

**COVID-19: IS THE LEGALITY OF WHITTLING DOWN FUNDAMENTAL RIGHTS ABSOLUTE?
SOME JURISDICTIONS IN PERSPECTIVE***

Abstract

At the epicenter of any constitution are enshrined the safeguards of fundamental human rights, protecting the freedom of its citizens. The inclusion of these rights in any legislation that governs a certain class or group of persons cannot be overemphasized. The extent of protection offered by this fundamental right, cuts across person to person dealings, to the extent of it being recognized worldwide by a central body called the United Nations which recognizes it as an important aspect of human concern. Some special organs of the United Nations like the United Nations Human Rights Commission has been mandated to ensure that every member state recognizes within its governing legislation this aspect that protects the fundamental human rights of persons within its jurisdiction. Also under this UN body are several other organs charged with several specific functions on certain endeavors of human life ensuring the quality of life of every human being is improved. There comes a time when conflict arises between certain recognized fundamental human rights of a person and the express mandates or provisions of some organs of the United Kingdom. Particular reference would be made to several international agencies like the World Health Organization (WHO) and its subsidiaries like the CDC (Center for Disease Control), who, while attempting to discharge its statutory functions, encroach into some recognized fundamental rights of a person as enshrined in the several United Nations Regulations. With the Spotlight on China battling with the recent Corona Virus Scourge, certain aspects of some relevant state laws on the subject are analyzed. A further analysis is done on the conflict of laws relating to preventive statutory guidelines adopted by the Chinese government encroaching on personal fundamental Human Rights in a bid to contain the scourge. To what extent can the safeguards of fundamental human rights protect a citizen, when there is dire need to contain an epidemic, and what rights of redress is available to the a person whose fundamental right has been restricted? Certain relevant scenarios playing out in China as at today would be analyzed and legal options open to such victims would be proffered. The study recommends a model that aims to strike a balance where the safeguards of fundamental human rights offers the requisite protection while the government carries out its intrusive, preventive and punitive roles in a bid to contain a scourge, pandemic, epidemic, or threat to its sovereignty.

Keywords: Covid-19, Legality of Whittling Down, Fundamental Rights, Some Jurisdictions

1. Introduction

The idea that human beings should have a set of basic rights and freedom dates back to 1215 when the Magna Carta was formulated.¹ This was the first codified set of rules that aimed to protect the fundamental rights of an individual. Followed by this rule were other set of laid rules bothering on the rights of a person up until 1945, when there was a Universal Declaration of Human Rights, which was as a result of the atrocities of the Second World War. A comity of nations came together to formulate what is today, a model law on human rights, and this model law is known as the Universal Declaration on human Rights 1945.² This declaration laid the foundation of what forms most of the fundamental human rights laws in every country in the world. This document was the first widely accepted document on the basic principles of human rights.³ The right to the freedom of movement as a fundamental human right has been recognized as the ability of any individual to reside within any given location devoid of restrictions by the state or its agents. Certain events may affect the rights of persons limiting the chances of people fleeing for safety as displaced persons during times of war or natural disasters, and these factors adversely affect the quality of lives, health and wellbeing of such individuals.⁴ While certain factors like internally displaced persons not having the requisite travel documents to emigrate to other jurisdictions in times of natural disasters or war, another way whereby persons freedom of movement could be restricted will be through use of government's agents to restrict movement during an outbreak by means of quarantine or other random safety measures.

While this article will be focusing on the randomness of quarantine measures in China, restricting the free movement of its healthy citizens, exposing them to risk of infection and preventing their fleeing the ravaged areas,

*By **C.O.K. EZEAMA, LLB, BL, LLM**, Lecturer, Department of Commercial and Property Law, Nnamdi Azikiwe University, Awka, Anambra State. 08109001356 lexactlegal@gmail.com.; and

* **Somtochukwu D. OJUKWU, LLB. BL, LLM**, Lecturer, Department of International Law and Jurisprudence, Faculty of Law, Nnamdi Azikiwe University Awka: Email: somtoojukwu@gmail.com.

¹ Magna Carter Libertatum 15th June 1215

² The Universal Declaration on Human Rights 1945

³ Equality and Human Rights Commission 'What Is the Universal Declaration on Human Rights' www.equalityhumanrights.com accessed on 19th February, 2020.

