

# THE LEGALITY OF THE COVID-19 LOCKDOWN ON MOVEMENT RESTRICTIONS IN NIGERIA AND SOUTH AFRICA

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## ABSTRACT

*This paper investigates the legality as a result of the COVID-19 lockdown on movement restrictions in Nigeria and South Africa, according to the laws and measures enacted and carried out by both countries in response to the COVID-19 outbreak, which violated the fundamental right to free movement guaranteed by the constitution. According to the constitution, deviation from observance of this right can be limited under enabling provisions of the law in certain circumstances, for example, when it is in the best interests and safety of the public. It specifies that the use of enabling legislation was justified in both jurisdictions, except in cases where individuals' liberties were grossly violated by overzealous law enforcement officials enforcing the provisions of law, thereby committing blatant violations of human rights that resulted in harm or death of persons.*

**Keywords:** Quarantine Act, Disaster Management Act, Legality of COVID-19 Lock Down, The Right to Freedom of Movement, Derogation.

## INTRODUCTION

The World Health Organization (WHO) had announced the outbreak of the corona virus (COVID-19), a viral disease that was first discovered in December 2019 in Wuhan, China. On January 30, 2020, the disease was declared a public health emergency because it had moved on to the level of a global pandemic (Taylor, 2020). The WHO urged States to take immediate and aggressive measures to halt the disease's spread, mentioning concerns about the disease's alarming rates of propagation and severity (Kilbourne, 2006). Soon after the WHO's announcement, many States imposed travel restrictions targeting specific countries.

The disease has taken a heavy toll, claiming (Oyekanmi, 2020) many lives. On March 29, 2020, President Buhari signed the COVID-19 rules 2020, in exercise of the authority granted to him by sections 2, 3, and 4 of the Quarantine Act in response to the increasing geometric proportions of COVID-19, declaring COVID-19 a dangerous infectious disease and laying out measures to contain the spread of the infectious pandemic (Odutola, 2020), coordinated by the Nigeria Centre for Disease Control (NCDC), the government agency responsible for the management of the infectious pandemic.

Although there is no specific provision in the QA that empowers the President to issue regulations restricting movement, such restrictions appear to be justifiable in the context of the COVID-19 infection, which is transmitted by human carriers under section 4 of the QA. COVID-19, in addition to claiming many lives, has had a significant impact on fundamental rights to

freedom of movement under Section 41 of the constitution as a result of the lockdown imposed by various States.

In lieu of the aforementioned, the paper focuses on six inter-connected sections. It begins with the introductory section. Section 2 investigates whether the president could enact measures to limit the spread of COVID-19 outside of the provisions of CFRN, 1999, as amended, dealing with when a state of emergency is declared. Section 3 investigates violations of the right to free and unrestricted movement that occurred during the COVID-19 lockdown. It acknowledges that violations of human rights may be necessary in the interests of public morality, public order, or public health and safety, but warns that the use of force in making arrests must be reasonable, not disproportionate, and proportionate to the circumstances. Section 4 discusses the South African government's laws that govern the legitimacy of the COVID-19 restriction on the right to free movement. These laws, the Disaster Management Act and the International Air Services Regulations (COVID-19 restrictions on air transport movement), will be scrutinized. Section 5 examines the legality of COVID-19's restrictions on the right to free movement in both jurisdictions. It observes that a state of emergency was not declared in either State. Finally, section 6 concludes by stating that the provisions of the laws invoked by the government of Nigeria and South Africa were justifiable in light of the prevailing circumstances in the aftermath of the COVID-19 scourge, but that the enforcement of the law should be in tandem with the observance of people's fundamental rights.

### **Covid-19 Lockdown and Declaration of a State of Emergency**

Concerns were raised about the president's ability to take action to halt the spread of COVID-19 without invoking and complying with the provisions of CFRN 1999 section 305, which governs the declaration of a state of emergency. In his contribution to the above, the Attorney-General of Nigeria and Minister of Justice (AGF), Malami stated (Omohomhion, 2020) that the President's declaration was valid, legal, and enforceable based on a combined reading of sections 5, 14, 20, and 45 of the 1999 constitution and sections 2, 6, and 8 of the Quarantine Act. According to him, the President did not declare a state of emergency as required by section 305(1) of the 1999 constitution as amended, which requires the approval of both chambers of the National Assembly. He goes on to say that the President's broadcast made it clear that he was dealing with a public health emergency caused by the severe and infectious corona virus disease. Before making his announcement, the president listened to recommendations from the two focal agencies in the fight against COVID-19, the Federal Ministry of Health and the National Center for Disease Control and Prevention (NCDC). The restriction order was obvious and unmistakable evidence of a nationwide quarantine.

