

**COVID-19 LOCKDOWN AND THE PLIGHTS OF PEOPLE
REMANDED IN SECURITY DETENTION CENTRES: A
SOCIOLEGAL ANALYSIS**

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Abstract

The researchers analyzed from sociological and legal perspectives the COVID-19 lockdown and the plights of people remanded in security detention centres in Nigeria. The objective of the study is to identify the loopholes in the Constitution of the Federal Republic 1999 as amended and other relevant legal provisions in Nigeria. The study is an exploratory type of research whose goal is to explore the phenomenon under investigation. This research design is considered appropriate for this paper because the COVID-19 lockdown has explored the weaknesses of the extant legal provisions in Nigeria in a situation like the Lockdown. Data were from secondary sources and were subjected to content analysis. The result revealed that during the COVID-19 lockdown in Nigeria, accused persons, awaiting trial persons and prisoners in different detention centres were detained beyond the legal requirements whereas there is no legal provision that clearly stated remedies.

Tulisan ini mengkaji hak-hak orang yang ditahan oleh aparat keamanan atau dijebloskan ke dalam lembaga pemasyarakatan oleh Pengadilan sebelum lockdown COVID-19 dan menjalani masa karantina COVID-19 dalam

tahanan. Para peneliti mengidentifikasi ketentuan hukum yang terkandung dalam Konstitusi Republik Federal Nigeria 1999 & celah di dalamnya yang gagal membuat ketentuan untuk keadaan darurat seperti penguncian. Konsekuensi yang tidak diinginkan dari tindakan purposive oleh Robert Merton diadopsi sebagai penjelasan teoretis. Makalah ini mengadopsi desain penelitian eksplorasi untuk mengeksplorasi kekosongan dalam Hukum Nigeria di mana data bersumber dari sumber sekunder dalam teks terdokumentasi. Makalah ini menemukan bahwa semua Undang-undang dan Undang-undang di Nigeria tidak memiliki ketentuan tentang bagaimana memberi kompensasi kepada orang-orang yang mengalami masalah emosional, keuangan sosial, dan psikologis sebagai akibat dari waktu yang mereka habiskan di sel tahanan di luar waktu yang diharapkan karena penguncian.

Keywords: COVID-19, Plights, Rights, Detention, Law, 1999 Constitution of the Federal of Nigeria, Sociolegal

INTRODUCTION

This paper is fusion of sociological and legal analysis of the COVID-19 lockdown regarding the plights and rights of some people who at that time were in detention facilities of security agencies in Nigeria. The acronym 'COVID-19' stands for 'coronavirus disease 2019', which is a communicable respiratory disease, caused by a new strain of coronavirus that causes illness in humans. (Africa CDC 2020). It was initially reported by the World Health Organisation (WHO) on December 31, 2019. Also, on January 30, 2020, the WHO declared the COVID-19 outbreak a global health emergency (global pandemic).

In the wake of the COVID-19 pandemic, guidelines were issued by State authorities as protective measures to halt the spread of disease. Lockdown or stay at home as it is often called was one of these guidelines which require people to stay indoors in a bid to curb the spread of the coronavirus outbreak. This guideline raised great challenges in the Nigerian

Criminal Justice System as it affects the right to liberty, that is, the right of all persons to freedom of their personal freedom of movement and freedom from arbitrary detention by others (1999 Constitution of the Federal Republic of Nigeria). This triggered clarion calls and reminders on State authorities of the need to ensure that those protective measures must never result in inhuman or degrading treatment of persons deprived of their liberty. It is in the light of the above that this article makes a sociological analysis of COVID-19 lockdown and the plights of people remanded in security detention centres either based on Court Order or arrest by the security personnel

The objective of this paper is to explain that arrest or detention of an individual must be in accordance with the provision of the law. Where this procedure is not followed and the rights are violated, the law provides series of remedies to redress the violation. Also, to examine the legal and sociological implication of detention of people during the period of COVID-19 lockdown in Nigeria. To identify the loophole in the Constitution of the Federal Republic 1999 as amended and other relevant legal provisions in Nigeria which failed to anticipate situation such as lockdown and the remedy for the affected persons. To achieve the above objectives, the paper focused on the people who were arrested and detained in Police custody, or remanded in Prison awaiting trial as well as those who were serving jail term and it their term elapsed during the period of lockdown.