⁴ Yinka Olomajobi 'Human Rights and Civil liberties In Nigeria' 2016 Princeton Publishers.

relevant legal instruments will be reviewed alongside the action of the Chinese government will either be criticized or justified. While the action of the Chinese government is seen as a proactive step towards preventing the further spread of the scourge, the random nature of their quarantine which prevents healthy citizens from fleeing the affected areas and seeking asylum within or outside China would be legally reviewed using relevant statutes and laws. Certain organs of the United Nations, like the World Health Organization (WHO) and other recognized bodies that play major important roles during such outbreaks will be reviewed and an appraisal of their *modus operandi* will be discussed. A legal review to their Strategic Objectives in collaboration with jurisdictions experiencing the scourge will be analyzed and appraised.

2. Freedom of Movement Enshrined in Several Laws

Universal Declaration of Human Rights 1948

Article 13 of the United Nations Declaration on Human Rights states that ‘everyone has the right to freedom of movement and residence within the borders of each state. Everyone has the right to leave any country, including his own, and return to his country.’ This provision has been adopted by almost all the jurisdictions of the world as a model for the protection of its citizens regarding their freedom to move freely within and outside their borders. This article will try to decipher to what extent, has this provision, which has been adopted by virtually all the legislations worldwide has offered protection to its citizenry. Is it a blanket right to move freely without protection or are there instances when the excesses of this right is curtailed? This rhetoric will be clarified looking at several laws of different Jurisdictions including China as a case study. Are there scenarios where such rights will be amended, adjusted or even suspended and what are the available measures or yardstick that will determine the extent of whittling down the effect of these rights? Apart from the provisions of the UNDHR, other recognized institutions like the European Courts on Human Rights, Inter American Courts on Human Rights, and The African Charter⁵ all made express provisions as to the fundamental right of the free movement of persons in their various statutes.

International Covenant on Civil and Political Rights 1966

Article 12 of the above covenant provides that ‘Everyone lawfully within the territory of a state shall, within that territory have the right to liberty of movement and freedom to choose his residence. Everyone shall be free to leave any country, including his own. No one shall be arbitrarily deprived of the right to enter his own country’⁶ As an addendum to the provisions of Article 12, the General Comment of the Human Rights Committee on the above provisions on the freedom of movement⁷ made some comments on article 12

- ‘Liberty of movement is an indispensable condition for the free development of a person. It interacts with several other rights enshrined in the covenant, as is often shown in the committee’s practice in considering reports from state parties and communications from individuals. Moreover, the committee in its general comments No. 15 referred to special link between Articles 12 and 13.’⁸
- The Permissible limitations which may be imposed on the rights protected under article 12 must not nullify the principle of liberty of movement and are governed by the requirement of necessity provided for in Article 12 paragraph 3, and by the need for consistency with other rights recognized in the covenant.
- State parties should provide the committee in their reports with the relevant domestic legal rules and administrative and judicial practices relating to the rights protected by article 12, taking into account the issues discussed in the present general comment. They must also include information on remedies available if these rights are restricted.⁹

African Charter on Human and People’s Right 1981

Article 12 of the African Charter on Human and people’s right Provides as follows:

- ‘Every Individual shall have the right to freedom of movement and residence within the borders of a state provided he abides by the law
- Every individual shall have the right to leave any country including his own and to return to his country. This right may be subject to some restrictions, provided for by the law for the protection of national security, law and order, public health or morality

⁵ African Charter on Peoples and Human Rights, June 01, 1981

⁶ Article 12 International Covenant on Civil and Political Rights 1996

⁷ General Comment No 27 of 1999, the Human Rights Committee on the Freedom of Movement

⁸ The position of aliens under the 1986 Covenant

⁹ Culled from pg 279 *Human rights and civil liberties in Nigeria* by Yomi Olomajobi

- Every individual shall have the right, when persecuted, to seek and obtain asylum in other countries in accordance with laws of those countries and international conventions
- A non-national legally admitted in a territory of a state party to the present charter, may only be expelled from it by virtue of a decision taken in accordance with the law
- The mass expulsion of non-nationals shall be prohibited¹⁰

