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GUEST EDITORIAL NOTE

Promotion, Protection and Fulfilling of Human Rights and Business Halted: Covid-19 and the Need to Brace up for the New Normal

ARTICLES

The Impact of Nigeria's Federal Structure on the States' Response to COVID-19 and Experience in Ethiopia

An Appraisal of the Legal Impacts of Covid-19 on the *Almajiri* Children in the Northern Part of Nigeria

Combating the Impact of Covid-19 on Child Labour through Effective Enforcement of Laws in Nigeria and Ethiopia

Child Protection and the Unseen Challenges of the Covid-19 Pandemic in Ethiopia and Nigeria

An Overview of the Legal Implications of Covid-19 on Performance of Contractual Obligations in Ethiopia

Selected Court Cases/የተመረጡ ፍርዶች

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Dedication

This volume of the IJELS is dedicated to the memory of Dr. ANDARGACHEW TIRUNEH, who was the ex-colleague of the School of Law, University of Gondar, and ex-member of the Editorial Board of this Journal and who died following the intrusion of the COVID-19 pandemic.

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GUEST EDITORIAL NOTE

PROMOTION, PROTECTION AND FULFILLING OF HUMAN RIGHTS AND BUSINESS HALTED: COVID-19 AND THE NEED TO BRACE UP FOR THE NEW NORMAL

Azubike Onuora-Oguno*

Oluwatosin Igbayiloye**

INTRODUCTION

The articles contained in this special issue are papers selected after peer review from the AFRICA IN AN EMERGING ERA – Africa Union (AU) AGENDA 2063 AND POST COVID-19 THREATS conference that held from 12-13 May 2020. The premise of the conference was to investigate the effect of the poor standard of living and respect for human rights in the continent despite Africa's potentials as the continent with the largest land mass and growing population. Particularly with the pandemic of COVID-19, which graced the world in December 2019. Economies, entertainment, education, health and virtually all sectors of the world beat a retreat. Jobs were lost, thousands lost their lives in the fight against the virus and because of extra judicial killings, contracts were suspended, oil prices crashed, and developmental projects are on a halt. While the whole world is prey to COVID-19 pandemic, Africa have been cited by development authorities to be most vulnerable. Experts were quoted in some quarters to predict that the effect of the COVID-19 on Africa would be excruciating. The assumption is premised on the level of poverty, state of health facilities and poor educational infrastructure.

1. CONTRIBUTING AUTHORS' PERSPECTIVES

This section of this Journal would take a peep into the other arguments advanced by other others in this special issue that highlights the numerous and diverse challenges that the pandemic caused with particular focus to the situations in Nigeria and Ethiopia.

1.1 Governance Structure and COVID-19

The implication of a federal system suggests the possibility of different approaches to issues that are majorly included in the concurrent legislative lists in constitutions. In this instance, the

response to COVID-19 is one of such situations that require divergent response mechanism.¹ According to Sambo and Adekilekun, “despite the remarkable multiple institutional designs, constitutional and statutory provisions” all lead to some form of intense conflict on what the best approach could be in managing the pandemic, as clearly shown in the approach on *Almajiri* children which left them more exposed to the negative effects of the pandemic. This conflict finds a leaning in political cultures and leadership style.² While some leader adopted various approaches and techniques in the quest to contain the pandemic, some were slow to proceed, and thus severe damages were already experienced before responses from leaders. This was hugely linked to the distrust that several individuals had on government officials.³ The question therefore that should be resolved is “was there a need for constitutional review to enable the governments to be able to deal with the pandemic? In response to the above question, the Sambo and Adkilekun identify the importance to ensure “effective constitutionalisation of the objectives of federalism in the constitution” to be able to ensure the protection of the rights of individuals. Sadly, it is concluded that the present federal structure has contributed negatively to the states' responses to the fight against Covid-19. The uncoordinated actions of the state and federal government agencies”. Clearly identified is also the need to ensure that power structure is clearly defined to ensure that there are no disruptions in the power structures in the states. For instance, the discrepancy in the various pandemic curfews is a clear example. In several states, domestic violence increased during the pandemic and harsh economic realities.⁴

Another clear disparity is the distribution of economic relief which gave rise to variety of corrupt and sharp practises. In Nigeria for instance, during the pandemic the ENDSARS movement erupted with attacks on warehouse alleged to have been secret stores for COVID-19 relief materials.⁵ Other issues presented in the police brutalities and enforcement procedure for the various lockdown procedures in States.⁶ The clear indication here is that it is practicable that true federalism is factored in the constitutions to clearly define the power sharing models and governance structures so as to allow people to benefit from the government and know whom to hold liable at every point.

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¹ P Adepoju (2020) ‘Politics gets in the way of Nigeria's COVID-19 response’ available <https://www.devex.com/news/politics-gets-in-the-way-of-nigeria-s-covid-19-response-97720> (accessed June 15, 2021).

² *Ibid.*

³ Chatham House (2020) ‘Nigeria’s Political Leaders Need to Win Trust to Tackle COVID-19’ available at <https://www.chathamhouse.org/2020/04/nigerias-political-leaders-need-win-trust-tackle-covid-19> (accessed June 10 2021).

⁴ See generally, Gebrewahd, Gebremeskel Tukue, Gebreamlak Gebremedhn Gebremeskel, and Degenah Bahrey Tadesse. "Intimate partner violence against reproductive age women during COVID-19 pandemic in northern Ethiopia 2020: a community-based cross-sectional study." *Reproductive health* 17, no. 1 (2020): 1-8; Fawole, Olufunmilayo I., Omowumi O. Okedare, and Elizabeth Reed. "Home was not a safe haven: women’s experiences of intimate partner violence during the COVID-19 lockdown in Nigeria." *BMC women's health* 21, no. 1 (2021), at 1-7.

⁵ T Obiezue (2020) ‘Nigerians Justify Massive Looting of COVID-19 Supplies’ available <https://www.voanews.com/covid-19-pandemic/nigerians-justify-massive-looting-covid-19-supplies> (accessed June 10, 2021).

⁶ Coronavirus: Security forces kill more Nigerians than Covid-19 Available at <https://www.bbc.com/news/world-africa-52317196> (accessed June 1, 2021).

A good resonating point is the autonomy granted for state policing architecture which is permitted in the Ethiopian Constitution as against the situation in Nigeria.⁷ Another high point is as seen in the structure that allows each tier of government in Ethiopia to ensure that decisions are tailor made to help the curbing of the virus⁸ as against the blanket approach by the Nigerian central government to place several individuals in a place of hardship. Consequently, it is important to ensure that federating units are well equipped to act briskly in the interest of persons within their regions.

1.2 COVID-19 and Vulnerable Groups

According to Abdulrazaq and Ayinla, “an appraisal of the legal impacts of COVID-19 on the *Almajiri* Children in the Northern Part of Nigeria” the pandemic ensured a stiffer socio-economic situation for vulnerable groups and in this instance, the *Almajiri* in northern Nigeria. The authors argue that the restrictions on movement affected the *Almajiri* whose major reliance and live style was a mobile one. It is very fundamental to note that the education of the *Almajiri* and fending for food is one that thrives on constant itinerant lifestyle. However, the COVID-19 ensured this was impossible. Considering that street begging lifestyle of the *Almajiri* had strong economic support from travellers. Thus, the ban on motor parks impacted directly on the survival of this vulnerable group. Another factor that was exacerbated by the virus was the rate of spread of the virus in closed spaces which the *Almajiris* had to operate on in the pandemic heights. The susceptibility of *Almajiri* children into violence had the propensity to increase as previous studies show that they are soft targets for recruitment into the nefarious activities of groups like *boko haram*.⁹

A way of ensuring the resolution of the impasse is to ensure an equitable implementation of policies and laws by the Federal government and the states affected in the North. These includes the stop of the blanket repatriation of *Almajiri* students across the states without adequate provisions of shelter and food.¹⁰

The disparity in state response to the pandemic was adequately examined in the article “the impact of Nigeria’s Federal structure on the states’ responses to COVID-19 and the Experience in Ethiopia”.

⁷ The Changing Face of Ethiopia's Police Force available at <https://issafrica.org/amp/iss-today/the-changing-face-of-ethiopiass-police-force> (accessed June 1, 2021)

⁸ United nations Ethiopia Report available at https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&cad=rja&uact=8&ved=2ahUKewiJhfe68pxAhUNDmMBHRtIdgMQFjABegQIAxAE&url=http%3A%2F%2Fwww.undp.org%2Fcontent%2Fdam%2Fundp%2Flibrary%2F covid19%2FUN-Socio-Economic-Impact-Assessment-FINAL.pdf&usg=AOvVaw0_kqf_IV0QWjCtVLmI8Pl3 (accessed June 1, 2021).

⁹ Onuora-Oguno, Azubike, and Mariam Adepeju Abdulraheem-Mustapha. "Beyond the Law to Socio-Legal Intervention: The Boko Haram Insurgency and the Nigerian Child." In *Boko Haram and International Law*, pp. 371-389. Springer, Cham, 2018.

¹⁰ Coronavirus in Nigeria: The child beggars at the heart of the outbreak available at <https://www.bbc.com/news/world-africa-52617551> (accessed June 15 2021)

1.3 Mobilising Law for Effective Combat of the COVID-19 Virus

Building on the two contexts above, the need to ensure appropriate legal stance to ensure a positive drive of various arms of governance in coping with pandemics of this nature is paramount. The need to examine the impact of COVID-19 on children receives attention by Aimienrovbiye and Otasowie. In extrapolating how the impact of COVID-19 on children through effective enforcement of laws in Nigeria and Ethiopia can be mitigated, the authors identify child labour as a serious global problem which seems to have some stringent hold on Africa. This is traceable to the high level of poverty on the continent. The article recognizes that COVID-19 presents poorly on children directly but underscores the impact that it has indirectly.

For instance, the authors identify the closure of schools as contributing to high level of drop out from schools in Ethiopia, which affects access to education and also harsh economic situation on parents and guardians of children who are unable to work thus forcing children to engage in menial works to contribute to household incomes.

The author's identify common international law treaties that both Ethiopia and Nigeria have ratified alongside national laws that could be relied upon to increase the protection of children from the harsh impact of COVID-19. The United Nations Convention on the Rights of the Child (UNCRC) and the African Charter on the Rights and Welfare of the Child (ACRWC) and International Labour Convention are identified as been very pivotal to achieving this if implemented effectively. Municipally, the Constitution of both Nigeria and Ethiopia; Labour Acts, Revised Family Code are laws that are further identified by the authors.

The authors argue that despite the existence of the above-mentioned laws, "the eradication of child labour in the country has remained a mirage." This situation is identified to be fuelled by lack of political will and non-prosecution of child labor related cases.

The authors conclude that "if sustainable future must be guaranteed, then child labour, a phenomenon which affects the all-round development of the child must be eradicated" stating that the existence of laws without enforcement makes the laws worthless. The need for government to map out better strategies for the enforcement of child labour laws in Nigeria and Ethiopia is a major recommendation advanced by the article.

Clearly, the positive mobilisation of the law would ensure that every individual is protected. Flowing from the above, it becomes imperative to examine the protection of the child in pandemic situations. Consequently, in examining "child protection in a Pandemic" Umeh recalls that "child protection concerns the prevention, protection and fulfilment of all rights that accrue to children". Importantly, to achieve the above obligations, it is key to adopt a multisectoral collaborative approach. This implies ensuring that the education system is well protected. In the case of the pandemic, the sudden migration to e-learning is one that requires governments proactiveness. Additionally, considering job loss and loss of economic livelihood,

children would naturally be subjected to further disadvantage and the implication of this is that states must ensure that no obstacle to the realisation of the rights to education must be allowed to subsist. The importance of ensuring that the health sector is well captured in efforts on which international solidarity could thrive is advanced here as a key to ensuring the protection of rights.¹¹

The danger of the pandemic is further captured succinctly by Umeh when it is reiterated that “For many children in Nigeria and Ethiopia, growing economic vulnerabilities will intensify the likelihood of child labour, child marriage and child trafficking”. The reality of this is clearly shown by statistics that several children were forced into a closed space with violators as they had no where to turn to for help.¹² There is therefore the utmost need to ensure that structures are put in place to alleviate these challenges going forward by making relevant strategies in the policy making and implementation of states.¹³

Finally, to achieve all the above, the importance of the Legal Implication of COVID-19 is important to be put in perspective especially as it affects businesses and livelihood of persons. According to Demamu in examining the Legal implications of COVID-19 on performance of contractual obligations in Ethiopia the need to ensure that individuals are well informed of the implication of existing laws is key as this would enable effective planning and aid implementation of businesses. This can be reflected in the various mode of contractual agreement between individuals and corporations. Some of the identified laws by the author includes legal measures in “the Council of Ministers’ Regulation No. 466/2020, Ministry of Labor and Social Affairs’ COVID-19 Workplace Response Protocol, and Ministry of Finance’s Tax Debt Remittance Directive No 64/2012”. While noting the efforts by the government to ensure that the public are aware of the applicable legal regime and restrictions during the high peak of the pandemic, the author notes that the strategies adopted by the Ethiopian government was not sustainable or implementable. This is advanced because “regional and local governments failed to follow and supervise the implementation of these measures.” Another identified reason is the impact of poverty that led to people daring the restrictions in search of daily living.¹⁴

The effect of this is that businesses experienced increasing “hardships and difficulty to meet contractual obligations being under pressure to perform contractual obligations but at risk of breaching them”. Sadly, despite efforts made by countries like China to mitigate the impact of COVID-19 on the business and contracts of its companies, the Ethiopian “government, however, did not issue any specific directives or take any measure to ease the impacts of the

¹¹ UN expert says global coordination and more equitable sharing of COVID-19 vaccines key to recovery available at <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=26683&LangID=E> (accessed June 1, 2021)

¹² Petrowski, Nicole, Claudia Cappa, Andrea Pereira, Helen Mason, and Rocio Aznar Daban. "Violence against children during COVID-19 Assessing and understanding change in use of helplines." *Child Abuse & Neglect* (2020), at 104757.

¹³ Arantes de Araújo, Liubiana. "The potential impact of the COVID-19 pandemic on child growth and development: a systematic review." (2020).

¹⁴ *Ibid*

pandemic on the performance of contractual obligations, except for the Federal Housing Corporation which has declared a 50% reduction of house rent.”

The article further examines such concepts of a COVID qualifying as a *force majeure* and novation of contractual obligations. Conclusively, the paper identifies that COVID-19 has certainly created an unprecedented situation wherein businesses are facing many challenges resulting in significant losses if not addressed properly.

SUMMARY

Reflecting on both the presentations and papers that are accepted for publication in this special issue bring to the fore a common agreeable stance that the COVID-19 Pandemic hugely impacted on lives globally. Particularly, Africa had a toll perhaps not on the number of fatalities but on the realisation and progress of other development efforts. From education to health, the governance, policy formulation and regulation of business transactions, a big halt occurred in the progress. Vulnerable groups like the *Almajiris*, children and women were all impacted. The need to ensure that law and policies are reappraised to ensure effective responses is another conclusion that resonates through the various articles. The importance of budgetary and security policies is also identified to be key in the quest of curbing and containing the effects of the virus.

Finally, a call for action on both national and AU regional frameworks are identified to hold strong potentials for the recovery of Africa especially Nigeria and Ethiopia going forward.

THE IMPACT OF NIGERIA'S FEDERAL STRUCTURE ON THE STATES' RESPONSES TO COVID-19 AND THE EXPERIENCE IN ETHIOPIA

Abdulfatai Oladapo Sambo*

Mubarak T. Adekilekun**

Abstract

Nigeria discovered her index case of SARSCOV-2 (COVID-19) in March, 2020. Despite the remarkable multiple institutional designs, constitutional and statutory provisions, intense conflicts, endemic disunity, systemic struggle for dominance in the fight against COVID-19 continues unabated. This often leads to the pessimistic conclusion that the conflicts will continue to have negative impacts on the fight against COVID-19. Using doctrinal method, this paper acknowledges complementary effects of political culture and leadership on conflicts but argues that deficiency in constitutional and legal architecture generally and institutional designs of the Federal structure largely contributed to the conflicts, improper coordination and disunity in the fight against COVID-19 by the government in Nigeria. This was juxtaposed examining the experience in the federal structure of Ethiopia. The paper concludes that a properly coordinated Federal structure in Nigeria has the propensity to fight the Corona Virus or other such future epidemic. With renewed vigour for the alteration of the Constitution, effective constitutionalisation of the objectives of federalism in the constitution is an alternative to the present legal order. This paper focuses on these constitutional and institutional deficiencies and suggests the needed reforms in these spheres.

Keywords: Federalism, Covid-19, States' Responses, Nigeria, Ethiopia

INTRODUCTION

The World, since late 2019, has witnessed upsurges in COVID-19 Pandemic. Nigeria discovered her index case in March, 2020. There have been global efforts to construct a sustainable global solution to this pandemic that has brought nearly all nations of the world to their knees in terms of protection of human lives and economic survival. Central to these efforts in Nigeria is the development of a coordinated national approach to resolving the challenges posed by COVID-19. One of the efforts is to redesign the constitutional framework of federalism to reduce the

incidences of conflicts between states governments and federal government in solving the problems of corona virus. This federal structure, as well as its institutional design, has proved to be problematic, vague and vexatious.¹ Applying this present federal structure in the fight against Covid-19 has been very challenging as will be shown in the course of this study.

Nigeria has a federal arrangement in which governmental powers are shared between the Federal and the states governments. The constitution is supreme with its provisions having binding force on all authorities and persons throughout the country.² Nigeria is constitutionally regarded as one indissoluble and indivisible sovereign state³ which cannot be governed except through the provisions of the constitution.⁴ The country consists of 36 states, a Federal Capital Territory (FCT) as well as seven hundred and sixty-eight local government areas within the states and six area councils in the FCT.⁵ The FCT is treated as a state with its area councils as its local governments, and the Presidency, the National Assembly, the Federal Courts as its governmental institutions.⁶ The Federal government operates within the exclusive legislative list as well as the concurrent list while the states are limited to matters in the concurrent list and arguably the residue. The states are not allowed to exercise their executive powers in such a way as to impede or prejudice the exercise of federal executive power, or in such a way as to prejudice the existence of the Federal Republic of Nigeria or in a way as to endanger the assets of the Federal government in that state.⁷

Despite the remarkable multiple constitutional and statutory provisions, as well as institutional engineering on Federal structure, intense conflicts, endemic disunity, systemic struggle for dominance in the fight against COVID-19 continues unabated. It seems to be more of politics than the fight itself. Balancing the two main important principles of federalism i.e.

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¹ Kenneth S. Carlston, *The United Nations and World Unity*, 3(2) *Wyoming Law Journal*, 57-65 (2018).

² Section 1(1) & (3) Constitution of the Federal Republic of Nigeria (CFRN), 1999 (as altered).

³ Section 2 CFRN, 1999.

⁴ Section 1(2) CFRN 1999. This means that the constitution is the ultimate standard by which the legal validity of laws and action must be tested: *Balarabe Musa v Independent National Electoral Commission* (2003) 11 WRN 110 at 156-157.

⁵ Section 2(2) and section 3(1)-(6), CFRN, 1999.

⁶ See sections 2(1), 3(4) and (4) and 297-304 CFRN, 1999.

⁷ See section 5(3) of the Constitution.

National Unity in diversity and states autonomy in the fight of Covid-19 is very difficult. For instance, some states like Ogun and Kano relax lock downs contrary to the presidential directives. Rivers State also arrested some agents of Federal government despite being granted permission by the Federal Government. Some states have also condemned the Federal Government for giving grants of about 5 Billion Naira to Lagos State to fight the pandemic. A state in the North Central Nigeria which also has boundary with the Federal Capital Territory, Kogi State also threatened to arrest or quarantine the staff of the Nigerian Centre for Disease Control if they come to the state for any national assignment. Others have accused the NCDC of not giving enough attention to their states in the fight against COVID-19 thereby resulting to deaths of helpless citizen. All these tend to show lack of proper coordination in the fight against COVID-19. Yet, efforts are still being made to flatten the curve of this dangerous contagious pandemic in the country. For instance, NCDC has been very active in giving awareness, contact tracing, testing and treatment of patients who test positive for corona virus.⁸

Explanations for the intractability of grand conflicts, endemic disunity, systemic and catastrophic struggle for dominance in the national polities have centred on political culture and leadership as factors behind the gap between the need to promote national unity in the fight against COVID-19 and the pervasiveness of public malfeasance in the fight against the virus. This often leads to the pessimistic conclusion that the conflicts will continue to have negative impacts on the fight against COVID-19 as the constitution and the law can do little or nothing to prevent or reduce the conflicts, pervasive disunity, general and ruinous struggle for political dominance in the fight against COVID-19.

This paper acknowledges the interactive and complementary effects of political culture and leadership on conflicts, prevalent disunity, systemic and appalling struggle for dominance in the fight against COVID-19 in Nigeria. However, the paper argues that deficiency in constitutional and legal architecture generally and institutional designs of the Federal structure largely contributed to the conflicts and disunity in the fight against COVID-19 and improper coordination between States and federal government. With renewed vigour for the alteration of the constitution, effective constitutionalisation of the objectives of federalism in the constitution is an alternative to the present legal order. This paper focuses on these constitutional and

⁸ Covid-19 Nigeria, <https://covid19.ncdc.gov.ng/>. Accessed on 25th July, 2021.

institutional deficiencies. It suggests that constitutional and institutional reforms are required in these spheres in order to mitigate the conflicts and endemic disunity between federal government and states thereby saving total collapse of the fight against COVID-19 and other future epidemic or pandemic in the nation.

Ethiopia presents an interestingly unique experience in the dealing between the federal and state governments. Nigeria and Ethiopia are comparable because both operate federalism as a system of government. Nigeria is the most populous African nation while Ethiopia is the second. Both countries have people who are fundamentally divided across religion, ethnicity, tribe and culture. They both operate constitutional democracy. Nevertheless, the Nigeria operates a presidential system while Ethiopia operates a parliamentary system of government. Although the study is not of comparative nature per se, lessons can be learnt from the experience of Ethiopia in terms of constitutional structure of the country which leads to little or no conflicts between the agencies of federal government and the state governments in this period of COVID-19.

To achieve the above, this paper adopted doctrinal methodology of legal research where primary and secondary sources of materials were subjected to thorough content analysis. This paper is also divided into five segments apart from the introduction. The first segment examines the nature of Nigeria's federalism. The second part analyses the Nigeria's Federal structure and the challenge of COVID-19. The third part analyses the experience of Federal structure in Ethiopia. The fourth segment discusses the future of Federal principle and agenda for reforms. The last part concludes and makes appropriate suggestions.

