rule of privacy and confidentiality is so sacrosanct that it is preserved even upon the death of the patients. See the World Medical Association International Code of Medical Ethics adopted by the 3rd General Assembly of the World Medical Association, London, England, October 1949 which provides that "A PHYSICIAN SHALL preserve absolute confidentiality on all he knows about his patient even after the patient has died." See also the Physician (Hippocratic) Oath taken by physicians to **observe medical ethics part of which is confidentiality of patient's information**. This oath is usually incorporated into graduation ceremonies of medical schools and mostly intended to inspire ethics of the medical profession based on the writing of Hippocrates. This Oath has been further codified in the Geneva Declaration (by the World Health Organization) *Adopted by the 2<sup>nd</sup> General Assembly of the World Medical Association, Geneva, Switzerland, September 1948.*

So, with this background do you also think the Federal Government should have revealed the identity of the first index case, the Italian man? Many people did not believe this coronavirus before and they were agitating that if it true, the Government should release information



concerning the Italian man for them to believe. The question is can the government/the health workers release information about the index case to the public? The answer is No going by the foregoing expositions.

However, there are exceptions to the rule of confidentiality and these are contained sections 26(2) and 27 of the National Health Act, 2014. These include:

1. when the patient gives consent in writing,
2. when the disclosure is ordered by the court,
3. in respect of a minor (infant, baby etc) when the parents, guardian requested the disclosure,
4. in the case of a patient incapable of giving consent, when the parent or guardian requested,
5. when non-disclosure constitute serious threat to public health (it can be disclosed).
6. A health worker can also disclose a patient's health record to any other person, health provider or establishment for legitimate purpose where such disclosure is in the interest of the patient.

Breach of this right can lead to imprisonment not exceeding two years or fine of 25,000.00 or both (s. 29 NHA).

Given this background, it is my submission that a COVID-19 patient's information can be disclosed to the Minister/Commissioner/Ministry of Health (pursuant to NHA/Quarantine Act), NCDC (pursuant to NCDC Act/COVID-19 Regulations), COVID-19 Task Force whether of Federal (pursuant COVID-19 Regulations of FG) or state (pursuant to COVID-19 Regulations of State Quarantine Act).

Considering the nature of COVID-19, what the NCDC mostly do is to hide the identity of the patient under an umbrella term such as 'index case' when it is necessary to announce that such a patient visited a particular place and to request people who might have come in contact with the patient to self-isolate. NCDC should be commended for this. It is ultimately professional unlike what Samuel Ortom did in Benue State.

Samuel Ortom is the Governor of Benue State. Around 29<sup>th</sup> of March 2020, he featured in a Press briefing where he announced the first recorded index case in Benue State allegedly without prior recourse to the patient. He went ahead to mention the name of the index case to be Susan

Okpe. This sparked controversy as to whether Ortom was legally justified to publicly give out such information about the patient. Ortom's argument is that he did in the public interest so as to allow for contact tracing. Whether this is right or wrong, the patient has threatened to sue him and perhaps until then and the pronouncement of court, the issues is still an open debate.

We also see the example of Abba Kyari, the Chief of Staff to the President that was publicly announced. A host of others announced their own themselves e.g. Governor Nasir el-Rufai, Kaduna State; Gov. Engr. Seyi Makinde, Oyo State, the GMD of University College Ibadan etc. Ortom might also be justified under the exceptions contained in section 26(2) and 27 of NHA but until it is tested in court.

## **5.0 LEGAL CONSEQUENCES OF COVID-19 ON EMPLOYMENT, CONTRACTUAL OBLIGATIONS AND COMMERCIAL ACTIVITIES**

No doubt, COVID-19 and the consequent lockdown have disrupted business activities, supply and the value chains and it is not without serious legal implications on contract of employment, commercial contracts/transactions.

On the contract of employment, employers may be constrained to lay off their employees for their inability to pay their wages/salaries. Many a contract of employment does not usually envisage supervening situation/circumstance such as this and so may not have provisions incorporating force majeure on what should be in this situation. Whereas if some businesses cease to operate for a month, it automatically translates to no income and lack of income can quickly cripple many businesses from being able to pay their workers/employees.

