

THE PLANLESS PLAGUE: COVID-19 PANDEMIC AND RIGHT OF THE CHILD TO HEALTHCARE

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Abstract

There is no doubt that the COVID-19 pandemic took the world by surprise. The various countries' determination to end the rampage of the Covid-19 pandemic has brought about these countries adopting strict measures to handle the situation. Some of the steps taken have created a clog on the children's rights to access healthcare as prescribed by the local laws of such countries and essential international laws. This paper is not an attempt to look at COVID-19 on all fours but to focus on the child's right to healthcare in some selected jurisdictions especially during the pandemic. The paper examined the effect of the Covid-19 pandemic on the right of the child to healthcare, the responses of the Nigerian government, and the lapses in the children healthcare system especially when juxtaposed with what obtains in jurisdictions such as China, UK and US. The paper adopted the doctrinal methodology through the examination of the opinions of authors and extant statutes. The paper further recommends the establishment of national health indicators and monitoring mechanisms that would monitor the implementation of the sustainable development goals, which sees the right to health of children as a right that every child must enjoy. The paper also focused on modalities for strengthening and enforcing children's right to healthcare in selected jurisdictions post-COVID-19 and in preparation for other unforeseen pandemics.

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1.0 Introduction

A country's healthcare system revolves around everything geared at guaranteeing that all citizens have easy access to things that make for a healthy living. This includes the availability of medical supplies, staff and dedication, and affordable medical treatments.³ The position taken by the government of any nation in upholding the healthcare system of such a nation plays a pivotal role in the development of such a nation and gives the citizens a sense of belonging. This was seen at the inception of the Covid-19 Pandemic in Nigeria; the government's move by imposing a lockdown and restriction on interstate movement curbed the spread a little.⁴ The first part of this paper will examine the fundamental human rights of citizens, especially children in selected jurisdictions, while the second part will examine the meaning of Covid 19 as a pandemic. The third part of the paper will consider an appraisal of the right to healthcare of children, vis a vis international instrument for the protection of right of the child to healthcare in selected jurisdictions. The fourth part of this paper will consider the enforcement of the right of the children to healthcare in selected jurisdictions during the Covid-19 pandemic. The paper ends with recommendations on how to ensure adequate future legal and institutional frameworks to avert future and better management of another global plague, especially as it affects children.

2.0 The Concept of Fundamental Human Rights

According to Osborn's Concise Law Dictionary,⁵ "a right is an interest recognized and protected by the law, respect for which is a duty and disregard of which is wrong. Holland defined right as "capacity

³ Healthcare system, <<https://pattipedia.org/health-care-system>> accessed 14 April 2020.

⁴DamoodMzikenge Chirwa, 'The Right to Health international law,its implications for obligations of state and Non-state Actors in Ensuring Access to Essential Medicine', *South African Journal on Human Rights* 18, No. 4 (2003): 541,<<https://www.tandfonline.com/doi/abs/10.1080/19962126.2003.11865153>>.

⁵ Osborn's Concise Dictionary (10th ed) p. 356.

residing in one man of controlling, with the assent and assistance of the state, the actions of others.⁶ Rights for all individuals came into limelight as far back as the colonial era when there was an expression of fear by the minority ethnic group in Nigeria who thought that they would be trampled upon and cheated on by the ethnic group in the majority. As a result of this, the British government made an attempt to ease the fear of the minority group by setting up a Royal Commission of Enquiry in 1958, and the main purpose of this commission was to recommend and then incorporate the fundamental right provision into the Nigerian Constitution. These rights later became imputed into the 1960 constitution⁷ and, subsequently the 1999 constitution of the Federal Republic of Nigeria.

Human rights are rights inherent to all human beings, irrespective of age, class, religion, ethnic group, or political affiliation. These rights are essential rights of every citizen and especially children in a state. They become fundamental when a state accords them as important, necessary and a must to actualizing a citizen's freedom in society. According to Garner⁸, fundamental right is a right gotten from fundamental law, like constitutional law.⁹ Falana insisted that fundamental rights are generally regarded as those areas of human right which have been accepted and provided for in the Constitution of a particular state. In *Ransome – Kuti v Attorney General of the Federation*¹⁰, the Nigerian Supreme Court stated that a fundamental right is a right which stands out, and above the ordinary laws of the land. Section 46(1) of the Constitution states, "Any person, who alleges that any of the provisions of this chapter has been, is being or likely to be contravened in any state in relation to him may apply to a High Court in that state for redress."

⁶ Mohd Aqib Aslam, Rights and Duties in the Light of Jurisprudence: An Overview, <<https://www.legalserviceindia.com/legal/article-1919-rights-and-duties-in-the-light-of-jurisprudence-an-overview.html>> accessed 13 April 2019.

⁷ Section 17-30, Cap 3, 1960 Constitution.

⁸ Evolution of Human Rights in Nigeria, research clue.com.

⁹ B. A. Garner, Black's Law Dictionary, Opcit, p 744.

¹⁰ Aduba, J. N, 'Impact of Poverty on the Realization of Fundamental Human Rights', *Beijing LawReview*, Vol.10 No.1, January 1991.

The United Nations' Sustainable Development Goal 16, established in 2015, clearly states the link between promoting human rights and sustaining peace.¹¹ Also, Article 8 of the Universal Declaration of Human Rights states, "Everyone has the right to an effective remedy by the competent National Tribunals for acts violating the fundamental rights granted him by the constitution or by law".¹² Likewise, the courts are given the utmost responsibility to ensure that there is easy access to justice by litigants, especially the disadvantaged and vulnerable.¹³ In *Idris v Agumga*¹⁴, the Court of Appeal Abuja Division held that access to Court means an easy approach to Court without hindrance.¹⁵ It is important to note that over 50 years, the Universal Declaration of Human Rights has gotten the status of customary international law because most states have accepted the matters of fundamental human rights and incorporated them into their local laws.¹⁶ There are other provisions of the law, such as the Child Rights Act in Nigeria, which guarantees adequate provisions for the rights of the child to be protected in Nigeria. However, the scope of this article is to advocate for special protection of children's rights during unforeseen natural disasters or pandemics such as Covid-19.

3.0 An Examination of Covid 19 Pandemic

According to Oxford Dictionary, Covid-19 is an acute human disease caused by a virus that produces severe symptoms of fever and cough and can progress to pneumonia, respiratory malfunction, renal failure, and sometimes death, especially in older people and those with underlying health conditions.¹⁷ The word corona means crown, and this can best describe the appearance of the spike-like protein that

¹¹ *Ramsome-Kuti v Attorney General of the Federation* (1985) 5 UWL (pt. 10) 211 at 229-230.

¹² Constitution of the Federal Republic of Nigeria 1999 "as amended".

¹³ Dosg Eric, Sustainable Development Goal 16, United Nations, and the Rule of Law. Retrieved 2020-09-25.

¹⁴ (2015) 13 NWLR (Pt.1417) 441 @463.

¹⁵ *Idris v Agumga* (2015) 13 NWLR (Pt.1417) 441 @463.

¹⁶ Pam Costain, 'Moving the Agenda Forward', *Connection to the Americas* (1997).