1. NATURE OF FEDERALISM

This segment will analyse the nature of federal system by examining the mode of power sharing, the notion of autonomy of each tier of government and its relationship on national cohesion as well as the principle of equality of status of government.

2.1 Methods of Power Sharing

The mode of power sharing may be in terms of listed powers and the residue.⁹ The listed power may be exclusive to the Federal government and other lists may be exclusive to the states. In some situations, there may be three sets of enumerated powers. One may be exclusive to the Federal, one exclusive to the state and another will be concurrent to both the state and the federal governments. Another situation is that enumerated powers may be exclusive to one of the tiers and have concurrent lists to be shared among the two tiers. Although the executive of a state may be permitted to execute the laws of the federal government in some situations, the sharing of executive power usually goes in the same pattern with that of the legislature.

In Nigeria, the technique of sharing power is contained in Section 4 of the Constitution. The National Assembly is empowered to make laws for the peace, order and good government of the federation or any part of it in respect of matters contained in the exclusive legislative list as contained in the Part I, Second Schedule to the Constitution. A total of Sixty-Eight (68) items are listed under the exclusive list including matters incidental to items one-sixty six as well as other matters contained in the provision of the Constitution.¹⁰ These items are too numerous and wide to be put under the exclusive list. However, the Constitution also allows the National Assembly to make laws with the state houses of Assembly in matters of concurrent list as contained in Part II of the second schedule to the constitution.¹¹ About twelve items are stated therein. Nevertheless, in case of conflict between the laws validly made by the National Assembly and the ones made by the State House of Assembly, the ones made by the National Assembly will prevail and that the State House of Assembly shall be void to the extent of its inconsistency.¹²

The execution of laws also follows the similar patterns of matters contained in the various lists. However, the executive power of the federation is vested in the President.¹³ He is empowered to maintain and execute the constitution and the Acts of the National Assembly.¹⁴ The President can also execute matters for the time being not yet legislated upon but contained in

⁹ Matters not contained in the legislative list.

¹⁰ Part I, Second Schedule to the CFRN 1999.

¹¹ Part II, Second Schedule to the CFRN 1999.

¹² Section 4(5) of the CFRN 1999.

¹³ Section 5(1)(a) of the CFRN 1999.

¹⁴ Section 5(1)(b) of the CFRN 1999.

the exclusive list or concurrent list.¹⁵ Similarly, the Governor of each state is empowered to maintain and execute the constitution in his state as well as matters contained in the concurrent list as enumerated by the Constitution.¹⁶

It can be said that simplicity can be achieved and uncertainties and conflicts between the federal and state governments can be eliminated where the constitution provides for only one list of matters exclusive to the states or federal government while leaving the residue to the other government. However, on a scale of balance, having matters also listed in the concurrent matters has benefits which seem to outweigh conflicts and uncertainties associated with concurrent provisions.

One advantage of a concurrent list is that it increases flexibilities in legislation. This is particularly true of new federations. In this circumstance, it allows the federal government to suspend the exercise of its power in an area until a time when the matter is of national importance. Yet, it does not prohibit any state which is ready from legislating in the meantime on its own volition.¹⁷ Second, it gives room for national uniformity in legislation. Here, the federal government can provide guideline and allow the states to give details or adapt the legislation or guidelines to fit their local circumstances. This is usually common in legislation relating to social services. Also, a concurrent list permits the federal government to step into what is usually an area of states' activity in order to provide remedies for mainly regressive states or for complications arising from states legislation which affect other states. Similarly, concurrent list may ease comparative federalism by inspiring joint rather than autonomous actions in these spheres. Lastly, such a list may lessen the need for complex, tiny sectors of individual functions assigned to the exclusion of one government.¹⁸

Nevertheless, the issue of concurrent object usually gives rise to the application of the doctrine of covering the field. In other words, since the laws validly made by the National Assembly is to prevail in situation of conflicts with the state's laws, where the federal government comprehensively or exhaustively makes laws on a concurrent area, the field is said to be *ipso facto* covered. The state government is then precluded from entering the covered field.

¹⁵ Section 5(2)(b) of the CFRN 1999.

¹⁶ Section 5(2)(a)(b) of the CFRN 1999.

¹⁷ Watts, New Federations: Experiments in the Commonwealth 174-5 (1966).

¹⁸ *Id.*

The constitutionality of this doctrine is doubtful. The reason is that since the constitution speaks in terms of conflict,¹⁹ there has to be a legislation of both governments before it can be meaningfully said that a conflict exists. There will then be basis for comparison to see whether one conflicts with the other. Moreover, the term 'inconsistency' as used by the constitution implies some incompatibility. One must be at variance with the other in their provisions. It is not adequate that two laws make different provisions without contrariety. Also, there is room for further regulations not inconsistent with the earlier provisions. It is not easy to conceive a situation where legislation will be comprehensively and exhaustively drafted in a way that will not give room for further regulation. Otherwise, principles implied in covering the field theory may defeat the very purpose of concurrent list provided for under the constitution.

1.2 Autonomy of Each Tier of Government and National Unity

Autonomy is one of the most important fundamental objectives of federalism. It presumes that each level of government has its separate existence and is independent from the control of the other. The physical and legal existence of the government apparatus is essential. This includes separate existence of legislative arms, executive arm, ministries, agencies and departments. However, this distinctiveness does not have to extend to all machinery of government. For instance, there can be one police and the courts. And as earlier stated, the executive arm of one tier may be allowed to execute the law of another. Nevertheless, autonomy implies that each government must be able to execute its will or conduct its affairs as an autonomous entity that is free from the control of the other. Thus, the common arrangement during the military era where the Head of State appointed Military administrators for various states is not a federal system.

It can be said that the 1999 Constitution provides a measure of autonomy for each tier of government. The federal and state apparatus of government are distinct from the other. Each has its own separate executive arm of government.²⁰ However, there can only be one police force for the Federation²¹ organized and administered in accordance with the Act of the National Assembly.²² The Inspector General of Police (IGP) is appointed by the President on the advice of the Nigeria Police Council (of which the President is the Chairman) from among the serving

¹⁹ Section 4(5) of the CFRN 1999.

²⁰ Sections 130-175 for the Federal Executive and 176-212 CFRN 1999.

²¹ Section 214(1) CFRN 1999.

²² Section 214(2) CFRN 1999.

police force in Nigeria.²³ The Commissioner of Police in each state is also appointed by the Police Service Commission.²⁴ The IGP is bound by the instruction of the President or Minister on his behalf.²⁵ The State Commissioner of Police may be given lawful instructions by the state governor but the obedience is subject to higher authority of the President or Minister in that behalf.²⁶ The courts are also common to both as they are courts, especially the Superior courts of records, established for the federation.²⁷

One other area in which autonomy is present is that federal government is not able to override the state in all matters. The Constitutions, as earlier stated, provide for exclusive and concurrent matters. This is to avoid undue interference. Whether federal laws will prevail in case of conflict with state laws depends on whether the federal law is validly made.²⁸ Thus, there are instances where the courts have resolved the issue of inconsistency of laws made by the federal as well as the ones made by the state government in favour of the state²⁹ and in favour of federal government.³⁰ This is clearly different from the 1951 Macpherson's Constitution which allowed the National government to override the regions in all matters.³¹

Autonomy also implies that the national government should not be able to legally remove or appoint the elected or representative organs of the state or regional government. This was the situation under the 1960 Constitution in which the national government could legally remove the representative organs of government and even temporarily takeover the administration of regional government. This is contrary to the principles of federalism which prevents a situation where national government will become instrument of total domination and so governing the local affairs of states. Under the 1999 Constitution, federal government cannot appoint the apparatus of the organs of government of a state. It is done by states themselves. It cannot also remove democratically elected representatives of the state. The procedure for removing the

²³ Section 215(1)(a) and 216 (2) CFRN 1999.

²⁴ Section 215(3) CFRN 1999.

²⁵ Section 215(3) CFRN 1999.

²⁶ Section 215(4) CFRN 1999.

²⁷ Sections 6 and 230-285 CFRN 1999.

²⁸ Section 4(5) of the CFRN 1999 uses the word 'validly' in relation to the laws made by the National Assembly.

²⁹ Attorney General of Lagos State v. Attorney General of the Federation (2003) 12 NWLR (Pt833) at 118-119.

³⁰ Attorney General of Ogun State v. Aberuagba (1985) 1 NWLR (Pt. 3) 395.

³¹ Ben. O. Nwabueze, *The Presidential Constitution*, 40-41 (Enugu and Lagos: C. Hurst and Company London with Nwamife Publishers, 1982).

governor is also by the state apparatus.³² The state legislatures also run their affairs independent of the National Assembly except in extreme situations where it is practically impossible for the state assembly to sit.³³

One other implication of autonomy is that neither the federal government nor the state government should be able to confer or impose additional duties or responsibilities on the other without the consent of the Chief executive. This important principle of federalism was enshrined in the 1963 Constitution, specifically in Sections 99 and 100 of the Constitution. These provisions precluded the President as well as the federal parliament from imposing additional duties or responsibilities on the governors of the regions of regional legislatures without the consent of the governors. In the same vein, the regional governors and legislatures were not allowed to impose additional duties or responsibilities on the nation's chief executive and parliament without the consent of the chief executive. Clearly, these provisions have been omitted from the 1979 and 1999 Constitutions. However, the effect of such omission has been held not to affect the operation of the principle. In *Attorney General of Ogun State v. the Attorney General of the Federation*,³⁴ the Supreme Court held that neither the federal nor state government can confer additional responsibility on each other. Similarly, Uwais JSC (as he then was), speaking for the Supreme Court noted that:

“As a general principle of constitutional law, it is implicit in the character of the federal constitution that neither the Federation nor the States could make laws imposing extra burden on each other. This is because legislative power in a true federation usually involves division and limitation of governmental powers.”

Thus, notwithstanding the omission of this federalism principle in the 1999 Constitution, the gap seems to be filled by the Supreme Court as neither the federal nor the state government can impose or confer additional duties, burdens or responsibilities on the other without the consent of the chief executive.

Moreover, autonomy also implies that each state should have its own constitution. This is because a government may sometimes presuppose that states should have their constitutions.

³² See sections 188 and 189 of CFRN 1999.

³³ Section 11 CFRN 1999.

³⁴ (2002) 18 NWLR (Pt.798) 232.

This was the opinion of the Judicial Committee of the Privy Council when it held that: the natural and literal interpretation of the word (i.e. federal) confines its application to cases in which these states, while agreeing on a measure of delegation, yet in the main continue to preserve their original constitutions.”³⁵ This was the system of constitution adopted by Australia when it federated in 1900. This is even the USA constitutional form from which modern federation copied. The Privy Council also noted that the loose definition of federalism still admits that such state should have their constitutions.

However, the situation in Nigeria is unique. It shows that, like many later federations, it is possible for a government formerly under a unitary system to form a federal system by devolving some of its power to two or more independent state governments. In noting the uniqueness, the 1951 Nigerian Constitution Drafting Committee said: The federal governments of USA, Canada, and Australia have been built on the basis of separate states surrendering to a federal government some of their powers for the benefit of all. The reverse process on which we are engaged-that of the creation of a federal government by devolution- is a political experiment for which...there is no precedent to guide us and we are very conscious of the dangers inherent in such an experiment.³⁶ Thus, it is not necessary to have a separate constitution in a federal system which devolved from a unitary state. This was why the 1951-54 Constitution which established a federal system did not have separate constitutions for the regions. It was one constitution for the nation. It was the 1960 Constitution that introduced new constitutional forms established separate constitutions for the federal and each region. This was contained in the schedules annexed to the independence order in council. Each thus had a common source of authority, with the federal Parliament given the power to repeal the 1960 Constitution. This paved way for the Republican Constitution of 1963. Nevertheless, the 1979 and 1999 Constitutions reverted to the 1951-45 form of constitution by having a single constitution for the federation.

Furthermore, autonomy also implies that in sharing governmental powers, the preponderance of power should not tilted in such as a way as to enable the federal or state government so powerful as to impose its will on the other in areas of operation of the other. In

³⁵Attorney General v. Colonial Sugar Refining Co.Ltd (1914 AC 237) at 253.

³⁶ Committee’s Report (1951) 3.

other words, in matters of local concern which is constitutionally meant for the state, the federal government should not be able to impose its will on the state. Similarly, in matters of general concern, such as foreign affairs, which are within the exclusive preserve of the federal government, a state should not be so powerful as to be able to impose its will on the federal government. There has to be some fine and fair balance of power in this regard. In areas of its operation, each should have meaningful autonomy so as to support the mechanism of a functioning government. This seems to carry with it some measure of equality.

1.3 Equality of Status as a Government though not Equal Weight

It must be stated from the onset that to conceive the idea of federalism to mean a two equal and competing sovereignties clearly gives a disingenuous image.³⁷ Yet, the government is truly equal in status but not necessarily in weight.³⁸ This is particularly the position in almost all ramifications in foreign affairs such as conduct of peaceful diplomacy, war, currency, citizenship. This is entirely within the province of federal government. In this regard, the federation is one indivisible political entity and not dual sovereignty. In the same token, in terms of territorial spheres of activity or operation, the federal government is bigger than a state government. The power of federal government extends to the whole nation while that of the state is restricted. Equality does not also mean that the number of resources allocated must be equal nor matters assigned in the list must be equal. Federalism admits some form of inequality (which may be seen as equity) in powers and resources between federal and the state so long it does not render the other impotent in the discharge of its constitutional responsibilities.

Thus, there is a need to inexorably recognise the leadership and direction of the federal government in the union of federalism. The federal must be dominant to provide necessary direction and leadership. Since the nation's economy is integrated and single, the federal government should be able to regulate the impact of state actions on the society and national economy. National federalism is better in the description of the federal arrangement than dual federalism which seeks to give a misleading picture of rivalry or jealousy between state and federal governments. The two should cooperate to develop the nation in terms of security and

³⁷ B. O. Nwabueze, *The Presidential Constitution*, (Enugu and Lagos: C. Hurst and Company London with Nwamife Publishers, 1982), at 41.

³⁸ *Ibid.*

welfare of the people which is the primary purpose of government. This will avoid a situation where one tries to frustrate, confront or unduly compete with the other in the discharge of their duties.

However, as between state governments, the states are equal in status and the same in powers. Again, federal arrangements are between the federal government on one hand and the states on the other hand. It is not between federal government and separate or individual or each state government. No state can be given special position in the union. This will not allow each state to interact freely with each other as equal partners in the development of the nation. It destroys the needed equilibrium that should exist between the states due to superiority and arrogant disposition that may be shown to the other. Nevertheless, in terms of populations and spheres of operation or resource allocation, the constitution does not require equality. Yet, this seeming inequality should not be allowed to create great imbalance among states.

Great imbalance among the states is dangerous. Mill noted that if there is “any one state so much more powerful than the rest as to be capable of vying in strength with many of them combined...it will insist on being master of the joint deliberations: if there be two, they will be irresistible when they agree, and whenever they differ, everything will be decided by a struggle for ascendancy between the rivals.”³⁹ Sir Kenneth also opined that “ some sort of reasonable balance between the units in area, population and wealth which will insure that all the units can maintain their independence within the sphere allotted to them and that no one can dominate the others.”⁴⁰

The position under the 1999 Constitution is that states have equal powers. There is no dichotomy among the state in terms of status and weight.⁴¹ However, in terms of population and land mass, the states are not equal.⁴² States are also not equal in terms of revenue allocation to the states.⁴³ The sharing formula differs significantly. Some receive allocation on the basis of 13

³⁹ Kenneth Wheare, *Federal Government*, 50-55 (4th Edn)`, quoting from Mill from *representative Government*, Everyman edn. 367-368.

⁴⁰ *Ibid.*

⁴¹ Sections 3, 90-129; 176-212 of the CFRN 1999.

⁴² Section 3(2), Part I of the First Schedule to the Constitution.

⁴³ For example, the Internally Generated Revenue (IGR) of Lagos State alone is far more than some ten (10) States in some parts of the Country.

percent derivation.⁴⁴ In terms of representation at the National Assembly, the seats of the House of Representatives are based on population while that of the Senate is based on equal representation in terms of three senators per state.⁴⁵ By the same token, the federal government's areas of operation are larger than the states. This covers the whole country but states are limited to their various states.⁴⁶ The enumerated powers also seem to tilt too much in favour of the federal government.⁴⁷ Even in the so called concurrent list, the federal government also plays a significant role. This appears of the reason why many have called for the restructuring of the country.⁴⁸

2. FEDERAL STRUCTURE AND THE CHALLENGE OF COVID-19

This section analyses how the present Federal structure has impacted on the fight against COVID-19 and the question of constitutionalism.

2.1 Relaxation of Federal government's Lock down by states in the heat of COVID-19

As earlier stated, states have some measure of autonomy under the federal arrangement. This autonomy principle is well respected in some states in response to this COVID-19 Pandemic. Others have treated this autonomy with abuse and in flagrant violation of the provisions of the constitution. This is particularly prevalent in this area of lockdown order as handed down by the president. It will be recalled that states are not allowed to exercise their executive powers in such a way as to impede or prejudice the exercise of the executive powers of the federation. Undoubtedly, the Constitution,⁴⁹ some extant laws⁵⁰ and international treaties⁵¹ to which Nigeria is a signatory empower the President and the governors to lock down states in order to prevent the spread of COVID-19 in the country.

⁴⁴ Section 162 of the CFRN 1999.

⁴⁵ Sections 48 and 49 of the CFRN 1999.

⁴⁶ Section 2 of the CFRN 1999.

⁴⁷ Second Schedule to the Constitution.

⁴⁸ Yusuf Ali, To Restructure or Not to Restructure: The New Swan-Song of the Nigerian Elites (paper presented at the 10th Hon. Justice M.M.A. Akanbi Faculty of Law, University of Ilorin Annual Lecture on 14th December 2017) p; 17-18.

⁴⁹ Sections 5 and 45(1) (a) of the 1999 Constitution.

⁵⁰ The Quarantine Act (LFN 2004).

⁵¹ Article 4 of the International Covenant on Civil and Political Rights, Article 11 of the African Charter on Human and Peoples' Rights.

In pursuance of the above, the President locked down states like Lagos State, Ogun State and later Kano State. Undoubtedly, Lagos State strictly complied with the lockdown order of the federal government. Palliatives were rolled out to the people in order to reduce the harsh effects of the lock down on the people of Lagos State. The situation was however not the same in Ogun and Kano States. In Ogun State, contrary to Presidential Broadcast, the Governor issued another order that the lockdown would not start on the day stated in the presidential order until after some days later. The Governor claimed that he sought the permission of the presidency in order to suspend the presidential order. Yet, the presidential order was not amended to reflect this claim. This makes the claim doubtful. It appears the Governor fell for the pressure of the people of the state who wanted to exercise their freedom of movement notwithstanding the effects on the spread of the deadly coronavirus. The situation in Kano State was even worse. In the spate of unexplained deaths, with limited testing capacity and high number of positive COVID-19 cases, the Governor unilaterally relaxed the presidential lockdown order. The lockdown was relaxed two times in a week. Like its Ogun State counterpart, the governor of Kano State also claimed to have sought the permission of the federal government to relax the order. This claim is doubtful as there is no amended presidential order on lockdown on the state. This perhaps led to the loud silence of the President when the two weeks lockdown expired. Another two weeks extension of lockdown was further relaxed by the Governor on 18 May 2020 to pave way for religious gatherings.⁵² The effect of these is that cases rise as the virus spreads like fire in the states with so many deaths.⁵³ These states also export the number of positive cases to so many other states in the country.

One main argument of the governors that relax the presidential lockdown is to cater for the need of considerable percentage of people who are daily bread earners. The category of people are said to live from hand to mouth. It is said that the lockdown would definitely affect their sources of livelihood. Hence, these people will be severely affected by hunger and starvation all in the name of curbing the spread of COVID-19. However, the President took this issue into consideration in his broadcast. He took a fair balance in the overall interest of the

⁵² COVID-19: Ganduje amends Buhari's lockdown directive, allows congregational prayers. Mr Mustapha said President Buhari approved a two-week extension of the total lockdown in Kano, one of the states hardest hit by COVID-19. Read More: <https://www.premiumtimesng.com/news/headlines/393496-COVID-19-ganduje-amends-buharis-lockdown-directive-allows-congregational-prayers.html>.

⁵³ Nigeria Records 184 New Cases Of COVID-19, Total Infections Near 5,000* <https://www.barristerNG.com/nigeria-records-184-new-cases-of-COVID-19-total-infections-near-5000/>.

people of Nigeria. The risk of spreading the virus when the lock down was relaxed is higher. This is the directive made on the advice of NCDC and the Federal Ministry of Health. Really, someone has to be alive for him to complain of hunger and starvation. Yet, so many palliatives were rolled out by the President and well-meaning Nigerians in order to cushion the effects of the lockdown especially to the vulnerable Nigerians.

It is important to learn from the lesson of history and the situations in countries like United States of America, Spain, Italy, Germany, France and Russia. The most severe pandemic in the world history was the Spanish Flu of 1918. It reportedly lasted for about 2 years. This was in three waves infecting about 500 million people with 50 million deaths. Most of the fatalities reportedly happened in the second wave. This is because people felt so bad about the quarantine and social distancing measures to the extent that when they were first lifted, the people rejoiced in the streets with abandon and negligence. In the coming weeks, the second wave occurred killing millions of people. In the same vein, the President of the United States initially said it was a Chinese Virus, globally, as of 5:04PM CET, 11 March 2021, there have been 117,799,584 confirmed cases of COVID-19, including 2,615,018 deaths, reported to WHO. As of 10 March 2021, a total of 300,002,228 vaccine doses have been administered.⁵⁴ The governments have to take a decisive step to stem the tide. The uncoordinated effort of the federal and state governments is not in the interest of the people. Of the two evils of lockdown to prevent the spread of the virus and hunger as a result of the virus, one has to be chosen. The best is to lock down and curtail the spread of the virus once and for all. In the spirit of common sense, lesser evil should be chosen.

2.2 Conflicts with Agents of Federal Government by State Governments

Intense conflicts, endemic disunity, systemic struggle for dominance in the fight against COVID-19 continues unabated. It seems to be more of politics than the fight itself. Balancing the two main important principles of federalism i.e. National Unity in diversity and states autonomy in the fight of COVID-19 is very difficult. This is mainly due to persistent conflicts between agents of federal government and the state governments. It will be recalled that the President did not lockdown the whole country. Some states were allowed to use their measures to fight the virus so

⁵⁴ WHO Corona Virus Dash Board. Available at: https://covid19.who.int/?gclid=EAIaIQobChMI4SnjtKq7wIVLEiRBR2B5gk3EAAAYASABEgIV-fD_BwE. (Accessed on 12 March, 2021).

long as those measures did not conflict from the order of the President. Nevertheless, conflicts occurred in some states.