In private sector, this can prompt the employer to lay off the employees in line with their contract of employment rather than allow arrears of salaries pile up. But the fundamental question is; does this pandemic constitute a supervening event that be invoked to terminate contract of employment on the ground of discharge/termination by frustration?

Most contracts of employment in private sector usually provide for termination which is either one (or more) months' notice or one (or more) months' salary in lieu of notice. It is therefore easier for the employers of labour in private sector to relieve/lay off their employees. Wouldn't a private business owner prefer to do lay off than keep the employees while the arrears of salaries/wages pile up especially that the end of the pandemic does not appear near yet?

Once the terms of the employment are complied with i.e. the necessary notice is given or the necessary salary in lieu of notice, it may be difficult for an employee laid off to force himself on the unwilling employer.

Where, per chance, the employment provides for termination in the event of supervening situation like this, it is necessary that the termination process is complied with and the employee is given his/her benefits. International Best Practice requires that the employer states the reasons for the termination of the employment (in this circumstance, the COVID-19 pandemic). This international best practice is contained International Labour Organization (ILO) Termination of Employment Convention 1982 (No. 158). Though this convention may not have been domesticated pursuant to section 12 of the 1999 CFRN, section 254 (1),(f) and (h) of the 1999 CFRN (Third Alteration) and s. 7(6) of the National Industrial Court Act, 2006 permit the Court to apply international best practices or interpretation of international labour standards.

Nigeria courts have not been consistent though and that is perhaps why in *Aloysius v. Diamond Bank Plc [2015] 58 NLLR (Pt. 199) 92 at 134* the National Industrial Court of Nigeria held that the reason for termination of employment must be given while the Supreme Court held otherwise in *Obanye v Union Bank of Nigeria Plc (2018) LPELR 44702 (SC)*, and maintained the Common Law position that an employer need not justify the reason for a termination.

Whichever is the case, none of the court has questioned the right of the employer to terminate contract of employment so long as the termination provisions are complied with.

Now for those in government sector, it depends on whether their employment has statutory flavour or not. If it has statutory flavour, the provisions of the statutes must be complied with otherwise their letter of employment will dictate the terms of the termination. But it is very much unlikely that the government will lay off its staff for lack of money to pay salaries. The government would rather continue to owe them salaries or borrow money to pay than to lay them off especially in this circumstance. So, it means those in government are safer in terms of job security than those in private sector. But again, can the employer suspend or reduce the employee's salary at this period?

Like every other contract, employment is also a contract between the employer and the employee and since the terms of contract cannot be changed or varied unilaterally by a party, the contract of employment cannot also be unilaterally changed/varied by the employer. I understand that this is in principle especially in Nigerian situation. I say this because there is inequality of bargaining

power in employment contract/relations in Nigeria. See *Johesu v. Federal Ministry of Health* (2016) 65 NLLR (Pt. 229) 84 NIC. Therefore, pay cut, salary reduction or salary suspension need to be agreed upon by the employees. The employer will need to engage the employee(s) to get their consents, otherwise, as long the contract of employment lasts, the employer may be risking litigation if he/she unilaterally cuts, reduces or suspends salaries of his employees. Similarly, can the employer treat this period being spent at home now as a compulsory leave with or without pay for the employee, in which case the employee, will no longer be entitled to leave after the pandemic?

Section 19 of the Nigerian Labour Act (Cap L1, LFN, 2004) provides for at least six days paid annual leave and most employment contracts usually state the number of annual leave days to which an employee is entitled. So, first, much depends on the nature of the business and whether the employees are working from home at this period. Where employees are working from home during the lockdown, to treat such stay at home and supplant them as the leave period for the employees will constitute unfair labour practice and the court will be inclined to rule in favour of the employee.

Where the employees are not working from home, it is still very important that the employers get the employee to agree. This is the international best practice in line with ILO Holidays with Pay Convention (Revised) 1970 (No. 132). Otherwise, it may constitute an unfair labour practice and the employer may be risking litigation.

Practically, I acknowledge the unfair and inequality of bargaining power in the employment contract/relations in Nigeria especially in private sector. Thus, with lack of awareness as regards their rights and obligations, many employees may have their stay at home at this period supplanted as their annual leave.

