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LEGAL POWER VERSUS LEGAL RIGHTS: ISOLATION AND QUARANTINE OF INFECTIOUS DISEASES IN NIGERIA

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Abstract

Citizens expect and the law requires that governments take steps to protect their populations from infectious diseases. Yet, many of the controls that governments use to identify, prevent, and respond to infectious diseases limit individuals' liberty of movement, privacy, freedom to travel as well as freedom to control their own bodies. The state has to strike a balance between individual control and acts for the public good. The 1926 Quarantine Act and the 1999 Nigerian Constitutions are the laws enabling the imposition of quarantine and isolation. The Act is however obsolete and unable to meet with the present day demands as it relates to public health emergencies. This paper concludes on the dire need to repeal the Act and enact a dynamic legislation that can meet up with technological advances of the 21st century, and recommends some salient features which the legislation ought to have.

Keywords: Quarantine, isolation, legal rights, infectious diseases,

Introduction

“The legal system provides many tools to promote public health, but it includes necessary limits to protect individual rights.”¹

The study of public health law entails the legal powers and duties of the state to promote the conditions for people to be healthy as well as the limitations on the power of the state to constrain the autonomy, privacy, liberty, or proprietary or other legally protected interests of individuals for the protection or promotion of community health.² However, to what extent can a state legitimately restrict the liberties of its citizens in order to serve the common good? And to what extent has the protection of the public's welfare been a pretext for government to curtail or erode fundamental rights? Across the spectrum of threats to public health ranging from infectious diseases to chronic disorders are inherent tensions between the good of the collective and that of the individual.³

Legal power refers to the right, ability, or authority to perform an act, an ability to generate a change in a particular legal relationship by doing or refraining from doing a

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¹ Gostin L. O. “Law and the Public's Health”, 21(3) (2005) *Issues in Science and Technology* at 1.

² Ibid

³ Bayer R. “The continuing tensions between individual rights and public health. Talking Point on public health versus civil liberties” 8(12) (2007) *European Molecular Biology Organization Reports* pp. 1099-1103 at 1099

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certain act.⁴ In any democratic setting as it is in Nigeria, the law making power certainly and indeed, rightly belongs to the legislature. This body is represented in Nigeria in form of National Assembly, made up of Senate and House of Representatives, and Houses of Assembly.⁵ The Constitution further provides that the National Assembly shall have power to make laws for the peace, order and good government of the Federation or any part thereof with respect to any matter included in the exclusive legislative set out in Part 1 of the Second Schedule to the Constitution. This power shall be to the exclusion of the Houses of Assembly of States. The National Assembly is also empowered to make laws with respect to any matter in the Concurrent Legislative List.⁶ The Constitution lists quarantine as Item 54 on which the National Assembly can legislate upon. By inference, it is the National Assembly of Nigeria that can make any laws regarding quarantine.

Legal Power also refers to the capacity of a state to regulate behaviours and enforce order within its territory. The “police power” is the most famous expression of the natural authority of government to regulate for the public good. It is the inherent authority of the state to enact laws and promulgate regulations to protect, preserve, and promote the health, safety, morals, and general welfare of the people. To achieve these communal benefits, the state retains the power to restrict, within federal and state constitutional limits, private interests—personal interests in autonomy, privacy, association, and liberty, as well as economic interests in freedom to contract and uses of property.⁷

While laws authorise and oblige the government to protect and advance the public’s health, they also curtail government power through structural and rights- based limitations. Rights-based limits, inherent in constitutional principles and other laws, include affirmative norms such as individual rights to free expression, freedom of religion, bodily integrity, health information privacy, equal protection, due process, and freedom from unlawful governmental searches.⁸

The objective of this write- up is to examine in the light of relevant authorities the power of the state to restrict the rights of the citizenry vis-a-vis the 1926 Public Health Quarantine Act⁹ and the 1999 Constitution of the Federal Republic of Nigeria in the control of infectious diseases in Nigeria. In so doing, it examines the Lagos State Public Health Recommendations will be proffered by a comparison of the Nigerian regulations

⁴ legal-dictionary.thefreedictionary.com/power Accessed 1/03/17

⁵ Section 4(1) 1999 Constitution

⁶ Section 4(2) – (4) 1999 Constitution as amended

⁷ Centre for Diseases Control and Prevention (2009), Tuberculosis Control laws and Policies; A handbook for public health and Legal Practitioners available at www.cdc.gov/tb/programs/TBLawPolicyHandbook.pdf. Accessed 13/07/17

⁸ *ibid.*

⁹ Cap. Q2 Laws of Federation of Nigeria(LFN) 2004

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on quarantine with the International Health Regulatory Framework of the World Health Organization.