Ogunye agrees with the AGF's position. He claims that the purpose of declaring a state of emergency under the constitution is not solely (Ogunye, 2020) to protect public health. He claims that the provisions for declaring a state of emergency in the constitution are focused on war, impending war or invasion of Nigeria, or Nigeria's involvement in a war; public order and safety preservation and restoration; actual breakdown of public order and safety and averting such danger; and the occurrence of any disaster or natural disaster that threatens Nigeria. He insists that the Quarantine Act is a one-of-a-kind statute with one-of-a-kind provisions that allows the president to make recommendations for the prevention and control of infectious diseases.

Nwokedi, on the other hand, claims (Onyekwere, 2020), that the President's reliance on the Quarantine Act in the current situation for his order or proclamation, which has no legal authority, has already caused a crisis in the aftermath of the COVID-19 pandemic. He goes on to say that in such a case, the President's failure to declare a state of emergency, as required by the constitution, before closing or locking down cities could lead to serious problems for the Nigerian economy and people.

We agree with Malami and Ogunye that the President used the QA's provisions lawfully and that he did not need to declare a state of emergency because public health matters are not covered by section 305 of the constitution. In the current circumstances, the provisions of the law referred to by Malami are appropriate. A cursory look at these provisions supports this. Section 5 of the CFRN delegated to the president executive powers derived from the constitution, all laws passed by the national assembly, and all matters over which the National Assembly has the power to pass laws for the time being. Furthermore, section 14 of the CFRN states that the primary purpose of government is to ensure the security and welfare of the people; section 20 states that the state shall protect the environment; and section 45 of the CFRN states that derogations from the provisions for the enforcement of fundamental rights may be made in the interests of national defense, public safety, order, morality, or public health, or to defend individual rights and freedoms. Furthermore, the President's use of the QA provisions was consistent with the current public health emergency caused by the COVID-19 outbreak. According to section 2 of the QA, a dangerous infectious disease is defined as cholera, plague, yellow fever, smallpox, or typhus, as well as any infectious or contagious disease that the president may declare a dangerous infectious disease by notice. COVID-19 is categorically designated as a serious disease. The President was correct in using his executive powers to impose a lockdown on the FCT, Lagos, and Ogun States because there was a public health emergency that required drastic measures to prevent the disease from spreading to other parts of the country. In the same vein, it is worth noting that the announcements made by the Governors of Nigeria's various States about the existence or imminence of the COVID-19 pandemic in their respective States, as well as their responses to the crises, could be classified as formal declarations within the context of the QA. Section 8 of the QA recognizes the Governors' authority to issue declarations and regulations necessary to protect public health. If and to the extent that the President has not made a declaration under sections 2 or 3 of the QA, or issued regulations under section 4 of the QA, the Governor of the State has the same authority as the President to make such declarations and regulations. To summarize, regulations under the QA can only be made by State Governors if the President has not made the necessary declaration or regulation. In the case of Lagos State, the COVID-19 outbreak regulations were made in accordance with the Lagos State Public Health Law and the Quarantine Act. According to the law, the Governor has the authority to limit the movement of individuals, vehicles, aircraft, and watercraft within, into, and out of any local region, except for the purpose of vital supplies or the movement of essential supplies personnel. Specifically, based on the provision of Section 8 of the QA, the Governors' regulations and announcements made after the President has issued COVID-19 regulations 2020 are not tenable under the law.

## The Covid-19 Lockdown and the Right to Movement

Section 41 CFRN guarantees the right to free movement. It states that every Nigerian citizen has the right to freely migrate and reside throughout the country, and that no Nigerian citizen can be expelled or denied entry. Only in line with the law can he be expelled. During the COVID-19 lockdown, the State severely restricted people's movements. During the COVID-19 lockdown, police officers severely violated the right to freedom of movement.