Constitution of the Federal Republic of Nigeria 1999

S. 41(1) of the Constitution of the Federal republic of Nigeria, 1999 makes provision that ‘every citizen of Nigeria is entitled to move freely throughout Nigeria and to reside in any part thereof, and no citizen of Nigeria shall be expelled from Nigeria or refused entry thereby or exit therefrom’.¹¹ Having outlined the express provisions of certain laws that make provision for the protection of the right of freedom of movement of persons, this article will now determine to what extent this protection offers an individual, and are there exceptions to the blanket rights granted to persons under these laws. The Object of this article takes into consideration instances of extreme circumstances or public emergencies which threatens the life or the sovereignty of a nation, what adequate measures are put in place to strike a balance between the rights of freedom of movement of a person encroaching into the sovereignty of a state or a nation. A major point of reference would be the juxtaposing the enshrined right to access to health and quality healthcare as provided by major legislations or laws and using China as case to determine to what extent the right of freedom of movement of a person during times of national health emergency could affect the aforementioned right to freedom of movement.

3. Exercising Absolute and Non-Absolute Rights During a Pandemic

The above express laid down legislations regarding the liberty granted by the laws to its citizens residing within or outside jurisdiction begs the question, if these rights are sacrosanct or are there exceptions? Where the application of one’s fundamental right for example the right of free movement is restricted, certain circumstances like wars, pandemics and natural disasters may be termed exceptional circumstances where certain aspects of one’s fundamental rights are restricted. While the Universal declaration on Human Rights laid down guidelines as to the different fundamental rights an individual may enjoy, the absoluteness of these rights are not guaranteed as states from time to time may either broaden or limit the scope of the application of their application.¹² While limitations permitted by human rights laws may not carry the full effect of derogations during times of war or emergency, this article will strike a distinguishing balance between the two and set the record straight.

4. Limitations permitted by Human Rights Law

The Universal Declaration on Human Rights Law 1948 enunciated certain classes of fundamental rights that every person must be seen to enjoy, the scope or applicability of these rights as enunciated, differ as some are classed of more importance than the others.¹³ While every jurisdiction grants absolute rights to every individual against torture, slavery and retroactive criminal laws (Prohibition of laws operating in retrospect), other rights such as freedom of speech or movement may not enjoy such absoluteness.¹⁴ Buttressing this fact is the Provisions of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment,¹⁵ which prevents any law from stipulating any acts which may contravene the provisions of the above convention even where a country is at war, thereby granting the absolute right against any form of degrading or inhumane treatment.¹⁶ From the above example, certain fundamental rights enjoy an absolute nature and may not be subject to variation no matter the situation that arises, because of the sensitivity of these rights. However certain other rights may be subject to variation or modifications and most times instances where these laws can be modified are expressly spelt out in a statute to prevent ambiguity. For instance, the Right to freedom of Movement¹⁷, Freedom of Expression¹⁸, Freedom of Association¹⁹, are all subject to modification in cases of threat to national security, threat to public order, and during times of disease pandemic which is the subject of our discuss. In situations

¹⁰ The African Charter on Human and People’s right 1991

¹¹ S.41(1) CFRN 1999

¹² UNODC Policy Document on Derogation in Times of Public Emergency Published on July 2018 accessed from www.unodc.org/e4j accessed on 26th February, 2020

¹³ *Limitation permitted by Human Rights Law* culled from www.unodc.org/e4j accessed on 26th February 2020

¹⁴ Ibid.

¹⁵ Resolution 39/46(2) Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, New York, 10th December 1984.

¹⁶ *ibid*

¹⁷ Article 13 UNDHR

¹⁸ Article 19 UNDHR

¹⁹ Article 20 UNDHR

where the absoluteness of the rights of an individual may be whittled down to limit its scope are classified as non-absolute rights. From the above, we have laid to rest the controversy as to classification of the absolute and non-absolute fundamental rights. However the limiting of these rights do not automatically occur, there are certain safeguards that are reviewed before a non-absolute right of a citizen is tampered with and below are conditions that must be met before whittling down the scope of a non-absolute rights of a citizen.