Infectious diseases and quarantine

Infectious diseases have been said to be one of the leading causes of illness and mortality around the globe. About 15million of 57 million deaths worldwide are the direct result of infectious diseases. Infectious diseases have also been implicated as one of the leading causes of death worldwide among individuals less than 45 years. Three of the top ten causes of death, or sixteen percent of all deaths each year are from infectious diseases.¹⁰

Infectious diseases continue to occur throughout the world both sporadically and as outbreaks because of multiple factors. It has been observed that the incidence and prevalence of infectious disease which is on the increase amongst certain populations have also been described as ‘emerging.’¹¹ According to the World Health Organization, an infectious disease is one that has newly appeared in a population or that has been known for some time but is rapidly increasing in incidence or geographic range. These diseases, which respect no national boundaries, include new infections resulting from changes or evolution of existing organisms, known infections spreading to new geographic areas or populations, previously unrecognized infections appearing in areas undergoing ecologic transformation and old infections re-emerging as a result of antimicrobial resistance in known agents or breakdowns in public health measures.¹²

Countries worldwide face the global threat of newly emerging infectious diseases such as severe acute respiratory syndrome (SARS), Zika virus and pandemic influenza. These types of diseases can create serious problems for international and local public health authorities and health professionals: They can be highly contagious and can lead to death or serious illness. Such diseases also can have major economic impacts. These concerns are often heightened by the lack of proven vaccines or effective treatments for those who become infected. Thus, the importance of containing these diseases before widespread transmission occurs becomes a priority for public health policy and planning.¹³

¹⁰ World Health Organization. (2009) World Health Statistics: Cause Specific Mortality and Morbidity available at www.who.int/EN Accessed 13/07/17

¹¹ Okonko I. O. Donbraye E. Babalola E.T, Mejeha O.K, Fadeyi A., Udeze A. O., Garba K. N. Fowotade A. Adekolujo O. A., “Conflict and the spread of emerging infectious diseases: Where do we go from here” 3(13) (2009) *African Journal of Microbiology Research*. 1015 – 1028 1024.

¹² World Health Organization. The 10 Leading Causes of Death By Broad Income Group (2004), I Fact Sheet No. 310, www.who.int/mediacentre/factsheets/fs310/en/index.html Accessed 13/07/17

¹³ Blendon, R. J. DesRoches, C.M., Creton M.S., Benson J.M., Meinhardt T. and Pollard W. “Attitudes Toward The Use Of Quarantine In A Public Health Emergency In Four Countries” 25(2) (2006) *Health Affairs* 15- 25 at 1

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The Quarantine Act 1926¹⁴ defines an infectious disease as any epidemic or acute infectious disease and includes open pulmonary tuberculosis but does not include venereal disease.¹⁵ The use of quarantine and isolation therefore becomes necessary in public health emergencies to curtail and control the spread of infectious diseases amongst populations. Quarantine and Isolation is one of the most aggressive and controversial measures public health officials have at their disposal in infectious diseases outbreaks.¹⁶ Isolation is a routine procedure in hospitals and emergencies whereby sick people are separated and their movement is restricted so that they do not spread disease to healthy people. Isolation is voluntary, but in a public health emergency, officials have the authority to isolate people who are sick. The Quarantine Act describes isolation to mean the removal to a hospital or other suitable place approved by the Health officer of a person suffering or suspected to be suffering, from an infectious disease, and his detention therein, until in the opinion of the Health officer, such a person is free from infection or if not so free may be discharged without undue danger to public health.¹⁷ Isolation involves a small number of individuals and is thus easier to justify and enforce than quarantine. Quarantine on the other hand is for people who have been exposed to an infectious disease, but are not sick. Quarantine separates and restricts the movement of people who have been exposed to an infectious disease and may become contagious.¹⁸

Infectious diseases are, by their very nature, social threats. Although they are most directly caused by pathogens (bacteria, viruses, and prions), their ability to infect and harm humanity is determined largely by a variety of social factors, including sanitation, trade and travel, deforestation, urbanization, and behavioural patterns.¹⁹ In recent times, there has been resurgence in the study of infectious disease; this is because the past century brought about tremendous changes which linked the world's populations together. The transition from subsistence farming to industrialization also generated profound changes in social and cultural relationships, and altered many people's connection with their natural environment. All of these factors have had implications for global health.²⁰

¹⁴ Cap Q2, LFN 2004

¹⁵ First Schedule 1926 Quarantine Act. Cap Q2 LFN 2004

¹⁶ Rothstein M.A. "Legal and Ethical considerations for Modern Quarantine" 12(2) (2015) *Indiana Health Law Review*, 227-228 at 232

¹⁷ First Schedule 1926 Quarantine Act. Cap Q2 LFN 2004

¹⁸ New Jersey Department of Health and Senior Services(2008), Public Health Fact Sheet, Quarantine and Isolation available at www.nj.gov/health/flu Accessed 31/07/17