On April 2, 2020, a man named Joseph Pesu was allegedly killed by soldiers in Warri, Delta State, for allegedly violating a lockdown order. According to the Nigerian Human Rights Commission, at least eighteen civilians were killed (Olawaju, 2020) by security operatives while attempting to enforce the State's lockdown imposed to control COVID-19 spread. The Commission's head, Tony Ojukwu, observed approximately 105 human rights violations, including 18 cases of extrajudicial murders, which were forwarded to competent agencies for investigation.

As a result of the foregoing, debates have erupted over the legality or otherwise of the President's declaration restricting the movement of people. Nwabueze contends that the Nigeria bills of rights do not guarantee liberty in the American sense of freedom from physical restraint as well as freedom of private enterprise in the citizens' right to exercise all of their faculties and use them in all legitimate ways, such as living and working wherever they wish, earning a living by any lawful calling, pursuing any job or vocation, and entering into all contracts that are proper, necessary, and vital. So, according to him, the Nigeria bill of rights mentions personal liberty, which only refers to freedom from physical restraint. Akande (2000) observes that as society approaches a state of emergency, the permissible area of governmental restriction of individual liberty will expand. He goes on to say that the general restriction on limitation and derogation from fundamental rights under section 45(1) CFRN affects section 41, and that it means that any law that is reasonably justifiable in a democratic society and in the interest of, or for the purpose of, defence, public safety, public order, or public health, or protecting other people's rights, could be allowed to supersede those provisions contained in section 41. However, such limitations are only constitutional if they are imposed by a law that has been duly enacted.

Oyebode thinks it's an overreaction. According to him, the current COVID-19 pandemic appears to have resulted in a complete overreaction. It is heinously wrong and completely absurd to try to obstruct people's constitutionally guaranteed freedom of movement. It is a blatant attempt to turn Nigeria into a confederation, and it should be condemned in its entirety. The Nigerian Governors' forum should rein in its ignorant members by upholding the sanctity of the country's constitution.

Sani asserts unequivocally that such restrictions violate the fundamental right to freedom of movement unless justified by a regulation that complies with section 45 of the constitution, which lays out the conditions under which such a right can be properly derogated. As in the case of COVID-19, he claims that such a law must be in the public interest, maintain public order, and be fairly justifiable in a democratic society. He claims that such limitations are null and void because no such law has been established as the foundation for them. Nonetheless, Ibebuike, who views the limitations differently, states that while the right to freedom of movement guaranteed by section 41 CFRN protects the right of any citizen to be expelled from or denied entry or exit from Nigeria, that right is not absolute. According to him, such a right may be

derogated from under section 45 of the constitution in the interest of protection, public protection, order, morality, or public health, or for the purpose of protecting the rights and freedom of others. Layonu alludes to this by saying that no Governor has decreed a sedentary life for people, but most of us only discourage movement and promote staying at home, which no one can deny is appropriate for the circumstances. He contended that the individual's right to movement is superseded by public health, and that the constitution allows for the current situation. We are in no academic condition whatsoever. This is about real life and death.

Candidly, we concur with the views expressed by Ibebuike and Layonu. We go on to say that the right to freedom of movement can thus be limited in accordance with the CFRN's conditions. It is important to note that human rights are not guaranteed in an absolute sense. Unrestricted rights will lead to licentiousness and anarchy. When it comes to human rights, terms like limitation, restriction, and derogation are frequently used interchangeably. Limitation clauses are qualifications or exceptions to a right that is guaranteed (Ogbu, 2007). They established a standard for a law that restricts human rights. Derogation from human rights is not the same as a limitation on human rights. Derogation refers to the temporary suspension of the right to be ousted during times of war or emergency. In a democratic society, the following two factors will allow the restriction to be justified: First, the law must be enacted to protect public morals, public order, or public health and safety. Second, it must not be excessive or out of proportion to the goal it seeks to achieve. In this context, public health may include the defense of medical action taken or being taken to curb or combat COVID-19, as well as the protection of other people's rights and freedoms. In particular, an act of the National Assembly shall not be declared invalid solely because it allows for the implementation of measures that deviate from the provisions of section 41 of the CFRN during times of emergency.