One notable state where there is loggerhead between federal agencies and the state government was Rivers State. In the first place, the Federal government sent some men to Rivers State to operate in order to save the nation's economy during lockdown. These men were arrested and detained for weeks in Rivers State for allegedly violating the lockdown order of the state. Some maritime workers were also arrested by the State government.⁵⁵ "They were arrested by the Rivers State Government Task force on COVID-19 lockdown led by the Governor Nyesom Wike. According to the Union's President, "All entreaties/explanation made by the Workers fell on deaf ears; in spite of presenting essential duty Port permit duly signed by the Nigeria Port's Authority NPA. Instead, the Governor mocked them saying they should go and work in Abuja. The Union further noted that "in the next forty eight (48) hours i.e. Monday May 11, 2020, if nothing is done to release our members, the union will have no option than to withdraw our services in all the Nation's seaports, terminals and jetties in solidarity with our detained members as injury to one is injury to all. The President General of MWUN explained that consequent upon the decision, terminal operation, shipping companies and Port users in Port Harcourt Ports are closing down shops as a direct result of the unsavoury activities of the Rivers State Government for not allowing Port workers and other maritime stakeholders to work. The Union warned that the direct implication is on the nation's economy with a clear threat to employment and job security of Port workers, Dock workers and shipping companies employees. "As it were, Port terminals have closed down till further notice, leading to loss of jobs and there is already restiveness in the entire Port and this appeal for the release of the workers is to douse rising tensions in the Ports, which could snowball into a full blown national industrial unrest if not checked," the union said.

The above attitude of the state governor has been described as 'hostile and aggressive' by the Chairman of the Presidential Advisory Committee Against Corruption (PACAC), Prof. Itse

⁵⁵ Wike: Maritime Workers threaten to shutdown ports over arrest of 20 dockworkers* <https://thenigerialawyer.com/wike-maritime-workers-threaten-to-shutdown-ports-over-arrest-of-20-dockworkers/>.

Sagay (SAN).⁵⁶ He added “the way Wike has been carrying on is as if there is a republic of Rivers state of which he is the President. He has done it so far and gotten away with it because the federal gov-ernment is very accommodating. We have a President who is very gentle, who doesn't want to make trouble with anybody but wants things to go on peacefully in the country.”⁵⁷ This shows that governor has been ignoring the authority of the federal government and behaving as if the federal government has no authority in the state. Yet, federal government has overriding authority both under the Quar-antine Act of 1926. States can operate, provided they don't clash with the federal government. Sagay concluded that “I remember the speech he made to the traditional rulers in the state; he treated them like rascally schoolboys that you can talk to anyhow without any regard. That is his attitude, so I'm not really surprised.”⁵⁸ Others notable legal scholars have described that Governor's attitude in different manners. According Falana, SAN, the Governor is a colossal embarrassment to the body of benchers, being a member of the highest law body in the country.⁵⁹ Some see it as act of dictatorship especially the demolition of some people's hotel all in the name of enforcing lockdown.⁶⁰

One other state that has conflicted with the federal government agency in the fight against COVID-19 is Kogi State. The State governor ordered the quarantine/isolation of the officials of the Nigeria Centre for Disease Control who were in the state to ascertain the claim by the state to be COVID-19 free. It will be recalled that the state, despite bordering about nine states and the FCT that have confirmed cases of COVID-19, claims to be COVID-19 free. The governor's attitude is a clear violation of the principle of state autonomy as provided for in the constitution. It is a clear case of provocation of the federal government, a more powerful entity than the state. Yet, he got away with it. Even as a layman in medical science, Kogi state is probably full of

⁵⁶ Gov.Wike Is Acting Like President of Rivers State Freely because FG Under Buhari Is Gentle And Accommodating -- Prof. Sagay* <https://thenigerialawyer.com/gov-wike-is-acting-like-president-of-rivers-state-freely-because-fg-under-buhari-is-gentle-and-accommodating-prof-sagay/>.

⁵⁷ *Ibid.*

⁵⁸ *Ibid.*

⁵⁹ Rivers: Wike a colossal embarrassment to Body of Benchers – Falana* <https://www.barristerNG.com/rivers-wike-a-colossal-embarrassment-to-body-of-benchers-falana/>.

⁶⁰ COVID 19: Wike must check his despotic tendencies* <https://www.barristerNG.com/COVID-19-wike-must-check-his-despotic-tendencies/>. See also The Emerging Dictatorship in Rivers State —Adeghoruwa, SAN blast GovWike: A Rejoinder By River State Attorney General, Prof. ZacchaeusAdangor* <https://www.barristerNG.com/the-emerging-dictatorship-in-rivers-state-%e2%94%80adeghoruwa-san-blast-gov-wike-a-rejoinder-by-river-state-attorney-general-prof-zacchaeus-adangor/>. Covid 19: Wike And The Hordes Of Mordor By Prince Azubuike Esq.* <https://www.barristerNG.com/COVID-19-wike-and-the-hordes-of-mordor-by-prince-azubuike-esq/>.

COVID-19 infected people in view of contagious nature of the disease and its borderlines to about Nine states already infected with COVID-19. The reason for the state awkward attitude is not clear. It has been described as “It is very childish and infantile act.”⁶¹ It appears there is a kind of covering up as if there is a prize to win if the governor continues to deny the existence of COVID-19 in the state. The implication now is that when the virus spreads and death toll continues to rise like the case in Kano State, then the state will be overwhelmed and nobody will tell the governor before he goes back to the federal government for help. The federal government has the power to send those NCDC officials back to Kogi state with full security and they will go in, do all the tests they want in the interest of the nation. This is clearly constitutional and within the power of the federal government. The same position should be adopted in Cross River State. The state also borders Cameroon and some states which have a considerable number of COVID-19 positive cases. Yet, the State claims to be COVID-19 free.

2.3 Dominance and Over-stretching of Nigeria Centre for Disease Control

The Nigeria Centre for Disease Control (NCDC) is the country’s national public health agency, with the mandate to lead the preparedness, detection and response to infectious disease outbreaks and public health emergencies.⁶² NCDC was formerly established in 2011 when some departments in the Ministry of Health, including the Epidemiology Division, the Avian Influenza Project and its laboratories; and the Nigeria Field Epidemiology and Laboratory Training Programme (NFELTP) were moved to form the nucleus of the agency. The Bill for an Act to establish NCDC was signed into law in November 2018, by President Muhammadu Buhari.

The mission for the NCDC (2017-2021) is ‘To protect the health of Nigerians through evidence based prevention, integrated disease surveillance and response activities, using a one health approach, guided by research and led by a skilled workforce’. The main functions of NCDC are to prevent, detect, and control diseases of public health importance; coordinate surveillance systems to collect, analyse and interpret data on diseases of public health importance; support States in responding to small outbreaks, and lead the response to large disease outbreaks; develop and maintain a network of reference and specialized laboratories;

⁶¹ COVID- 19 Why FG Should Send NCDC Officials Back To Kogi With Full Security — Prof. Sagay* <https://thenigerialawyer.com/COVID-19-why-fg-should-send-ncdc-officials-back-to-kogi-with-full-security-prof-sagay/>.

⁶² Covid-19 Nigeria, <https://covid19.ncdc.gov.ng/>. Accessed on 25th July, 2021.

conduct, collate, synthesize and disseminate public health research to inform policy; and lead Nigeria's engagement with the international community on diseases of public health relevance.⁶³

As at the first quarter of 2020, the NCDC has 213 staff, working across its locations at the Headquarters and the National Reference Laboratory in Abuja, as well as the Central Public Health Laboratory in Lagos State which is a campus of the National Reference Laboratory. However, many ad-hoc staff have been employed and many volunteers are helping the organisation. It is led by a Director General, the members of staff work in six Directorates, four of which are Technical Directorates.

The country consists of 36 states, a Federal Capital Territory (FCT) as well as seven hundred and sixty-eight local government areas within the states and six area councils in the FCT.⁶⁴ The FCT is treated as a state with its area councils as its local governments. However, due to the large expanse of Nigeria's territory as well as it being over 200 million population, it becomes difficult for the NCDC to achieve its mandate in the present COVID-19 Challenge in Nigeria. This accounts partly for the slow testing capacity, slow response time, inadequate man power and equipment and many other challenges which Nigerians complain of in the discharge of NCDC's functions. At a time like April 2020 in Kano, the state kept begging for the presence of NCDC officials despite increase in mysterious death in the state.

States in Nigeria also appear very well unprepared for the challenge of COVID-19 in the states. This accounts for the reason why many states quickly, after breakout of the virus, set up ad-hoc isolation centres to control the spread of the disease. States should have, long before now, set up their various centres for disease control in their various states. There is nothing in the constitution preventing the states from setting up their own centres for disease control in the states. This will assist the federal government in proper coordination of the system of disease control in Nigeria. Thus, the absence of centres for disease control in various states of the federation has hindered states responses to the challenge of COVID-19 in various sub-nationals in Nigeria.

2.4 Federal Security Agents in the Enforcement of Lock down Orders

⁶³ *Ibid.*

⁶⁴ Section 2(2) and section 3(1)-(6), CFRN, 1999.

As earlier stated, Police and other Security agencies are within the exclusive preserve of the federal government.⁶⁵ Undoubtedly, orders of state governments in curtailing the spread of COVID-19 will have to be enforced or implemented by the police and other security agents established by law. These security agents are agents of the federal government. Their appointments, recruitment, structure and composition is done by the Federal government. Except that the constitution requires these agents, especially the police to carry out or implement the lawful orders of the governors, though subject to the direction of the Inspector general of Police, no real obligation is imposed on the security agents to enforce the orders of state governors. This clearly played out in the implementation of COVID-19 orders of the state governors.

The consequence of the above on the states' COVID-19 response is that many citizens behave irresponsibly. The COVID-19 orders were breached with impunity. More than 50 percent of the people are not carrying any facemasks at all. Of the remaining 50 percent, half of them are carrying the facemasks under their chins; only 25 percent are wearing it properly.⁶⁶ Yet, if citizens do not cover their mouth and nose, the essence of the idea is defeated. Those who are infected will be ejecting the virus from their mouth and nostrils on innocent people. Observing social distancing has disappeared into thin air. Commercial motorcycles (okada) have been riding in areas where they have been banned without anybody challenging them. The ban on inter-state travel has clearly become ineffective. People move from one state to another without much hindrance. Commercial vehicles fill their buses to capacities. Many governors allege the police and other security agents hinder the effectiveness of the ban on inter-state travel which is meant to curtail the spread of the virus.⁶⁷ It is also alleged that security agents collect bribes from motorists in order to compromise lockdown orders.⁶⁸

2.5 Quarantine being under Exclusive List

⁶⁵ Item 45 of Part I of the 2nd Schedule to the CFRN 1999.

⁶⁶ [Tessy Igomu](https://healthwise.punchng.com/nigerians-poor-attitude-towards-COVID-19-testing-remains-a-challenge-mustapha/), Nigerians poor attitude towards COVID-19 testing remains a challenge –Mustapha, August 21, 2020, Available at: <https://healthwise.punchng.com/nigerians-poor-attitude-towards-COVID-19-testing-remains-a-challenge-mustapha/> Accessed on 02/11/2020

⁶⁷ Security Agents Hindering Compliance With Ban On Inter-State Movement, Says Civil-Society* <https://thenigerialawyer.com/security-agents-hindering-compliance-with-ban-on-inter-state-movement-says-civil-society/>

⁶⁸ *Ibid.* COVID-19: Police collecting bribe, sabotaging lockdown in Rivers – Wike alleges <https://www.barristerNG.com/COVID-19-police-collecting-bribe-sabotaging-lockdown-in-rivers-wike-alleges/>

Quarantine is under the exclusive list of the federal government.⁶⁹ This implies that it is within the exclusive power of the federal government to quarantine individuals found with infectious diseases. The little power given to the states to manage and control diseases like COVID-19 is under the Quarantine Act. Although some states pass infectious disease bill into law, it does not mean that states are not empowered to quarantine individuals suspected of having infectious diseases. The Nigeria Centre for Disease Control still plays enormous role in this regards. Yet, quarantine remains an effective mechanism in curtailing the spread of COVID-19. Despite being a potent tool to fight the spread of COVID-19, it is regrettable to state that the Constitution does not give this power to the states, at least in a concurrent nature with the federal government. This is a serious set-back on the states' responses to COVID-19.

2.6 Immigration and Emigration from Nigeria

As earlier stated, Nigeria's federal structure involves sharing of powers between matters listed in exclusive legislative list and concurrent lists. Foreign affairs matters like immigration and emigration fall within the exclusive legislative list. The effect of this on COVID-19 response of the state governors, particularly Lagos state is that it is only the federal government that has the power to close and open airports. Since COVID-19 is a foreign disease that was only imported into the country, early closure of the nation's airspace would have to a large extent reduced the incidences of infections in the country. This point was stressed by the governor of Lagos state. According to the governor, the delayed closure of the country's borders, seaport, and airports, including the failure of returnees to self-isolate, caused the spread of COVID-19.⁷⁰ The governor noted that Lagos was prepared to curb the spread of COVID-19 but had to wait for the Federal Government to shut airport, seaport and land borders.⁷¹ Although Nigeria recorded its first COVID-19 death on February 27, the federal government officially shut the country's airports, seaports, and borders on March 29.⁷² As of March 29 when the federal government shut the country's airports, seaports, and borders, Nigeria had recorded 111 confirmed cases of COVID-19 and one death. When asked about the state's preparedness, the governor noted that, "Given

⁶⁹ See item 54 of Part I of the 2nd Schedule to the CFRN 1999.

⁷⁰ Sodiq Oyeleke, The Punch News Paper, Sanwo-Olu blames late airport, border closures for COVID-19 spread, <https://punchng.com/sanwo-olu-blames-late-airport-border-closures-for-COVID-19-spread/?amp=1> Published April 30, 2020.

⁷¹ *Ibid.*

⁷² *Ibid.*

the population that we have, we are a bit ahead in terms of preparation, as a state, but we are sub-national. We couldn't give directives as to when Nigeria should close the airport, seaport, or inland border".⁷³ The shows that aviation matters, being within the exclusive preserve of the federal government, has serious response on the state's response to COVID-19.

2.7 The *Almajiri* Problem

The challenge of *Almajiri* has been a great set-back to the fight against COVID-19 especially in Northern Nigeria. It is one of the easiest ways in which COVID-19 spread in the northern part of the country. This is because the *Almajiris* (beggars) who mainly have no specific places of abode are being deported back to their states of origin. Many of these children have tested positive to COVID-19. Hence, when they get to their states, they easily spread the disease to the innocent residents of their states of origin. The deportation of these children started from Kano State. The children were sent to states like Kaduna, Jigawa, Bauchi, Plateau, Gombe, Katsina, Niger. Some of the states in turn send the *Almajiri* children in their states to the neighboring states. The care of these children does not really concern some of the governors.⁷⁴ Politics is being played with the lives of these unfortunate *Almajiri* children.⁷⁵

The above is a clear abuse of the principle of autonomy in a federal system like Nigeria. At least, it can be mildly described as a product of lack of understanding of the principle and constitutional law. First, the Constitution secures full residence rights for every citizen in all parts of the federation.⁷⁶ The Constitution also promotes national integration while discrimination on grounds of place of origin, sex, religion, status, ethnic or linguistic ties is prohibited.⁷⁷ In order to also promote national integration, states are enjoined to encourage free mobility of people, goods and services throughout the federation. Thus, the deportation of these *Almajiri* children is unconstitutional.

3. THE EXPERIENCE OF FEDERAL STRUCTURE IN ETHIOPIA

⁷³ *Ibid.*

⁷⁴ COVID-19 Positive Almajiri Kids Need Care Not Publicity – Ganduje* <https://thenigerialawyer.com/COVID-19-positive-almajiri-kids-need-care-not-publicity-ganduje/>.

⁷⁵ COVID-19: Governors playing politics with Almajiri – Ganduje accuses El-Rufai, others* <https://www.barristerNG.com/COVID-19-governors-playing-politics-with-almajiri-ganduje-accuses-el-rufai-others/>.

⁷⁶ Section 15(3)(b) of the CFRN 1999.

⁷⁷ Section 15(2) of the CFRN 1999.

Ethiopia is one of the countries highly exposed to the COVID-19 Pandemic through its huge involvement in air transportation to exports: the national carrier, Ethiopian Airlines that has the largest fleet in Africa.⁷⁸ The country announced the suspension of 80 flight routes. On the 8th of April 2020, the Prime Minister declared a state of emergency pursuant to Article 93 of the Federal Constitution, which allows it to impose more stringent measures in situations of epidemic or pandemic. The Constitution establishes a federal and democratic state structure, known as the Federal Democratic Republic of Ethiopia. The lists of states are also provided for in the Constitution.⁷⁹ Addis Ababa is the capital city with complete powers of self-administration but accountable to the Federal Government.⁸⁰

3.1 Measure of Autonomy of Tiers of Government in Ethiopia

Each member state of the Federation may have its own flag and emblem. Particulars shall be determined by their respective parliaments.⁸¹ The member states of the Federation shall determine their respective official languages.⁸² The Constitution is supreme and states are not allowed to violate the constitution. In fact, all laws, customary practices, and decisions made by state organs or public officials inconsistent therewith, shall be null and void.⁸³ All citizens, state organs, political organizations, other associations and their officials, have the duty to comply with this Constitution and abide by it.⁸⁴

One important provision is that the State shall not interfere in religious affairs; neither shall religion interfere in the affairs of the State.⁸⁵ However, due to this pandemic, social and religious gatherings have been suspended. This is a form of interference of states in religious affairs.

The Federal Government and the States shall have legislative, executive and judicial powers.⁸⁶ The State Parliament is the legislature of the State with regard to matters falling within

⁷⁸ Ethiopia Government and institution measures in response to COVID-19. <https://home.kpmg/xx/en/home/insights/2020/04/ethiopia-government-and-institution-measures-in-response-to-covid.html>. (Accessed on 18th Day of May, 2020).

⁷⁹ Article 47 of the Constitution of the Federal Democratic Republic of Ethiopia (The Constitution)

⁸⁰ Article 48(3) of the Constitution.

⁸¹ Article 3(2) of the Constitution.

⁸² Article 5(3) of the Constitution.

⁸³ Article 9(1)(2) of the Constitution.

⁸⁴ *Ibid.*

⁸⁵ Article 11(3) of the Constitution.

⁸⁶ Article 50(2) of the Constitution.

its powers. It has power to prepare, adopt or amend the Constitution of the State.⁸⁷ The Government of the State is the highest executive organ of the State.⁸⁸ Judicial powers of states are resident only in the courts.⁸⁹ Each tier of government is enjoined to respect the power of another tier.⁹⁰ However, where necessary, the Federal government may delegate some of its power and responsibilities to the states.⁹¹ Member States of the Federal Democratic Republic of Ethiopia shall have equal powers and rights.⁹² The mode of power sharing is that some powers are exclusive to the federal government,⁹³ some are exclusive to the state government⁹⁴ and some are concurrent to both. Powers not exclusively reserved to the Federal Government or concurrently given both to the Federal Government and State Governments by the Constitution shall belong to the States.⁹⁵ One important power of the state is the power to create, organize and direct state police force within the state.⁹⁶

The exercise of judicial powers also has some level of autonomy by the states. The States also have State Supreme Courts, State High Courts and State First Instance courts.⁹⁷ Particulars shall be determined by law. Judicial power shall be vested only in the courts both on the Federal and State levels.⁹⁸ The Federal Supreme Court also has the highest and final jurisdiction over federal matters.⁹⁹ In the same vein, the State Supreme Court is the highest and final jurisdiction over state matters and assumes, in addition, the jurisdiction of the Federal High Court.¹⁰⁰ However, final decisions made by the Federal Supreme Court or state courts may be reviewed in cassation by the Federal Supreme Court where it finds such decision to be affected by a fundamental error of law. Particulars shall be determined by law.¹⁰¹ The State High Court, in addition to its jurisdiction in the state, assumes the additional jurisdiction of the Federal First

⁸⁷ Article 50(5) of the Constitution.

⁸⁸ Article 50(6) of the Constitution.

⁸⁹ Article 50(7) of the Constitution.

⁹⁰ Article 50(8) of the Constitution.

⁹¹ Article 50(9) of the Constitution.

⁹² Article 47(3) of the Constitution.

⁹³ Article 51 of the Constitution.

⁹⁴ Article 52(2) of the Constitution.

⁹⁵ Article 52(1) of the Constitution.

⁹⁶ Article 52(2)(g) of the Constitution.

⁹⁷ Article 78(2)&(3) of the Constitution.

⁹⁸ Article 79(2)&(3) of the Constitution.

⁹⁹ Article 80(1) of the Constitution.

¹⁰⁰ Article 80(2) of the Constitution.