5. Conditions Required for Limiting the Scope of Non-Absolute Rights: Covid-19 on the Diamond Princess as Case Study

As it has been established that some rights are absolute, other rights may not be absolute and are subject to amendments and whittling down. What determines to what extent a right becomes absolute or non-absolute is what will be explained in this part of this article. To further elucidate on this subject, a review of the rights of free movement of persons, and the fundamental right to freedom of information will be carried out using the safety measures adopted by the government in the event where corona virus infected passengers were on board a vessel named 'Diamond Princess'. An appraisal of the information management, evacuation of passengers and quarantine of passengers, will be reviewed side by side with the necessary safeguards to be adhered to before limiting the scope of protection of some non-absolute rights. Overtime, due to consistent practice, a litmus test was developed and several legislations including the International Convention on Civil and Political Rights²⁰ adopted guidelines that determine when a limitation to a non-absolute right will be legitimate. Below are some of the parameters that are used to validate the limitation of a non-absolute right and as a case study, this article will be appraising the safety measures adopted both by the domicile state of berth of the 'diamond princess', a cruise ship with passengers on board and will aim to determine the legality or illegality of limiting the non absolute rights of the passengers aboard the vessel.

Certain questions may arise below, which forms part of the evaluation of the encroaching into the fundamental rights of passengers aboard 'Diamond Princess' (a) Was there a legal basis for the measure limiting the right of passengers aboard the vessel?²¹ Bringing our case study to bear, a critical analysis of the diamond princess cruise ship incident revealed that on board a vessel with over 3,000 passengers some of whom were identified as carriers of the deadly corona virus, some radical safety measures were taken by both the government agencies and the management of the cruise ship in order to curtail the spread of the virus. Measures such as *mandatory isolation of all passengers aboard*, quarantine, restriction of movement and evacuation falls within the purview of health safety measures during a disease pandemic hence limiting certain fundamental rights of passengers aboard the Diamond Princess Cruise ship. The astronomical increase on the number of patients infected aboard the vessel diamond princess rose from 10 to 690,²² and in a bid to curtail the spread, adequate restrictive steps which are legal under the Chinese laws and WHO guidelines during times of pandemic were adopted.²³

Before the corona virus epidemic in China, the Severe Acute Respiratory Syndrome (SARS) was a major health epidemic that world health agencies had to grapple with, and drastic measures were taken to tackle the virus which included the quick amendment of their health and quarantine legislation to include SARS as a major communicable disease. This was initially excluded among the list of communicable diseases codified in their immigration laws.²⁴ The Chinese government through this legislation 'Regulation on the Urgent Handling of the Entry-Exit, Inspection and Quarantine of Frontier and Port Public Health (revised)',²⁵ ensured stringent measures were put in place, which included further encroachment on an individual's non-absolute rights. From the above it can be seen that legislation can be used to further encroach on the non-absolute right of an individual in a health emergency, hence the quarantine and other restrictive measures used on passengers aboard the vessel the Diamond Princess would be said to be justified²⁶. However there are divergent opinions as to the mode of implementation of the above regulation on healthy passengers aboard the vessel who were of the opinion that restricting their freedom of movement exposed them to the further risk of infection.²⁷

²⁰ International Convention on Civil and Political Rights Adopted by the General Assembly of The United Nations on 19th December 1966

²¹ UNODC Policy Document on Derogation in Times of Public Emergency Published on July 2018 accessed from www.unodc.org/e4j accessed on 26th February, 2020

²² www.businessinsider.com ibid

²³ Order No. 57of the State Administration of Quality Supervision, Inspection and Quarantine 11th July, 2003

²⁴ Executive Order 10532 (May, 28th 1954)

²⁵ Order No. 57of the State Administration of Quality Supervision, Inspection and Quarantine 11th July, 2003

²⁶ United States Executive Order 13295 (4th April, 2003)

²⁷ 'Wholly inappropriate quarantine practices may have helped spread coronavirus on the diamond Princess Cruise Ship' Business Insider 02/15/202 accessed on www.pulse.ng/bi/tech/wholly-inappropriate.

(b) The second criterion is whether such limitation pursued a legitimate aim such as in the instant example the safeguarding of public health. According to health experts the rapidity of spread of the SARS and the Corona Virus is much higher than other prior listed communicable diseases (like small pox, leprosy, measles etc) which were on the quarantine list of many countries.²⁸ Using our case study, the limitation was aimed at preventing the further spread of the virus in the city where the vessel was to berth. Had the authorities not taken the drastic steps of restricting the tourists to the vessel, a major health catastrophe would have occurred. The conflict of interest of legislations is what will be discussed here where, in a bid to curtail the spread of a deadly virus, the rights of passengers aboard a vessel, both infected and non-infected ones was infringed upon. The right of free movement and the right of quality access to public health battles for superiority as both are legitimate rights recognized by law.