¹⁷ Oxford On-line Dictionary 3rd Edition, September 2020.

shoots out of the coronavirus¹⁸. The virus comes from the family of Coronaviridae.¹⁹ It is a large single-stranded RNA virus with a lipid envelope studded with club-shaped spike proteins, infecting birds and mammals with the inclusion of human beings.²⁰ It is an infectious ailment caused by a virus known as the severe acute respiratory syndrome coronavirus 2 (SARS-COV-2). The spike-like protein is the part that sticks to the human cell and reproduces itself, thereby spreading into other parts of the body. It spreads fast through droplets from the mouth or nose when a person sneezes or coughs. It shows symptoms like cough, high temperature, and difficulty in breathing. The disease also damages major organs, such as the heart and kidney.²¹

In the latter part of 2019, there was an outbreak of covid-19 which was first recorded in Wuhan, a city in China.²² The man with the first confirmed infection of covid-19 told the World Health Organization team that his parents had shopped at the Wuhan Market. In January 2020, the World Health Organization tagged Covid-19 a health emergency and later a pandemic due to its rapid spread worldwide and the fatality it left behind.²³ To what extent did we pay particular attention to the vulnerabilities of children during this pandemic?²⁴

¹⁸ Basics of Covid-19; Center for Disease Control and Prevention – N. S Department of Health & Human Services Newsletter (4 November 2021).

¹⁹ Definition of Coronavirus', <<https://www.merriam-Webster.com/dictionary/coronavirus>>accessed 26 August, 2020).

²⁰ Ibid.

²¹ Covid-19, <<https://www.dictionary.com>>.

²² Jeremy Page, Drew Hinshaw, and Betsy McKay, In Hunt for Covid-19 Origin, Patient Zero Points to Second Wuhan Market (26 February, 2021).

²³ YellaHewings Martin, Covid-19 is Now a Pandemic: What Next? <<https://www.medicalnews.today.com/articles/covid-19-is-now-a-pandemic-what-next>>accessed 23 September 2022.

²⁴ Covid-19, 'Coronavirus Pandemic', <<https://www.worldmeter.info/Coronavirus/>>accessed 26 August 2020.

4.0 An Appraisal of the Scope of Right of Children to Healthcare in Nigeria

Public Health should be the priority of any nation and must be treated as important as national security. The public health of any nation should make provisions for its citizens regarding medical care, keep track of how medical care is accessed, and be able to monitor in case of an outbreak of any disease.²⁵ Nigeria has experienced the scourge of diverse diseases that have tested the strength of the nation's healthcare system. Even though Nigeria occupies an important position amongst other African Nations, its healthcare is allegedly below standard²⁶ due to limited health centers, inadequate health workers, especially in rural areas, and non-availability of standard medical equipment.²⁷ The seemingly fallen healthcare standard would affect the right to healthcare of children. Indeed, health is wealth, and health cannot be separated from development; the two are mutually a strong drive of national values.²⁸

African traditional institutions maintained their health and well-being using herbs, roots, fruits, and vegetables. Also, different religious groups have their structured health doctrine, which their members, with all dedication, uphold. This mode of healthcare that looks unscientific paints a good picture of efforts made by humans to live in sound health. In the twentieth century, the United Nations' stand on healthcare as an essential aspect of human rights made it assertive for nations to give public health the attention it deserved. During the pandemic, the rights of children to healthcare assumed a level that went beyond just access to healthcare and the building of hospitals, but it included essentials things like adequate nutrition, good housing facility, safe drinking water, safe and clean environment, conducive and safe working conditions, sound education and information.²⁹

²⁵ Health Reform Foundation of Nigeria (HERFON); <<http://www.herfon.org>> accessed November 2022.

²⁶ Nigeria National Health Conference 2009, communiqué, Abuja, Nigeria.

²⁷ Nigeria Primary Healthcare Policies.

²⁸ *Ibid.*

²⁹ World Health organization, 'Right to Health Care', <[https://www.ohchr.org/Documents/Publications/Factsheet 1](https://www.ohchr.org/Documents/Publications/Factsheet%201)>.

Article 12 of the International Covenant on Economic, Social and Cultural Right (ICESCR)³⁰ clearly show the recognition by state parties of the right of everyone to sound physical and mental health. The actualization of that right of children places a demand on state parties to ensure the prevention, control, and treatment of epidemics and other contagious diseases. It also emphasizes the creation of the right atmosphere where all medical services and medical staffing would pay off in the event of a pandemic. The Covid-19 upsurge, which attained global pandemic status, became a wake-up call to all nations, especially Nigeria. With the not-too-good healthcare system in Nigeria, the Nigerian government realized that there needed to be medical strength to withstand the widespread of the virus; this prompted issuing a lockdown and quarantining infected humans, often without their consent.³¹

In Nigeria, isolation centres were set up in some states to quarantine individuals who exhibited the signs and symptoms of the virus. However, there were not enough beds for individuals brought into the centres. In some places, individuals in quarantine experienced lots of discomfort because of the poor hygiene³² of the centres, and infected persons had no food to eat in other centres.³³ Placing all these scenarios together shows the commitment respective states have for their citizens in upholding their rights to healthcare. The principle of international human right law demands that clogs on human rights, in furtherance of a public health emergency, should go in line with the

³⁰ International Covenant on Economic, Social and Cultural Rights, G. A, res 2200A (xx1), 21 U. A GAOR SUPP. (No. 16) at 49, U. N Doc. A/6316 (1966), 993 U.N.T.S 3, entered into force Jan. 3. 1976.

³¹ Nigeria Announces Lockdown of Major Cities to Curb Coronavirus <<https://www.aljazeera.com/economy/2020/3/30/nigeria-announces-lockdown-of-major-cities-to-curb-coronavirus>> Accessed 2 March 2023.

³² Sodiq Oyeleke, 'Covid-19; Nigeria Lacks Bed Spaces says NCDC Boss', <<https://punchng.com/covid-19-nigeria-lacks-bed-spaces-says-ncdc-boss>> accessed 30 April 2020.

³³ Covid-19 Patients Protest Poor Quarantine Condition in Gombe, <<https://www.vanguardgr.com/2020/05/covid-19-patients-protest-poor-quarantine-conditions-in-gombe>> accessed 6 May 2022.

demands of legality, necessity, and proportionality and must not be unfair.³⁴

The second wave of the Covid-19 pandemic allegedly showed that the Nigerian government had failed to pull all resources to give its citizens the best healthcare. During the second wave, the Federal government raised the alarm because of the nationwide shortage of oxygen in public hospitals. The Chief Medical Director (CMD) of Lagos University Teaching Hospital (LUTH), Idi-Araba, Prof. Chris Bode, in an emergency press conference, warned of severe consequences as “the mutated form was deadlier and easily transmitted.”³⁵The University of Nigeria Teaching Hospital (UNTH) Enugu and LUTH gave a report on the severe shortage of oxygen which is the vital equipment for the sustenance of Covid-19 patients. The oxygen plant at UNTH, Ituku, Ozalla, Enugu, which had malfunctioned, was not repaired at the dire time. Those who needed to purchase oxygen could not have access to any. Even UNTH, the only centre where Covid-19 test could be done, had to rely on other private medical institutions to treat cases requiring oxygen. An official of the hospital that did not want his identity known told *The Guardian* that oxygen was not something an individual could purchase for use. He informed the *Guardian* that those responsible for supplying oxygen refused to do so; it is part of the challenges we face in treating covid-19 infections.”³⁶ The above revelations adversely affect children much more than adults.