¹⁰¹ Article 80(3) of the Constitution

Instance court.¹⁰² Nevertheless, decisions rendered by the State High Court in its federal jurisdiction can be reviewed on appeal by the State Supreme Court.¹⁰³ In the same token, decisions rendered by the State Supreme Court in its federal jurisdiction may be reviewed on appeal by the Federal Supreme Court.¹⁰⁴

Even in terms of judges' appointments, the tiers of government have some measure of autonomy. The President and Vice-President of the Federal Supreme Court are appointed by the Council of Peoples' Representatives upon their nomination by the Prime Minister.¹⁰⁵ Similarly, the appointment of other judges of the Federal Supreme Court is to be made by the Council of Peoples' Representatives upon nomination of candidates by the Judicial Administration Commission and subsequent presentation by the Prime Minister.¹⁰⁶ In the spirit of state autonomy, the President and Vice-President of the State Supreme Courts are appointed by their respective State Parliaments upon their nomination by their respective heads of government.¹⁰⁷ Moreover, judges of the State supreme and High Courts are appointed by their respective state parliaments upon nomination by their respective Judicial Administrative Commissions.¹⁰⁸ The judges of the First Instance Courts of the states are appointed by their respective parliaments upon nomination by their respective Judicial Administration Commissions. Furthermore, the Judicial Administration Commission must, before presenting the nominees to the State parliament, solicit the opinion of the Federal Judicial Administration Commission on the nominees and submit the same, together with its own recommendations, to the State Parliament.¹⁰⁹ Also, matters relating to the transfer and discipline of judges at all levels are determined by the Judicial Administrative Commissions concerned.¹¹⁰

Furthermore, in the declaration of emergency in periods of epidemics, pandemics or other national disaster, autonomy of the tiers of government is also provided for. Article 95 is clear on the State of Emergency. The Council of Ministers of the Federal Government may declare a state of emergency in the event of among others, of natural disaster or epidemic endangering public

¹⁰² Article 80(4) of the Constitution

¹⁰³ Article 80(5) of the Constitution

¹⁰⁴ Article 80(6) of the Constitution

¹⁰⁵ Article 81(1) of the Constitution

¹⁰⁶ Article 81(2) of the Constitution

¹⁰⁷ Article 81(3) of the Constitution

¹⁰⁸ Article 81(4) of the Constitution

¹⁰⁹ Article 81(5) of the Constitution

¹¹⁰ Article 81(6) of the Constitution

health.¹¹¹ The procedure for such declaration is equally provided for.¹¹² In the spirit of state autonomy, the State Governments may, within their territory, declare a state of emergency in the case of natural disasters or epidemic endangering public health. Particulars shall be determined by the constitutions of the respective states adopted on the basis of this Constitution.¹¹³

5. THE FUTURE OF FEDERAL PRINCIPLE AND AGENDA FOR REFORMS

This segment discusses the implication of the above threat to constitutionalism and proposed reforms to be included in the constitutional and institutional architecture in the light of the current conflicts and disunity in the fight against COVID-19 in Nigeria.

What is the implication of the foregoing? The constitutional architecture is generally deficient and institutional designs of the federal structure largely contribute to the current conflicts and disunity in the fight against COVID-19 in Nigeria. Efforts at constitutionalism or proper coordination of states' responses to COVID-19 with the present federal structure have not yielded the desired results. One of the reasons is that most Nigerian leaders do not understand, believe in constitutionalism in a federal system or lack the requisite knowledge of the impact that proper structuring and understanding of federalism can have on the states responses to COVID-19, peace, and unity in diversity in the fight against COVID-19 and future pandemics or epidemics.

What further actions can be taken by the country, its leaders and civil societies to ensure constitutionalism in the federalism in managing the states' responses to COVID-19? Enhancing constitutionalism in the federal structure requires certain key actions.

4.1 Capacity-building to Enhance Expertise in the Operation of Federalism

Smooth operation of a federal structure presumes expertise and enabling institutional framework on constitutionalism. It is important to build capacity on federal governance structure and the importance of constitutionalism in operating federal structure for proper management of COVID-19 cases. It will be counter-productive to operate a federal system where there are inadequate experts in federalism who will train or advise their respective leaders on the nature

¹¹¹ Article 95(1)(a) of the Constitution.

¹¹² Article 95(2)-(6) of the Constitution.

¹¹³ Article 95(1)(b) of the Constitution.

and importance of federal constitutionalism to peace and unity in the country. The constitutional architecture in the country needs to be tailored towards effective federal structure and good governance. A preliminary investigation in this study shows that some so called constitutional experts are not aware of any idea of federalism and how it can operate to properly coordinate states' responses to COVID-19. If many constitutional law 'experts' do not have requisite knowledge of the operation of federalism, the society will suffer for it. The respective governments will be ill-advised as states' responses have shown. There have been so many actions of state governments identified above that are contrary to the principles of states 'autonomy in federalism and clear provisions of the constitution.

4.2 Security Matters should be Taken Out of the Exclusive List and be Inserted into the Concurrent Lists

The original idea of perhaps inserting security matters in the exclusive list was to prevent states from becoming too powerful as to secede from the union of federal system. One other reason was to prevent state from the abuse of security forces. All these were the fall out of the Nigeria's civil war. After the war, there was too much suspicion in the land. In order to prevent its future occurrences, more states were created in order to produce multiplicity of interest groups reacting to one another to produce equilibrium in a federal system. A union of more states will, like the USA, will force each state to be aware of its relative insignificance *vis-a-vis* the whole with the futile exercise of the policy of separatism. This will lead to individual state ostracizing itself from the rest thus denying itself of comradeship in communal life.

However, it is timely for the states to have their own police. This is evident from the recent abysmal performance of the federal security agents in the resolving many security challenges in the country. This is also clear from their terrible performance in the enforcement of lockdown orders by the state and the federal government. However, state police should be well regulated in the constitution in order to prevent incidences of conflicts with federal security agencies. The bottom line is that both the federal and state governments should be ready for constitutionalism and obey the rule of law. This will prevent the occurrence of many avoidable conflicts between states and federal government in the enforcement of their various responses to COVID-19 and other future epidemics or pandemics.

4.3 Altering the Mode of Power Sharing in the Constitution

The technique of power sharing should be altered in the constitution to prevent incidences of conflicts in the exercise of power and at the same time enjoy the flexibilities and other benefits associated with concurrent list. It is suggested that one may be exclusive to the Federal government, one exclusive to the state and another will be concurrent to both the state and the federal governments. Residue can be taken to the local government, which is also with the ambits of the states.¹¹⁴ It is submitted that simplicity will be achieved and uncertainties and conflicts between the federal and state governments will be eliminated where the constitution provides for only one list of matters exclusive to the states and the other exclusive to the federal government. And to create a fair balance and reap the benefits of concurrent lists stated above, some matters should still be included in the concurrent list. This will have positive impacts on states responses to COVID-19.

4.4 Quarantine should be Taken Out of the Exclusive List and be Inserted into the Concurrent Lists

As earlier stated, quarantine is still within the exclusive preserve of the federal government. This is clearly needless. It has hampered the states' responses to COVID-19. This is because despite limited federal presence in some states, they will be looking for officials of federal government for them to quarantine some individuals suspected to be carrying the corona virus. Due to this difficult challenge, some States have resolved to forceful and unconstitutional quarantine of individuals even without seeking help from the federal government. This has severe implications on constitutionalism.

Also, the presence of quarantine in the exclusive list of federal government has hindered proper state legislative responses to COVID-19. The lee-way provided for the States under the Quarantine Act is not enough for most states to operate. Some States have, however, provided for some infectious diseases laws. Some even provided for quarantine laws. Definitely, those laws do not have the capacity of giving powers of quarantine to the State without offending the constitutional provisions. Where it thus, then it is unconstitutional and this may be put to test in the future. The result is that states would have made many efforts in futility due to the

¹¹⁴ Section 7 of the CFRN 1999.

unconstitutionality of the quarantine laws. The best is to remove the quarantine from the exclusive list and put in concurrent list to allow the states operate freely in responding to COVID-19 cases in the States.

4.5 States should create their Centres for Disease Control

As earlier stated, the NCDC has been very much overstretched. This has occasioned unnecessary delay in responding to emergency situations. In some cases, it takes NCDC 3 to 4 days to respond to emergency situations. The state should create their own centres for disease control that will perform the role of NCDC at state levels. There is nothing unconstitutional with this. It will go a long way in supporting the effort of the Federal government in the fight against the corona virus.

4.6 The System of *Almajiri* Should be Institutionalised

The plight of the *Almajiris* requires urgent attention. It has been established in this study that the deportation of the *Almajiri* children from one state to another is not only a violation of the right of the children to movement as guaranteed under the constitution, it's also a violation of the constitution and the principle of federalism. The Northern States can be more coordinated in dealing with the *Almajiri* syndrome. The current situation should be abolished with some reinvention. Schools and institutions can be created to cater for this menace. This will prevent or reduce further spread of Covid -19 in the state.

4.7 There should be more Coordination of Immigration and Emigration from Nigeria

As earlier stated, matters on immigration and emigration is within the exclusive preserve of the federal government. However, states should not be in a situation of helplessness where the federal government's actions and inactions on foreign affairs can cause the spread of diseases in the state. The purpose of federalism is to bring good things to the people and not bad things like COVID-19. It is not a bad idea to have coordinated synergy in matters of this nature for overall good of the people of Nigeria. Each tier of government should not work at cross purposes but should cooperate for the greater happiness of the people of Nigeria.

CONCLUSION

This study makes an expository analysis on how the deficiency in constitutional and legal architecture generally and institutional designs of the Federal structure largely contributed to the conflicts, improper coordination and disunity in the fight against COVID-19 by the government in Nigeria. From the foregoing analysis, it can be said that the present federal structure has also contributed negatively to the states' responses to the fight against COVID-19. The uncoordinated actions of the state and federal government agencies have increased the spread of confirmed COVID-19 cases in Nigeria. The states are not truly autonomous in the true sense autonomy required in a Federal system. Yet, the little autonomy enjoyed by the state governments are misused by some state governors. This is particularly true of states like Kano, Kogi, Rivers, Kaduna, Cross Rivers and some others. It's either the governors do not understand the nature of the autonomy granted to states under the constitution or they are simply mischievous thus acting against constitutionalism in their states.

Also, the mode of power sharing as contained in the constitution is faulty. This has increased the conflicts between the federal government and states thereby affecting the states' responses to the fight against COVID-19. It is suggested that some matters should be under Exclusive List of the Federal government, some to be exclusive to the states and some should be concurrent to the federal and state governments. This will to a large extent eliminate conflicts and uncertainties in the fight against COVID-19. Moreover, issues like police and security matters should be taken away from the Exclusive List and be taken to Concurrent List. The same thing applies to quarantine. It will enhance the enforcement mechanisms of the state in enforcement of COVID-19 orders by the state governments.

The study has also shown that the NCDC has been overwhelmed in the fight against COVID-19. States need to create their various centres for disease control in the state to support the efforts of the Federal government in the fight against the Corona Virus. The *Almajiri* syndrome has also spread COVID-19 cases to various states of the federation. There has to be a coordinated approach by northern governors with federal government support to curtail the menace of *Almajiri* in the north. Also, there has to be a coordinated approach between the federal and state governments on matters of immigration and emigration. People who come from foreign countries will definitely enter into states. Hence, cooperation is needed to enhance fight

against COVID-19. Where all these suggestions are taken into consideration, it will go a long way in enhancing the states' responses to COVID-19.

It can be said from the foregoing analysis that the Ethiopian Constitution presents a unique federal structure which gives a measure of autonomy to the state governments than the situation in Nigeria. One major area of state autonomy which has led to proper coordination of the fight against COVID-19 is the State police permitted by the Ethiopian Constitution unlike the situation in Nigeria. Enforcement of lockdown orders appears seamless and properly coordinated. Again, the courts are also separated from the federal courts. Each tier has their own with different mechanism for enforcements. The Constitution clearly empowers the state organs to declare a state of emergency in periods of disaster, epidemic, pandemic and national disaster in their states without having to wait for the federal government. This is different from Nigeria where the Constitution does not empower state government to declare a state of emergency in their state during the period of pandemic or natural disaster. The little window under which states operate is the Quarantine Act. This Act is subject to amendment by federal agencies and may be to the disadvantage of the state government. The mode of power sharing is also clear thereby devoid of conflicts associated with the mode of sharing power in Nigeria. Some are exclusive to the federal government, some to the states and residue are clearly left for the state governments.

AN APPRAISAL OF THE LEGAL IMPACTS OF COVID-19 ON THE *ALMAJIRI* CHILDREN IN THE NORTHERN PART OF NIGERIA

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Abstract

This paper examined the legal impacts of COVID-19 pandemic on Almajiri children in the Northern part of Nigeria with consideration of the current serious socio-economic and political challenges ravaging the peaceful existence of the region. The varying threats of insurgency, banditry, cattle rustling, ethno-religious crisis and kidnapping that have substantially wrecked the Northern part of Nigeria in the recent times obviously make the Almajiri children soft target to this novel pandemic. Factors such as overpopulation, paucity of funds, inadequate human and material resources and large scale ignorance widespread in the region predispose Almajiri children to devastating impact of COVID-19 regulations. It was observed that the current structural formation of the Almajiri system which has blown out of proportion across the Northern states in Nigeria is a serious concern which requires meticulous planning and viable mechanism to avert a devastating catastrophe in the region. This paper is analytical and based on the survey of relevant available literatures and verifiable reports. This paper thus asserts that the current overwhelming socio-economic and political quagmire in which the Northern part of Nigeria has degenerated into makes the Almajiri children negatively affected by the COVID-19 regulations. This paper finally concludes that the cross repatriation of the Almajiri children to their respective states of origin is not only a breach of their Constitutional rights as citizens of Nigeria but also an ill-conceived approach anathema to the fundamental objectives and directive principles of state policy.

Keywords: Legal impacts, Vulnerable persons, COVID-19, Northern part of Nigeria, *Almajiri* Children

INTRODUCTION

The emergence of COVID-19 and its sporadic global spread poses a great threat and immense challenge to state actors worldwide. According to the World Health Organisation (WHO), Nigeria amongst other African Countries remained precisely susceptible and vulnerable to the pandemic considering the state of its poor health infrastructure; acute shortage of medical personnel; widespread ignorance, and rate of illiteracy; corruption amongst other challenges. As COVID-19 cases increase around the world, mortality rates are likely to be higher in countries

with limited health services and with large amounts of people on the move."COVID-19 is highly infectious and will spread easily in places where there are unhygienic conditions, crowding, and where health services and monitoring are weak."¹

There is no gainsaying the fact that Nigeria was amongst the first contact of the pandemic in Africa as predicted by the World Health Organisation (WHO) when Lagos State recorded its index cases as far back as February, 2020.² The virus gradually spreads across the Southern part of the country. Neighbouring state with Lagos State recorded COVID-19 cases as a result of trans-border migration and business interactions. However, anxiety heightened when the disease started spreading to the northern part of the country considering the extreme vulnerability of the regions and its people to contagious disease in the past.³ As a matter of fact, the spread of COVID-19 to the Northern region further aggravated the crisis ravaging the region more particularly as the disease found its way in the midst of the *Almajiri* children.

Consequently, it was reported that there has been cross repatriation of *Almajiri* children amongst the Northern States.⁴ The propriety of the repatriation of the *Almajiri* is not only technically abhorrent to the principles of natural justice, equity and good conscience, but also constitutes a double standard in flagrant breach of fundamental human rights. Similarly, it is difficult to fathom the rationale behind the discrimination and general non-consideration of the *Almajiris* in the various relief measures rolled out to contain the spread of the virus. Sadly, this apparent attempt by Northern political elites to side-line or downplay the legal consequences of COVID-19 regulations on the *Almajiri* children depicts high level of political irresponsibility and nonchalant character at the hems of political affairs. Although, successive administrations have expressed their concern about the *Almajiri* system in the North, yet, repatriation of these children during a pandemic period is inimical to the COVID-19 regulations restricting exodus inter-state

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¹ Tom Davis, *World Vision International's Head of Health and Nutrition*, "COVID-19 and the World's Margin", <<https://act.newmode.net/action/world-vision-canada/covid-19-and-worlds-margins>>, (May 7, 2020)

² <<https://ncdc.gov.ng/news/227/first-case-of-corona-virus-disease-confirmed-in-i=nigeria>>, (February 8, 2021)

³ IRIN Background Report on Epidemic in Northern Nigeria (19990727), Available at <https://www.africa.upenn.edu/Newsletter/irinw_72779a.html>, (February 8, 2021)

⁴ Isaac Anyaogu, *21 out of 61 Almajiri returned to Kaduna tested positive for Covid-19*, (Business Day Newspaper), <<https://businessday.ng/coronavirus/article/21-out-of-61-almajiris-returned-to-kaduna-tested-positive-for-covid-19-el-rufai/>>, (May 2, 2020).

migration. The policy of repatriation of *Almajiri* children to their respective state of origin under whatever guise is not only wrongly timed but also unlawful.

A glimpse into the various regulations made by the various Northern state governors clearly depicts a deliberate neglect of the most vulnerable in the fight against the pandemic. Unfortunately, these *Almajiri* children who are estimated to be about 9.5 million in Nigeria according to UNICEF reports may eventually become vectors for COVID-19 considering their vulnerability, susceptibility, lack of physiological resistance, poor hygiene, malnutrition, unregulated migration and population across the Northern part of Nigeria.⁵ Thus, there is a need to streamline the various policies or regulations made by the government to ensure a holistic approach in the fight against the pandemic.

From the foregoing, this paper will examine the legal impacts of COVID-19 without prejudice to the socio-economic, psychological and educational impacts of the disease on the *Almajiri* children in the Northern part of Nigeria. Meanwhile, the scope of this work will be restricted to the legal impacts of COVID-19 on the *Almajiris* children in the Northern part of Nigeria.

1. COVID-19 IN THE NORTHERN PART OF NIGERIA

On 21st of April, 2020, the governors of Northern part of Nigeria discussed the growing spread of COVID-19. By the end of the meeting, they unanimously agreed that classical Qur'anic education in their regions should be suspended and students sent back home.⁶ The following week, the Governor of Kano state which is the current epicenter of the outbreak in Northern Nigeria, said, "Over Two Thousand (2000) *Almajiris* had been returned to their states of origin and that more would soon follow suit."⁷ Similarly, the Governor of Kaduna State, Malam Nasir el-Rufai confirmed that *Almajiris* deported from Kano State about a week before brought 21 cases of COVID-19 to the state. Speaking on Arise Television, the broadcast arm of THISDAY Newspapers, "he said when the state took delivery of 148 *Almajiris* from Kano, it kept them in a

⁵ *History of Almajiri System in Nigeria*, <https://guardian.ng/features/history-of-the-almajiri-system-in-nigeria/>. (May 8, 2020).

⁶ Northern Governors begin the expulsion of *Almajiri* over Corona virus, (24 February 2021) <<https://guardian.ng/news/northern-governors-begin-expulsion-of-almajiri-over-corona-virus/>>

⁷ <<https://africanarguments.org/2020/05/07/as-covid-19-spreads-northern-nigeria-states-scapegoat-usual-suspects/>> (May 8, 2020).

holding facility where tests were conducted on eight of them with symptoms, adding that five tested positive to the disease.”⁸

Meanwhile, on the 24th March, 2020, Bauchi State amongst the Northern States confirmed its index case out of the four newly confirmed cases in the country. Meanwhile, on the 28th March, 2020, Kaduna state confirmed its index case.⁹ Ever since Kano state recorded a case in April, the figure kept rising geometrically and spreading sporadically. The North-western state of Kano in the past weeks experienced a spate of unknown deaths, including that of a first class traditional rulers, health workers and academics. Preliminary investigations showed that many of the victims died from malaria and cerebrospinal meningitis (CSM), according to the State Government. However, an address by the coordinator of the presidential task force on COVID-19 in Kano, Sani Gwarzo, on Sunday suggested that COVID-19 was the cause of the deaths.¹⁰

It is disheartening to state that although the emergence of COVID-19 in the Northern part of the country kicked off lately in April, 2020, it has however recorded the highest infections after Lagos State. According to the official updates of the Nigerian Centre for Disease Control (NCDC) of 7th May, 2020, Kano State has recorded 482; the highest amongst Northern States and closely behind Lagos State within the shortest period of time. Meanwhile, Kogi State remained the only Northern State that is presently immunized against the pandemic. More worrisome is the fact that 50 percent of the infection so far was spread by the *Almajiri* children as a result of the cross repatriations.¹¹ Governors under the aegis of the Northern Governors’ Forum (NGF) had issued a statement where they discussed the risk that *Almajiri* children are exposed to due to the virus. They unanimously decided to ban the *Almajiri* system and evacuate the children to their parents or states of origin.¹²

While the propriety or otherwise of the cross-repatriation of *Almajiri* children will be examined later in this work, it is crucial as a matter of necessity to state that such repatriation

⁸ <<https://www.thisdaylive.com/index.php/2020/04/30/el-rufai-how-kano-almajiris-increased-covid-19-infections-in-kaduna/>> (8 May 2020)

⁹ <<https://nairametrics.com/2020/03/29/covid-19-cases-rises-to-111-as-14-new-ones-confirmed-positive/>> (13 May, 2020).

¹⁰ <<https://www.premiumtimesng.com/news/headlines/391558-no-evidence-yet-kano-mysterious-deaths-caused-by-covid-19-health-minister.html>> (8 May, 2020).

¹¹ <<https://www.google.com/amp/s/www.bbc.com/news/world-africa-52617551.amp>> (24 July, 2021).

¹² <<https://guardian.ng/news/northern-governors-begin-expulsion-of-almajiris-over-coronavirus/>> (8 May, 2020).

exercise is improper, ill-conceived and discriminatory against *Almajiri* children. No excuse will be substantial enough to justify the ill-treatment of the *Almajiri* children on the basis of their poor socio-economic status and wretchedness in the society. More painful is the fact that these children have been exposed to infection in the process of evacuation due to poor mechanism for repatriation; disregard for social and physical distance and failure to arm them with preventive materials such as hand sanitizer, face covers and other protective gadgets.

Invariably, majority of Nigerians reside outside their states of origin.¹³ It is perplexing and hypocritical that the *Almajiri* children were singled out for repatriation even though the index cases in the Northern States were from amongst incumbent Governors, political elites, and academics. Unfortunately, records show that some *Almajiris* have contracted the disease in the process of the repatriation; thus, aiding the spread of the contagious disease which may eventually worsen community spread.¹⁴ Also, such actions further spurred the existing marginalization of the most vulnerable in the region most of whom had lost their homes, parents and relatives to insurgency, ethno-religious crisis, and plague. In a nutshell, COVID-19 has further orchestrated severe pains and horror on the *Almajiri* children in the Northern part of the country more because of government's indifferent attitudes in policy-making and programmes towards alleviating their plights.

1. VULNERABILITY OF *ALMAJIRI* CHILDREN TO COVID-19

The word “*Almajiri*” is derived from the Arabic “*Almuhajirun*”, which connotes “an emigrant”. It is usually referred to as a person who migrates from his home to a popular teacher in the quest for Islamic knowledge. This is the basis of the *Almajiri* system in what became Northern Nigeria today. Before British colonization, a system called *Tsangaya* prevailed in the Kanem-Borno Empire. It was established as an organized and comprehensive system of education for learning Islamic principles, values, jurisprudence and theology.¹⁵

The students were at liberty to acquire skills in between their Islamic lessons, and so were involved in trades such as farming, fishing, and masonry, among others. Many were the farmers

¹³ Uche C. Islugo-Abanihe and International Organization for Migration, Nigeria, *Migration in Nigeria - A Country Profile 2014*, (2016), International Organization for Migration Publication, 1211 Geneva 19 Switzerland, at 1.