¹⁹ Parmet W. "Public Health and Social Control: Implications for Human Rights" (2009). Being the Report on the Project on Social Control and Human Rights commissioned by the International Council on Human Rights Policy. Retrieved from www.ichrp.org on 16/07/17

²⁰ Sunny L. "Infectious diseases and Global Public Health", available at www.globalization101.org/infectiousdiseases. (2016) Accessed 15/07/17

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According to the WHO, infectious diseases account for about 43% of the Global Burden of Disease²¹ According to Gannon, twenty well-known diseases--including tuberculosis (TB), malaria, and cholera--have re-emerged or spread geographically since 1973, often in more virulent and drug-resistant forms. At least 30 previously unknown disease agents have been identified since 1973, including HIV, Ebola, hepatitis C, and Nipah virus, for which no cures are available. In addition, of the seven biggest killers worldwide, TB, malaria, hepatitis, and, in particular, HIV/AIDS continue to surge, with HIV/AIDS and TB likely to account for the overwhelming majority of deaths from infectious diseases in developing countries by 2020. Acute lower respiratory infections including pneumonia and influenza as well as diarrheal diseases and measles, appear to have peaked at high incidence levels.²²

Infectious diseases have spread across populations and regions throughout history and it is likely that newly-emerging infectious diseases will continue to be identified. Many infectious diseases have animal reservoirs and can infect humans under certain circumstances. Several factors amongst others have been associated with the emergence and spread of infectious diseases. They include changes in human demographics and behaviour, impact of new technologies and industries, economic development and changes in land use and increased international travel and commerce.²³

Evolution of Quarantine in the Control and Spread of Infectious Diseases

Quarantine and isolation are social distancing measures used in various mandatory and recommended strategies to limit close contact.²⁴ Quarantine which is the restriction of movement of asymptomatic persons with possible exposure to a communicable disease during its period of communicability is done to prevent disease transmission. Isolation on the other hand is the separation for period of communicability of known infected persons to prevent the transmission of the infectious agent. Quarantine is one of the most aggressive measures taken in public health emergencies to control the outbreak of a disease.²⁵ The practice of quarantine as it exists today began during the 14th century in an effort to protect coastal cities from plague epidemics. Ships arriving in Venice from infected ports were required to sit at anchor for 40 days before landing.²⁶ The practice of

²¹ WHO "Global Burden of Disease", available at www.who.int/trade/glossary (2016) Accessed 12/07/17

²² Gannon J. C "Global Infectious Diseases threat and its Implications for the United States". (2000), National Intelligence Office for Economics and Global Issues

²³ WHO Infection prevention and control of epidemic- and pandemic-prone acute respiratory diseases in health care WHO Interim Guidelines (2007) available at www.who.int/ncdr/resources/publications/who Accessed 12/07/17

²⁴ Glass J.R "Targeted Social Distancing Design for Pandemic Influenza" 12 (2006) *Emerging Infectious Diseases*. p. 1671

²⁵ Rothstein M.A. "Legal and Ethical considerations for Modern Quarantine" Vol. 12(1) (2015) *Indiana Health Law Review*, pp. 227-228.

²⁶ Centre for Diseases Control (2014), Quarantine and Isolation available at www.cdc.gov/quarantine.html Accessed 15/07/17.

quarantine dates back to antiquity where quarantine was mentioned for leprosy in the Old Testament.²⁷ The history of quarantine began in the long roots of stigma and prejudice from the time of the Black Death and early outbreaks of cholera to the 1918 influenza pandemic and to the first influenza pandemic of the twenty-first century, the 2009 influenza A (H1N1) outbreak. Quarantine then was adopted as an obligatory means of separating persons, animals, and goods that may have been exposed to a contagious disease. And was viewed as the cornerstone of other coordinated disease-control strategy, including isolation, sanitary cordons, bills of health issued to ships, fumigation, disinfection, and regulation of groups of persons who were believed to be responsible for spreading the infection. The 40 days length of isolation time needed to avoid contamination, may have derived from Hippocrates theories regarding acute illnesses.²⁸

Another theory is that the number of days was connected to the Pythagorean theory of numbers. The first English quarantine regulations, drawn up in 1663, provided for the confinement (in the Thames estuary) of ships with suspected plague-infected passengers or crew. In North America, quarantine was introduced during the same decade that attempts were being made to control yellow fever, which first appeared in New York and Boston in 1688 and 1691, respectively. Organized institutional responses to disease control began during the plague epidemic of 1347–1352.²⁹ Toward the end of the fourteenth century, the epidemic had abated but not completely. Medicine was impotent against plague thus; the only way to escape infection was to avoid contact with infected persons and contaminated objects. Thus, some city-states prevented strangers from entering their cities, particularly, merchants and minority groups, such as Jews and persons with leprosy. Implementation of these measures required rapid and firm action by authorities, including prompt mobilization of repressive police forces. A rigid separation between healthy and infected persons was initially accomplished through the use of makeshift camps.³⁰

In the United States, quarantine legislation, which until 1796 was the responsibility of states, was implemented in port cities threatened by yellow fever from the West Indies. As time went by, the suspension of personal liberty provided the opportunity using special laws to stop political opposition. However, the cultural and social context differed from that in previous centuries. For example, the increasing use of quarantine and isolation conflicted with the affirmation of citizens' rights and growing sentiments

²⁷ Leviticus 14: 4-8.