Furthermore, cases of human rights violations committed by law enforcement agents on individuals as a result of the lockdown should be investigated as soon as possible. Those found guilty should be prosecuted in court. This is due to the fact that the statutory grant of powers to police is not an absolute right to arrest people without cause. The Court of Appeal ruled in *Igweokolo v Akpoyibo and Ors* that "*in any event, the police have the statutory power to investigate, arrest, interrogate, search, and detain any suspect.*" The Court also stated that police officers must use their powers of arrest, detention, and interrogation in accordance with the law. This is particularly true given that the constitution states that "*any person wrongfully arrested or detained shall have the right to restitution and public apologies from the relevant authority or persons designated by law*" Sections 34 and 35 of the CFRN state that the arrested person must be treated humanely and with respect for his or her right to dignity as a human being, and that the arrestee must not be subjected to torture, cruel or humiliating treatment. As a result, any law enforcement officer who violates the preceding extant provision of the law is in violation of the law. However, the use of force by police officers while making arrests is justified in some circumstances, particularly when the officer's life is in grave danger. The use of force required during an arrest should be reasonable, not excessive, and proportionate to the circumstances. Without hesitation, the actions taken to combat the scourge of COVID-19 are reasonably justifiable for the purpose of dealing with the situation that arose during that period of emergency. This is because the COVID-19 pandemic's severity and scope are clearly alarming and significant, and its rate of infection and spread is of such a nature that it can legitimately be classified as a threat to public health, justifying restrictions on certain rights, such as those resulting from quarantine or isolation, and restricting freedom of movement.

## The Covid-19 Lockdown and the Laws that Apply in South Africa

Following the confirmation of several cases of COVID-19 infection in the country, the South African government issued a proclamation (Cohen & Mbatha, 2020) prohibiting entry into the country on March 15, 2020. Under the Disaster Management Act (Dube, 2020), the South African President declared the COVID-19 outbreak a national state disaster. A disaster, according to the South African Disaster Management Act, is defined as a sudden or radical, widespread or localized, natural or human-caused occurrence that: (a) causes or threatens to cause death, injury, or disease; (ii) damages property, facilities, or the environment; or (iii) disrupts the life of a community, and the community's ability to cope with its impact using only its own resources. (b) Is of a nature that exceeds the ability of those affected by a disaster to manage it through continuous disaster management. Whether or not national disaster status has been recognized under section 27 of the DMA, the national executive is solely responsible for preparing for and responding to national disasters. Furthermore, section 27(1) states that in the event of a national disaster, the Minister may declare the disaster by publication in the gazette if: (a) no appropriate provisions of current legislation or contingency plans are in place; or (b) other exceptional circumstances warrant the declaration of a national state disaster.

President Ramaphosa stated that efforts were made to provide the country with an integrated and coordinated disaster management system aimed at preventing and minimizing viral outbreaks. The declaration was also justified by the need for the government to establish quick and effective emergency response procedures in order to mitigate the severity of the effects. The Republic of South Africa's Constitution contains a simple but comprehensive provision protecting the fundamental right to free movement. It states: (1) everyone has the right to move and reside freely; (2) everyone has the right to reside freely. (2) Everyone has the right to leave the republic. (3) Everyone has the right to enter, remain in, and live anywhere in the republic. (4) Every citizen is entitled to a passport.

If, as in the case of COVID-19, South Africa's President declares a national state of disaster by proclamation, the President can issue regulations or instructions after consulting with the responsible cabinet member, or approve the issuance of directions concerning the regulation of the movement of persons and goods into, out of, and within the country. This is because public health can be used to justify restricting certain rights in order to motivate a State to act in response to a serious threat to the health of the community or individual members. These safeguards must be specifically designed to prevent illness or disease as well as treat the sick and injured. The South African government has passed several regulations in accordance with the DMA since the first declaration of a state of national disaster. However, on April 29, 2020, the catastrophe management regulation repealed some of these regulations. In the following regulation, movement is defined as entering or leaving a place of residence or, in the case of those who are not typically residents in the republic, their temporary abode while in the republic. The regulation restricts citizens' and residents' freedom of movement. This entails statutory surveillance of anyone suspected of being infected with COVID-19. The Director-General of Health has the authority to direct an electronic communications service provider licensed under the 2005 Electronic Communications Act to do something in writing and without prior notice to the individual affected, such as provide him or her with any information that the electronic communications service provider has available for inclusion in the COVID-19 tracking database, including any information that the electronic communications service provider has available to