(c) Did the restriction respect the principle of Equality among passengers of the Diamond Princess Vessel? The major aim of quarantine in a situation of a major health epidemic is to curtail the further spread of the disease. According to the reports from the Center for Disease Control (CDC), the evacuation of both infected and non-infected United States nationals jeopardized the aim of the whole quarantine process and still exposed infected passengers to the risk of infection.²⁹ Also the evacuation process which ought to be, non-infected passengers evacuated first before the evacuation of infected passengers was not followed, rather different countries carried out selective evacuation plans for its citizenry, thereby jeopardizing and elongating the stay of healthy passengers aboard the vessel, exposing them to the risk of infection.³⁰

In summary the evacuation process was termed selective and did not show equality among the passengers aboard the vessel.³¹

6. The Use of Necessary Force while Enforcing Compliance to Quarantine Measures

A YouTube video³² emerged online on or about 12th of February, 2020, showing Chinese enforcement agents forcefully dragging citizens into quarantine detention centers. The legality of such use of force has been questioned by Civil rights advocacy groups. Apparently, residents had been instructed to flee the Wuhan region where the epidemic was most prevalent and the couple cited on the video, defied government orders and travelled back to their residence and were forcefully taken away from their residence to a quarantine detention center and the legality of the action of the government was brought to limelight.³³ Also in Nigeria, in a bid to further strengthen preventive measures by government, in curtailing the spread of the COVID 19 Pandemic, several state governments made some proclamations with a view to enforcing quarantine measures. This article will be justifying or criticizing some of these preventive measures adopted by some state governments in Nigeria. As at the time of conducting this research, only the Lagos State House of Assembly through a health bill,³⁴ has passed into law certain measures aimed at regulating the conduct of its citizenry during the pandemic. There may be other state laws in existent, but which are either obsolete or needed amendment. While the passage of this bill is most commendable, every of its stipulations must be consistent with the dictates of the grund norm of the land being the 1999 Constitution of the Federal Republic of Nigeria. The Rivers State government on the other hand took stringent measures³⁵ which to some fundamental rights proponents limits the rights of persons within the state and also usurps the powers of the executive. Proclamations like banning the ingress and egress of commuters into and out of the state and enforcing same greatly whittles down the fundamental rights of freedom of movement of persons within Nigeria. The rights of a state Governor to make such a proclamation banning the entrance and exit of commuters in Rivers State usurps the powers of the executive,³⁶ and has attracted a barrage of criticisms. The proclamation of Rivers state government to close all entrance and exit land routes (Federal Highways) and both airports located within the state, in a bid to curtail the COVID 19 pandemic, purely encroaches into the powers of

²⁸ Exec Order 10532 *ibid*.

²⁹ Lena H. Sun, Lenny Bernstein, Shibani Hahtani, Joel Achenbach 'Corona-infected Americans Flown home Against CDC's Advice' Washington Post, February, 20, 2020.

³⁰ Australian Associated Press 18th February, 2020 'Corona Virus outbreak- Australians Stuck on Corona Virus hit Diamond Princess Cruise Ship'

³¹ *Ibid*.

³² <https://www.voanews.com/science-health/coronavirus-outbreak/coronavirus-death-toll-surpasses-sars-epidemic> accessed on 28th February, 2020

³³ *ibid*

³⁴ Lagos State Emergency Corona Virus Pandemic Bill 2020

³⁵ Ernest Chinwo 'Covid-19 Rivers Government Closes All Borders' *Thisday Newspapers* 25th March, 2020

³⁶ S. 3 Quarantine Act 1926

the executive. While the Quarantine Act of 2004 stipulates that State Governments should take necessary steps to safeguard its citizens during a pandemic or health emergency, such powers when being administered must be guarded with great caution, as the Constitution remains the supreme law of the land. My recommendation would have been an urgent appeal by the State Government to the Authorities of the Federal Airports Authority of Nigeria (FAAN) whose mandate is to amongst others manage all the airports in Nigeria.³⁷ This could have prevented the ongoing supremacy tussle between the Minister of Aviation and the Executive Governor of Rivers State. The directive by the Rivers State Governor, to shut operations in the international Airport violates the constitution which establishes confederacy and recognizes the exclusive list in schedule II of the 1999 constitution³⁸.