²⁸ Rothstein M.A. op cit. at p.232

²⁹ Tognotti E. "Lessons from the History of Quarantine, from Plague to Influenza A" 19(2)(2013) *Emerging Infectious Diseases* pp. 254- 259

³⁰ Ibid

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of personal freedom fostered by the French Revolution of 1789.³¹ Efforts to impose quarantines on those viewed as a threat to public health involved the use of measures that look excessive and profoundly unfair from the perspective of less troubled times. A central strategy of the emergent public health regime in the nineteenth and early twentieth centuries involved the mandatory reporting of patients' names to public health registries. In most instances, physicians attending patients in private practices often opposed such requirements as impinging on their autonomy and a violation of the doctor-patient relationship.³²

In recent times, intervention measures were resurrected in response to the global crisis precipitated by the emergence of Severe Acute Respiratory Syndrome (SARS), an especially challenging threat to public health worldwide. The disease quickly spread along air-travel routes and easily became a global threat because of its rapid transmission and high mortality rate. Various strategies were put in place by the countries hardest hit by the pandemic. In Canada, public health authorities asked persons who might have been exposed to SARS to voluntarily quarantine themselves. In China, police cordoned off buildings, organized checkpoints on roads, and even installed Web cameras in private homes.

Other methods of social distancing include

- a. Area quarantine; this is the restriction of entry in or out of a geographic area where a contagious disease exists.
- b. Shelter-in-place: This is a general non-mandatory effort to limit personal exposure in a community by requesting that individuals remain in their schools, work station or homes as the case may be while a public health threat exists.³³

States Authority to Quarantine or Isolate

States have the authority to quarantine and isolate individuals with dangerous and communicable diseases in order to protect the public's health; they also have a duty to respect individual civil liberties. The administration of state powers authorize government to exercise compulsory powers for the common good and welfare of the populace, however, the government must act in conformity with constitutional and statutory constraints whilst exercising the powers.³⁴

³¹ Rothstein M. A. Alcalde G.M. Elster N. R. Majumder M. M. Palmer L.I. Stone H.T "Quarantine and Isolation: Lessons Learned from SARS" being report to the Centre for Diseases Control and Prevention p.17

³² Bayer R. "The continuing tensions between individual rights and public health. Talking Point on public health versus civil liberties" 8(12) (2007) *EMBO Reports* 1099 – 1103 at 1100

³³ Hawryluck L. "SARS Control and Psychological effects of Quarantine" 10(1) (2004) *Emerging Infectious Diseases* pp.1206 -1212 at p.1208

³⁴ Pope S., Shery N. and Webster E. "Protecting Civil Liberties during Quarantine and Isolation in Public Health emergencies" (2011) *Law Practice Today* available at www.americanbar.org/publications
Accessed 26/0717

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Whenever government exercises coercive powers, it interferes with personal rights to liberty, bodily integrity, privacy, property, or other legally protected interests. The exercise of state power therefore often presents hard trade-offs between promoting the common good and protecting individual rights.³⁵

The legal principles employed to sustain state public health power were *sic utere tuo ut alterum non laedas* (use that which is yours so as not to injure others) and *salus publica suprema lex est* (public well-being is the supreme law). The principle of *sic utere* describes the power of the state to prevent or prohibit “the use of private property or the commission of private acts in a manner harmful to others.” The principle of *salus publica*, on the other hand, recognizes state power as a means to “prevent or avoid public harm even if the action has not harmed others.” While the *salus publica* doctrine implied a more extensive exercise of state powers, state actions allowable under its aegis were, generally speaking, under the discretion of the state legislature, and limited only by infractions to an express constitutional right or by actions opposite to the principles of representative government.³⁶

Quarantine and Legal rights

Quarantine is a multifaceted issue that must balance individual rights against public safety as use of quarantine or isolation powers may create sensitive issues related to civil liberties. Individuals have rights to due process of law, and generally, isolation or quarantine must be carried out in the least restrictive setting necessary to maintain public health.³⁷ Should government have the power, for example, to engage in active surveillance, compel treatment, and impose quarantines? Or, should individual rights to privacy, bodily integrity, and liberty prevail? A quarantine requirement is either right-based or goal-based. It is right based when it is generated by a concern for some individual interest and goal based when propagated by the desire to further something taken to be of interest to the community as a whole. The right-based approach does not deny that the interest of a particular individual is not also shared by others in the community but it would claim that the interest of each individual is sufficient to generate the requirement³⁸