him or her. While this surveillance may be seen as an infringement on the subject's privacy rights, it also serves as a foundation for restrictions on freedom of movement. The rule of law is safeguarded. However, because the Director-General of Health is required to file a weekly report with the COVID-19 authorized Judge detailing the names and details of all persons whose location or movements were recorded in accordance with regulations (10)(a) and (10)(b) (b). In response to the widespread spread of COVID-19 in South Africa, Chapter 3 of the regulation established a level 4 alert, which took effect on May 1, 2020. The above-mentioned alert level 4 remained in effect for the duration of the national state of disaster until different alert levels were declared. The regulations outlined in Chapter 3 apply during alert level 4. The aforementioned restrictions state, among other things, that everyone must be confined to their place of abode. In response to the COVID-19 pandemic, which hampered freedom of movement, the Department of Air Travels enacted legislation such as the International Air Services (COVID-19 constraints on air travel movement) regulations, 2020.

One of the goals of these laws is to prohibit foreign nationals from embarking and disembarking at international airports designated as ports of entry. This legislation applies to all foreign nationals and tourists from high and medium risk countries, as well as South African citizens and permanent residents. Importantly, the President has established a body known as the National Command Council (NCC), which appears to have extensive decision-making power in relation to the epidemic, including some influence over the issuing and execution of regulations. The President's devolution of power has raised constitutional concerns, specifically whether the NCC is improperly interfering with the president's and cabinet members' exercise of executive authority (including the implementation of national legislation and the development and implementation of national policy) as granted by the constitution. The President has the authority to transfer or assign executive duties that he or she has lawfully exercised in accordance with the constitution. To summarize, South Africa has some of the strictest lockdown restrictions in the world: no running outside, no dog-walking, and no mobility outside the home except for required visits. Non-compliance with the law may result in a prison sentence or hefty fines.

The United Nations Human Rights Commission has explicitly condemned South Africa for using disproportionate force during the lockdown; nearly 120,000 people have been arrested for non-compliance, and at least two people have been murdered by security forces (Gevisser, 2020). To get people off the streets, South Africa's security services have used aggressive tactics. Some of the safeguards put in place, such as allowing people to go out only for basic needs such as purchasing food and medication, are in direct opposition to the cruelty (Mugabi, 2020). As a result, eight people have been killed, and at least 200 people have been injured as a result of police violence. Soldiers have been accused of kicking people to the ground and forcing them to roll on the ground. Others were given the order to frog-march to their destinations. Many South Africans have petitioned their government to take action. Excessive force is a violation of the right to be free from violence and is prohibited by the South African Police Service Act 68 of 1995, which states that officers must use "*only the minimum force necessary in the circumstances.*" In *Ex parte Minister of Safety and Security: Re S v Walters*, the Constitutional Court held that there must be a proportional relationship between the seriousness of the relevant offence and the force used, and that the state must set an example of assessed, logical, fair, and proportionate responses to anti-social behavior, and should never be seen to support, let alone encourage, excessive violence against transgressors. There have also been reports that the

executive branch is attempting to punish behavior that is not illegal (Pierre, 2020). It would be against the law to do so.