Therefore, the following the paper raised some questions: what is the rights of the people spent months in the cells of security personnel as the closure of Courts? What is the limitation of extant in laws in Nigeria in the

provision of remedy to the affected persons? To answer the above questions, the researchers sourced secondary materials, reviewed and assessed for the study.

This is significant because existing studies and literature have not focused on the rights people who were detained for long period due to the COVID-19 lockdown. Even the Penal Reform International (2020) only focused on the healthcare and human rights of people in prison in March, 2020 report.

METHODOLOGY

This study is an exploratory type of research whose goal is to explore the phenomenon under investigation. This research design is considered appropriate for this paper because the COVID-19 lockdown has explored the weaknesses of the extant legal provisions in Nigeria in a situation like the Lockdown. The elicited data from secondary sources, that is documented texts both online and hard copies and were subjected to content analysis. The findings of the study are presented based on themes generated during the analysis.

DISCUSSION

Closure of Court as a Result of the COVID-19 Lockdown

It is not an exaggeration to assert that the closure of Court nationwide in Nigeria as a result of COVID-19 induced lockdown was a hellish situation for detainees especially those at the security detention centres like Police Stations, Military formation, Department of State Security Services (DSSS), National Drugs Law Enforcement Agency (NDLEA) and

Nigerian Security and Civil Defence Corps (NSCDC). The reason is that these detention centres lacked even the minimum detention facilities like accommodation, feeding, potable water, hygienic environment, sewage disposal, clothing, and toiletries (Nigerian Correctional Act, 2019). This is in addition to the additional trauma of fear of contracting the corona-virus while in detention.

This closure of court was based on a circular issued by the Chief Justice of Nigeria (CJN) on 23 March 2020, in which he directed all Heads of Court to “suspend Court sittings for an initial period of two weeks at the first instance, except in matters that are urgent, essential or time-bound. Subsequently, another circular on 6th April 2020 suspended Court proceedings until further notice. Barely a week after the CJN’s initial circular, the President of the Federal Republic of Nigeria had on 30th March 2020, directed a 14-day lockdown of Abuja, Nigeria’s capital, along with Lagos and other States (Punuka, 2020). Shortly after the directives were given by the President, there was an uproar among the citizens due to a myriad of concerns. It is pertinent to state at this juncture that the President has the power under both Section 305 of the Constitution of the Federal Republic of Nigeria 1999 as amended and under the Quarantine Act to proclaim a state of emergency under the former and a notice under the latter to declare where there is a danger of an actual breakdown of public order, public safety, imminent danger, the occurrence of any disaster, natural calamity, dangerous infectious diseases, preventing the spread of any dangerous diseases, preventing the transmission, etc. Additionally, Section 305(1) of the Constitution of Federal Republic of Nigeria, 1999 (as

amended) states: Subject to the provisions of this Constitution stated conditions under which the President may declare a state of emergency.

Furthermore, Section 305 (1) of the Constitution of Federal Republic of Nigeria, 1999 (as amended) states: Subject to the provisions of this Constitution, (1) the President may by instrument published in the Official Gazette of the Government of the Federation issue a Proclamation of a state of emergency in the Federation or any part thereof. (2) The President shall immediately after the publication, transmit copies of the Official Gazette of the Government of the Federation containing the proclamation including the details of the emergency to the President of the Senate and the Speaker of the House of Representatives, each of whom shall forthwith convene or arrange for a meeting of the House of which he is President or Speaker, as the case may be, to consider the situation and decide whether or not to pass a resolution approving the Proclamation.

(3) The President shall have the power to issue a Proclamation of a state of emergency only when: (a) The Federation is at war; (b) The Federation is in imminent danger of invasion or involvement in a state of war; (c) There is actual breakdown of public order and public safety in the Federation or any part thereof to such extent as to require extraordinary measures to restore peace and security; (d) There is a clear and present danger of an actual breakdown of public order and public safety in the Federation or any part thereof requiring extraordinary measures to avert such danger; (e) There is an occurrence or imminent danger, or the occurrence of any disaster or natural calamity, affecting the community or a section of the community in the Federation; Section 4 of the quarantined law states.