¹⁴ Isaac Anyaogu, *21 out of 61 Almajiri returned to Kaduna tested positive for Covid-19*, “Business Day Newspaper”, On May 2, 2020. <https://businessday.ng/coronavirus/article/21-out-of-61-almajiris-returned-to-kaduna-tested-positive-for-covid-19-el-rufai/> (7 May, 2020).

¹⁵ <<https://guardian.ng/features/history-of-the-almajiri-system-in-nigeria/>> (May 8, 2020).

whose produce formed the famous groundnut pyramids after colonization; *Almajiris* were recruited by the British as miners in Jos. The system also produced the judges, clerks, and teachers who provided the colonial administration with the needed staff. The first set of colonial staff in Northern Nigeria was provided by the *Almajiri* schools.¹⁶ In fact, the *Almajiri* system produced eminent jurists, Islamic scholars and religious reformers in the past, when their numbers remained within manageable limits. Since the 11th century, Qur'anic teaching has been a medium of Islamic education in the country.¹⁷

Over times, the word *Almajiri* has gradually acquired a completely different meaning; it is more or less referred to as beggars roaming the streets in our towns and cities. They include young pupils who left the comfort and protection of their parents and relations at a very tender age for the purpose of Qur'anic education.¹⁸ The *malam* (teacher) is not responsible for feeding the *Almajiris* and, therefore, are forced to beg on the street. They depend on people for their food and other life needs.¹⁹ In the course of begging on the streets, they are exposed to various forms of hazards in quest of acquiring Qur'anic education.²⁰

With time, the *Almajiri* system, which was meant to inculcate Islamic virtues in the youth, degenerated into a practice characterized by unwholesome and inhumane activities. At the formative stage of *Almajiri* schooling, it was not envisaged that the Quranic pupils would have to beg for alms permanently or do menial jobs for their survival, as it is the practice today. These days, a typical *Almajiri* can be spotted by his unsavory appearance, dressed in tattered clothes, disease afflicted, and armed with a plastic plate, roaming the streets begging for alms. Socially regarded as nuisance, the *Almajiri* are often chased away by decent people. They hang around restaurants, markets, shops, petrol stations, and houses, most times sleeping on disused pieces of

¹⁶ <<https://guardian.ng/features/history-of-the-almajiri-system-in-nigeria/>> (May 8, 2020).

¹⁷ Iro Aghedo and Surulola James Eke, 'From Alms to Arms: The *Almajiri* Phenomenon and Internal Security in Northern Nigeria', <https://guardian.ng/features/history-of-the-almajiri-system-in-nigeria/> KOREAN JOURNAL OF POLICY STUDIES, <https://researchgate.net/publication/280309828>, at 103.

¹⁸ Sa'id I. *Menace of Almajiris in Kano municipal*. (A paper presented at Faculty of Education, Ahmadu Bello University, Zaria, 1992).

¹⁹ *The Socio-Economic Implications of the Almajiri Practice in Minna Metropolis*, *Journal of Social Science and Media Studies*. Vol., 02 issue 01.1.

²⁰ Salis T., *Impact of Islamic Education in Kano Metropolitan Nursery School on Muslim Children*, (Unpublished Thesis Submitted to Department of Islamic Education, Ahmadu Bello University, Zaria 1995).

cardboard or bare floors. The street urchins bemoan their fate as they watch other privileged children enjoying life with their parents.²¹

It is deducible from the foregoing that the plight of the *Almajiris* amidst the COVID-19 pandemic became more glaring and copious to all. Hence, the various impetus that contribute to the vulnerability of *Almajiri* children amidst COVID-19 pandemic are highlighted as follows;

- i. Lack of stable source of livelihood
- ii. Lack of access to information and health facilities
- iii. High risk of infection
- iv. Victim of hard labour, human rights abuses and exploitation
- v. Disposition of crime

The above listed impulses are examined below;

A. Lack of Stable Source of Livelihood

The *Almajiri* children are part of the citizenry that are minors, mostly left to cater for themselves; thus, depending on door to door begging for survival. The implication of this is that within the lockdown period, these children are subjected to unending starvation and are without protection thereby increasing their risk of exposure to incidence of outbreak of the pandemic in their locations.²²

In fact, subjecting the *Almajiri* children to lockdown without any palliative to cushion the effects of restriction may lead to more catastrophic consequences such as malnutrition, cholera outbreak, diarrhea, and weakened immune system to combat minor diseases. In the end, the *Almajiri* children are pushed into a dilemma of choosing between starvation and COVID-19 infection. Painfully, these children are not captured in the various palliatives programmes bankrolled by both Federal and State Government nor are they potential beneficiary of the Federal Government Social Intervention Programmes despite the fact that they are the cynosure of vulnerable in the society. If COVID-19 has successful made people with stable financial

²¹ Olagunju, L., *Almajirai, Street Kids and a Nation's Future*, *Nigerian Tribune*, (19 April, 2012). www.tribune.com.ng/index.php/the-friday-edition/39559-almajirai-street-kids-and-a-nations-future.

²² Advocates for Dan Almajiri, *COVID-19: Protecting The Rights to Life of the Almajiris Amidst the Pandemic*, (Position Paper). <https://reliefweb.int/report/nigeria/covid-19-forum-advocates-palliatives-almajiri-children>, (May 20, 2020).

means wretched, one wonder what the *Almajiri* children without financial means might metamorphose into in the nearest future.

B. Lack of Access to Information and Health Facilities

Basically, the *Almajiri* children obtain information on the street in the course of searching for sustenance. They are far removed from all major sources of information on COVID-19 despite their vulnerability. They also lack access to parental guidance on the messages and guidelines issued by medical experts on how to avoid infections. Impliedly, they are not able to protect themselves and will not be able to observe any socio-physical distancing nor access medical services should they contact the virus. Considering the lopsidedness or preferential treatment that characterized Nigeria health system, *Almajiris* do not have the socio-economic and political charisma to access the limited medical facilities at the expense of others.

When people are told to self-isolate, *Almajiri* children on the street situations may not have a safe home to go to. When people are told to wash their hands frequently, they have no soap or clean water to observe same. And when instructions are given out over the internet or in print media, most cannot read them and they remain uninformed of the basic information. They are unable to find the means to feed themselves. They are experiencing untold horrors, difficulties and severe human rights violations.

C. Exposure to Infection

The *Almajiri* children, given their means of survival which include begging, accepting other persons' leftovers, handling waste disposals for people, are most vulnerable to COVID-19. The likelihood of their getting contact with infected persons as beggars who take whatever comes to them as food or support from those willing to give, exposes them to the COVID-19 infection. This eventually make them potential vector for the spread of COVID-19. Giving the dimension of the disease, *Almajiris* do not have shelter to protect them from the disease. They live and sleep on the streets, motor parks, and public places. Invariably, the lockdown directives across the Northern States do not appeal to their sense of reasoning because they have no shelter to reside at night. Hence, they are readily more vulnerable to contact and spread the disease at rapid rate.

D. Victim of Hard Labour, Human Rights Abuses and Exploitation

When the desirables are not available, the available becomes the desirable. In a time when the street is empty in compliance with the lockdown directives, *Almajiri* children are left with no option of sustenance other than resorting to the few available difficult jobs.²³ They visit homes out of desperation in their vicinity soliciting for jobs to keep hearts and body together²⁴. In the process, they are exposed to hard labour, sexual harassment and abduction by human traffickers.²⁵ In order to save their lives, they submit their human dignity to all manner of oppressions while risking their lives to accomplish their employers' embellishments and needs.

On the other hand, the owners of *Almajiri* schools whom as individuals and as a group have been very conservative for too long refusing to restructure the system in tune with the reality of time. Majority of the Malams interviewed have no verifiable means of livelihood and feeding, those that have means of livelihood said they are either farmers or traders and they accept that their source of feeding cannot cater for the students under them. Without a comfortable means of livelihood, the Malams have obviously no choice but to push the students into the society to beg.²⁶

E. Disposition to Crime

The cumulative pains and struggle for survival amidst COVID-19 pandemic have forced many *Almajiri* to give illegality and other acts of crime reluctant consideration.²⁷ Already, Boko Haram insurgency and Banditry have made the Northern part of Nigeria lucrative for crime business. The *Almajiris* become more susceptible to bad influence as pains of lockdown, social apathy and ostracism makes life meaningless to them. Thus, COVID-19 may eventually become a driving force or impetus to embrace crime due to high desperation for survival amongst the *Almajiri* children.

²³ Garba U.K. and Nik Ahmad K.N.M, *Child Trafficking and Religion: A Case Study Almajiri Education in Northern Nigeria*, INTERNATIONAL JOURNAL OF BUSINESS, ECONOMICS AND LAW, VOL. 8, ISSUE 4 2015, p. 120

²⁴ <<https://www.google.com/amp/s/www.theafricareport.com/27676/coronavirus-food--insecurity-fallout-from-nigeria>> (February 23, 2021)

²⁵ United Nations Office on Drugs and Crime, *An introduction to Human Trafficking Vulnerability, Impact and Action*, Available online at <https://www.unodc.org>.

²⁶ *The Socio-Economic Implications of the Almajiri Practices in the Minna Metropolis*. Available online at <https://www.athensjournal.gr/review/2019-2812>

²⁷ Freedom C. Onuoha, "Why do youth Join Boko Haram?", (Special Report 348, United State Institute of Peace, June 2014) available at; www.usip.org

However, these children lack access to proper information which consequently make them unaware of basic guidelines about preventive measures against the virus. They lack shelters which make compliance with lockdown directives impossible. They lack access to sustenance which makes hard labour and crime more worthwhile. Lack of parental training and basic orientation make life meaningless to them. All these and many others underscore the vulnerability of the *Almajiri* children to COVID-19.

2. GOVERNMENTS' RESPONSE TO COVID-19

It is important to state here that the power of Federal Government to make regulations to contain the pandemic; COVID-19 is derived from the Quarantine Act 2004²⁸ which vested unto the President of the Federation to make regulations to promptly address emergency health related issues. Basically, the Quarantine Act²⁹ empowered or vested the president to declare any part of the country infected area and to make regulations to ensure effective control of the disease. Pursuant to the above premise, the Executive signed into law COVID-19 Regulations on the 30th of March 2020 but did not state a specific commencement date. However, based on the content it can be inferred that the Regulations commenced on the 30th of March 2020. The President has directed the cessation of movements in Lagos, Ogun and Federal Capital Territory, Abuja for an initial period of 14 days with effect from 11pm on Monday 30th March 2020.³⁰

In the same vein, most state governors whose States were not considered in the Regulation, took heed to make similar regulations to reinforce Federal Government measures in order to contain the spread of the virus. Similarly, on the 23rd of April, the Nigeria Governors Forum placed a ban on interstate travel except for transportation of essential goods such as food, drugs and medical equipment. This resolution was made to stop community spread of the virus. Another notable regulation was the lockdown and closure of schools, markets, religious gatherings, club houses, cinemas, banks and other public places to prevent transmission of the disease and to identify the asymptomatic contacts. Although, most of the States opened window to ease the effects of the lockdown on the peoples as it became apparent that neither the state nor

²⁸ CAP Q2 Laws of the Federation, 2004.

²⁹ Section 3 & 4, Quarantine Act CAP Q2 LFN 2004.

³⁰ <https://pwc-nigeria.typepad.com/tax_matters_nigeria/2020/03/the-federal-government-of-nigeria-has-issued-covid-19-regulations-2020.html?utm_source=Mondaq&utm_medium=syndication&utm_campaign=LinkedIn-integration> (May 11, 2020).

the Federal Government has the capacity to provide sufficient palliatives during the lockdown for the vulnerable.

Regulations for COVID-19 pandemic include closure of schools, businesses, and restriction of inter-state movement. However, curative programmes were rolled out to cushion the economic impact of the restrictions on the vulnerable groups. Some of the relief programmes include distribution of relief materials to masses, feeding programme for school children, 3-month repayment moratorium for Trader Moni, Market Moni and Farmer Moni loans, moratorium will be granted for all Federal government funded loans issued by the Bank of Industry, Bank of Agriculture, and Nigeria Export Import Bank.

The aforementioned regulations and measures although are specifically meant for Lagos State, Federal Capital Territory and Ogun State from a narrow perspective. Notwithstanding, some of the measures aforementioned affect the entire federating units. Similarly, it is important to note that none of the aforementioned states fall within the Northern part of Nigeria; however, a critical assessment shows that the Federal Capital Territory is a host of a sizeable number of *Almajiris* children and neighboring states such as Niger, Kogi, Nasarawa and Kaduna especially in the suburb town. Hence, it is crucial to consider the Federal Government Regulations *vis-a-vis* its legal impacts on the *Almajiris*.

It is worthy to note that the measures put in place by the Federal Government were meant to cushion the effect of the lockdown on the most vulnerable as a result of the socio-economic impacts of COVID-19. The Social Investment Programme (SIP), Market Moni, Trader Moni and other forms of relief materials shared across the Federation were meant to assist the less privileged most of who earn their sustenance from daily struggles. Unfortunately, the *Almajiris* children do not have any parent or guardian that may directly benefit from the loan moratorium nor are they technically qualified to get palliatives as they are helpless with no voice to attract government's attention.

It is observed that while government has invested enough energy and resources in ensuring that laws and orders are kept during the crisis period, there is no evidence of special attention to issues affecting vulnerable children, especially the *Almajiris* and other street kids, who are more

vulnerable in periods of emergency which offer a supportive environment for potential predators.³¹

It is pertinent to highlight some others regulations made by some Northern State government as they are partially excluded from the Federal Government's regulations. A major regulation distinct from Federal Government regulation is the decision of some Governors in the North to repatriate the *Almajiri* children to their state of origin. State like Kano, Kaduna, Katsina, Bauchi and Nasarawa³² have commenced repatriation of *Almajiris* children to their respective states of origin.

Also, civil servants have been instructed to work from home while markets, Mosques, Churches and other public places have been temporarily closed to avoid social contact and community spread of the disease. Palliatives were also facilitated by both state government and private individuals to the less privileged in order to ease the effect of the lockdown. Unfortunately, the most vulnerable and most affected by the regulations were rather excluded by kicking them out of their states in disguise of repatriation. By implication, the haphazard disbursement of palliative and relief packages to the exclusion of *Almajiri* children contravenes the constitutional provisions on economic rights.

Similarly, as part of measures to cushion the adverse effects of COVID-19 on the educational sector and school children at large, most States have introduced e-learning platform to reach the students from their comfort zones. Media platforms such as radio, television, internet were adopted by States to engage the students during the pandemic in order to keep them updated on their academics. This platform enables students to receive instructions and interact with instructors regardless of the distance. This medium is not without its own challenges. Challenges of epileptic power supply, financial incapacitation to access internets, lack of requisite skills amongst children, distractions on the social media etc. pose threat to the materialization of the

³¹ Advocates for Dan Almajiri *COVID-19: Protecting the Rights to Life of the Almajiris Amidst the Pandemic*, (Position Paper), (8th of May, 2020). <https://reliefweb.int/report/nigeria/covid-19-forum-advocates-palliatives-almajiri-children>, at.3.

³² <<https://www.pulse.ng/news/local/nasarawa-govt-sends-788-almajiris-back-to-their-home-states/7cd56zr>> (May 10, 2020).

medium. Most unfortunately is the fact that the *Almajiri* children who had zero knowledge and access to computer were completely and technically cut out of contemplation.

3. LEGAL IMPACTS OF COVID-19 ON THE *ALMAJIRI* CHILDREN

The emergence of COVID-19 has put the global world on its toes. It is unimaginable and defies human expectation in this century that a tiny invincible virus could shutdown global business, sports, education, entertainment and politics despite the amazing scientific and technology breakthrough recorded in recent times. COVID-19 has left no aspect of human endeavour untouched and any part of the world unshaken. In essence, the pandemic has successfully hijacked the world system; thereby forcing State actors worldwide to take extreme measures to curtail the spread of the virus. In other words, laws and rights have been suspended, contractual obligations, conferences and world biggest events were put on hold, resulting in the cancellation and postponement of fixed major events. Hence, governments worldwide are compelled to adopt extreme measures which have significantly affected the citizenry of every political and geographical setting. COVID-19 has impacted negatively on the world economy, overstretched the global health system, instilled financial discipline and propelled compulsory restructuring of administration.

Definitely, COVID-19 has devastating impacts on the *Almajiri* children in the Northern part of Nigeria. It has caused socio-economic havoc on the masses; threatened global political stability, stirred psycho-religion quagmire especially in places where high premium is attached to religion such as Nigeria. Good governance is not about resolving every problem. It is about choosing the best available option, taking into account the current challenge at hand. However, our concern here is to examine the legal impacts of COVID-19 on the *Almajiri* children in the Northern part of Nigeria. Thus, it is pertinent to examine the impacts of the various regulations made by both Federal and State Governments towards halting the spread of the pandemic beyond measures. It is pertinent to reproduce the regulations for COVID-19 in order to foster simplicity and avoid ambiguity.

- A. **Citizens are to stay in their homes and all businesses and offices should be fully closed while travel to other states should be postponed.** Restriction of movement is not applicable to; hospitals and related medical establishments; health care related

manufacturers and distributors; food processing, distribution and retails companies; petroleum distribution and retail entities; power generation, transmission and distributions companies; private security companies; urgent court matters as may be directed by the Chief Justice of Nigeria; financial system and money markets; and workers in telecom companies, broadcasters, print and electronic media staff who can prove they are unable to work from home. **(emphasis is added)**

The impact of the first regulation is far-reaching on the lifestyle of the *Almajiris* who are raised on the street. Most of the *Almajiri* children have lost their homes to communal crisis, herders-farmer crisis, insurgency, and natural disaster. This particular regulation directly forced them into a state of psychological commotion and dilemma. Apart from the fact that they are not categorized as essential servicemen that may be exempted from the lockdown, their business is not attractive to earn government compassion, palliatives, incentives and financial intervention packaged for traders, marketers, farmers or small scale medium enterprises.

In essence, *Almajiri* children are faced with the option of either complying with the lockdown while enduring starvation or violate the lockdown directives from government and risk been arrested or contract the disease unconsciously while sourcing for sustenance. Even if the *Almajiris* risk violating the lockdown directives in search for sustenance, there is low probability of getting anything as the streets are deserted either in compliance with the government directives or for fear of COVID-19. The first and foremost regulation has a devastating, and overreaching impact on the wellbeing, right to life³³ and freedom of movement³⁴ of the *Almajiris*.

Interestingly, Section 45 of the same Constitution makes provision for justifiable excuse or instances when citizens right to freedom of movement can be restrained. However, such justification does not cover violation of right to life under Section 33 of the Constitution. It is the authors view that restriction of *Almajiri* children movement without any arrangement for palliatives to mitigate the sudden hardship from lockdown is tantamount to death sentence.

³³ See section 33 of the CFRN (1999) as amended.

³⁴ *Id.*, section 41.

Although, right to life is not absolute as the law makes clear and unambiguous provision for instances that can warrant lawful violation of same.³⁵ Meanwhile, none of the constitutional excuses absolves government restriction of *Almajiri* children's movement. Accordingly, the Criminal Code³⁶ provides thus;

“A person who by **threat** or **intimidation** or any deceit causes another person to do an act or make an omission which result in the death of that other person is deemed to have killed him.”

The question agitating the mind and begging for answer is whether the regulations restricting movement of *Almajiri* children constitute threat or intimidation as contemplated by the Criminal code? A quick glance into the Black's law Dictionary defines threat as follows; “A declaration of intention or determination to inflict punishment, loss, or pain on another, or to injure another by the commission of some unlawful act”³⁷

Similarly, the Penal code which is largely applicable in the northern part of Nigeria describes homicide as follows;

“If the doer of the act knew or had reason to know that death would be the probable and not likely consequence of the act or any bodily injury which the act was intended to cause.”

The singular act of the government to provide succor to other members of the public with the exception of *Almajiri* children gives strength to the fact that death or serious injury was anticipated from the lockdown directives. The deliberate act of excluding or non-recognition of the plights of the *Almajiri* children amidst COVID-19 pandemic portrays government's bias, indifference, nonchalance and discriminatory attitude towards its citizens.

Inference from the restriction against the right to movement of *Almajiri* children whose only means of survival is tied to their movement from one place to another is inimical to their

³⁵ See section 33 (2) a-c of the CFRN.

³⁶ Section 310 of the Criminal Code CAP “C38” of LFN 2004.

³⁷ Henry Campbell Black, *Black's Law Dictionary* (Definitions of the Terms and Phrases of American and English Jurisprudence, Ancient and Modern), West Publishing Co. 4th Ed. Rev.pg. 1651, (In U. S. V. Daulong, d.c.la., 60 f.supp. 235, 236. A menace; especially, any menace of such a nature and extent as to unsettle the mind of the person on whom it operates, and to take away from his acts that free and voluntary action which alone constitutes consent. Abbott, United States v. French, D.C.Fla., 243 F. 785, 786).

wellbeing and material needs. It suffices to hold that threat to arrest lockdown violators without adequate concession for *Almajiri* children constitute threat to their right to life guaranteed under the constitution. In other words, government directives to restrict movement of citizens without concession for *Almajiri* children like other essential workers is suicidal and has the propensity to cause more harm than good. It is illogical to assume that government is ignorant of the condition of the *Almajiri* children whose existence and presence in the nooks and crannies of major city and all northern states can neither be denied nor downplayed.

There is no gainsaying the fact that such regulations actually threatened the life and existence of the *Almajiri* children in flagrant contravention of their constitutional and fundamental rights. Unfortunately, no meaningful arrangement or policy has been earmarked for *Almajiri* children in the northern part of Nigeria amidst the unabated increase in spread of COVID-19 in Nigeria.

B. Excerpt from the regulations and measures “Government will deploy relief materials to residents of satellite and commuter towns and communities around Lagos and Abuja whose livelihood will be affected by the restrictive measures.” Also, the school feeding program will be sustained without compromising social distancing policies **(emphasis added)**. As beautiful as the above measure appears, it is quite unfortunate that the *Almajiri* children despite possessing the required qualification to benefit from the palliative were not reckoned as deserving beneficiary. Also, the proposed feeding programme for school children, the category they ordinarily belong did not avail them because they lack access to formal education. Thus, they are unjustly excluded on the basis of a circumstance beyond their own means. In other words, they are unjustly exempted for government’s failure or negligence to provide free compulsory education in the country. The plight of the *Almajiri* children is pitiable, distressing and alarming. The legal impact of the pandemic is obviously devastating and unbearable.