³⁴ United Nations Economic and Social Council, UN Sub-commission on Prevention of Discrimination and Protection in International Covenant on Civil and Political Rights, Annex (1985). UN.DOC.E/CN.4/1985/4.

³⁵Ugo Aligo, ‘Second Wave of Covid-19 Claiming Many Lives’ *thisdaylive.com* (7 January 2021).

³⁶Lawrence Njoku,Eniola Daniel, and Odun Edward, ‘Oxygen Crisis hits Nigeria’s Covid-19 response scheme’ *The Guardian* (Nigeria 7 January ,2021).

5.0 International Instrument for the Protection of Right of Children to Healthcare in Selected Jurisdictions

The Right of children to health is a fundamental human right essential to human existence. The main human rights instruments that deal with the sustenance of rights to health include the following;

5.1 The International Covenant on Civil and Political Rights.

The International Covenant on Civil and Political Rights (ICCPR)³⁷ is a multi-lateral treaty that places a responsibility on state parties to respect their citizens' civil and political rights. However, it does not directly deal with issues on the right of children to health but contains provisions that talk about the right against torture or cruelty and the right against being used for medical experiments without the consent of the person concerned. The ICCPR covenant, if adhered to by states, would guarantee our children's best health and total well-being³⁸. This covenant is not domesticated in Nigeria; however, the provision of the covenant makes up an essential part of Nigeria's domesticated law. For instance, Chapter four (4) of the Constitution talks about civil and political rights, we also have Anti Torture Act 2017, Legal Aid Council of Nigeria (Amended) (LACN) Act 2012, Violence Against Persons (Prohibition) (VAP) Act 2017, Child Rights Act, etc.

5.2 International Covenant on Economic, Social and Cultural Rights.

This covenant ensures that state parties grant its citizens social and cultural rights such as right to health, an adequate standard of living, and the right to education.³⁹ State parties are advised to ensure that they use their resources to make available to all their citizens the highest attainable standard of health, which includes the prevention, treatment, and control of epidemic, endemic and other diseases, the

³⁷ International Covenant on Civil and Political Rights, G. A. res. 2200A (XXI), 21 U. N. GAOR. Supp. (No 16) at 52, U. N. Doc A/6316 (1966) 999 U. N. T. S 171, entered into force Mar. 23, 1976.

³⁸ *Ibid.*

³⁹ UN Treaty Collections: International Covenant on Economic, Social and Cultural Rights, <<https://www.refworld.org/docid/3b00f47924.html>> accessed 26 December 2022.

reduction of the rate of stillbirth and infant mortality, which will create a conducive environment for any child to develop healthily. It would also involve the creation of conditions that would ensure that standard medical service and medical attention is provided in the event of sickness.⁴⁰ Nigeria ratified the ICESCR on July 29, 1993, and entered into force in Nigeria.⁴¹ Article 2 of ICESCR admonishes state parties, by all means, to pull all available resources together to give the required health care to its citizens, especially children.⁴²

5.3 The Universal Declaration of Human Rights

The Universal Declaration of Human Rights is a human and civil rights foundation. The UDHR was adopted because of the disheartening acts during the Second World War.⁴³ The UDHR recognized that promoting and safeguarding human rights for everyone is the basis of freedom, justice, and peace in the world. The document emphasizes the rights and essential freedom of all citizens.⁴⁴ It became a uniform standard for people from every tribe, tongue, and race. The document stated that all states parties are responsible for ensuring that all citizens are seen as the same, “born free and equal in dignity and rights⁴⁵ It was the inspiration that birthed the International Human Rights Law and brought about the emergency of the International Bill of Human Rights.⁴⁶

⁴⁰ International Covenant on Economic, Social and Cultural Rights; New York, NY: United Nations – 1966. UN documents A/6316.

⁴¹ Oil spill by oil ria Deepwater Horizon 2013.

⁴² The Nature of States Parties Obligations, Human Rights institute, Columbia law.

⁴³ What is the Universal Declaration of Human Rights and why was it created? <<https://www.amnesty.org/en/what-we-do/universal-declaration-of-human-rights>>.

⁴⁴ International Covenant on Economic, Social and Cultural Rights: position statement, <<https://www.gov.scot/publications/international-covenant-economic-social-cultural-rights-cescr/pages/3/>> Published 21 November 2022.

⁴⁵ Angeles Solanes Corella, 'The Political, Legal and Moral Scope of the Universal Declaration of Human Rights: Pending Issues', The Age of Human Rights Journal(11 December 2018) ISSN:2340-9592

⁴⁶ Henry J Steiner and Philip Alston, International Human Rights in Context: Law, Politics, Morals, (2nd edition), Oxford University Press, Oxford,2000.

5.4 The World Health Organization Constitution

The World Health Organization Constitution is a body of laws that contains principles that are basic to all human beings, cordial relations, and safety.⁴⁷ It revolves around a reasonable standard of healthcare, which the state has an utmost responsibility to provide a leveling social playing field concerning health. According to the WHO, the enjoyment of the best healthcare is one of the intrinsic rights of every human being, without discrimination of ethnicity, status, political affiliation, or religion.

6.0 Effect of Covid-19 on Right of Children to Healthcare

Nigeria is one of the African countries that felt the heat of the coronavirus pandemic. The pandemic brought into the limelight the deficiencies in Nigeria's healthcare, which involves the dilapidating infrastructure, neglect of the welfare of medical personnel, and inaccessibility of sound healthcare by citizens especially children, to mention but a few. The Nigerian Medical Association President disclosed that about 75,000 medical doctors were registered with the association as of 2020. However, about 33,000 of them left the shores of Nigeria during the Covid-19 pandemic, leaving 42,000 doctors to man the health institutions in the country with a population of over 200 million people.⁴⁸ The President went further to analyze that the rural community had few medical doctors to attend to community members in case there was an emergency. In his words, the rural community had only one doctor to 22,000 people, while the urban centres had one doctor to 12,000 people, as against the World Health Organization (WHO) standard ratio which is supposed to be one doctor to 600 persons.⁴⁹ The doctors were said to have abandoned their duty post

⁴⁷ The Constitution was adopted by the International Health Conference held in New York from 19 June to 22 July 1946, signed on 22 July 1946 by the representatives of 61 states and entered into force April 1948.