7. A Lesson from China

As a result of the public health crisis during the SARS epidemic, the Chinese Government in a bid to adequately regulate the conduct of its citizenry, through a Constitutional amendment, enacted laws to declare state of emergencies during times of Public Health Emergencies.³⁹ Amongst the Powers granted by this law was that: 'The State or its agents have the powers to Evacuate, Isolate or blockade people from the areas of epidemic'⁴⁰. This wisdom displayed by China in ensuring that this law is included in its constitution, the supreme law of the land, with detailed operational procedures should be emulated by other jurisdictions, especially during this scourge of the Corona Virus in Nigeria, at a time where rumors of patients escaping the government approved quarantine centers are prevalent⁴¹. Also several preventive proclamations by different state governments in Nigeria against the spread of the COVID-19 Virus,⁴² has got tongues wagging as these restrictive proclamations tend to infringe on the fundamental rights of freedom of movement, freedom of association, and rights of liberty of persons. While the enforcement of these rights can be contested in the courts, as most of these proclamations were either passed by the States Houses of Assembly, through an Executive Bill order. The fundamental Rights of the Citizenry enshrined in Part IV of the Constitution of the Federal Government of Nigeria⁴³ remains the supreme law of the land and any law not consistent with the Constitution must and should be declared null and void by the Courts.

However, the judicial activism of the courts takes into consideration matters concerning public policy and other exceptional circumstances while giving their decisions. In the instant case, such matters bothering on pandemics would sway the opinion of the courts while giving their decisions. Also with reference to the Quarantine Act⁴⁴ in giving effect to Section 305⁴⁵ of the Nigerian Constitution, several opinions have emerged as to the validity of the proclamations made by the Rivers State and Ebonyi State Governments which encroaches on the powers of the executive by creating a state of emergency type atmosphere within their states towards curbing the spread of the pandemic Corona Virus. These Governors exercising powers that are exclusive to the executive took proactive steps which can be backed up by the provisions of the Quarantine Act, which allows state governors, in the absence any proactive steps by the Federal Government to take necessary steps aimed at protecting its citizens from any pandemic pending adequate steps by the Federal government⁴⁶. However a proviso to that provision also mandates the state government to cater for the health needs of its citizenry during the quarantine, isolation and restriction of movement period.⁴⁷ This however is yet to be implemented by any of these state governments that are taking steps to curb the virus. It must be important to note that the Nigerian President foot dragged in his nationwide address long after the State Governors usurped the powers of the executive, while taking precautionary steps to check the spread of the COVID pandemic. However a regulation tagged the Infectious Disease (Emergency Prevention) Regulation⁴⁸ has since laid to rest the emerging controversy. This coming of this regulation at this time will serve as a guideline for states that may not have laws to guide them during times of disease pandemics.

8. The Similitude of Intrusion Into Person's Rights during a Pandemic and Derogations from Human Rights

³⁷ S. 3(a) Federal Airports Authority of Nigeria Act CAP F5 L.F.N 2004

³⁸ Schedule II CFRN 1999

³⁹ March 14, 2004, Emergency Response Law and National System of Contingency Plans for Emergencies

⁴⁰ Section 46

⁴¹ Tessy Igomu 'Punch Newspaper' Coronavirus Patient attempts to escape Lagos Isolation Center' February 29th, 2020

⁴² Lagos State Shut Down Schools www.lagosstate.gov.ng accessed on 22nd March, 2020

⁴³ Part IV Constitution of the Federal Republic of Nigeria, 1999.