According to Feinberg, rights are indispensably valuable possessions, a world without them no matter how full of benevolence and devotion to duty, would suffer an immense moral deprivation. A right is thus, not a mere gift or favour but is something which a man can stand on, or something which a man can demand or insist upon without

³⁵ Gostin, op cit.4

³⁶ Reynold G. H and Kopel D. B “The evolving Police Power: Some Observations for a new century” .27(2000) *Hastings Constitutional Law Quarterly* p.511

³⁷ National Conference of State Legislatures “State Quarantine and Isolation” (2014) available at www.ncsl.org Accessed 18/07/17

³⁸ Freeman M. D *Lloyds Introduction to Jurisprudence*, 16th ed (London, Sweet & Maxwell, 1996) 380

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embarrassment or shame. There are a number of models on which the pre-eminence of rights is perceived.³⁹ The simplest is that which views rights as a very important interest which can be weighed against other calculations. But, which can be knocked off its pedestal by a goal of special urgency, for example, the right to strike may be forfeited during a war-time emergency. It can also be flanked out by any similar important interest or indeed by a combination of less important interests. These interests can similarly be outweighed by those of others.

As Dworkin opined, individual rights are political trumps held by individuals. Individuals have rights when for some reasons; a collective goal is not sufficient justification for denying them what they wish, as individuals. Rights in this sense can be put in abeyance where there is interference in the life of an individual where there would otherwise be a right. This interference is justified where “special grounds” can be found. Government for instance, has a reason for limiting rights if it plausibly believes that a competing right is more important, however, there must be a compelling reason to do so.⁴⁰

The writer of this article is of the opinion that the application of this model suggests that the right to freedom of movement and privacy of individuals may be forfeited during a time of public health emergency. Public health emergency or cases of infectious diseases control would be a “special ground” to disregard the “rights” of individuals. This can also be explained in the light of a scenario which occurred in the aftermath of the outbreak of Ebola Virus Disease in Nigeria

The index case carrier of the disease (Mr. A.) sought by all means to gain his freedom after being suspected of contracting the disease. A Liberian Government official wanted Mr. A to attend a meeting in Calabar. The medical doctor in charge of the treatment (Dr. G.) was told that “Mr. A’s human rights were being violated” whilst Dr. G insisted that Mr. A was being kept for greater “public good”.⁴¹ A second model postulates that rights have “lexical priority” which means that these rights are to be promoted above all other considerations and clearly prevail over considerations of utility. It also concedes that rights may conflict with each other, in which case, the preferred solution is one which maximizes the fulfilment of rights and minimizes their violations.⁴²

According to Rawls, the first priority rule of this “lexical priority” provides that the principles of justice are to be ranked in lexical order; and therefore the basic liberties

³⁹ Darby D. “Feinberg and Martin on Human Rights” 34(2) (2003) *Journal of Social Philosophy* pp. 199-214 at 200

⁴⁰ Dworkin R. “Taking Rights Seriously” 77(5) (1977) *Columbia Law Review* pp. 818-826 at p. 819

⁴¹ Akaninyene O. Ameh S. Osifo-Dawodu E. Alade E. Ekuri S. Idris J. “An account of Ebola Virus Disease Outbreak in Nigeria: Implications and lessons learnt” 18(3) (2017) *BMC Public Health*

⁴² Taylor R. S. “Rawls Defence of the Priority of Liberty” 31(3) (2003) *Philosophy and Public Affairs* pp. 246-271 at 247

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can only be restricted for the sake of liberty. The basic liberties are those commonly protected by constitutional regimes, including freedom of speech and assembly, liberty of conscience and freedom of thought, freedom of the person and the right to hold personal property amongst others. The priority of liberties treats these liberties as paramount and prohibits their sacrifice for the sake of efficiency, utilitarianism or perfectionist ideals.⁴³ This would mean (based on this model) that in matters of public health emergencies, the rights of individuals and the citizenry are promoted over and above any other considerations in the society. This model clearly does not support quarantine and isolation of individuals in infectious diseases control.