I have had conversations with people at different platforms where some employers were discussing the possibility of mandating their employees to take a furlough leave for the period of the lockdown. They feel this will be a win-win situation for them and their employees.

A Furlough leave envisages a situation where an employee is given a mandatory suspension from work for a period of time. Where an organization lacks the financial resources to continue paying its employees and does not want to lay them off, the organization makes the employee proceed on furlough leave. The implication is that the employee is not to do any work and he also receives no salaries but still retains his/her employment status and rights. During this period the

employee can take advantage of unemployment benefits of the government or even venture into a business ventures of his/her choice.

This practice is well developed and utilized abroad but as far as I know I do not think there is presently any legal framework for its application yet in Nigeria. Therefore, it is advisable for an employer that intends to do this to engage and consult the employee and or involve the labour Union (in case the employees have unions) otherwise, this may likely constitute unfair labour practice in Nigeria or consequently be interpreted as a constructive dismissal of the employee.

Many governments have declared that their workers should work from home. When Ekiti State announced its own, my reaction was, on a normal day, these civil servants do not have the necessary tools to even work from their various offices not to talk of working from home. And now you tell them to work from home. Where is the computer, the electricity, the internet access, the data subscription service etc?

As trivial as this may appear this is the reality of many ministries and government parastatals including some private sectors in Nigeria today. In this circumstance, if the employee could not work from home as a result of these constraints, can the employee be sacked for non-performance?

It is the duty of the employer to provide necessary tools for the employee to perform the task demanded by the employment. See *Lovell v Blundells and T.A Crompton & Co. (1943) 77 L.L. Rep 340*. But we are talking about employees of ministries and government parastatals who running into thousands and government is, right now, concerned about fighting the COVID-19 pandemic. So, where will it get the money to start acquiring/procuring tools such as computer, wi-fi, broadband, etc for the civil servants so that they can work from home?

In essence, the instruction to work from home is most likely going to remain just an instruction or directive and it would constitute unfair labour practice to then sack the employee for non-performance when the employer has failed to provide the necessary tools to enable the employee work accordingly.

Finally on employment, can the employee who is working from home during this period be compensated for any injury sustained while working remotely (from home). Section 73 of the Employee Compensation Act, 2010, allows an employee to be entitled to compensation for death or injury, disease or disability suffered in the course of employment. The provision defines workplace as any place a person performs work or is required to be in the course of employment.

So, in my view, if an employee is required to work remotely from home by the employer, once the employee is in the course of the employment the place where he works from may be subsumed under the definition to be his work place at that relevant time and so, the employee will equally be entitled to compensation for any injury occasion in the course of the work.

Concerning commercial contracts/transactions, in some of these contracts time may be of essence and since the outbreak of COVID-19 has disrupted such time, it becomes an issue to assess whether the principle of Force Majeure applies to such contract. Force Majeure envisages unforeseeable circumstances that prevent someone from fulfilling a contractual obligation. Thus, where someone is required by a contract to perform certain obligation within certain period, if prevented by the outbreak of COVID-19, such a person can plead force majeure to excuse himself from liability arising out of the failure to perform such task/obligations.

We should expect many commercial disputes after COVID-19 as parties may rightly or wrongly rely on COVID-19 as a force majeure to excuse themselves from liability. For instance on April 9 2020 Shell declared force majeure on exports of Nigerian Forcados crude oil after a shutdown by the pipeline's operator although there was another report that it later lifted force majeure.

## **6.0 CAN CHINA BE SUED FOR THE OUTBREAK OF THIS CORONAVIRUS PANDEMIC?**

People have asked, can China be sued for the outbreak and the spread of this virus, globally, beyond Wuhan? The answer is not an easy Yes or No. This is because one needs to first establish that the conduct of China over COVID-19 violates International Health Regulations (IHR). Specifically, one will need to prove that China's conduct violates articles 6 and 7 of the IHR which require timely notification and sharing of information on issue constituting public health emergency. The argument then is, if China had timely notified WHO of the possibility of human-to-human transmission of the virus and shared necessary information, it could have been contained and confined only to Wuhan.