⁴⁴ Quarantine Act of 1926

⁴⁵ S. 305 CFRN 1999

⁴⁶ Quarantine Act, 2004 (As amended)

⁴⁷ S.8 Quarantine Act, 1926

⁴⁸ Infectious Disease (Emergency Prevention) Regulation, 2020

When a disease is declared a pandemic, by the World Health Organization, then it means that there is a high possibility of a rapid spread of a new disease which people are not immune to. This alert by the World Health Organization calls for a level of preparedness by every government's health's ministry to put adequate measures in place to ensure that if such outbreak occurs it could easily be curbed.⁴⁹ The effect of a pandemic therefore requires that every necessary steps should be taken including but not limited to invasion on person's privacy rights to ensure that the spread of a new disease is curbed. The intrusion into passenger's medical records, past travel history etc. by airline companies and airport authorities were held to be lawful in a bid to curb the spread of a new disease.⁵⁰ Relating this to the rules guiding derogations during times of war and extreme emergencies, certain fundamental rights cease to operate during times of emergencies and this can lead to derogation from rules on fundamental human rights⁵¹. So if limitations to these fundamental rights are limited due to some obvious reasons, then the burden of proof lies on the body or the organization that is limiting the fundamental right of an individual from operation. This likened to the topic of discuss, when there is an intrusion on a person's fundamental right, and the aggrieved person files a suit in court claiming breach on fundamental rights, then the burden of proof lies on the body or health agency as the case may be who has infringed on such right. They must show valid lawful reasons why such breach occurred and what dangers or harm they intended to prevent by carrying out such actions that amounted to a breach of fundamental human rights. The Use of excess force by Soldiers in Nigeria, while trying to enforce limitations on fundamental rights as a result of pandemic clearly violates the golden rule and the burden of proof shifts to them to show cause why excess use of force must be deployed while enforcing compliance to isolation or quarantine.

9. Information Management during a Pandemic

The right to freedom of information or access to information remains a right that has been recognized by the Universal Declaration on Human Rights⁵² and is a model law in many jurisdictions including Nigeria, which until recently enacted the Freedom of Information Act.⁵³ This right as enshrined in the Universal Declaration on Human Rights recognizes as follows 'Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinion without interference and to seek, receive and impart ideas through any media regardless of frontiers'⁵⁴ The freedom of Information Act of Nigeria also recognizes in its preamble as follows 'An act to make public records and information freely available, provide for public access to public records and information, and protect public records and information....'⁵⁵ The African Charter, also recognizes the rights of freedom of Information and it's stipulated as follows 'Every individual shall have the right to receive information; every individual shall have the right to express and disseminate information within the law'⁵⁶

Having outlined the relevance of fundamental right of freedom of information and expression in the above legislations; will it be right in some circumstances for vital information to be withheld from the public, which is termed privileged information by Government or its agencies? Also the high traffic of concerned populace who throng the internet, social media and other e-media platforms in search of information during a pandemic raises some concern. The peddling of fake news and information over e-media platforms during a pandemic has caused more harm than good. The internet is awash with so much false information regarding the COVID 19 virus, that proper regulation, filtering and vetting of what is posted on the internet has become necessary.⁵⁷ While this part of this article will determine to what extent the fundamental right of freedom of expression as enshrined in the Universal Declaration on Human Rights and adopted by several other legislations will be protected during a pandemic, the negative effect of disseminating fake news, or information which has the capability of worsening the situation will be evaluated. The use of legislation, red flags, and other awareness programmes, as will be discussed in this section would be reviewed and best practice recommended. In a collaborative effort to combat the peddling of fake news concerning the recent Corona Virus, Facebook, an online platform envisaged that it's privacy policy may not protect the innocent public from online postings about the deadly corona virus, and in a smart move gave the World Health organization free ad spaces on its platform to flag and counter every fake

⁴⁹ What is a pandemic? www.who.int accessed on 19th march, 2020

⁵⁰ J. Porty 'Facebook Confirms ban on misleading corona virus ads' www.verge.com accessed on 19th February, 2020.

⁵¹ Article 29 (2) UNDHR 1948

⁵² op cit

⁵³ op cit

⁵⁴ Article 19 UNDHR 1948

⁵⁵ Preamble to the Freedom of Information Act, Nigeria enacted 2011.

⁵⁶ Article 9 African Charter on Human and People's Rights, 1986.