From another perspective, the above measure can be simply described from the constitutional point of view as a discriminatory policy against the *Almajiri* children. Section 17(3) of the Constitution of the Federal Republic of Nigeria (as amended) provides as follows;

17(3). The state shall direct its policy towards ensuring that;

- a. all citizens, without discrimination on **any group** whatsoever have the opportunity for securing adequate means of livelihood as well as adequate opportunity to secure suitable employment;
- f. children, **young persons** and the age are protected against any exploitation whatsoever and against moral and **material neglect(emphasis is ours)**.³⁸

Similarly, Section 18(3) a-d of the Constitution provides for free compulsory and universal primary education, free secondary education, free University education and adult literacy programme.³⁹

From the above cited statutory authorities, the mind boggling question that cross the mind is whether government school feeding programme to the exclusion of the *Almajiri* Children amidst COVID-19 pandemic is not *ultravires*, contradictory and anathema to the spirit and letters of the *grundnorm*? Whether governments' negligence to provide free compulsory, secondary, University and adult literacy programme for the *Almajiri* children is justifiable? This paper answers the above questions in the negative. The question is answered in the negative in view of the provision of the Constitution, specifically Section 15 (1 & 2)⁴⁰ which provide as follows;

15. (1) The motto of the Federal Republic of Nigeria shall be Unity and Faith, Peace and Progress.

(2)Accordingly, national integration shall be actively encouraged, whilst discrimination on the grounds of place of origin, sex, religion, status, ethnic or linguistic association or ties shall be prohibited. (emphasis is ours)

Hence, the *Almajiri* children should not be made to bear the brunt of government's iniquities and failure in the discharge of its responsibilities. Consequently, non-inclusion of the *Almajiri* children in the school feeding programme is discriminatory against the *Almajiri* children, unjustifiable and such programme merits prompt re-evaluation for possible redress.

³⁸ Sections 17(3) (a) and f, chapter 2 of the 1999 constitution of the Federal republic of Nigeria (as amended).

³⁹ Sections 18 (3) (a-d), *Ibid*.

⁴⁰ See section 15 of the 1999 Constitution (as amended).

C. “Northern Governors’ Resolution to Evacuate *Almajiris*”

Governors under the aegis of the Northern Governors’ Forum (NGF) issued a statement where they “discussed the risk that *Almajiri* children are exposed to due to the virus. They unanimously decided to ban the *Almajiri* system and evacuate the children to their states of origin. As a result of the resolution, Kano state has already finalized arrangement to repatriate 251,000 *Almajiris* to their state of origin.⁴¹ Nasarawa state has equally sent back 788 *Almajiri* children to their states.⁴²

A careful evaluation of the legal impact of this repatriation policy on the *Almajiri* children revealed governments’ insensitivity to their primary obligations and lack of quality policy direction. Such policy depicts the epitome of injustice and discrimination against the *Almajiris*. It is incongruous, unconstitutional and repugnant to natural justice, equity and good conscience that a vulnerable sector of the community who ordinarily should be protected are further subjected to rash and inhumane policy. Such resolution constitutes a flagrant breach of human dignity, and right of personal liberty. If about 9% of infected cases at Lagos State COVID-19 centres are foreigners and are being treated free of charge,⁴³ it is astonishing for Northern Governors to resolve to evacuate *Almajiris* who are citizen and indigenes to their respective state of origin rather than being given adequate care and treatment. In essence, the policy is ill-conceived and embarrassing.

Specifically, the Nigerian Constitution guarantees every citizen freedom to move and reside in any part of the country.⁴⁴

41. (1) Every citizen of Nigeria is entitled to move freely throughout Nigeria and to reside in any part thereof, and no citizen of Nigeria shall be expelled from Nigeria or refused entry thereby or exit therefrom.

⁴¹ <<https://www.vanguardngr.com/2020/04/kano-to-evacuate-almajiri-children-to-states-of-origin/>> (May 9, 2020).

⁴² <<https://www.pulse.ng/news/local/nasarawa-govt-sends-788-almajiris-back-to-their-home-states/7cd56zr>> (May 19, 2020).

⁴³According to Professor Akin Abayomi, Lagos State Commissioner for Health about 91 per cent of confirmed COVID-19 Cases in Lagos are Nigerians, nine percent are foreigners,” <https://businessday.ng/coronavirus/article/covid-19-weekly-summary/> (May 11, 2020).

⁴⁴ Section 41 (1) of the 1999 CFRN (as amended) “Every citizen of Nigeria is entitled to move freely throughout Nigeria and to reside in any part thereof, and no citizen of Nigeria shall be expelled from Nigeria or refused entry thereby or exit therefrom”.

(2) Nothing in subsection (1) of this section shall invalidate any law that is reasonably justifiable in a democratic society-

(a) imposing restrictions on the residence or movement of any person who has committed or is reasonably suspected to have committed a criminal offence in order to prevent him from leaving Nigeria; or

(b) providing for the removal of any person from Nigeria to any other country to:

(i) be tried outside Nigeria for any criminal offence, or

(ii) undergo imprisonment outside Nigeria in execution of the sentence of a court of law in respect of a criminal offence of which he has been found guilty:

Provided that there is reciprocal agreement between Nigeria and such other country in relation to such other matters.

Although, the same section of the law provides for exceptional instances a citizen can be expelled from the country, it requires judicial interpretation to determine whether a citizen's right under Section 41 can be restricted for public safety or public health under Section 45(1) (a) of the 1999 Constitution contrary to the unilateral executive discretion by the executive arm of government. While the nationwide lockdown and restrictive regulations can be hesitantly or partially accepted to be in the interest of public safety, repatriation of infected *Almajiri* children cannot be justified under the same guise in the interest of public safety or public health because to do so will be discriminatory. Repatriation of the *Almajiri* children will amount to double standard if other victims of COVID-19 who reside outside their states of origin are not subjected to similar treatment (of repatriation).

From the foregoing, it is conceivable and obvious that the legal impacts of COVID-19 on the *Almajiri* children are distressing and upsetting. Unlike others, the *Almajiri* children bear more burden during the period of pandemic as a result of the varying regulations and measures put in place to contain the spread of COVID-19. Rules and regulations which ordinarily ignite peace, comfort, justice and convenience on the masses occasioned untold hardship on the *Almajiri* children.

CONCLUSION

This paper presents an in-depth critique of the legal impacts of COVID-19 on the *Almajiri* children in the Northern part of Nigeria using available data and reports as at the time of writing this paper. Thus, it is not out of place to observe little discrepancies in figure and data later as the number of infections keeps increasing. It considered the background and the concept of *Almajiri* system in the Northern part of Nigeria while highlighting the significant contributions of the system at the early stage to the socio-economic, judicial and political administration pre and post colonialism. Ironically, the system was abused and consequently became a burden on the socio-economic and political growth due to executive negligence, parent religious overzealousness and societal misconceptions in the North.

Similarly, the factors contributing to the vulnerability of the *Almajiri* children to COVID-19 were highlighted. It was observed that the traditional lifestyle of the *Almajiris*, lack of parental guidance, lack of shelter, stable means of sustenance and poor access to useful information and health services underscores their vulnerability to the pandemic in the Northern part of Nigeria. Thus, the *Almajiris* from all indication appeared to be the most vulnerable to COVID-19 infection

Also, the various regulations made by the Federal Government and Northern State Governments to flatten the curve of the disease occasioned serious socio-economic crisis on the people. However, measures put in place to mitigate the impacts were uneven and unfavourable to the *Almajiris* due to state actors' zero concern for them; thus, making the *Almajiris* disproportionately bearing the burden of Covid-19. It was also observed that Northern State policy and regulations in containing the disease aggravated the problems. While, the order of lockdown is understandable, the measure of repatriation of the *Almajiri* children in the Northern part of Nigeria is unconstitutional and ill-conceived.

It is submitted that the legal impact of Covid-19 on the *Almajiri* children is discriminatory, repugnant to natural justice, equity and good conscience. The legal impact of Covid-19 on the *Almajiri* children is devastating and poses serious threat to the society at large as they will find it unbearable to comply with lockdown and other regulations. Consequently,

partial compliance with the regulations may jeopardise all efforts to contain the contagious disease.

COMBATING THE IMPACT OF COVID-19 ON CHILD LABOUR THROUGH EFFECTIVE ENFORCEMENT OF LAWS IN NIGERIA AND ETHIOPIA

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Abstract

Child labour is a serious global problem and Africa appears to be worst hit. Nigeria and Ethiopia are developing countries in Africa contending with child labour. There are national, regional and international legal measures aimed at curtailing the spate of child labour in these jurisdictions. Despite these legal measures, child labour remains endemic as children face exploitative labour due to factors such as poverty and poor enforcement of existing laws. The need for enforcement of child labour laws becomes more pressing as the world presently contends with the novel pandemic, corona virus (COVID-19). Although research indicates that children have less severe symptoms and lower mortality rates than other age groups, measures such as closure of businesses and schools directly, affect children. Closure of schools and lack of access to e-learning tools by poor families also makes children susceptible to child labour. Relying on doctrinal research and secondary empirical research, this paper advocates the need for government in Nigeria and Ethiopia to explore practical legal measures to enforce child labour laws. It is averred that the countries under reference can share experiences that would drive the desired enforcement of existing laws. It is important to set up effective mechanisms that would prioritise the best interest of the child.

Keywords: Child, Child labour, COVID-19, Law and Enforcement

INTRODUCTION

Africa is continent with about the highest number of child labourers in the world today. Despite the reduction in the rate of child labour between 2012- 2016 by more than half, the realisation of the United Nations goal is being threatened by the ongoing pandemic. The highly pathogenic and

contagious COVID-19¹ has continued to hit the world on all sides since its emergence in 2019.² Being of serious challenge to global health security, COVID-19 has been affecting the economic, social, educational and virtually all aspects of human life in Nigeria and Ethiopia.³ Children are also being affected. Although research indicates that children who contract COVID-19 appear to have less severe symptoms and lower mortality rates than other age groups,⁴ yet they are affected in many different ways.⁵ Presently, the world, including Africa battles to combat the dreaded disease through innovations in medicine, legal and policy measures; including restrictions on the fundamental rights to freedom of movement, privacy and liberty of citizens.

In Nigeria, specific measures for limiting the transmission of COVID-19 such as temporary closure of schools, markets and other businesses have grave impacts on children.⁶ They become more susceptible to child labour⁷, child marriage and teenage pregnancy. Some children may even drop out of school.⁸ In Ethiopia, COVID-19 prevention measures⁹ have been

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¹ “COVID-19”, formerly referred to as “2019 novel coronavirus” or “2019-nCoV” was given to the disease by the World Health Organisation (WHO) on February 11, 2020. COVID-19 is an abbreviation. ‘CO’ represents ‘corona’, ‘VI’ stands for the ‘virus’ while ‘D’ is for the ‘disease’. COVID-19 is a new disease, caused by a novel (or new) coronavirus that has not previously been seen in humans: Ralph Abraham, *COVID-19-19 Resources*, (Jun.15, 2020, 10:25PM) <https://abraham.house.gov/coronavirus> accessed on March 31, 2020; Sandhills Sentinel, *Firsthealth infectious disease expert details what you need to know about COVID-19* (Mar.13, 2020, 1:35PM) <https://sandhillssentinel.com/firsthealth-infectious-disease-expert-details-what-you-need-to-know-about-COVID-19>, March 13, 2020.

² *China publishes timeline on COVID-19 information sharing, int'l cooperation*, XINHUANET (April 29, 2020 4:20PM) http://www.xinhuanet.com/english/2020-04/06/c_138951662.htm.

³ United Nations, *Everyone Included: Social Impact of COVID-19*, (April 29, 2020, 11:20PM) <https://www.un.org/development/desa/dspd/everyone-included-COVID-19-19.html>.

⁴ However, the reverse is the case for children who have other underlying health conditions.

⁵ *COVID-19 and Children's Rights*, HUMAN RIGHTS WATCH, (April 9, 2020, 10:25PM) <https://reliefweb.int/sites/reliefweb.int/files/resources/COVID-19%20and%20Children%E2%80%99s%20Rights.Pdf>.

⁶ This is particularly so for those who work in the informal sector although the formal sector is also affected. The National Bureau of Statistics, in its latest unemployment report ranks Nigeria 21st among 181 countries with unemployment rate of about 23.1%: Unemployment rate-National Bureau of Statistics, (May 4, 2020, 2:35PM) nigerianstat.gov.ng.

⁷ *COVID-19 Child Safeguarding*, BRITISH COUNCIL (NIGERIA) (May 2, 2020, 3:12AM) <https://www.britishcouncil.org/ng/child-safeguarding-COVID-19>.

⁸ *COVID-19's Devastating Impact on Children, Governments Should Mitigate Harm, Protect Most Vulnerable*, HUMAN RIGHTS WATCH, (April 29, 2020, 4:11PM) <https://www.hrw.org/news/2020/04/09/COVID-19-19s-devastating-impact-children>.

⁹ World Health Organisation, “COVID-19 Preparedness Bulletin Ethiopia”, (May 12, 2020, 5:16AM) 2020, <https://extranet.who.int/sph/news/covid-19-preparedness-bulletin-Ethiopia>.

adopted with some modifications. The Ethiopian government has been conducting house-to-house screening of more than 11 million households containing 40 million people, including children.¹⁰ There are several laws enacted to curb child labour and other forms of human rights violations faced by children in Nigeria and Ethiopia. Apart from national laws, Nigeria and Ethiopia have ratified International Instruments like the United Nations Convention on the Rights of the Child (UNCRC)¹¹ and the African Charter on the Rights and Welfare of the Child (ACRWC) and International Labour Convention. In the face of these measures, child labour has remained endemic due to gaps in enforcement in the countries under reference.

The focus of this paper is to review the efficacy of enforcement mechanisms aimed at addressing child labour particularly during pandemics like COVID-19 when human existence is seriously threatened. The current measures of leaving implementation in the hands of ministries and government in Nigeria and Ethiopia does not really help in bringing violators of the laws to justice. This paper proposes the need for adoption of better enforcement mechanisms to protect the child from exploitative or illegal working conditions in Nigeria and Ethiopia while analyzing their strengths and weaknesses. This paper is divided into five parts: Part 1 is the introduction. Part 2 talks about the meaning, forms and causes of child labour. Part 3 deals with the legal framework for child labour. Part 4 delves into enforcement of child labour laws in different eras: Pre-COVID-19 and Post-COVID-19. Finally, part 5 is the concluding section which contains some recommendations.

1. MEANING, FORMS AND CAUSES OF CHILD LABOUR

Who is a Child?

The word “child” is incapable of a precise meaning; it is sometimes understood as a changing term. No wonder, one social scientist argues that “childhood is a post-industrial and post-modernist social construct,” which is constantly evolving.¹² Under the Nigerian legal framework,

¹⁰ *World Economic Forum Ethiopian's Unconventional COVID-19 Response*, (Jul.20, 2020, 12:15PM) <https://www.weforum.org/agenda/2020/06/ethiopia-covid19-response/>.

¹¹ United Nations Convention on the Rights of the Child (hereinafter referred to as UNCRC), Nov. 20, 1989, Resolution 44/25, 1577.

¹² Daniel Fekadu Wolde-Giorgis, *Child labour in Addis Ketema, Ethiopia: A study in Mental Health*, Umeå University, SWEDEN NEW SERIES No 1228, 2008.

the United Nations Convention on the Rights of the Child¹³, the African Charter on the Rights and Welfare of the Child¹⁴ and the Child's Rights Act (CRA)¹⁵ define a child as any person who has not attained the age of 18. The Labour Act¹⁶ provides that children of any age are permitted to do light work alongside a family member in agriculture and domestic work. Although the Labour Act forbids the employment of youth under age 18 in doing work that is dangerous to their health, safety, or morals, it does not state in specific terms, the types of hazardous activity that are prohibited to children under 18. This paper takes cognizance of the supremacy of the Child Rights Act to other laws dealing with children.¹⁷

Under the Ethiopian Legal framework, there is no consensus among legal authorities on the definition of a child. Like Nigeria, Ethiopia is a signatory to the United Nations Convention on the Rights of the Child (UNCRC) and the African Charter on the Rights and Welfare of the Child which define a child as a person under the age of 18. The national legal mechanisms, such as the Revised Family Code¹⁸ also perceives a child as “a person of either sex who has not attained the full age of eighteen years.” However, The Labour Proclamation¹⁹ does not make specific provision for the definition of a child, but defines a “young worker” as “a natural person who has attained the age of 15, but below the age of 18 years.” The Proclamation prohibits the employment of a person less than 15 years of age,²⁰ and further prohibits the involvement of young workers in work which is of such a nature as would affect the health and lives of citizens.²¹ By virtue of these provisions, children who are between 15 and 18 are allowed to work. This is in conflict with the provisions of the international legal instruments which the country has ratified. Further, the absence of a uniform definition of a child together with the

¹³ UNCRC, Art 1, Nov. 20, 1989, Resolution 44/25, 1577.

¹⁴ African Charter on the Rights and Welfare of the Child, Art. 2, Jul. 11, 1990, CAB/LEG/24.9/49.

¹⁵ Child's Right Act (hereinafter referred to as CRA), section 277, 26 (2003).

¹⁶ Labour Act, section 54 Cap. L.1, Laws of the Federation of Nigeria, (2004).

¹⁷ CRA, Section 274(1) provides that “The provisions of this Act supersede the provisions of all enactments relating to - (a) children; (b) adoption, fostering, guardianship and war ship; (c) approved institutions, remand centres and borstal institutions; and (d) any other matter pertaining to children already provided for in this Act. (2) Accordingly, where any provision of this Act is inconsistent with that-of any of the enactments specified in subsection (1) of this section, the provision of this Act shall prevail and that other provision shall, to the extent of its inconsistency, be void.

¹⁸ The Revised Family Code, Proclamation No. 213/2000 (2000).

¹⁹ Labour Proclamation No.1156/2019(2019).

²⁰ Labour Proclamation, art. 89(1) No.1156/2019(2019).

²¹ Labour Proclamation, Art. 89(3) No.1156/2019(2019).

attendant inconsistencies stands as an obstacle in the path of measures aimed at combating child labour as different standard would be applied in enforcement.

Meaning of Child Labour

Child labour is an issue that bothers on the rights, protection and welfare of the child. The term ‘child labour’ appears simple, but has been the subject of different interpretations. Sometimes, the term is confused with “child work”. The International Organisation of Employers (IOE)²² calls for the adoption of a specific definition of child labour. IOE asserts that some kind of work can be beneficial to children, their families and the economic life of a community if they acquire requisite skills and earn income. However, IOE frowns at work threatens the health, education, moral and future development of children. This paper contends that children should not be subjected to exploitative work even though it may be advantageous to their families and the community at large. Indeed subjecting children to labour that financially benefits families is tantamount to relieving parents of their traditional and legal responsibility of providing for the children. This is what the concept of child labour entails.

According to Aja Nwachukwu,²³ child labour is not synonymous with exploitative labour. To this author, Section 28 of the CRA contemplates child labour that is “forced or exploitative” or what he describes as ‘bad labour’. He contends that child labour is permissible under Nigerian laws; it is only prohibited when it is forced. With due respect, this distinction drawn by the author is superfluous. This paper is of the view that child labour is exploitative no matter the angle at which it is perceived. For the avoidance of doubt, child labour is different from child work. The United Nations Children Emergency Funds (UNICEF) settled this distinction over a decade ago in the following words:

Child work should be distinguished from child labour. By child work is meant work in which the primary emphasis is on learning, training and socialization. As such, the work schedule is flexible, tends to be responsive to the developing

²² *Challenges in Addressing Child Labour: An IOE Approach*, IOE(May 21, 2020, 4:20PM) 11:12PM) [http://csrgermany.net/www/csr_cms_relaunch.nsf/res/IOE%20Leitfaden%20zum%20Thema%20Kinderarbeit/\\$file/IOE_Challenges_in_Adressing_Child_Labour.pdf](http://csrgermany.net/www/csr_cms_relaunch.nsf/res/IOE%20Leitfaden%20zum%20Thema%20Kinderarbeit/$file/IOE_Challenges_in_Adressing_Child_Labour.pdf).

²³ Aja Nwachuku, M, *A Critical Review of Child Labour in Nigeria and the Case for Child Entrepreneurship* 3(2), RECHTSIDEE ,71 -84, (2016).

capacity of the child and encourages his or her participation in appropriate aspects of decision making process.²⁴

Therefore, it is clear that while child labour refers to the act of engaging children in harmful labour (labour that affects the all-round development of the child), child work means participation in an activity that does not negatively affect the health and development or interfere with education.²⁵ No wonder, Fernandes puts it thus: ‘in all circumstances, child labour impacts negatively on a child leaving a lifelong mark on their physical, emotional and social development.’²⁶

The International Labour Organisation (ILO), in defining child labour distinguishes the term child labour strictly so called from ‘worst forms of child labour.’ It defines child labour as “work that is mentally, physically, socially or morally dangerous and harmful to the children and interferes with their schooling by depriving them of the opportunity to attend school.” It also extends to compelling children to abandon school prematurely or making them to combine “school attendance with excessively long and heavy work.”²⁷

The ILO Worst Forms of Child Labour Convention makes provision for specific circumstances that constitute ‘worst forms of child labour’ in the following terms:

- a. All forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labour including forced or compulsory recruitment of children for use in armed conflict;
- b. The use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances;
- c. The use, procuring or offering of a child for illicit activities in particular for the production and trafficking of drugs as defined in the relevant international treaties;

²⁴ *Children and Women’s Rights in Nigeria: A Wake-up Call (Situation Assessment Analysis)* 2001, NATIONAL PLANNING COMMISSION, ABUJA and UNICEF, Nigeria, 203.

²⁵ Child Labour/Child work, January 31, 2008. <https://forum.wordreference.com/threads/child-work-child-labour.813021/>

²⁶ Cassandra Fernandes, *Why is child labour detrimental for children* FARIA AGA KHAN UNIVERSITY, INSTITUTE FOR EDUCATIONAL DEVELOPMENT, KARACHI, 15, 2010.