Surprisingly, the State's enforcement of the COVID-19 lockdown regulations has been challenged in court by affected citizens. In *Hola Bon Renaissance Foundation v President of the Republic of South Africa*, the foundation approached the constitutional court directly and urgently, seeking an order declaring the 21-day lockdown unconstitutional. According to HBR, the lockdown violated a wide range of rights, including dignity, freedom of movement, and freedom of trade, occupation, and profession, and access to healthcare, food, and water. The case was dismissed by the constitutional court because it had no chance of success. In *Muhammed v President of South Africa*, the petitioners, who are devout Muslims, filed an urgent appeal with the Pretoria High Court challenging the constitutionality of several disaster management act restrictions that impair some of their fundamental rights. The applicants proposed limiting the number of people who could pray in mosques to a certain number of people. They demanded that regulation 11b (i) and (ii), when read in conjunction with the definition of the word 'gathering' in the regulations published under section 27 of the Disaster Management Act, be declared illegal because they were overly broad and excessive, threatening human rights. The petitioners also asked for an order directing the minister in charge to make an exception for Muslims to gather for prayers while being supervised. The Court ruled that the regulations established under the Disaster Management Act were intended to ensure that the government minimized the catastrophic impact of COVID-19 on people's lives. While some of the actions taken may appear to be burdensome and inconvenient for the public, they are the government's best options in the face of the pandemic's health and life-threatening consequences. While the court acknowledged that certain government actions may violate people's human rights, it determined that such interference is permissible under section 36 of the constitution. Given the pandemic's threat to people's lives and health, the court concluded that "*the regulations must strike a delicate balance between limiting social contact and potentially allowing the virus to spread on the one hand, and meeting the short- and long-term needs of people within South Africa on the other.*" In order to achieve this balance, the court referred to the constitutional court's decision in *Home Affairs v NICRO*, which confirmed that the limitation analysis requires a separate investigation where factual issues must be resolved and that evidence and practice are frequently entangled in the study of justification. For example, there may be situations in which the issues addressed by the legislation are subjective and cannot be verified as actual facts. A policy option may or may not be subject to fact-finding in a court of law, and it may be based on rational conclusions that are not supported by empirical evidence. On this basis, the court determined that the restrictions on rights regulations are reasonable and justified under the constitution. The Court went on to say that in the spirit of Ubuntu (humanity), which encourages us to consider the interests of others as much as our own, the applicants should be more concerned about the potential consequences of their actions and requests. Allowing congregational prayers at this critical juncture, the court ruled, would be detrimental to the public interest. It was discovered that, in the spirit of Ubuntu, nearly everyone in the country was asked to make some sort of sacrifice in order to prevent the virus from spreading. As a result, the applicants are not unique and cannot claim to have suffered more inconvenience than others. The petitioners' application was denied by the Court, which reasoned that the government's actions under the regulations and the disaster management act were required and critical in containing COVID-19's spread. As a result, they are justifiable and reasonable under the circumstances and in accordance with the constitution.

Furthermore, in *De Beer and Others v Minister of Cooperative Governance and Traditional Affairs*, a request was made that the national state of disaster be declared unconstitutional, unlawful, and invalid, as well as the imposed regulations. Alternatively, the applicants requested an order declaring all meetings legal and permissible under certain conditions. They also asked for an injunction that would allow businesses, facilities, and shops to operate under certain conditions, such as using masks, gloves, and sanitizers. It is worth noting that while the petitioners in *Muhammed* recognized the logic and justice of the COVID-19 standards, they requested an exception to their application. In *De Beer*, the applicant argued that the COVID-19 restrictions were irrational and unreasonable, and thus invalid. The Judge agreed with the applicants in *Muhammed* that the laws were reasonable and warranted, and that it was the role of every good-hearted South African to make sacrifices for the greater good. According to the Court, the procedure to be followed prior to a declaration requires the national disaster management center to assess the scope and severity of the disaster. Following that, a gazette notice declaring the country to be in a state of disaster would be issued. Despite the fact that this right is unaffected by any limitations other than those imposed by law and required to protect national security, public order, or public health, the implementation of these regulations limited one's ability to roam freely. While the declaration of a state of calamity was technically permissible, the court pointed out that it gave the minister broad authority to enact laws that significantly impacted people's rights.