⁵⁷ Fighting Fake News Workshop 'The information Society Project' The Floyd Abrams Institute for freedom of Expression, March 7, 2017

information that may be disseminated on its platform⁵⁸. This programme, so far has enlightened the public on the recent Corona Virus and steps to prevent contamination. This carrot and stick approach adopted by this major online platform Facebook, seem to be the best approach so far. This blockade of content that has mis-information has been applauded by the World Health Organization. Such information like ‘masks have the capability of 100% cure to corona virus’ were either taken down from their platform or alerted as false and misleading information.⁵⁹ While encouraging the right to freedom of expression, necessary safeguards are put in place to counter any information that may seem harmful to the public.

10. Conclusions

This Article has conducted an appraisal of several legislations that offer protection of fundamental rights of persons. Of particular reference are two rights, the right to freedom of movement and the right to freedom of expression and access to information. The strength of these rights when applied to some exceptional circumstances was also reviewed. While some of the procedures and guidelines adopted by some legislation like China were appraised, a critic of these laws was also carried out. It is worthy of note that the Chinese government with the use of legislation and constitutional amendment laid to rest the longstanding argument of which fundamental right supersedes the other, when in conflict (Access to information by citizens and Government’s right to use reasonable force to enforce some aspects of the health regulations in existence in China Post SARS). This move by the Chinese government with the aid of constitutional amendment sets an example for several other jurisdictions like Canada, United States of America etc to expand the scope of what is termed communicable diseases in their regulations to include SARS and any other disease that has the ability to spread rapidly.⁶⁰ Just recently we have recorded the first incidence of a deadly virus in Nigeria long after some of the African Countries grappled with the Ebola virus. The inclusion of constitutional procedures through National Assembly amendments may be necessary as some fundamental rights are tampered with, while enforcing these health regulations in checking the spread of these diseases. This will reduce the propensity of a barrage of lawsuits against the government for breach of certain fundamental human rights while enforcing health laws through quarantine, isolation or blockades. Just recently, the news of a collapsed building which was a major quarantine center in China, housing many patients, whose movements were restricted as a result of government quarantine measures have tongues wagging.⁶¹ Not all has been heard of this incident as a series of lawsuits will likely ensue for restricting freedom of movement of patients and those under observation, which has resulted in many deaths and injuries.

This article also recommends that free flow of information among agencies of government and its citizenry during an emergency or an epidemic must be put in place. Free toll lines, Emergency regional centers, gratification for information provided by citizens must all be in existent to ensure relevant information are not classified by the Government and fake news suppressed. From the Chinese example, the initial suppression of valid information availed to the public by some citizens turned out to be a major setback in the management of the spread of the virus.⁶² Availing the public the necessary information as to how to curb, prevent or protect oneself from the Corona virus, could have reduced the incidence of panic emigration from the places that were termed areas of high risk infection.⁶³ Such early warnings could have reduced to the barest minimum, the number of cases of government’s use of force in compelling quarantine, isolation or blockade of citizens who emigrated to areas of low risk infection due to panic and lack of information.⁶⁴

Finally, it is strongly recommended that a subject called social media ethics should be included in our today’s curriculum as a high percentage of internet and social media users are said to be the youth who most times make unguarded statements and misinformation over social media platforms that has a tendency of causing psychological trauma long after it has been discredited.⁶⁵ Sufficient education and enlightenment should be given

⁵⁸ Jessica Goodfellow, ‘Is Facebook coping with the COVID misinformation’ Campaign February 19th 2020.

⁵⁹ J. Porty ‘Facebook Confirms ban on misleading corona virus ads’ www.verge.com accessed on 19th February, 2020.

⁶⁰ China: Legal Response to Health Emergencies; Library of congress available at www.loc.gov/law/help/health-emergencies accessed on 16th March, 2020.

⁶¹ Associated Press of 9th march, 2020, ‘China Hotel that Houses Refugees from virus epicenter Collapses’

⁶² Joyce Huang ‘Where is the Investigation Report into Corona virus Whistleblower’ www.voanews.com accessed on 16th March, 2020

⁶³ Ibid.

⁶⁴ Early warning systems www.who.int accessed on 19th March 19, 2020

⁶⁵ Nyhan Brendan et al ‘Displacing Misinformation about events: An experimental test of casual corrections’ *Journal of Experimental Political Science*, 2015

to internet and social media users comprising mostly the youth about the negative impact of dissemination of fake or unconfirmed reports over the internet, especially during a pandemic.⁶⁶

⁶⁶ Op cit