⁴⁸ Martins Ifijeh, 'Nigeria Has Only 42,000 Doctors to 200 million People, NMA President Cries Out', *This Day Lagos* (19 December 2019), < <https://allafrica.com/stories/201912190053.html>>

⁴⁹ Joyce A.M. Ejukonemu, 'The Nigerian Health Sector and the Covid-19 Pandemic', *International Journal of Scientific Research Publications*, Volume 11, Issue 4, April 2021.

because the government failed to make personal protective equipment (PPE) available, which was crucial in managing infectious diseases.⁵⁰ Those that died because of neglect by doctors were more than those that died from the Covid-19 virus because most medical institutions refused to treat patients for fear of contracting the Covid-19 virus.⁵¹

The Nigerian government tried its best to see that the virus spread was minimal. The government put many measures in place and tried different policies to halt the spread and safeguard the un-infected. One of such policy was the compulsory vaccination for all Nigerians.⁵² This intended move by the Federal Government did not go down well with many Nigerians, who saw it as a violation of their fundamental human right and an intrusion on their privacy.⁵³ Faisal Shuailo called the move by the Federal Government to make vaccination compulsory for all Nigerians “application of the basic rule of law”. These Federal government’s moves prompted some states to make similar orders, especially Ondo and Edo State governments. Edo State Governor Obaseki gave Edo civil servants a seven-day ultimatum to get inoculated or stay indoors permanently.⁵⁴ Nigerian Covid Response Alliance (NCRA) stated that Obaseki’s directives were outrageous because he had no power to prevent Edo state residents from appearing

⁵⁰‘70 Per Cent of Medical Doctors in Kano Have Abandoned Duty Posts, Analyst says’, < [https:// Sahara reporters.com/2020/04/28/70-cent-medical-doctors-kano-have-abandoned-duty-post-analyst-says](https://Sahara-reporters.com/2020/04/28/70-cent-medical-doctors-kano-have-abandoned-duty-post-analyst-says)> accessed 2 May 2022.

⁵¹Nike Adebowale, ‘Nigeria records more deaths from other diseases than Covid-19-SGF’, *Premium Times* (Nigeria 28 May 2020), <<https://www.premiumtimesng.com/news/headlines/395060-nigeria-records-more-deaths-from-other-diseases-than-covid-19-sgf.html>>

⁵² Mariam Ileyemi, ‘Covid-19: Nigerian Government insists on Mandatory Vaccination’, *Premium Times* (Nigeria 15 November 2021),<<https://www.premiumtimesng.com/news/top-news/495541-covid-19-nigeria-governments-insists-on-mandatory-vaccination.html>>

⁵³Dayo Ojerinde, ‘Forcing People to take the Covid-19 Vaccination Violates Human Rights, it is Political-Akinyemi Chairman, Covid-19 Response Alliance’ accessed 6 September 2022.

⁵⁴Covid-19: Edo Civil Servants get 7-day Ultimatum to get Vaccinated; Agency Report, *Premium Times* (Nigeria 30 August 2021),< <https://www.premiumtimesng.com/regional/south-south-region/482103-covid-19-edo-civil-servants-get-7-day-ultimatum-to-get-vaccinated.html>>

in public places like attending Church services, Juma'at prayers, or going to their various places of business without proof of vaccination.⁵⁵ Charles Osaretin, in reaction to this, instituted a matter against Governor Obaseki and five others in the case of *Charles v Governor Obaseki & Ors*⁵⁶ at the Federal High Court, sitting in Port Harcourt.⁵⁷ The Court granted the restraining order against Governor Obaseki⁵⁸, and before long, the entire move was abandoned by the Federal Government and the respective States concerned. Abiodun Odusote, a lecturer at the University of Lagos, raised his objections based on compulsory vaccination. According to him, the move by the Federal Government and the State Government was illegal because no law was put in place, making it a must for Nigerians to get vaccinated. Compulsory Covid-19 vaccination could not be by mere word of mouth but had to be done based on legislation because of public health and safety. Anything other than this would amount to intrusion on the privacy of Nigerian citizens.⁵⁹ Children will need proper parental briefing and consent to enjoy this compulsory treatment/vaccination.

7.0 Comparative Analysis of the Right of Children to Healthcare in Selected Jurisdictions during the Covid 19 Pandemic

7.1 China

The World Health Organization (WHO) got a report about a strange virus that was associated with pneumonia in the city of Wuhan in China in December 2019⁶⁰. The pandemic was the most challenging health crisis that the Peoples Republic of China had ever experienced

⁵⁵ Dayo Ojerinde, Forcing People to take the Covid-19 Vaccination Violates Human Rights, it is Political-Akinyemi Chairman, Covid-19 Response Alliance.

⁵⁶ No FHC / PH / FHR/ 266/2021.

⁵⁷ *Charles Osaretin v Governor of Edo State & Ors* (2021) FHC/PH/FHR/266/2021.

⁵⁸ Victoria Ibemiz Ohaeri, 'Covid-19; Human Rights and Civic Space in Nigeria', *Business Day* (Nigeria 1 April 2020).

⁵⁹ Abiodun Odusote, 'Compulsory Covid-19 Vaccination in Nigeria? Why it is illegal, and a bad idea', *The Conversation* (8 September 2021), <<https://theconversation.com/amp/compulsory-covid-19-vaccination-in-nigeria-why-its-illegal-and-a-bad-idea-167396>>

⁶⁰ WHO Statement Regarding Cluster of Pneumonia cases in Wuhan, China', <<https://www.who.int/china/news/detail/09-01-2020-who-statement-regarding-cluster-of-pneumonia-cases-in-wuhan-china>> accessed 18 April 2020.

since its existence. It was a big blow to China because the existing healthcare structure could do little to handle a damning health crisis like the Covid-19 pandemic. The government had invested more in their traditional healthcare system than the orthodox healthcare system.⁶¹

Based on the findings, it was discovered that China's medical practitioner's workforce could not withstand the crisis because it stood at 17 medical doctors to 10,000 Chinese populations, which was not even the norm in countries that had low economic development. For instance, Cuba a small country with low economic growth, yet it has the world's best record of 82 doctors for every 10,000 Cuban residents.⁶² Another expert survey showed that China had roughly 60,000 healthcare practitioners, of which one practitioner is expected to handle 23,000 Chinese citizens.⁶³ This made it impossible for medical practitioners in China to withstand the overwhelming situation the pandemic had created in China. The looming danger made the Chinese government declare a total lockdown in Wuhan, where the virus was birthed. The lockdown halted every activity in the nation, especially Wuhan. It is our view that in all these developments, children should be given specialized care and attention due to a higher level of vulnerability.

The attitude of the Chinese government in denying the Chinese population easy access to healthcare during the pandemic was a violation of their fundamental human right. Even though China is a part of the Association of the Southeast Asian Nation, which adopted

⁶¹Christopher Balding, 'China's Poor Public Healthcare has Hindered Coronavirus Fight', <<https://asia.nikkei.com/opinion/china-s-poor-public-health-care-has-hindered-coronavirus-fight>>accessed 24 May 2020.

⁶²Shawn Yuan, 'Utter Chaos: Coronavirus Exposes China Healthcare Weakness', <<https://www.aljazeera.com/news/2020/01/chaos-coronavirus-exxxposes-china-healthcare-weakness-200129050408104.html>> accessed 24 May.

⁶³Christopher Balding, 'China's Poor Public Healthcare Has Hindered Coronavirus Fight', <<https://asia.nikkei.com/opinion/china-s-poor-public-health-care-has-hindered-coronavirus-fight>> accessed 24 May 2020.

the Human Rights Declaration in November 2012⁶⁴, Principle 10, makes it mandatory that citizens have the right to enjoy the best physical, mental, and reproductive health, and they should be able to access the medical facilities”.⁶⁵ The pandemic exposed the fact that the declarations were mere words and passive in China. Even the constitution of China has nothing in place that mandates the government to ensure that its citizens get the highest attainable healthcare without hindrance or favour.⁶⁶ The right to healthcare is not enforceable in China. All these point to the fact that the instruments to which China is a party and the local laws in China could not make the government accountable to its citizens regarding enforcing their health care obligations.⁶⁷

7.2 United Kingdom

The United Kingdom reported its first case around January 2020.⁶⁸ During this period, all nations were advised to put everything in place to tackle the virus through containment and diligent surveillance.⁶⁹ The response of the United Kingdom government after Covid-19 was declared a pandemic was described as slow because the government handled it like any other disease which could be treated easily.⁷⁰ The

⁶⁴ Association of Southeast Asian Nations (ASEAN), ASEAN Human Rights Declaration, adopted in Phnom Penh, Cambodia 18 November 2012.