The second task is that one needs to identify the jurisdictional basis for an international court or tribunal to hold China responsible. This is not an easy task as the atmosphere is foggy. First, the dispute settlement mechanism provided by IHR under article 56 is arbitration and arbitration will require China to submit to the arbitration. Will China submit? Not likely.

Another likely jurisdictional basis is under article 75 of WHO Constitution. It provides that any dispute regarding interpretation and application of WHO Constitution which is not settled by negotiation or Health Assembly shall be referred to the International Court of Justice (ICJ). This means any party that will sue China must first explore negotiation, if it fails, also attempt to settle it through Health Assembly before it can go to ICJ. But the complication is how to link China's conduct to violation of WHO Constitution. Remember articles 6 and 7 of IHR are not the same as WHO Constitution.

The truth is, China is not transparent in this COVID-19 issue and this is perhaps why few hours ago, Donald Trump ordered the stoppage of USA funding for WHO on the alleged conspiracy on the part of WHO and its failure to hold China responsible. The allegations against China include that it withheld information about its COVID-19 patient zero, that it withheld early reports of medical staff infection, that it denied human-to-human transmission of the virus from 1<sup>st</sup> December 2019 when the virus broke out until 22 January 2020 when WHO delegation went to Wuhan to conduct a field visit and found result which suggested human-to-human transmission of the virus, that it also withheld information about the number of its asymptomatic patients and finally, that it blocked discussion on COVID-19 at the UN Security Council

Now, even if one is able to cross all the above hurdles, the place where China can be sued is at the International Court of Justice (ICJ). The jurisdictions of the Nigerian Courts do not extend beyond the shore of Nigeria. And so, China being a country with its own sovereignty cannot be dragged before a Nigerian court.

And if China is to be sued at the ICJ, it is only Nigeria government (as a country) that can sue China there. Member states of UN (i.e. countries) or specialized UN organs are the only recognizable parties who can sue at ICJ. Individuals and NGOs are not recognized. Though a country can sue on behalf of its citizens but it still must be the country that sues and not individual citizens. Therefore in our own context, the question is will Nigeria government sue China? Remember, Chinese government donated relief materials. The Chinese handle almost every significant known concession project in the country and Chinese government funding is visible across almost all African countries, the Chinese are the new Lord of Africa. And as at now I do not yet know of any pact, convention, treaty or agreement between China and Nigeria that confers on the Nigeria citizens a right to hold China accountable in situation such as this.

The treaty and agreements between China and Nigeria so far border on economic cooperation and cultural exchange. Therefore, I do not think that Nigeria government or even any African Country will sue China.

I am aware of the Complaint/Petition to the United Nations Human Rights Council filed on behalf of India citizens by the Chairman All India Bar Association. I am equally aware of the case filed at the US District Court by Buzz Photo and 3 others against the People's Republic of China, the China People's Liberation Army, Wuhan Institute of Virology and its Director. This case is filed in the US pursuant to the US Justice Against Sponsors of Terrorism Act. Will this action fly? Can US, by its own law subject China to the jurisdiction of its courts? Will US, as a country too, ever accept to be sued inside China court? These are questions bordering on international law/international relations. But they are definitely discussions for another time.

## **CONCLUSION**

This discussion has identified many legal issues surrounding covid-19 pandemic in Nigeria and attempt their analysis. It examined the legal framework for the control of pandemic and epidemic in Nigeria and rightly situates it within the context of covid-19 pandemic. This discussion concludes on the note that our health care system needs serious reform and attention to better position it for the future. The truth is, this is not going to be the last pandemic so we all can start thinking of what reform that needs to be put in place. On the basis of this the author suggests revamping and serious overhauling of the health sector. We do not have much problem with legal framework. Our challenge is funding. All the national health system needs to be properly and adequately funded. We also need political will and sincerity and readiness on the part the government at various levels. If we refuse to learn from the lessons of COVID-19 we will be doomed to repeat the same mistake. And with this, we have come to the beginning of the end of this discussion today. I thank you all for your attention. May God continue to bless us with beneficial knowledge. Thank you for the opportunity.