### **Justification for Valid Restriction to the Right to Freedom of Movement**

On the occurrence of COVID-19, Nigeria and South Africa invoked the provisions of applicable laws. Nigeria invoked the QA, while South Africa invoked the DMA and the International Air Services (Covid-19 restrictions on the movement of air travel) regulations, both of which were supported by their respective constitutions. Both States did not declare a state of emergency, as required by their respective constitutions. Despite the fact that this right is unaffected by any restrictions other than those imposed by law and necessary to protect national security, public order, or public health, the implementation of these regulations limited one's ability to roam freely. Freedom of movement is a qualified right, and neither constitution mentions it as a non-derogable right. Qualified rights are those in which a right, such as the assurance of freedom of movement, is stated first, and then permissible constraints can be imposed. In a democratic society, this legitimate right can be curtailed if there is a legal justification for doing so. As a result, restricting one's freedom of movement may be legal. The burden of proof is on the individual to demonstrate that his rights have been violated. The burden of proof then shifts to the state to justify the interference.

In general, when a State's life and existence are jeopardized by a public emergency, the State is required to ensure that the emergency is declared officially. Following the official declaration of a national emergency or disaster, states may deviate from their responsibilities under applicable laws to the extent required by the situation's exigencies, provided that such actions do not constitute discrimination because they are not primarily based on race, color, sex, language, faith, or social origins. Limitations on the basis of public health, national security, morality, or others' rights and freedoms are acceptable grounds for restrictions. The requirement for restrictions on freedom of movement is that such restrictions be mandated by law. This is a significant guarantee of the rule of law. It includes a formal legal precondition, namely that there

must be a legal basis for restrictions. While it is a state's prerogative to impose restrictions on the enjoyment of freedom of movement to protect any interests that it considers vital to its security or welfare, as Nigeria and South Africa have done, the restrictions imposed should adhere to the standards set out in the constitution or any other applicable law. The main premise for preventing abuse of the authority to restrict freedom of movement is to prevent the right-to-restriction, norm-to-exception relationship from being reversed. Desierto believes that a law restricting freedom of movement must be justified (Desierto, 2012). The aforementioned laws should be based on accurate criteria, and those charged with enforcing them should not be given unrestricted discretion. Restrictive measures must follow the proportionality principle; they must be appropriate to perform their protective function; they must be the least intrusive tool among those capable of achieving the desired result; and they must be proportionate to the protected interest. The concept of proportionality must be adhered to not only in the law that imposes the constraints, but also in how the law is applied by administrative and judicial authorities. A proportionality decision should: infringe as little as possible on the right in question; be precisely tailored to achieve the goals in question; and not be arbitrary, unreasonable, or based on irrational grounds. The mere fact that a measure achieves its intended goal, such as protecting public health, national security, or public order, does not make it proportionate. Proportionality implies that interfering with a right such as freedom of movement is truly necessary to protect national security or public health, and that the strategy chosen is the least restrictive among the available options for achieving the desired result of protecting public order or public health. Proportionality always requires striking a balance between the burden imposed on the individual whose rights are being restricted and the public's interests in achieving the goal that is being protected. States' efforts to combat COVID-19 spread should be viewed and implemented with caution because they are vulnerable to exploitation (Vicente & Benítez, 2020). Some commentators have gone so far as to argue that civil rights should never be compromised in order to protect public health (Annas, 2018). If there is no check on the use of powers to combat the epidemic, an authoritarian administration with broad powers that could jeopardize human rights enjoyment may emerge. In such a case, a vigilant and active judiciary is required to ensure that people's rights are not violated without repercussions in the name of containing a public health disaster. Nigeria and South Africa should exercise caution in any processes relating to the exercise or restriction of these rights, and any restrictive measures should be accompanied by explanations. Based on the current precarious situation, both states' restriction of freedom of movement by citing legislative measures to combat COVID-19 transmission was legitimate, legal, tenable, and reasonable.

## CONCLUSION

The measures taken by the government of Nigeria and South Africa to combat COVID-19 by invoking the provisions of the QA, DMA, and International Air Services (COVID-19 restrictions on air travel) regulations 2020, which are supported by their constitutions and other laws, were justifiable, tenable, and commendable. Though human rights must be obeyed at all times, exceptions can be made in unusual circumstances, such as when public health, order, and safety are jeopardized. Under these conditions, States are permitted to deviate in this manner. However, in cases where there are clear, deliberate, and flagrant violations of a person's fundamental rights, such as the right to freedom of movement, resulting in harm or death, law

enforcement officers involved in such brazen acts involving the use of excessive and disproportionate force in light of the applicable facts and circumstances should be charged and tried before a competent court of jurisdiction.

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