⁶⁵ ASEAN Human Rights Declaration, <<https://asean.org/asean-human-rights-declaration>> accessed 16 May 2020.

⁶⁶ People’s Republic of China’s Constitution of 1982 with Amendments Through 2004, https://www.constituteproject.org/constitution/china_2004.pdf?lang=en accessed 23 May 2020.

⁶⁷ Shengnan Qiu and Gillian MacNaughton, ‘Mechanism of Accountability for the Realization of the Right to Health in China’, *Health and Human Rights Journal* (2017), <<https://www.hhrjournal.org/2017/04/mechanisms-of-accountability-for-the-realization-of-the-right-to-health-in-china>> accessed 23 May 2020.

⁶⁸ Elizabeth Williamson, Alex Walker, Ben Goldacre, ‘Factors Associated with Covid-19 Relate Death using Open Safely’ (Published 8 July 2020), *Nature Journal*, ISSN 1476-4687.

⁶⁹ J. Bedford, D. Enria, J. Giesecke, ‘Covid-19: Towards Controlling of a Pandemic’ (17 March 2020)

⁷⁰ Pegg D., ‘Covid-19: Did the UK Government Prepare for the Wrong Kind of Pandemic?’ *The Guardian* (Nigeria) 21 May

ministers were busy playing the blame games rather than taking a hint from other countries already feeling the heat of the infection.⁷¹ Around this period, the UK government moved from the ‘contain’ stage to the ‘delay’ stage an attempt which was a risky plan. It was called ‘herd immunity’, this method meant trying to manage the spread of the virus by giving room to a good number of its citizens getting infected and then later been allowed to get better.⁷² Many medical professionals frowned against this mitigation plan because individual ‘immune stamina’ defer, and the move could end up being disastrous, so this was abandoned.⁷³

However, at the pandemic's peak, the UK government failed to make available to its health workers sufficient equipment that could protect them while attending to those infected with the virus.⁷⁴ This led to many healthcare workers going into self-isolation, reducing the number of health workers on ground to attend to the infected.⁷⁵ Contrary to the recommendations of WHO in tackling the outbreak of contagious diseases, which includes; testing of individual to detect the disease, tracking down those that have been in the company of such persons, isolating suspected infected persons and having in place a healthcare system that has the human resources to handle critical cases

2020), <<https://www.theguardian.com/world/2020/may/21/did-the-uk-government-prepare-for-the-wrong-kind-of-pandemic>> accessed 15 October 2020.

⁷¹ Henley J., ‘Complacent UK Draws Global Criticism for Covid-19 response’, *The Guardian* (Nigeria 6 May 2020), < <https://www.theguardian.com/world/2020/may/06/complacent-uk-draws-global-criticism-for-covid-19-response-boris-johnson>>.

⁷² Parker G., Pickad J., Hughes L., ‘UK’s Chief Scientific Adviser Defends ‘herd immunity’ Strategy for Coronavirus’, *Financial Times* (London, 13 March 2020).

⁷³ Hanage W. “I’m an epidemiologist, when I heard about Britain’s ‘herd immunity’ coronavirus plan, I thought it was satire” *Guardian* et al. (15 March 2020).

⁷⁴ John P. Thomas, ‘Evaluating the National PPE Guidance for NHS Healthcare Workers during the Covid-19 Pandemic’ (20 May 2020), *Journal of Clinical Medicine*, Royal College of Physicians London.

⁷⁵ Hunter DJ., ‘Covid-19 and the Stiff Upper Lip: The Pandemic Response in the United Kingdom’, *New England Journal of Medicine* 2020.

if the need arises,⁷⁶ the UK government exhibited inequality by neglecting the vulnerable (children), and also the minority ethnic populations, those who were suffering from other ailment, the blacks, the elderly, the low income earners,⁷⁷ and the NHS workers who were on the Covid-19 front-line.⁷⁸ Even though the United Kingdom had ratified the 1966 ICESCR, and 1961 European Social Charter, which protects the right to health, and is also a signatory to other United Nations treaties that protect the right to health of women, persons living with disabilities and children,⁷⁹ it gave more importance to Covid-19 treatment, and failed to make health provisions for those with other serious medical conditions.

NHS trusts were instructed to rearrange their services by making more room for Covid-19 patients because of the overwhelming increase in the number of patients on ventilation beds because of the Covid-19 virus⁸⁰. Many patients who had cancer that had gotten to the advanced stage experienced a delay in their treatment during this period, especially, those that had been booked for surgical procedures; it emerged that over 10,000 NHS patients waited for almost three months for cancer treatment.⁸¹ The UK government devised many trial-and-error policies that put the most vulnerable at the receiving

⁷⁶Why is the UK Government ignoring WHO's advice? World Health Organization Statement on the second meeting of International Health Regulations – Emergency committee regarding the outbreak of Novel Coronavirus (30 January 2020).

⁷⁷Convention on the Elimination of All forms of Discrimination against Women, G. A. Res 34 / 180 (1979), art 12; Convention on the Right of Person with Disabilities, G. A. Res 61 / 106 (2007), art 25; Convention on the Right of the Child, G. A. Res. 44 / 25 (1989), art 24.

⁷⁸Adams Briggs, 'Covid-19 has Exposed the Government's Failure to Implement a Long-term Plan for Social Care' *The Daily Telegraph* (United Kingdom 22 April 2020).

⁷⁹Health Foundation, 'Covid-19: Five dimensions of impact' (29 April 2020).

⁸⁰Paul Gallagher, 'Trusts Under Pressure Due to Surge in Sicker Covid Patients on Ventilation Beds' *The i Newspaper* (United Kingdom 23 June 2021), <<https://iNews.co.uk/news/health/nhs-trusts-under-huge-pressure-due-to-surge-in-sicker-covid-patients-on-ventilation-beds-1066866>>

⁸¹Laura Donnelly, 'NHS Failure to Tackle Lockdown Cancer Delays Leaves 10,000 People Waiting Three Months for Treatment' *The Daily Telegraph* (United Kingdom 10 August 2022).

end.⁸² The policy makers were more driven by what they felt was the norm rather than what needed to be done. The John Hopkins University Center for Systems Science and Engineering (JHU CSSE) launched the first global real-time coronavirus surveillance system to create a hub for the public, scientists, and policy makers to understand the spread of the virus. The dashboard gave the full details of the location and number of confirmed Covid-19 cases, deaths, and recoveries for concerned countries, which was used to keep track of the outbreak.⁸³ This was ignored by the UK government and resulted in the number of deaths that was recorded.