Regulations

The President of Nigeria can make regulations for all or any of the following purposes- (a) prescribing the steps to be taken within Nigeria upon any place, whether within or without Nigeria, being declared to be an infected local area; (b) prescribing the introduction of any dangerous infectious disease into Nigeria or any part thereof from any place without Nigeria, whether such place is an infected local area or not; (c) preventing the spread of any dangerous infectious disease from any place within Nigeria, whether an infected local area or not, to any other place within Nigeria; (d) preventing the transmission of any dangerous infectious disease from Nigeria or from any place within Nigeria, whether an infected local area or not, to any place without Nigeria; (e) prescribing the powers and duties of such officers as may be charged with carrying out such regulations; (f) fixing the fees and charges to be paid for any matter or thing to be done under such regulations, and prescribing the persons by whom such fees and charges shall be paid, and the persons by whom the expenses of carrying out any such regulations shall be borne, and the persons from whom any such expenses incurred by the Government may be recovered; (g) generally for carrying out the purposes and provisions of this Act.

The Government failed to take into consideration that under Section 41(1) of the Constitution of the Federal Republic of Nigeria, 1999, every citizen is entitled to move freely throughout Nigeria and to reside in any part thereof. However, restriction of movement in some States by presidential order or regulation, even without recourse to the National

Assembly in the circumstances of the COVID-19 pandemic is Constitutional. The Quarantine Act LFN 2004, is existing legislation as it conforms with the provisions of the Constitution. Under the Quarantine Act LFN 2004, the president has the power, in the interest of public health, to declare any place in Nigeria "an infected local area" and may by regulation prevent the transmission of any dangerous infectious disease from any place within Nigeria or prevent the spread of any dangerous infectious disease by restricting movement which may include a total lockdown of places where there is a dangerous infectious disease.

The above discourse has provided the legal background on which both the CJN and the President of the Federal Republic of Nigeria relied to suspend all Court sittings in the country and total lockdown of the country as a result of the pandemic. However, the CJN and the President failed to take into consideration the unintended consequences of their decisions regarding people who were locked in different security custody and cannot be freed without an order from the Court.

Legal Positions when Courts are closed

Going by the provision of section 35 (4) of Constitution of the Federal Republic of Nigeria, 1999 (as amended), any person arrested or detained shall be brought before a Court of law within 24 hours in case of an arrest or detention in any place where there is a court of competent jurisdiction within a radius of forty kilometers or brought to court within 48 hours in case of an arrest in a place where there is no court of competent jurisdiction within a radius of forty kilometers. The ultimate aim of this

section is to ensure that all suspects arrested and detained by any security agents are treated by their legal rights and not subjected to excessive or derogatory treatment.

However, with this COVID-19 induced lockdown, even if investigations are concluded and charges ready for filing, this constitutional provision cannot be met due to the closure of the Courts. The question that now seeks for an answer is, will the courts later interpret this constitutional provision purposively to treat the fundamental right of the detainee as having been tolled or rather infringed? Of course, there is no direct Nigerian case law guidance on this point because of the unprecedented nature of the lockdown occasioned by COVID-19. And there is nothing to infer from the provision of the constitution that the application of this section would effectively be curtailed by court closures occasioned by an official lockdown.

Therefore, an argument could be advanced that matters of fundamental human rights are construed strictly in order not to open floodgates for their infringement. However, counter argument could be made relying on the equitable maxim of 'equity looks as done that which ought to be done and the "doctrine of necessity" (the necessity arising from the COVID19 induced lockdown) as the basis for departing from this constitutional requirement.