Quarantine and Human Rights in Nigeria

The legal authority of the Nigerian Federal Government to take extraordinary measures during public health crises is based on the emergency powers of the President and the legislature under the 1999 constitution, and the authorities given to health authorities under the 1926 Quarantine Act.⁴⁴ Specifically, the 1999 Constitution provides that the President is authorized to unilaterally or at the request of a state governor declare a state of emergency in certain instances, including:

- a. When there is actual breakdown of public order and public safety in the Federation or any part thereof requiring extraordinary measures to restore peace and security;
- b. When there is 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;

When there is an occurrence of any disaster or natural calamity, affecting the community or a section of the community in the Federation or there is any other public danger which clearly constitutes a threat to the existence of the Federation.⁴⁵

Such declaration of a state of emergency must be published in the country's official gazette and the President is required to notify the Speaker of the House of Representatives and the Senate President.⁴⁶ The same Constitution also provides that every person shall be entitled to his personal liberty and no person shall be deprived of such liberty save in accordance with a procedure permitted by law in the case of persons suffering from infectious or contagious diseases, persons addicted to drugs or alcohol or vagrants, for the purpose of their care or treatment or the protection of the community.⁴⁷ The effect of declaration of state of emergency in health related emergencies is that the

⁴³ Barry B. "John Rawls and the Priority of Liberty" 2(3) (1973) *Philosophy and Public Affairs* pp.274-290 at 280 ; See generally Michelman F. I "In pursuit of constitutional welfare rights; One view of Rawls' Theory of Justice" 121 (1973) *University of Pennsylvania Law Review* pp.962- 1019.

⁴⁴ Cap Q2 LFN 2004

⁴⁵ S305 1999 Constitution as amended

⁴⁶ Ibid

⁴⁷ Section 35(1)e 1999 Constitution as amended

Nigerian legislature may adopt laws that curtail some fundamental rights as enshrined in the Constitution. Thus, it is apposite to state that the right guaranteed by Section 35 of the constitution is not a right absolute as it may be restricted in certain circumstances and in accordance with the procedures permitted by law.

By the provisions of Section 35, of the Constitution, the Executive could be empowered to temporarily suspend constitutional protection for personal liberty in the event of any emergency or calamity threatening the life or wellbeing of the community. This provision is probable to protect the health of the populace during an outbreak of infectious diseases.⁴⁸

General Overview of the 1926 Quarantine Act

The 1926 Quarantine Act⁴⁹ is the primary law governing matters related to public health in Nigeria today. The Act was enacted “to provide for and regulate the imposition of quarantine, and to make other provisions for preventing the introduction into and spread in Nigeria, and the transmission from Nigeria, of dangerous infectious diseases.”⁵⁰

The Act has 8 sections and in Section 2, it lists the diseases which it covers to include: “cholera, plague, yellow fever, smallpox and typhus, and includes any disease of an infectious or contagious nature which the President may, by notice, declare to be a dangerous infectious disease within the meaning of this Act”.

Section 3 of the Act provides for the establishment of a Quarantine authority to consist of a Chairman and four other members. This includes a Medical Officer and representatives of interests of shipping and carriage.

Section 4 of the Act lists the regulations which the President can make to control the spread of an infectious disease. Section 4(c) provides that the President can make regulations for “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”.⁵¹ Section 4(e) empowers the President to prescribe the powers and duties of such officers as may be charged with carrying out such regulations under the Act. Section 5 prescribes penalties for any person who contravenes any of the regulations made under the Act. Such person shall be liable to a fine of N200 or to imprisonment for a term of six months or to both.

⁴⁸ Goitom H. Nigeria: Legal Responses to Health Emergencies. (2015) Available at www.nigeria/response/healthemergencies Accessed 10/07/17

⁴⁹ [18 of 1926. 7 of 1929. L.N. 131 of 1954) Cap Q2 LFN 2004

⁵⁰ Preamble to the Act

⁵¹ [18 of 1926. 7 of 1929. L.N. 131 of 1954), Cap Q2 LFN 2004

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Section 6 empowers the Governor General to appoint Health Officers, Visiting Officers, Quarantine guards and other employees necessary for the proper functioning of the Authority. By virtue of Section 7, the Minister is empowered to make regulations concerning the ports and coastal waters to prevent danger to public health from ships, aircraft, persons or things arriving at any place and for preventing the spread of infection by means of aircraft. The powers exercisable under section 7 include detention of ships/aircraft and of persons and things that are or have been on board them, destruction of things which are or have been on board ships or aircraft and conferring on appropriate officers of powers to board ships, aircraft and to enter premises. However, regulations made under this provision are subject to affirmative resolution of the House of Representatives and Senate.

It is an offence for any person to refuse to answer or withhold information pursuant to an enquiry, or give an untrue answer to any inquiry made under the authority of the Act.⁵² Section 12 provides that it shall be the duty of every Police constable to enforce (using force if necessary) compliance with the Act and with such orders, instructions or conditions lawfully made under the Act and in furtherance of this purpose, a constable may board a ship or enter any premises without a search warrant. The first schedule to the Act contains the Quarantine (Maritime Regulations).