7.3 United States of America

The response of the American Government was the worst because President Donald Trump was given enough warnings which would have helped in the control of the virus, but he ignored them.⁸⁴ Americans believe so much in their Presidents and in times of crisis they expect their President to be able to give them answers to every question that emerges and to provide solutions to every problem. The government under the leadership of Donald Trump downplayed the pandemic; in his response to Joe Kernen of CNBC on January 22, 2020, when asked whether there was concern about a looming pandemic, Trump he said “No, not at all and we have it under control. It’s just one person coming in from China, and we have it under control. It’s going to be fine.”⁸⁵ He totally ignored all warnings and signs and refused at the initial stage of the pandemic to put into place

⁸²Helen Lock, ‘The UK Urgently Needs to Tackle Health Inequalities, says Report on Pandemic Failing’, Global Citizen (13 October 2021).

⁸³ Covid-19 Dashboard by the Center for Systems Science and Engineering (CSSE), John Hopkins University & Medicine, <<https://coronavirus.jhu.edu/map.html>> accessed 3 June 2020.

⁸⁴Roser M, Ritchie H, Ortiz, Ospina E, Hasell J., ‘Statistics and Research; Coronavirus Pandemic (Covid-19) Our World in Data’ 2020, published online March 3.

⁸⁵Kernen J., CNBC Transcript: President Donald Trump sits down with CNBC’s Joe Kernen at the World Economic Forum in Davos, Switzerland(15 April 2020),<<https://www.cnbc.com/2020/01/22/cnbc-transcript-president-donald-trump-sits-down-with-cnbc-joe-kernen-at-the-world-economic-forum-in-davos-switzerland.html>>

any health policy that would curtail the spread of the pandemic⁸⁶. Even though the World Health Organization had declared the virus as a pandemic which needed urgent response the United State Government was ill-prepared as it was during the September 11 terrorist attack⁸⁷. The administration took steps that undermined their response to the gravity of the pandemic, it promoted a false choice between protecting the economy or saving the lives of its citizens.⁸⁸ The intelligence community in the US were not prepared for the pandemic, and they had nothing put in place that would enable them get adequate information about the virus; for instance, the US Director of National Intelligence (DNI), which had the responsibility to give alerts in cases that had to do with biosecurity threats and other emergencies which could threaten the peace and calm of the nation was not helpful at all. The director failed to issue directives for enhanced community-wide collection until January 29, 2020. When steps were taken to get details about the virus, the collectors took too long to deliver their findings.⁸⁹.

The ill-prepared attitude displayed by the American Government created profound inequality among American citizens, especially among the Black, American Indians, Alaska Natives, and Latin Americans, most of whom had no paid sick leave or employment

⁸⁶ Lipton E., Sanger D., Haberman M., Barnes J., 'He Could Have Seen What Was Coming: Behind Trump's Failure on The Virus' *The New York Times* (USA 11 April 2020) <<https://www.nytimes.com/2020/04/11/us/politics/coronavirus-trump-response.html>>

⁸⁷ Woodward, 'Trump Deliberately Played Down Virus', *BBC News* 2020, <<https://www.bbc.com/news/world-us-canada-54094559>> accessed 29 January 2021).

⁸⁸ Baker P, Haberman M, Glanz J., 'Tension Persist Between Trump and Medical Advisers Over the Corona Virus' *The New York Times* (USA 2020), <<https://www.nytimes.com/2020/04/03/us/politics/coronavirus-trump-medical-advisers.html>> accessed 2 February 2021.

⁸⁹ Erin Banco, 'Intelligence Agencies did not Move Fast Enough to Collect Covid Data' *Politico* (Germany 15 December 2022) <<https://www.politico.com/news/2022/12/15/report-intelligence-agencies-didnt-move-fast-enough-to-collect-covid-00074146>>

protections⁹⁰. This enabled the pandemic to spread rapidly because many of them still showed up at work not wanting to lose their jobs.⁹¹ The US health system, which happens to be one of the best in the world was seriously flawed, a country known for groundbreaking achievements in the medical world was mesmerized by the pandemic, and underlying challenges in the system were exposed. Medical experts expressed their fears of a total system collapse, rationing of medical care will become the main thing, medical costs will hit the roof and the vulnerable population especially the children will be in real trouble.⁹² It was so hard to initiate the vaccine deployment because the trust issue was out of the picture⁹³. This was due to the fact that Donald Trump and Dr Anthony Fauci painted two different pictures about the same subject matter ‘the virus’ which divided the American population.⁹⁴ Dr Anthony Fauci the, Chief Medical Advisor to Joe Biden who also worked with Trump, had worked in the National Institute of Allergy and Infectious Diseases since 1984. He worked with seven American Presidents but became so popular as he was American face of the Covid-19 pandemic response.⁹⁵ Fauci and Trump

⁹⁰Andrasfay T., Goldman N., Reduction in 2020 US Life Expectancy Due to Covid-19 and the Disproportionate Impact on the Black and Latino Population. *Proc Natl Acad Sci USA* 2021;118:1-6.

⁹¹ Charisse Jones, ‘Paycheck or Caring for Family? Without Paid Leave, People of Colour Often Must Make the Impossible Choice’ *USA Today* (24 March 2021) <<https://www.usatoday.com/story/money/2021/03/19/paid-leave-shortfall-during-covid-means-job-pay-losses/4730902001>>

⁹² Stephen Thomas, ‘The Covid-19 Pandemic is Breaking the U.S. Healthcare System-But That’s Only a Symptom of The Underlying Disease’ (19 January 2022) <<https://www.forbes.com/sites/coronavirusfrontlines/2022/01/19/the-covid-19-pandemic-is-breaking-the-us-healthcare-system-but-thats-only-a-symptom-of-the-underlying-disease/?=10978cc841ee>>

⁹³ Justin Hart, Trust “The Science”? No; *Brownstone Institute Article* (15 December 2022) <[⁹⁴ Chris Cillizza, ‘Here’s Exactly How Detached from Reality Donald Trump is on the Coronavirus’, *CNN Politics* \(8 July 2020\), < <https://amp.cnn.com/cnn/2020/07/08/politics/donald-trump-anthony-fauci-coronavirus/index.html>>](https://www.todayville.com>trust-the-science-no?></p></div><div data-bbox=)

⁹⁵ Julia Mueller, “Fauci says Covid-19 was Politicized by ‘Triple Whammy’ of Outbreak, Division and 2020 Election”, *The Hill (USA)* 16 October 2022) <https://thehill.com/homenews/Sunday-talk-shows/3690787-fauci-says-covid-19-was-politicized-by-triple-whammy-of-outbreak-division-and-2022-election/amp>.

had several altercation during the pandemic, especially at the early stage, he become the channel of medical information for the American public while locking horns with Trump over the latter's response to the pandemic, resistance of every efforts and kicking against the lockdown measures imposed to stop the rampage of the virus. This dysfunction, infighting, and aversion to the truth most ascribed to the difficulty faced by the government to act appropriately during the pandemic and made it hard for the public to respond positively.⁹⁶ He had also proposed to the government to get at least 75 percent to 80 percent of its population vaccinated, which will bring a bit of calm to the safety of Americans.⁹⁷ In an interview during Hardtalk on BBC on the 14th of October 2022, Anthony Fauci speaking from Maryland, was taken on by Stephen Sackur of BBC based on what transpired between him and the former President of America, Donald Trump during the Covid pandemic. Stephen clearly told him that the pandemic would not have killed so many Americans, including children, if he and the DNI had informed the Americans that they were dealing with a health emergency initially. Stephen went further to say that Americans were put in a relaxed mode which came with a terrible repercussion which many ascribed to the fact that Dr Fauci misled the American public.⁹⁸