Considering the above puzzlement or uncertainty on how the courts will decide on the application of this constitutional provision during the lockdown, the safest option, the court would be urged to apply, is the provision of Interpretation Act (Constitution of the Federal Republic of Nigeria 1999), which provides inter alia that a reference by a statute to a

period of days shall, where the last day of that period is a holiday, shall be construed as “continuing until the end of the next following day which is not a holiday. The Act further interpreted Holiday to mean a day which is a Sunday or a public holiday. And, under the Public Holidays Act, a “public holiday” includes “any day declared as a work-free day. It is a truism that the lockdown period, is intended to be work-free days at least for the non-essential public service. It follows, therefore, that if the provided by the provision of the constitution falls within the lockdown period, then that detainee may nonetheless be validly brought on the next working day after the lockdown period. However, where it is established that any of the detainee’s rights are infringed, the law will not hesitate to enforce same and damages would be awarded to place the claimant in the position he/she would have been, had the friction complained of not taken place (Open Society Justice Initiative 2012). This would be discussed under the heading below.

Legal Remedy for Those Who Were Detained during the Lockdown

Every state or country has the primary responsibility within its territory to ensure human rights are guaranteed to all members. By signing and ratifying human rights conventions, governments at national and local levels must commit to avoiding any actions that would violate or lead to a violation of human rights. Where however such rights are violated, the law provides a series of remedies as provided under Article 9 of the African Charter on people and human rights. The article is reproduced below:
Article 9:

(1) Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and following such procedure as are established by law.

(2) Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.

(3) Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should the occasion arise, for the execution of the judgment.

(4) Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, so that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.

(5) Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation.

The above article is in *pari passu* with the provision of section 35 of the constitution of the federal republic of Nigeria 1999 as amended. From these twin provisions, two basic remedies are available to those who were detained. These are:

Administrative Bail is a process whereby a person accused of being charged for the commission of an offence is released by the constituted authority detaining him, on the condition that the person will appear in the future whenever his presence is required or so ordered. Administrative bail is obtained by someone who is suspected of the commission of a crime. At this point, the Police or the government agency investigating the matter has not yet obtained enough evidence to charge the suspect to court.

Section 35 of the Nigerian Constitution provides that an accused person who has been arrested on the allegation of having committed an

offence must be charged to court within 24 hours where a court of competent jurisdiction is located within a radius of forty kilometers from the police station; and where a court is located within a radius above forty kilometers from the police station, the accused person must be charged to court within 48 hours or such longer period as a court might consider reasonable. Therefore, it is illegal and unconstitutional for a suspect to be detained for more than 48 hours by the police (or government agency) without bail or without charging the individual to court. However, what happened during the COVID-19 lockdown, both Police and Court that was supposed to grant the administrative bail were also closed this left those who were in detention with no way out and remained behind the bars.

Payment of damages and Compensation anyone who is deprived of his liberty by arrest or detention is entitled to damages and payments of compensation for the irreparable loss of the persons' liberty and the psychological trauma the person was subjected to by caused violators. In the case of COVID-19, this is another aspect that the Nigerian legal system has no legal provision for the people who suffered damages, of different categories, emotional trauma, psychological problem, and financial loss.

Analysis

The findings of this showed that there were people who were detained and remanded in the custody of security agencies in Nigeria from the beginning and end of total lockdown. There was no emergency measure put in place to look at the case of those whose fate has been determined by the court before the lockdown. This is in contrast to what happened in some

European countries where during the lockdown, convicted criminals were released as part of the measures to decongest the prison and curb the spread of the disease. Aebi and Tiago (2020) found that the overwhelming majority of such prisoners (102,944) were released after April 15th in Turkey, which had the second-largest prison population in Europe at the time. Additionally, the total number of inmates released includes 10,188 inmates released in France, which announced all of its releases, not just those linked to the COVID-19 pandemic. However, in Nigeria, there was no attempt to decongest the security detention facilities or temporary arrangements to determine the cases of people who were detained beyond the days stipulated by the Constitution.

This paper has adopted a sociological concept developed by Robert K. Merton unanticipated consequences of purposive social action to explain the decision of the Federal Government of Nigeria to impose a total lockdown in the country. The Government imposed the total lockdown without taking into consideration the consequences of the lockdown due to the COVID-19 pandemic on people in different detention facilities across Nigeria.