Nigeria's ability to effectively deal with public health crises was tested with the outbreak of Ebola in Lagos and Port Harcourt. On the 22nd of July, 2014 the Federal Ministry of Health was alerted on a suspected case of Ebola Virus Disease (EVD) in Lagos involving a 40 year old male (an American Liberian, Mr Patrick Sawyer), travelling from Monrovia, Liberia to Calabar, Nigeria on Asky Airline via Lome to Lagos. Despite the urgent specialized barrier nursing care provided for the patient in a Lagos Hospital, the patient unfortunately passed away in the early hours of 24th July, 2014. The Federal Ministry of Health in a swift health response established the Nigeria Centre for Disease Control (NCDC) to coordinate field operations for the disease prevention and containment. One of the measures taken included Quarantine of suspected cases and isolation and barrier nursing of confirmed case.⁵³ The successful containment of EVD during the 2014 pandemic of Ebola was largely due to the use of quarantine, border controls, contact tracing, and surveillance which proved effective in containing the nationwide threat in just over 3 months.⁵⁴

⁵² S7(3) 1926 Quarantine Act

⁵³ Federal Ministry of Health (2014), Statement of the Honourable Minister of Health on strategies of the Federal Government to prevent the spread of Ebola Virus Disease at the Emergency Council on Health Meeting on Ebola Virus Disease held on 11th August 2014.

⁵⁴ Akaninyene O. Ameh S. Osifo-Dawodu E. Alade E. Ekuri S. Idris J. op.cit See generally WHO Ebola Response Team 'After Ebola in West Africa- Unpredictable risks, preventable epidemics 375 (2016) *The New England Journal of Medicine* pp. 587- 596

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The 1926 Quarantine Act has been severally described as being obsolete and out of touch with the present day realities. Under the Act, the common means of transportation is the Ship, hence there is need to incorporate modern and current practices in relation to transportation in the Act. In addition, the Act does not provide for an exhaustive definition of infectious diseases. Its definition of infectious diseases does not include haemorrhagic fevers. When compared with S361 of the United States Public Health Service Act, which empowers the United States Secretary of Health and Human Services to take measures to prevent the entry and spread of communicable haemorrhagic fevers.

The proposed 2014 Public Health Quarantine Bill

The Upper legislative chamber⁵⁵ considered a Bill aimed at replacing the 1926 Act having gone through the first and second readings. The Bill was not signed into law, before the expiration of the Seventh National Assembly. It is not certain that the present National Assembly would still consider it as a matter of priority to enact a law that would meet up with the present day realities in matters of public health and control of infectious diseases.

Quarantine and Isolation Regulations in Selected States of Nigeria

Cross Rivers State

Quarantine and isolation is regulated under the Public Health Law of Cross Rivers State.⁵⁶ As it with many other quarantine regulations of states in Nigeria, the law was enacted in 1917, and has been in existence for over one hundred years. Section 13 of the law empowers the Commissioner of Health to declare any place within the state as an infected area following the outbreak of an infectious disease. The specific provisions relating to quarantine and isolation are in section 20 of the Law and this section empowers a medical officer of health to cause any person suspected to be suffering from an infectious disease to be removed to a government hospital and be detained there until such a time when he can be discharged with safety to the public. Section 21 further empowers the medical officer to isolate any person who has had contact with any person suffering from an infectious disease to be isolated in a place provided by the government until such a person is safe to be discharged to the public. This section goes as far as enabling the medical officer of health to use force as needed to ensure compliance with the order. Persons also found to be suffering from infectious diseases may be apprehended and taken to the hospital.⁵⁷ As it is with the 1926 Quarantine Act, the Cross Rivers State Public health Law is also obsolete and out of touch with modern day realities. The penalties for violations of the Law are meagre and unrealistic. For

⁵⁵ This mainly refers to the Seventh National Assembly which lasted from May 2011- May 2015.

⁵⁶ Cap P16, Vol. 5 Laws of Cross Rivers State 2004.

⁵⁷ Section 28, Public Health Law, Cap P16, Vol. 5, Laws of Cross River State 2004.

instance, section 26 makes it an offence for any person to knowingly let or hire any house in which any person who has suffered from any infectious disease without disinfecting such house to be liable to a fine of twenty naira. Similarly, for contravention of the provision which makes it mandatory for the head of family to notify the medical officer of health that a member of the family is suffering from an infectious disease, a jail term of two years or a fine of ten naira is stipulated.⁵⁸

Lagos State

The Lagos State government attributed their efforts at containing the outbreak of EVD to the passage of the public health law in the state. The State Governor stated that without the public health law, the state would have been helpless because the law gave the state the opportunity to arrest anyone whose health constituted danger to others.⁵⁹ The Lagos State Public Health Rules⁶⁰ contain provisions similar to those of the Public Health Law of Cross River State. In the wake of the recent EVD outbreak the Law was repealed to reflect present day challenges.⁶¹