The US failed the most vulnerable populations because when the pandemic spread got out of hand in the US, children, the coloured communities, nursing homes, the prisons suffered a greater burden of sickness, in accessibility to healthcare system and death. The US made decisions that undermined the government's response to safeguarding its citizens' health.⁹⁹

⁹⁶ Joe Walsh, 'US Could Have Decreased Covid Death Toll Substantially' Forbes News (USA 27 March 2021) <<https://www.forbes.com/sites/joewalsh/2021/03/27/us-couldve-decreased-covid-death-toll-substantially-dr-birx-admits/amp>>

⁹⁷ Alvin Powell, "Fauci says Herd Immunity Possible by Fall, 'Normality' by End of 2021", *The Harvard Gazette* (10 December 2020) <<https://news.harvard.edu/gazette/story/2020/12/anthony-fauci-offers-a-timeline-for-ending-covid-19-pandemic/>>

⁹⁸ What Did the US Get Wrong About Covid? Hard Talk on BBC (October 14, 2022; 10pm)

⁹⁹Ed Young, 'How the Pandemic Defeated America', *The Atlantic Journal*, September 2020 Issue May 2020.

8.0 Enforcement of Right of Children to Healthcare in Selected Jurisdictions during the Covid-19 Pandemic

Human rights are like shields and armours, they are there to safeguard; they are like regulations because they tell when to maintain order, they are like judges because a person can appeal to them. They offer a platform where every individual is treated the same way his neighbour is treated and given the same level of respect. Also, as stated in the Constitution, individuals have a right to enforce their fundamental human rights, and they can hold the government accountable in situations where such rights have been breached.¹⁰⁰ The Constitution is the country's supreme law, and Chapter 4 of the Constitution sheds light on the important rights that all citizens are entitled to, which cannot be suppressed by any authority. These rights include: the right to life, right to liberty, freedom of speech, freedom from slavery and torture, right to work, right to health, to mention but a few.

The Covid-19 pandemic came as Tsunami, severely threatening the health sector security and the nation's economy. Due to the looming danger it poses to humans, WHO advocated that lockdowns should be worldwide. According to WHO, it was the most appropriate measure to halt the virus's spread.¹⁰¹ President Muhammadu Buhari, on 29 March 2020 declared a total lockdown in Lagos, Ogun State, and Abuja which was to last for 14 days. The lock, in the meantime, brought an end to social gatherings and restricted the movement of Nigerians.¹⁰² In a statement by the Senior Special Assistant on Media and Publicity to the President, Malam Garba Shehu, just before the initial 14 day lockdown was to end, he pleaded with Nigerians to

¹⁰⁰Guterres A, 'We Are All in This Together; Human Rights and Covid-19 Response and Recovery', 2020 accessed 21 February 2021.

¹⁰¹ Human Rights Watch, Human Rights Dimensions of Covid-19 Response, (March 2020).

¹⁰² Ali Adoyi, 'Covid-19: President Buhari announces Total Lockdown in Lagos and Abuja [Full Statement]; Daily Post (Nigeria 29 March 2020), <https://dailypost.ng/2020/03/29/breaking-covid-19-president-buhari-announces-total-lockdown-in-lagos-abuja-full-statement>>

remain at home as a cure had not been found the virus.¹⁰³ For good results, other states of the Federation that stated recording cases in their respective states also declared a total lockdown. To ensure strict compliance with the lockdown order, the State Government of various states, authorized law enforcement agencies to deploy their men to strategic locations in the state. The law enforcement agents were to ensure that Nigerians complied, and properties secured. The total lockdown was sudden for a nation like Nigeria since the government had no policy to ease the effect of the pandemic. The restriction was tough for many Nigerians since most of them survived on subsistence basis whose source of income was below 1 dollar per day.¹⁰⁴ The fate of Orphanages and juvenile homes could be imagined. These homes lived on charities from the working population which had been locked down.

Nations that declared a total lockdown made available to their citizens financial and material provisions for that period. However, the Nigerian government just shut its citizens indoors and did not make arrangement for the survival of these citizens. The difficulties with the lockdown eventually caused Nigerians, especially those whose source of income came from daily income, to flout the lockdown restriction. All over the country, citizens' rights were violated by the same security operatives that were supposed to ensure the compliance with the sit-at-home order while ensuring the safety of lives and properties.¹⁰⁵ The Human Right Watch reported more than a hundred cases of violation of rights which led to the death of several people.¹⁰⁶

¹⁰³Lockdown Continues as Long as Necessary, says Buhari; This Day (Nigeria 12 April 2020) <<https://www.thisdaylive.com/index.php/20/04/12/lockdown-continues-as-long-as-necessary-says-buhari>>

¹⁰⁴Nigeria: Protect Most Vulnerable in Covid-19 Response; Human Right Watch (14 April 2020) <<https://www.hrw.org/news/2020/04/14/nigeria-protect-most-vulnerable-covid-19-response>>

¹⁰⁵Nike Adebawale Tambe; 'Coronavirus: Human Right Commission Warns against impunity by law enforcement agents' – Premium Times (Nigeria 1 April 2020).

¹⁰⁶ National Human Rights Commission Press Release on Covid-19 Enforcement So Far; Reports on Incidents of Violation of Human Rights (15 April 2020) <<https://www.nigeriarights.gov.ng/nhrc-media/press-release/100-national-human->

When the security operatives were first assigned to maintain the lockdown compliance, the local and international human rights organizations admonished the Nigeria Government to ensure that the security operatives carried out their assignments regarding respect for the rights of Nigerians.¹⁰⁷ However, the internal security operatives headed by the Police authorities just carried out their assignment based on the instructions regarding enforcing the lockdown orders; factual information related to protecting human rights in the cause of carrying out these assignments were omitted.¹⁰⁸ With the increase in cases of extra-judicial activities of law enforcement agents, the National Human Rights Commission (NHRC) as a matter of urgency, called out to all security agencies to desist from maltreatment and torture of Nigerian citizens while carrying out their assignments, but this did not ease their brutality.

Then came the incidence of access to healthcare, the right to health is one of the fundamental human rights that every citizen should enjoy, a denial of which will violate such right. For a person to have a right to health, it means that the nation providing such right should have standard health facilities that will be accessible by all without fear and favours and at a cost that would be affordable by all. The restriction on the movement of Nigerians made it difficult for some Nigerians who needed urgent medical attention to get one. Deaths that would have been prevented occurred because medical practitioners on ground turned back so many and those that were lucky to be attended to were told to use paracetamol. This can be linked to an investigation conducted on several hospitals and health establishments in Abuja by Premium Times journalists when one of its staff disguised as a sick patient with complains of abdominal pain and flu. The only nurse on

rights-commission-press-release-on-covid-19-enforcement-so-far-report-on-incidents-of-violation-of-human-rights.html>

¹⁰⁷<<https://www.amnesty.org/en/latest/news/2020/04/nigeria-covid-19>> accessed 26 April 2020.