In line with a sociological concept developed by an American Sociologist Robert King Merton, Unintended Consequence of Purposive Social Action. Both the President of Nigeria and Chief Justice of the Federation hurriedly decided without a second thought about detainees and their rights. In explaining further, believe that social actions have both expected and unexpected outcomes, in this case, the decision of the Federal Government of Nigeria to curb the spread of the deadly disease, COVID-19,

ordered all public offices to be closed. Merton stated that everyone is aware of the expected consequences, therefore, sociological research is needed to discover the unintended consequences; indeed, some consider sociology to be the study of unintended consequences. The plights of the people who were detained in different facilities throughout the lockdown have not been anticipated by the Government when the lockdown was imposed. The President and CJN could not anticipate the legal implications of their decision regardless of the duration of the lockdown that led them not to recourse to the legal provisions regarding the rights of the detainees.

Similarly, Merton maintained that unanticipated repercussions and latent functions are not the same. A latent function is a form of unanticipated effect that is useful to the discussion of loopholes in the Nigerian Constitution, Quarantine Act and the Federal Government to take into consideration the rights and plight of the affected persons by the lockdown. However, Merton (1949/1968:105) distinguishes between “those that are dysfunctional for a designated system, and these form the latent dysfunctions,” and “those that are unrelated to the system, which they affect neither functionally nor dysfunctionally, non-functional consequences.” The unintended consequences of the COVID-19 lockdown have produced a legal reform in Australia especially in the administration of bail. Murphy and Ferari (2020) in an attempt to reduce hardship on the remand, lack access to lawyers and compromise the immune system of the detained, the bail jurisprudence has overhauled to address emergency cases of the people in remand.

The findings of this paper have equally demonstrated that the common law maxim of *ubi jus ibi remedium* means where right there is a remedy but such remedy is shrouded in mystery and people who were in detention throughout in the period of COVID-19 lockdown.

CONCLUSION

A novel finding in this paper is the exposure of the Nigerian Criminal Justice System weakness to address the right of detainees to ameliorate their suffering in times of an emergency such as COVID-19 lockdown. Another novelty of this paper is that both President of the Federal of Nigeria and the Chief Justice of the Federation have not during the Lockdown ordered the release of prisoners who finished their jail term during the lockdown. And there are no constitutional provisions that specifically provide a remedy for people who are kept in prison or detention facilities as a result of the closure of Courts which has the right to grant bail, free those who are found innocent and those who finished serving the term. This is because most of the recent publications in this area focused on the health aspect of the detainees and their condition under detention such as a Policy Note (2020) by the International Drug Policy Consortium (IDPC) titled COVID-19: Prisons and Detention in Africa. Similarly, Heard (2021) in her work *locked in and locked down - prison life in a pandemic: Evidence from ten countries* focused on how the pandemic excluded the prisoners from receiving visitors, assistance, and its implications on their psychological health.

The paper concludes right to liberty requires that the arrest or detention of an individual must be under the provision of the law the

essence of which is to protect the individual against the excesses of the government and its agents that have been trampled during the lockdown.

However, this right is not absolute because absolute freedom means no freedom. It is subject to restrictions or limitations among which is COVID-19 lockdown which is purely on the ground of public policy. All the extant laws in Nigeria and the Federal Government have not anticipated a situation such as a lockdown would occur. In this connection, the Government has not made any attempt to compensate the citizens who spent months in detention because of the closure of courts to grant bail to the accused person or awaiting trial.

Therefore, the COVID-19 lockdown has revealed strange from the familiar, that is, it has revealed the shortcomings of the extant laws in Nigeria to take into consideration the rights of citizens in a situation like COVID-19 lockdown, either to provide alternative means of granting bail or dispensation of justice to those who were remanded in custodial facilities or monetary compensation for those who spent months, beyond the provisions of the law.

Therefore, the mixture of both legal and analytical tools of sociology translates to a sociolegal analysis of the shortcomings of the Nigerian law regarding the phenomenon discussed. The study conclude that people who were in detention or custodial facilities during the period of the COVID-19 had suffered untold hardship without redress.

The paper recommends that in situations such as the COVID-19 lockdown, Government should weigh the implications of its policy and actions before taking them. Similarly, there is the need for members of

parliaments to amend the laws in this regard to make provisions regarding future eventualities such as COVID-19 lockdown. [W]

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