Quarantine and Isolation under the International Regulatory Framework

The International Community joined together during the late 20th century to form a world trade system. Though not yet perfect, this world trade system has enforceable norms designed to encourage global economic activity. This world trade system is to a large extent facilitated by global travel. Global travel of persons exposes many people to a range of health risks, many of which can be minimized by precautions taken before, during and after travel. For instance, the transmission of infectious diseases that are caused by newly identified organisms such as Severe Acute Respiratory Syndrome (SARS) and the re-emergence of well-known infectious diseases in undoubtedly facilitated by the global travel of persons and goods amongst other factors.⁶²

The International Health Regulations (IHR) is an international legal instrument that is binding on 196 countries across the globe, including all the Member States of WHO. Their aim is to help the international community prevent and respond to acute public health risks that have the potential to cross borders and threaten people worldwide. Specifically, the stated purpose and scope of the IHR are to prevent, protect against, control and provide a public health response to the international spread of disease in

⁵⁸ Section 22, *ibid.*

⁵⁹ Fashola: Public Health Law helped us contain Ebola. Available at www.smooth98.1fm accessed on 5/16/18.

⁶⁰ Cap P25, Laws of Lagos State 2003.

⁶¹ Public Health Law of Lagos State 2015

⁶² Gostin L.O. *Global Health Law* (Cambridge, Harvard University Press, 2014) p.76

ways that are commensurate with and restricted to public health risks and which avoid unwarranted interference with international travel and trade.⁶³

Nigeria is a member country of the WHO and a signatory to the IHR. Thus, Nigeria is bound by the requirements of the regulation. The IHR, which entered into force on 15 June 2007, require countries to report certain disease outbreaks and public health events to WHO. Building on the unique experience of WHO in global disease surveillance, alert and response, the IHR define the rights and obligations of countries to report public health events, and establish a number of procedures that WHO must follow in its work to uphold global public health security. IHR also includes specific measures at ports, airports and ground crossings to limit the spread of health risks to neighbouring countries, and to prevent unwarranted travel and trade restrictions so that traffic and trade disruption is kept to a minimum. The IHR further introduces a series of health documents, including ship sanitation certificates and an international certificate of vaccination or prophylaxis for travellers.⁶⁴

Quarantine and Isolation in Nigeria: The Way forward

The following recommendations are proffered to enhance the practice of isolation and quarantine in Nigeria.

1. Public health laws need to be flexible enough to permit appropriate responses to new epidemics and new circumstances. Our laws are extant and out of touch with present day realities. The Public Health Act should be re-enacted as a matter of urgency. Legislation in advanced countries have been amended to take into account modern day challenges and scientific knowledge. By the provisions of the 1926 Act, newly emerging haemorrhagic fevers are not catered for as infectious diseases that attract public health emergency responses. In addition, the 1926 Act only recognizes sea travel as the only means by which individuals can gain entry into the country. The Act has no provisions whatsoever for penalizing or sanctioning erring citizens who flout quarantine and restriction orders.
2. Legal authority and public health strategies need to be in place for dealing with individuals who violate the law, and judges and law enforcement officials should be educated about the relevant enforcement provisions of public health laws. Studies need to be undertaken to determine if incentives or penalties could promote compliance with quarantine and isolation orders.

⁶³ Ibid at p.77

⁶⁴ World Health Organization *International Health Regulations 2005*, Second edition (Switzerland, WHO Press 2008) See also WHO (2016) Strengthening health security by implementing the International Health Regulations 2005. Retrieved from who.int/ihr/about/en on 12/0717

3. Public health officials and professionals need to be familiar with the statutory and regulatory procedures for invoking their (or the governor's) authority for quarantine and isolation as well as the mechanisms to enforce directives.

Conclusion

The obligation of states to protect the health of their populations is sacrosanct to none other. For example, the Constitution of the World Health Organization (WHO) declares that the enjoyment of the highest attainable standard of health is one of the fundamental rights of every human being without distinction of race, religion, political belief, or economic or social condition and that governments have a responsibility for the health of their peoples which can be fulfilled only by the provision of adequate health and social measures. In 1978 the Declaration of Alma-Ata reaffirmed that health is a fundamental human right and that governments have a responsibility for the health of their people which can be fulfilled only by the provision of adequate health and social measures.⁶⁵ However, the risk individuals face depends to a large extent on both the environment they inhabit and the disease's prevalence in the populations they encounter. With many communicable diseases, individuals benefit when others in their community are vaccinated or treated for an infectious disease. On the other hand, an individual's own infection may increase the risk to others. As a result, infections are never purely private affairs; if their risk is to be reduced, collective action is essential. Most often the state is in the best position to provide, or at least create the conditions necessary for, such ameliorative actions. For this reason, governments have a responsibility for protecting their populations' health, especially from infectious diseases. But in so doing, they need to be guided by the dictates of the law to prevent arbitrary misuse of power.

⁶⁵ Parmet W. *op.cit.*p. 9