¹⁰⁸ Guidelines for Policing During the Covid-19 Emergency Lagos: European Union and United Nations Office on Drugs and Crime (Nigeria Police Force 2020), <<https://www.unodc.org/documents/Nigeria/NPF/COVID-19Guidance>>Booklet Final.pdf.

duty told the journalist that the doctors were on strike, and that waiting until the strike ended would be better. She was later told to use paracetamol or seek medical attention in other private hospitals.¹⁰⁹ The vulnerable had to resort to herbal medicines, while the rich got themselves private doctors who were ready to work because of the amount of money involved.¹¹⁰

The government's attitude and the violation of the fundamental human rights of Nigerians during the Covid-19 pandemic showed the government had little or no respect for the constitution of the nation especially the provision of section 45. This Section deals with situations when restrictions can be placed on the fundamental human rights of its citizens. According to section 45 of the constitution, the situation would be where it is in the interest of security, public safety, public order, public health, and in a period of emergency.¹¹¹ The period of emergency means any period during which there is in force, a proclamation of a state of emergency declared by the President in exercise of the powers conferred on him under Section 305 of the constitution. Section 305 does not clearly state what the 'state of emergency' means. However, it talks about the process for declaring a state of emergency, the situations that will bring about the declaration, when it will no longer be effective, the role the National Assembly, the governors of various states, and the various Houses of Assemblies. The Covid-19 pandemic fell under this state of emergency because it was a health emergency that shook the foundation of the world.

It is essential to know that the lockdown declared by President Buhari caused lots of controversies, especially among legal practitioners who had their individual opinions based on the provisions of the constitution. Schools were shut, and examinations were shifted. A few schools opted for virtual learning but how equipped are the other

¹⁰⁹Ebuka Onyeji, Yusuf Akinpelu and 2 Others, 'Coronavirus: How Prepared are Abuja Hospitals to Prevent Transmission?' Premium Times (Nigeria 25 March 2020) <<https://www.premiumtimesng.com/health-features/383748-coronavirus-how-prepared-are-abja-hospitals-to-prevent-transmission.html>>

¹¹⁰ Constitution of the Federal Republic of Nigeria 1999 "as amended"

¹¹¹ CFRN, 1999 (as amended), S. 45(3)

schools, especially children of public schools who are expected to write the same examination with others who had the privilege of virtual learning.

8.1 An Examination of Section 45 of the Nigerian Constitution *vis a vis* Covid-19 Restrictions

Section 45(1) validates any law which limits or restricts the fundamental rights covered under section 37 on right to privacy; section 38 on right to freedom of thought, conscience, and religion; section 39 on right to freedom of expression and press, section 40 on right to peaceful assembly and association and Section 41 which provides for right to freedom of movement if the law is reasonably justifiable in a democratic society, and such restriction is in the interest of public order, public safety or public health. On the other hand, Section 45(2) and (3) validates an Act of the National Assembly which provides for reasonably justifiable curtailment or derogation from the constitutional rights stated earlier.

However, it was clearly stated that whatever measure needed to have been taken, whether by a declaration of the President or by an Act of the National Assembly, it should have been reasonably justifiable and in good faith for the essence of curtailing the situation at hand. This was far from the case in Nigeria; though the pandemic was a health emergency, the restriction placed on the movement of Nigerians, which so many saw as a breach of their fundamental human right was not reasonable, unjustifiable, and not in good faith because the peculiarity of the nation Nigeria was not taken into consideration.

9. Conclusion

The outbreak of the Covid-19 pandemic has brought to the open the incompetency of the healthcare system of nations around the world, Nigeria inclusive. This has a fatal effect on child training and mental development. Nations held to be at the forefront of unmatched development in science and innovations have been brought to their knees, broken, and battered. On the part of the Nigerian government, no effort was put into ensuring that its citizens, especially children, enjoyed the highest attainable healthcare without hindrance or favour

during the Covid-19 pandemic. This was evident in the supposed total lockdown, more like imprisonment or incarceration. It is obvious that the last of the Covid-19 pandemic has not been seen or heard, so to achieve success in the healthcare system in Nigeria, a system well-grounded in routine surveillance and medical intelligence as the backbone of the health sector is necessary, besides adequate management along with solid leadership principles.

10. Recommendations

The total lockdown declared due to the Covid-19 pandemic exposed the weakness of the Constitution of the Federal Republic of Nigeria 1999(as amended), especially in the right to health as a fundamental human right. The pandemic shows that the fundamental rights of Nigerians are passive and no policy in place makes it possible for the citizens to hold the state accountable for enforcing their healthcare obligations. The Nigerian government should ensure that the right to health is fundamental and justiciable to the point that no single child in Nigeria is seen living beneath the WHO baseline regarding health matters. The United Nations Sustainable Development Goal 16 clearly states that the right to health must be accessible to all citizens. The Nigerian government should ensure that it works towards this goal by putting in place a mechanism that would make health facilities and services essential and accessible, thereby leveling up with the international standard. There should also be the establishment of national health indicators and mentoring mechanisms that will keep tap on the implementation of the sustainable goals that would cover all the states of the Federation, especially the remote communities and vulnerable groups such as children.

The Nigeria Centre for Disease Control (NCDC) is the institution that monitors the national public health in Nigeria. The agency was established to protect the citizens of Nigeria from any endemic or health hazard through detection, surveillance, and proper coordination. However, the NCDC's responded so poorly, and the policies they put in place for responses were so weak that none was commensurate to the magnitude of the problem. To improve this situation, the Nigeria Centre for Disease Control should be given a clear mandate and

equipped to handle future health emergencies through more financial resources being channeled into the institution, which will enable the agency to give its laboratory scientists the needs training and a purpose-built infrastructure to support its work. The NCDC should have specialized care units for treatment of children and their peculiarities in case of future pandemic.

During the Covid-19 pandemic, the President, Muhammadu Buhari, declared a total lockdown and security agencies were empowered to ensure everyone complied and stayed home. However, the security agents took it beyond their scope of assignment by violating the human rights of Nigerians through extra-judicial killing, unlawful arrest, torture, and detention in fact it was reported that the number of those that died because of extra-judicial killing during the lockdown were more than those that died from the Covid-19 complications. Law enforcement agencies in Nigeria should make sure that their officers respect the dictates of international laws in the cause of carrying out their national assignment and make accountability their watch word.

The National Human Rights Commission (NHRC) should inaugurate a committee that would be saddled with the responsibility of monitoring, regulating, and tracking the activities of the security agents during national assignments to ensure their activities are in line with international and national human rights laws, and for those that experienced abuses in the hands of the security operatives should be compensated and the officer that had gone outside the scope of his assignment should be prosecuted accordingly. On the part of the Nigerian government, there is the need for them to actively encourage and support Human Rights education. Interestingly, documents that have big agendas inscribed on them will amount to nothing except the people it's meant for have an in-depth knowledge of what is written, and they insist on making it a lifestyle for themselves.

Also, the Federal Government should make healthcare its priority by increasing the budget allocation dedicated to the healthcare system which will increase the quality of the healthcare in the country and enable all Nigerians enjoy the best of it without discrimination.

Healthcare should be recognized as a fundamental human right that is justiciable, ensuring that no Nigerian lives below the health baseline set by WHO.

Lastly, there should be stronger inter-agency collaboration across the globe in terms of having plans between human rights organizations, security agencies, Home Offices and Immigration outlets, aviation industry, healthcare organizations and foreign missions. These collaborative efforts would save us from having another planless plague which would constitute hindrance to universal nature of fundamental rights especially in protecting our children.