²⁷ https://www.ilo.org/moscow/areas-of-work/child-labour/WCMS_249004/lang--en/index.htm,

- d. Work which by its nature or the circumstances in which it is carried out is likely to harm the health, safety or morals of children.²⁸

Elaborating on the above, UNICEF adopts a descriptive analysis of child labour. In this regard, UNICEF juxtaposes the relevance of domestic work done by children with work done for economic gains:

Children 5 -11 years engaged in any economic activity, or 28 hours or more domestic work per week; children 12-14 years engaged in any economic activity (except light work for less than 14 hours per week), or 28 hours or more domestic work per week; children 15-17 years engaged in any hazardous work.”²⁹

Conventions 138³⁰ and 182³¹ of the International Labour Organisations (ILO) define child labourers as all children younger than 12 working in any economic activities, children 12–14 years old engaged in more than light work, and all children engaged in the worst forms of child labour – in which they are enslaved, forcibly recruited, prostituted, trafficked, forced into illegal activities or exposed to hazards.³² Child labour, therefore means any work that deprives a child of childhood and right to education or is detrimental to the physical, mental, moral and social well-being of the child³³

In describing the circumstances under which a child can be said to be involved in child labour, UNICEF enumerates some circumstances:

starting full-time work at too early an age; too many hours spent on work within or outside the family, leading to excessive fatigue; depriving children of their rights to education where schools are available or interfering with their education;

²⁸ Art. 3 of C182 of the Worst Forms of Child Labour, 1999, (No 182), (May 4, 2020:4:20PM). https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C182.

²⁹ *Child Labour, Education and Policy Options*, (May 21, 2020, 11:25AM) https://www.unicef.org/Child_Labor_Education_and_Policy_Options.pdf.

³⁰ International Labour Organisation, Minimum Age Convention, c.138, June 26, 1973

³¹ International Labour Organisation, Worst Forms of Child Labour Convention, No.182, June 1, 1999.

³² Factsheet: Child Labour, UNICEF, https://www.unicef.org/protection/files/child_labour.pdf.

³³ Nwazuo, A. N., and Igwe, C. A. (2016). Worst Forms of Child Labour in Nigeria: An Appraisal of International and Local Legal Regimes. *Beijing Law Review*, 7, 69-82. <http://dx.doi.org/10.4236/blr.2016.71008>
Worst Forms of Child Labour in Nigeria: An Appraisal of International and Local Legal Regimes

participating in work that results in excessive physical, social and psychological strains on the child...”³⁴

It is worthy to note these indices are by no means exhaustive of the instances in which child labour can occur. Therefore, child labour extends to any work that is detrimental to the developmental needs of the child.

Forms of Child Labour

There are many forms of child labour in Nigeria.³⁵ These include domestic workers³⁶ or house helps, apprenticeship,³⁷ street trading,³⁸ and hawking, restaurant attendant,³⁹ bus conductor,⁴⁰ motor park tout, farm work, child begging, child trafficking and prostitution and child pornography. However, some of these forms of child labour like hawking and begging were less visible in some parts of Nigeria like Lagos and Abuja where lockdown⁴¹ was initially total due to COVID-19. Domestic servants and other children who are at home seemed more vulnerable to

³⁴ Cited in Folashade Bosede Okeshola, and Mudiare Patience Ukiri, ‘Child Labour,’ in Ignatius Ayua and Isabella Okagbue, (Eds.), *The Rights of the Child in Nigeria*, (Nigeria Institute of Advance Legal Studies, 1996), 178.

³⁵ E.F. Owolabi, *Child Labour and Sustainable Development in Law and Sustainable Development in Africa* edited by Wahab Egbewole, Muhtar Etudaiye and Olugbenga Olatunji, 302-303, Al-Fattah Publications Ltd., 2012.

³⁶ By virtue of Convention No. 189 of the ILO, “domestic work” means work performed in or for a household or households and “domestic worker” means any person engaged in domestic work within an employment relationship. <https://www.ilo.org/ipecc/areas/Childdomesticlabour/lang--en/index.htm> accessed on May 7, 2020. The risks associated with domestic service include exposure to sexual abuse, extremely long hours of work, use of toxic chemicals; carrying heavy loads; underfeeding and poor accommodation, handling dangerous items such as knives, axes and hot pans; ill treatment including physical and verbal violence.

³⁷ Bazu and Bhukuth observe that apprenticeship is not for children who are likely to enter the labour market, but for adults who have chosen to work as apprentices in the informal sector: Damien Bazu and Augendra Bhukuth, *An Analysis of Parents' Strategies of Child Labour and Education in Developing Countries*, March 2009, (May 7, 2020:12:15PM)

https://www.researchgate.net/publication/278821065_An_Analysis_of_Parents'_Strategies_of_Child_Labour_and_Education_in_Developing_Countries/comments.

³⁸ Clark and Yesufu contend that street trading is a major problem which developing countries are struggling with. Most times, street children deprives children of the opportunity to go to school and exposes them to risks such as accidents which may lead to death, sexual abuse and even attack by insane persons: C.I.D Clark, Sumaina Yesufu, *Child Street Trading as an Aspect of Child Abuse and Neglect: Oredo Municipality of Edo State, Nigeria as Case Study*, *European Scientific Journal*, (2012) 8(5), 3

³⁹ Many children work as restaurant attendant in the informal sector in Nigeria. They are often engaged in long and tiring hours of work such as carrying heavy items for the adult owner, running errands and doing other tasks that affect their mental and physical wellbeing. They are also exposed to the dangers of physical and sexual harassment abuse from customers.

⁴⁰ Bus conductor is another form of child labour because in some cases, children are sometimes used by drivers of commercial buses to announce prospective routes. These children are most times, deprived of going to school. They are usually exposed to risks such as accident, physical and emotional abuse

⁴¹ ‘Lockdown’ is a term that is used to describe a standstill situation where movement is restricted, institutions, businesses and workplaces are closed so as to contain the spread of corona virus, COVID-19.

exploitative labour and violence during total lockdown.⁴² In Ethiopia, different categories of child labour have been identified: domestic work, non-domestic, non-paid farm work, wage labour, employment in the informal sector and bonded or tied labour.⁴³

Poverty is generally perceived a root cause of child labour in developing countries.⁴⁴ The International Labour Organisation reports that poverty and its related problems are some of the main causes of child Labour in Ethiopia.⁴⁵ In the same vein, Okukpara and Odurukwe identify poverty as a key cause of child labour in Nigeria.⁴⁶ Another key cause of child labour in Ethiopia is cultural values.⁴⁷ Children are encouraged to develop skills under the Ethiopian culture. Indeed, the Ethiopian culture perceives children as tools for generating income in time of poverty.⁴⁸ Accordingly, children are given work at an early stage as part of efforts to prepare them for assisting parents. Other factors responsible for child labour in both countries include conflict and displacement, urbanization and parental neglect.⁴⁹ Ordinarily, these factors were identified by several authorities before the emergence of COVID-19. Using simple analogy, the pandemic may compel many poor households to bring food to the table through exploitative work due to increased financial pressure.⁵⁰

⁴² *Violence against girls and women risks being COVID-19's invisible catastrophe*, PLAN(April17,2020, 1:22PM) <https://plan-international.org/blog/2020/04/girls-and-women-risk-being-COVID-19s-invisible-catastrophe>

⁴³ Admassie, Assefa :*The incidence of child labour in Africa with empirical evidence from rural Ethiopia*, ZEF Discussion Papers on Development Policy, No. 32,University of Bonn, Center for Development Research (ZEF), Bonn(2000).

⁴⁴ Zahid Naeem, Faiza Shaukat, and Zubair Ahmed, *Child Labor in Relation to Poverty*, International Journal for Health Science 2011: 5(2) 48-49

⁴⁵ International Labour Organisation *Causes and Consequences of Child Labour in Ethiopia* (November 3, 2020) [https://www.ilo.org/ipecc/Regionsandcountries/Africa/WCMS_101161/lang-en/index.htm#:~:text=Poverty%20and%20its%20related%20problems,it%20\(66.0%20per%20cent\)](https://www.ilo.org/ipecc/Regionsandcountries/Africa/WCMS_101161/lang-en/index.htm#:~:text=Poverty%20and%20its%20related%20problems,it%20(66.0%20per%20cent).). It is important to note that poverty is also a consequence of child labour because many children who engage in child labour end up as never do well because they are deprived of the opportunity of going to school. Again, from all indications, COVID-19 pandemic is likely to worsen the level of poverty in the country: Lateef Olawale Akanni and Samuel Chukwudi Gabriel, *The implication of COVID-19-19 pandemic on the Nigerian Economy*, (April 13, 2020: 3:14PM), <http://cseaafrica.org/the-implication-of-COVID-1919-on-the-nigerian-economy/>.

⁴⁶ Benjamin Chiedozi Okukpara and Ngozi Odurukwe, *Incidence and determinants of child labour in Nigeria: Implications for poverty alleviation*, African Journal of Economic Policy 2004: 10(1) 3 (November 5, 2020:3:45am)

⁴⁷ Daniel Fekadu Wolde-Giorgis, *Child Labour in Addis Ketema, Ethiopia: A Study in Mental Health*, 2008 Child and Adolescent Psychiatry, Department of Clinical Sciences, Umeå University, Sweden

⁴⁸ International Labour Organisation, *Causes and Consequences of Child Labour in Ethiopia*, https://www.ilo.org/ipecc/Regionsandcountries/Africa/WCMS_101161/lang-en/index.htm, accessed on July 5,2020.

⁴⁹ JideOgunsakin, *A Legal Prognosis of Child Labour under the Child Rights Act*, Labour Law Review NJLIR, 2(2), 4, (2008).

⁵⁰ *COVID-19: Children at Increased Risk of Child Labour and Exploitation*, (April 23,2020:11:12PM) <https://businessday.ng/news/article/COVID-19-19-children-at-increased-risk-of-child-labour-sexual-exploitation>.

2. LEGAL FRAMEWORK FOR CHILD LABOUR IN NIGERIA AND ETHIOPIA

Nigeria:

Child labour, as a subject of global concern, is controlled by a host of international and national legal machineries. These include United Nations Convention on the Rights of the Child (UNCRC), African Charter on the Rights and Welfare of the Child (ACRWC). Nigeria is signatory to these instruments.⁵¹ At the national level, the key laws include the Constitution⁵² Labour Act and particularly, the Child Rights Act which is the chief legislation controlling child labour in Nigeria.

A. International and Regional Legal Framework

United Nations Convention on the Rights of the Child, (UNCRC) 1989

The United Nations Convention on the Rights of the Child (UNCRC), 1989 places a duty on signatories to protect children from exploitative work and enforce their rights. The UNCRC provides that state parties shall take legislative, administrative, social and educational measures to recognize the right of the child to be protected from economic exploitation and from doing any task that is likely to impede the child's education or affect the child's health or physical, mental, spiritual, social or moral development.⁵³ As signatory to this Convention, Nigeria is under an obligation to ensure compliance with its provisions.

African Charter on the Rights and Welfare of the Child (ACRWC)

At the Regional level, Africa recognizes the need to protect the rights and guarantee the welfare of the child. This regional legal instrument becomes important when one considers the statistics of children who are involved in child labour in the continent. The ACRWC consequently, recognizes the need for the child to be free from child labour; to grow in a happy environment for the full development of his personality. Article 15(1) of the ACRWC provides for the protection of any child from exploitative work or work that hampers the all-round development

⁵¹ Nigeria has also ratified conventions such as ILO C. 138, Minimum Age ILO C. 182, Worst Forms of Child Labor UN CRC UN CRC Optional Protocol on Armed Conflict UN CRC Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography.

⁵² Constitution of the Federal Republic of Nigeria, 1999 (as amended in 2011).

⁵³ Art. 32.

of the child. The Charter provides that every child might be shielded from all types of financial misuse and from doing any work that is probably going to be risky or prejudicial to the child's physical, mental or social improvement. Member states like Nigeria have avowed to take administrative and different measures to protect the child from unwarranted labour.⁵⁴

National Legal Framework

The Constitution

The Constitution of the Federal Republic of Nigeria, 1999⁵⁵ guarantees the right of every individual to respect for the dignity of his person.⁵⁶ Section 34(c) provides that no person shall be compelled to perform forced or compulsory labour.⁵⁷ This section falls under Chapter IV of the Constitution which deals with fundamental rights. Although this chapter does not expressly mention children, but the Child Rights Act (which shall be discussed shortly) acknowledges the applicability of Chapter IV of the Constitution to Children as fundamental rights. Chapter II of the Constitution deals with non-justiciable rights. It provides that children are entitled to protection against any exploitation whatsoever and against moral and material neglect.⁵⁸ By implication, this provision is not enforceable since the Constitution ousts the jurisdiction of the court from entertaining matters under Chapter II. However, this paper is not oblivious of the evolution of the notion of justiciability. When laws relating to children's rights are enacted in line with non-justiciable rights under the constitution, they can and should be enforced in the country. In this context, the enactment of the Child Right's Act settles the issue of justiciability as its provisions is enforceable. In Ethiopia, the rights of children are embedded in the Constitution.

Labour Act⁵⁹

The provisions of the Labour Act⁶⁰ as it relates to children is to the effect that no child shall be employed or work in any capacity except where he is employed by a member of his family on

⁵⁴ African Charter on the Rights and Welfare of the Child, Art. 15, Jul. 11, 1990, CAB/LEG/24.9/49.

⁵⁵ FRN Const., amend II.

⁵⁶ FRN Const., amend II, section 34

⁵⁷ Section 34(c).

⁵⁸ Section 17(3)(f).

⁵⁹ Labour Act, section 59(5) Cap. L.1, Laws of the Federation of Nigeria, (2004).

⁶⁰ Labour Act, section 59(1)(a) Cap. L.1, Laws of the Federation of Nigeria, (2004).

light work of an agricultural, horticultural or domestic character approved by the minister; or be required in any case to lift, carry or move anything so heavy as to be likely to injure his physical development.⁶¹ The Labour Act further provides that no young person under the age of 15 years shall be employed to work in any industrial undertaking except for young persons involved in works in institutions of learning approved by the government.⁶² As earlier noted, the Child's Rights Act (CRA) is superior to other provisions dealing with children, particularly their exposure to exploitative work.

Child's Rights Act

The Child Right's Act⁶³(CRA) is the first major legislative attempt aimed at the protection of children from exploitative labour.⁶⁴ Section 28(1) provides that:

- (a) no child shall be subjected to any forced or exploitative labour; or
- (b) be employed to work in any capacity except where he is employed by a member of his family on light work of an agricultural, horticultural or domestic character; or
- (c) required, in any case, to lift, carry or move anything so heavy as to be likely to adversely affect his physical, mental, spiritual, moral or social development ; or
- (d) employed as a domestic help outside his own home or family environment.⁶⁵

Furthermore, the Act prescribes penalty for breach of its provision.⁶⁶ The punishment is not severe enough to deter offenders in the light of present economic realities. Another setback of the Child Rights Act, like the Labour Act, is that it permits the child to be employed "by a member of his family on light work of an agricultural, horticultural or domestic character". The phrase 'light work' is not defined in the Act. What then is the yardstick for determining what constitutes light work? This is highly contextual because what constitutes light work to a child who is born

⁶¹ Labour Act, section 59(1)(b) Cap. L.1, Laws of the Federation of Nigeria, (2004).

⁶² Labour Act, section 59(2) Cap. L.1, Laws of the Federation of Nigeria, (2004).

⁶³ No. 26,2003.

⁶⁴ It is important to note that the event which led to the enactment of this legislation was characterized by religious sentiments, cultural beliefs, political interests and other selfish interest. It took the intervention of Non-Governmental Organisations and International Organisations to bring this law to limelight.

⁶⁵ This all-round development refers to the child's physical, social development: Section 28(1)(c)

⁶⁶ Section 28 (3) provides that anyone who contravenes the provisions of subsections (1) and (2) commits an offence and is liable on conviction to a fine of N50,000 or a term of six months or both. Child's Right Act, section 28(1)(d), 26 (2003).

and bred in a rural community may be different from what constitutes light work to a child who is trained in a modern society or city where all the facilities to do work are readily available.

The CRA prohibits a child from working in an industrial setting.⁶⁷ In addition, a child shall not be used for the purpose of begging for alms, guiding beggars, prostitution and domestic or sexual labour.⁶⁸ The Act further provides that no child shall be used as a slave or for practice similar to slavery such as debt bondage, serfdom or forced or compulsory labour of any kind.⁶⁹ Also, no child shall be found hawking on main city streets, brothels or highway.⁷⁰

Ethiopia

As earlier mentioned, Ethiopia, like Nigeria, has ratified International legal Instruments on child labour. Specific International Legal Instruments which on the rights of children and child labour which the country has ratified are: United Nations Convention on the Rights of the Child (UNCRC)⁷¹ the African Charter on the Rights and Welfare of the Child (ACRWC)⁷², ILO Convention Minimum Age Convention 138⁷³ and ILO Convention on the Worst Forms of Child Labour 182.⁷⁴

One of the drawbacks in the legal framework in Ethiopia is the absence of a specific legislation on child labour that addresses the need for children to be protected from exploitative labour. This is in contrast with the situation in Nigeria where the extant Child Rights Act exists to specially deal with child labour. Notwithstanding, there are other laws which are still applicable but yet to be fully enforced. The laws that deal with child labour are subsumed in general laws, some of which shall now be briefly discussed.

A. Constitution of the Federal Democratic Republic of Ethiopia, 1995:

⁶⁷ CRA, section 28(1)(d), 26 (2003).

⁶⁸ CRA, section 30(2)(a), 26 (2003).

⁶⁹ CRA section 30(2) (b), 26 (2003).

⁷⁰ CRA, section 30 (2)(c), 26 (2003).

⁷¹ 1989.

⁷² Section 36(b).

⁷³ 1973.

⁷⁴ 1999.

Chapter Three, Articles 13-44 deals with the fundamental rights of every person. Article 36 provides that every child has a right to life;⁷⁵ and a right to name and nationality.⁷⁶ The Constitution further provides that every child has a right “to know and be cared for by his or her parents or legal guardians.”⁷⁷ By reason of this provision, every parent is under an obligation to provide necessities for his child. This means that a situation where children as minors are compelled to work and earn money for their parents is prohibited under the Ethiopian Constitution. The Constitution provides that the child shall not be made “to perform work which may be hazardous or harmful to his or her education, health or well-being.”⁷⁸

The above provisions show the efforts of the government in protecting the child from hazardous or exploitative labour. These provisions have been captured under chapter 3 of the Constitution which deals with fundamental rights and freedom. The implication of these provisions is to make the rights of children binding on all persons and authorities in the country. This is unlike the situation in Nigeria where the rights are encapsulated under Chapter 2 of the Constitution which covers non-justiciable rights. Although the provisions of chapter 2 are generally not enforceable⁷⁹ recent literature shows that they can still be enforceable if they have been legislated upon. Nigeria can draw lessons from the Ethiopian Constitution that recognizes the rights of children as fundamental rights.

B. The Revised Family Code:

The Revised Family Code⁸⁰ does not specifically address the issue of child labour in Ethiopia. The Code is geared towards protecting children and ensuring their well-being in tandem with the provisions of the Constitution and international instruments which has been ratified by the country. The Code⁸¹ provides that the father and mother are, during their marriage, jointly guardians and tutors of their minor children. The Code further provides that the guardian may be

⁷⁵ Section 36(a).

⁷⁶ Section 36(b).

⁷⁷ Section 36(c).

⁷⁸ Section 36(2).

⁷⁹ Section 6(6)(c)

⁸⁰ Federal *NegaritGazetta* Extra Ordinary Issue No. 1/2000 The Revised Family Code Proclamation No. 213/2000.

⁸¹ RFC, Art. 219.

removed by the Court in the event that the minor does not receive the requisite care, attention and education.⁸²

C. Labour Law:

The new Labour Proclamation⁸³ increased the minimum age for admission to employment of young children from 14 to 15 years. By necessary implication, a child who is less than 15 years of age is prohibited from being employed. The Labour Law⁸⁴ prohibits the employment of a person less than 15 years of age and involvement of young workers in work which is capable of affecting endangering their lives or health by reason of its hazardous nature. The Proclamation provides that the minister may prescribe the list of activities prohibited for young lawyers which shall include:

- a) work in the transport of passengers and goods by road, railway, air and internal water ways, dock sides and ware houses involving heavy weight lifting, pulling or pushing or any other related type of labour;
- b) work connected with electric power generation plants, transformers or transmission lines;
- c) underground work such as mines and quarries;
- d) work in sewers and tunnel excavation.

D. Criminal Code:

The Criminal Code of Ethiopia contains provisions that deal with enslavement⁸⁵, trafficking in minors for compulsory labour⁸⁶ and trafficking in minors for prostitution⁸⁷. Under the Criminal Code,⁸⁸ the use of children (minors) for the production and trafficking of drugs is a criminal offence punishable by imprisonment and a fine. However, the Code does not punish the act of procuring or offering a child to carry out such activities.

⁸² RFC, Art. 245.

⁸³ Labour Proclamation, art. 89(2) No.1156/2019(2019).

⁸⁴ *Id.*

⁸⁵ Art. 596.

⁸⁶ Art. 597.

⁸⁷ Art. 636.

⁸⁸ Art.525(c).

3. ENFORCEMENT OF CHILD LABOUR LAWS IN NIGERIA AND ETHIOPIA

In this segment, an attempt will be made to discuss the enforcement of child labour in three seasons: the pre-COVID-19 era, COVID-19 era and the post COVID-19 era.

Pre-COVID-19 Era

Child labour is an old, complex social problem. There are innumerable gory tales of the risks and effects associated with subjecting children to different forms of child labour. The effects of the incidents of child labour include physical, mental and psychological abuse on the child, rape, assault and in some cases, death.⁸⁹

There are newspaper reports on incidences of child labour and the attendant risks. Girls have been reported to be at greater risks because of the exposure to sexual violence. For instance, in Nigeria, an online newspaper reports that in 2018, a 13-year old Fatima of Angwan Rairayi in Lafia, Nasarawa State was raped, after being lured with a promise to buy all her wares for N2,000.⁹⁰ In the same year, an 8-year old girl selling peanuts was gang-raped in the streets of Gombe.⁹¹

In the light of the above, the need for government in Nigeria to employ adequate enforcement mechanisms to curb child labour becomes imperative. This paper is not oblivious of the enforcement strategies employed by the Ministry of Labour and Productivity in curtailing child labour in the past. For instance, in 2013, the Federal Ministry of labour formulated the National Action Plan on Child Labour. This policy framework acknowledges the need for networking amongst stakeholders and affords them the opportunity to contribute to the elimination of child labour in the country, especially its worst forms. One of the key driving principles of this policy document is the enforcement of the right of the child and facilitation of access to child labour victims to rehabilitation, reintegration services and prevention of relapse.

⁸⁹ For instance, it has been estimated that 6 million work-related injuries occur among children annually and this results in 2.5 million disabilities and 32,000 fatalities every year: Child Labor and Child Abuse in Developing Countries, <http://www.uniteforsight.org/gender-power/module4>, (May 19, 2020, 1:30PM).

⁹⁰ Ali Abare Abubakar, *Child labor continues to be a pressing problem in Nigeria. Girls are especially at risk*, THE WORLD, July 30, 2018 <https://www.pri.org/stories/2018-07-30/child-labor-continues-be-pressing-problem-nigeria-girls-are-especially-risk>.

⁹¹ *Id.*

It is on record that some states in Nigeria have taken particular interest in the drive towards eliminating worst forms of child labour. In 2017, Edo State government established a Task Force to combat human trafficking. In the same year, the Borno State government signed as a witness to an Action Plan between the United Nations and the non-governmental Civilian Joint Task Force (CJTF) which aims to put a stop to the recruitment and use of children by the CJTF.⁹²

Despite these measures, the eradication of child labour in the country has remained a mirage.⁹³ It appears that the government lacks the political will to enforce child labour laws. This stance is taken based on the visible cases of child labour that have been ignored. It is no news that children parade highways and major streets in several states in the country, begging, hawking various wares, yet the government does little to stop it. The level of poverty may be responsible for the reluctance of government in this regard. It must be noted that child labour Laws are not meant to exist only on paper. Government has a responsibility to enforce the laws. It may be argued that people may be unwilling to obey existing child labour laws because the government in Africa has not been able to eradicate poverty. This argument cannot be tenable in the light of the need to protect vulnerable children from risks that are injurious to their health and threaten their lives. It is important to enforce existing laws while employing mechanisms to eradicate poverty.

It is curious that some states have not adopted Child Right's laws in Nigeria,⁹⁴ but even in the states that have adopted the child rights Act, enforcement measures still need to be strengthened. The importance of enforcement of laws was aptly captured by C. Andrews in the following words:

I would say that in most instances the passage of laws to correct these abuses is a necessity, but we must not stop with mere enactment of the law. We must provide means for its enforcement.⁹⁵

⁹² Nigeria: Moderate Advancement, <https://www.refworld.org/pdfid/5bd05ae22.pdf> (April 29, 2020, 5:00PM.).

⁹³ Iliya Kure, *Despite Bans, Child Labor Prevalent in Nigeria*, September 10, 2013, (July, 18, 2020:5:35PM) <https://www.voanews.com/africa/despote-bans-child-labor-prevalent-nigeria>.

⁹⁴ Adamawa, Bauchi, Bayelsa, Borno, Ebonyi, Enugu, Gombe, Kaduna, Kano, Katsina, Kebbi, Niger, Sokoto, Yobe, and Zamfara:

⁹⁵ Andrews, C. *The Importance of the Enforcement of Law*. The Annals of the American Academy of Political and Social Science, 34(1), 85-89, (1909).

In Nigeria, the government has been making efforts to curtail child labour through effective legislations, diplomatic relations and setting up of various agencies for the protection of the child and elimination of child labour.⁹⁶ These include The National and State Child Rights Implementation Committees; the Child Development Departments in the Federal and State Ministries of Women Affairs; the National Council of Child Rights Advocates of Nigeria (NACCARAN); The Nigerian Children's Parliament, inaugurated by the President of Nigeria; the National Agency for the Prohibiting of Trafficking in Persons, (NAPTIP), rehabilitation and protection of trafficked persons. Furthermore, Governmental authorities responsible for addressing various forms of violence against children include; Special Presidential Committee on Human Trafficking, Child Labour and slavery, Federal Ministry of Labor and Productivity, Federal Ministry of Justice, Federal Ministry of Information and National Orientation, Nigeria Immigration Service, Nigeria Customs Service.⁹⁷

In Ethiopia, children are trafficked from rural areas to Addis Ababa and to other parts of the country for forced labor in weaving industry and in domestic work. Parents compel their children to travel to urban areas and outside the country in search for jobs.⁹⁸ In some of these cases, female children may be coerced to engage in prostitution and other forms of exploitative labour. Child labour is more prevalent in the rural areas due to inadequate access to education. For instance, rural children often have to travel to far distances to attend school while some do not even have the ability to meet basic educational needs like books and school uniform. In addition, children are pushed into exploitative labour by the prevailing circumstances in their homes such as death of one or both parents, divorces and financial crisis.⁹⁹ A classic example is the case of 15-year-old Serkalem Bihon the only child of her parents who resides in Addis Ababa city. As early as when Serkalem was 9, she started to assist the parents in housework and income generation. Since then, she works round the clock to support the family income by engaging in

⁹⁶ Nwokoro and Cyril Nnaemeka, *The Challenge of Child Labor to the Achievement of MDG2: Case Study of South-East Nigeria*, (Oct 6 2019, 9:15 AM) <http://www.fao.org/fileadmin/templates/ERP/uni/CHLAB.pdf>.

⁹⁷ *Id.*

⁹⁸ *Bureau of International Labour Affairs, Child Labour and Forced Labour Reforms: Ethiopia*, <https://www.dol.gov/agencies/ilab/resources/reports/child-labor/ethiopia> (July 22, 2020, 10 :30AM)

⁹⁹ Sisay Alemayehu Gashaw ,*The Status of Child Labour Exploitation in South West Ethiopia, Jimma Town: The Case of Bocho Bore Kebele, Transcience*, (2017) Vol. 8, Issue 2

weaving for several hours and this affects her health.¹⁰⁰ In another case, a 12-year old boy whose father was a farmer and mother, a housewife. The financial condition of his family compelled him to leave his parents and work as a shoe shine boy in a nearby town. After securing money for transport, he went to Jimma to reside and work on his own.¹⁰¹ In yet another case, 14-year-old Surafel Getu, lives with his father in Addis Ababa. He was involved in traditional weaving with his father from the early age of 7. He was always ‘sleepy in class’ and ‘absent from school’.¹⁰² These selected cases underscore the need for the enforcement of child labour laws in Ethiopia.

Between 2001 and 2006, Ethiopian government introduced the Sustainable Development and Poverty Reduction Programme.¹⁰³ This programme was organized to curtail poverty. Unfortunately, the strategy did not include specific measures to curb child labour. In 2018, the labor inspections paid attention to the agricultural and construction segments of the country where child labour is most prevalent. Research indicates government did not publicly disclose the number of child labour cases identified as a result of these inspections. There is need for accurate data on child labour violations to guarantee effective inspections and enforcement.

Also, the government in Ethiopia formulated a National Plan for Children for the years 2003-2010. This Plan was designed to curtail the worst forms of child labour in the country.¹⁰⁴ The Country’s Response on Violence against Children reports that the national plan is geared towards reducing child labour and providing quality education, adequate health infrastructure, clean water, sanitation, food and nutrition, amongst other goals. In 2019, Ethiopia made efforts to curtail the worst forms of child labour. The government issued a new Labour Proclamation which increased the minimum age for work from 14 to 15 years. Furthermore, government also launched the Effective Approaches in Ending the Worst Forms of Child Labor program to ascertain appropriate ways of addressing the worst forms of child labour. However, children in Ethiopia still engage in child labour. It is observed that the law in Ethiopia does make provision

¹⁰⁰ Margaret Schuler, *Ethiopians Fighting Against Child Exploitation*, (November 14, 2020: 6:25pm) https://www.wvi.org/sites/default/files/E-FACE%20booklet5%20-1smaller%20size_0.pdf.

¹⁰¹ *Id.*

¹⁰² *Id.*

¹⁰³ *Id.*

¹⁰⁴ Responses to Child Labour in Ethiopia, (November 4, 2020, 10: 45am.), https://www.ilo.org/ipec/Regionsandcountries/Africa/WCMS_101163/lang--en/index.htm.

for free basic education or a compulsory age for education. Social programs to combat child labour have also not sufficiently targeted sectors with high incidences of child labour.¹⁰⁵ These have the tendency of making children from poor homes more to child labor.

There are several agencies responsible for the enforcement of child labour laws in Ethiopia.¹⁰⁶ There are Special Protection Units in Addis Ababa and other major cities that control child trafficking and assist weak children. The Ministry of Labour and Social Affairs (MOLSA) is charged with the task of conducting labour inspections of formal worksites at the regional level including the enforcement of child labour laws. MOLSA is also empowered to collect and analyse data relevant data and make policy recommendations on labour. Secondly, the Ethiopian Federal Police investigates criminal violations of laws that protect children against worst forms of child labour. Thirdly, the office of the Attorney General is the head of the Anti-Human Trafficking and Smuggling of Migrants Task Force. It is also vested with the task of prosecuting criminal violations of child labour laws. Finally, the Ministry of Women and Children's Affairs designs and implements programme to help vulnerable children and monitor alleged violations of child labour laws. However, these agencies have not adequately driven the desired enforcement of child labour laws particularly in the rural areas sector where children are overburdened with work in the agricultural sector.¹⁰⁷ There is need for increased governmental efforts in the enforcement of enforcing child labour laws, particularly in the rural setting where child labour is firmly entrenched.

In 2019, Africa Union converged to express concern at the spate of child labour on the continent. The third ordinary session of the specialized technical committee on social development, labor and employment, and high level experts meeting on disability was held at Addis Ababa, Ethiopia.¹⁰⁸ The theme of the event was “poverty eradication through strategic investments at national and regional levels towards social development, labour and employment

¹⁰⁵ Ethiopia: Moderate Advancement https://www.dol.gov/sites/dolgov/files/ILAB/_child_labor_reports/tda2019/Ethiopia.pdf.

¹⁰⁶ Ethiopia: Moderate Advancement (July 3, 2020, 2:56PM) https://www.dol.gov/sites/dolgov/files/ILAB/_child_labor_reports/tda2017/ethiopia.pdf.

¹⁰⁷ Una Murray, Rural Child Labour: Views of Extension Agents in Ethiopia, *Journal of Agricultural Education and Extension* Vol. 19, No. 5, 505-519, October 2013

¹⁰⁸ Third Ordinary session of the Specialized Technical Committee on Social Development, labor and Employment, and High Level Experts Meeting on Disability Addis Ababa, Ethiopia, 01-05 April 2019, African Union, (July 30, 2020:11:15 PM) https://au.int/sites/default/files/newsevents/workingdocuments/36350-wd-35838-wd-au_child_labour_action_plan_-english.pdf.

in Africa”. A draft ten year action plan on eradication of child labour, forced labour, human trafficking and modern slavery in Africa (2020-2030): Agenda 2063-SDG Goal 8, target 8.7 was formulated.¹⁰⁹ At this meeting, the high rate of child labour was acknowledged. Weak implementation of laws and policies were identified as part of the challenges in addressing child labour. In the final analysis, effective laws and policies, ratification and domestication of international and regional instruments were suggested as ways to eradicate child labour. This African Union Plan Action is not a binding instrument. In the absence of any force of law, the action plan is no more than toothless biting piece. The African Union should design a workable and regular monitoring of child enforcement measures in member states.

COVID-19 Era

The COVID-19 era presents real challenges that require the government to take the protection of children seriously, more than ever before.¹¹⁰ The United Nations Children’s Funds (UNICEF) observes that the COVID-19 may worsen child labour especially in places where statistics have remained substantially the same as temporary school closures may push children into exploitative work.¹¹¹ Generally, the pandemic has increased economic insecurity and tightened financial markets in many countries, including Nigeria and Ethiopia. There are reduced losses in household income, and more children could be forced into exploitative and hazardous jobs to enable them financially contribute to their families.¹¹²

Kalle Hirvonen¹¹³ opines that the economic impacts of COVID-19 pandemic in Ethiopia cannot be adequately ascertained due to the paucity of timely economic data. He contends that economic information is largely dependent “on surveys in which enumerators visit households, firms, or markets to gather information about household consumption and income levels, firm profits, and prices.”¹¹⁴ This suggests that researchers are still evaluating the effect of the pandemic on the economy, child labour stands an important issue that must be considered in the

¹⁰⁹ *Id.*, note 109.

¹¹⁰ *ILO: COVID-19: Protect children from child labour, now more than ever*, https://www.ilo.org/africa/technical-cooperation/accel-africa/WCMS_747756/lang--en/index.htm

¹¹¹ <https://www.unicef.org/sites/default/files/2020-06/COVID-19-and-Child-labour-2020.pdf>

¹¹² *Ibid*

¹¹³ Kalle Hirvonen, *Economic impacts of COVID-19 pandemic in Ethiopia: A review of phone survey evidence*

¹¹⁴ *Id.*

economic life of developing world. This is so because bad economic condition forces parents to send their tender children to work to lighten their economic burden.

The international community has designed four pillars to be applied by countries all over the world to respond to COVID-19 pandemic. These are stimulation of the economy and employment, support of enterprises, jobs and incomes, protection of workers in workplaces and facilitating social dialogue to proffer solutions.¹¹⁵ The United Nations International Children Emergency Fund (UNICEF) sets guidelines for the protection of children during this pandemic: Adequate feeding of children, provision of water, hygiene and sanitation for vulnerable children, ensuring e. learning for children, provision of support for financially weak families to enable them cater for their families, protection of children from violence, exploitation and abuse and special protection of refugee and migrant children, including those affected by conflict.¹¹⁶ This initiative is commendable. However, the workability would be dependent on the existing measures to drive enforcement of laws relating to protection of children in specific countries.

As Nigeria threads through the thorns of COVID-19, there is an imperative need for better enforcement strategies in the protection of children from child labour. No doubt, the country is passing through critical COVID-19 time that would affect its history. The response and management of the COVID-19 situation would make or mar the future of the nation. Without children today, the nation will go into extinction tomorrow hence the need for their safeguards, care and legal protection.¹¹⁷

One undeniable fact is that the COVID-19 pandemic has exposed the true situation of infrastructure and weak enforcement structures. In the first place, COVID-19 has exposed the fragile health facilities in Nigeria.¹¹⁸ Also, the novel virus has further worsened and revealed the weak economic condition of the nation.¹¹⁹ Children are now being compelled to support their

¹¹⁵ ILO and UNICEF: https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---ipec/documents/publication/wcms_747421.pdf (accessed on July 20, 2020 at 4:05AM).

¹¹⁶ *Id.*

¹¹⁷ O. I. Tajudeen, *Legal Framework For The Protection Of Child Rights In Nigeria*, *International Journal of Juridical Sciences*, 3 (2015), pp. 46-52, <http://univagora.ro/jour/index.php/aijs> ISSN 1843-570X, E-ISSN 2067-7677 No. 3 (2015), pp. 46-52.

¹¹⁸ UNDP: *The COVID-19-19 Pandemic in Nigeria: Potential Impact on the North-East*, (April 3, 2020:10:55AM), <https://www.undp.org/content/dam/rba/docs/COVID-19-19-CO-Response/UNDP-NE-COVID-1919-Briefing.pdf>.

¹¹⁹ Peterson Ozili, *COVID-19 pandemic and economic crisis: The Nigerian experience and structural causes*, (April 9, 2020:10:35AM), https://www.researchgate.net/publication/340439471_COVID-19_Pandemic_and_Economic_Crisis_The_Nigerian_Experience_and_Structural_Causes

families with the provision of basic facilities for survival. This poses a threat to the health,¹²⁰ mental and physical development of the child. Yet, government has not done enough to address the plight of the child. As at the time of writing this paper, the *Almanjari*,¹²¹ comprising mainly of children are being sent *enmass* to other states by their respective home states by northern governors. This move has been vehemently resisted by some state governments.¹²²

Children have become endangered species in a time like this when schools and businesses have been shut. This development exposes children to the risk of having to hawk items to keep the family going since the resources of parents have dwindled. This is visible in several parts of Nigeria. In Ekiti State, the government has frowned at children selling facemasks on the streets across the city of Ado-Ekiti. At a press briefing on COVID-19 in the State, the government described the hawking of face masks by children as child abuse which was punishable under the law.¹²³ However, government in Nigeria has generally paid lip service to the enforcement of child labour laws as the laws have yet to be enforced.

Of course, other children who sit at home have become victims of domestic violence since recent study shows that quarantined families are now susceptible to violence. The media has been reporting many cases of children that are abused during this era. Just recently, one Mrs. Ifeoma Ezia beat up her ten-year old domestic help because she slept off around 12:00AM and

¹²⁰ Even before the emergence of covid-19, children subjected to child labour have always been more susceptible to contracting diseases arising from exposure to bad weather such as cold and asthma. Other diseases include venereal diseases such as HIV, staphylococcus which arise as a result of rape. Mfrekemfon P. (etal) *Child Labour: A Public Health Problem in Nigeria*, *International Journal of Nursing and Health Science*, June 2015, www.iosrjournals.org,

¹²¹ *Almanjari* is a word derived from the Arabic “Al muhajirun”, “an emigrant”. It usually refers to a person who migrates from his home to a popular teacher in the quest for Islamic knowledge. This is the basis of the *Almajiri* system in what became Northern Nigeria. The word “*Almajiri*” is derived from the Arabic “Al muhajirun”, “an emigrant”. It usually refers to a person who migrates from his home to a popular teacher in the quest for Islamic knowledge. This is the basis of the *Almajiri* system in what became Northern Nigeria: ChetaNwanze, *History of the Almajiri System in Nigeria* (May 29, 2019:2:30PM) <https://guardian.ng/features/history-of-the-almajiri-system-in-nigeria/>. However, several authorities hold that the *Almajiri* system encourages child exploitation while some have described it as a form of child beggary in the north. It is a system whereby young children are released by their families to join an Islamic teacher and proceed afterwards to beg for alms. This is clearly against the spirit and clear provisions of the Child Rights Act. Perhaps, this explains why reason why most of the states in the north have refused to adopt the Act.

¹²² Cross River is one of the states in the federation that resisted the infiltration of the *Almanjaris* in the state due to fear of the spread of covi-19 pandemic. “COVID-19 Task Force intercepts, sends back trucks carrying *Almajiris* in Cross River”

¹²³ Radio Nigeria, *Ekiti Government Decries Hawking of Facemasks by Children*, (November 5, 2020: 1:27pm) <https://radionigeriaibadan.gov.ng/2020/05/13/ekiti-govt-decries-hawking-of-facemasks-by-children/>

allowed the baby she was carrying to fall down. The girl was beaten with a hot iron while nail was driven into her mind.

In Ethiopia, the United Nations reports that closure of schools and loss of means of livelihood are disproportionately affecting children. Domestic violence against children is increasing due to prolonged confinement and increased tension in the household as well as less access to protection services by victims of abuse and violence.¹²⁴ Ethiopia is effectively containing the spread of COVID-19. Schools in Ethiopia have been closed since the emergence of COVID-19. About 26 million children have been forced to stay at home with no specific measures to encourage learning. These children are at risk a higher risk of being pushed into child marriage and forced labour than they were during the pre-COVID-19 era.

Ethiopia has responded positively to addressing the problem of child labour in the COVID-19 era. For instance, the government, through the school improvement director at the Ministry of Education, remarked that school closure as a measure to contain the spread of COVID-19 increased the spate of child labour in the country. Consequently, network of committees whose primary obligation is to hunt for children forced into work and marriages during the Covid-19 pandemic was set up. Despite all the efforts in achieving the mandate of the committee at eliminating childlabour the survey carried out by the team of the research on improving System of Education (RISE) programme still shows that there would be increase in the number of school dropout as impoverished families may rather prefer their children working than returning them back to school.

As the world presently faces hardships due to the COVID-19 pandemic, developing countries are hit by crisis as the preexisting inequalities continue to worsen. It is intriguing to observe that the global health community has responded to curtailing COVID-19 through the production and use of vaccines.¹²⁵ However, there are issues associated with the use of vaccines. For instance, African countries have limited capacity to track and report adverse effects or the

¹²⁴ Global Humanitarian Response Plan, (November 3, 2020: 11:22am) <http://158.232.12.119/health-cluster/news-and-events/news/GHRP-COVID-19-Annexes-July-2020.pdf>

¹²⁵ World Health Organisation, “Risks and Vaccines in Africa’s COVID-19 Rollout”, <https://www.afro.who.int/news/risks-and-challenges-africas-covid-19-vaccine-rollout>, 14 May, 2021.

vaccines. They may not be able to investigate serious adverse events and share fact-based information on the benefits and risks of the vaccines among their populations. Besides, there is also safety concern in Africa. Some African countries stopped their vaccine rollouts due to safety concerns.

Post COVID-19- Era: Prospects for Reform

Nigeria and Ethiopia must begin to pay more attention to mitigating the effects of COVID-19 on child labour since children are the hope and future of any nation. Consequently, safeguarding the right of the child to be free from exploitative labour especially under the unusual circumstances propelled by the pandemic is critical. The impact of COVID-19 on aspects of the global economy and politics is already being felt; the countries under reference in this paper are no exceptions. There are already speculations about the impact of COVID-19 pandemic on the economy of the countries.¹²⁶ In Ethiopia, the government has been taking proactive steps in reducing the spread of COVID-19 pandemic. Despite the rise of the number of infected persons, the virus has also given rise to promotion of the production of alcohol based cleaning solutions, hand sanitizers, face mask, assembling of violators from locally sourced components.¹²⁷ More importantly, the Ethiopian government is presently synchronizing education curriculum through radio and television to maintain learning system for children. This has become necessary since closure of schools leave more vulnerable to child labour.¹²⁸ To this end, several dedicated satellite TV channels have been secured till the end of 2020 to facilitate learning for children while keeping safe out of school. This initiative has the capacity of catering for the learning needs of over 26 million out of school children and reduces child labour in the country.¹²⁹

¹²⁶ *COVID-19: Five Million Jobs at Risk*, Nigerian Tribune, www.tribuneonline.ng.com, May 8, 2020.

¹²⁷ Gojjam Limenih, *COVID-19 in Ethiopia: Challenges, best Practices and Prospects*. (November 10, 2020: 11:55AM) <https://humanitarianhealthethics.net/2020/05/18/covid-19-in-ethiopia-challenges-best-practices-and-prospects>.

¹²⁸ The Alliance for Child Protection in Humanitarian Action, *COVID-19 Synthesis*: (November 12, 2020) https://www.alliancecpha.org/sites/default/files/library/attachments/2_evidence_synthesis_child_labour_covid-19_final.pdf

¹²⁹ Covid-19 Impacts on African Children: How to Protect a Generation at Risk Pan African Policy Paper, June 2020 (November 10, 2020: 11:25PM), https://resourcecentre.savethechildren.net/node/17694/pdf/pan_african_policy_paper_8th_june_-_final.pdf

The time is set for government in Nigeria to adopt short and long term measures as are crucial for the reduction of child labour in the country. The enforcement of child rights Act in Nigeria is the first major step geared towards eradicating child labour. It is the first legislation that expressly punishes child labour and puts the best interest of the child as an overriding consideration in all actions affecting children.¹³⁰ This can be achieved by setting up a functional and responsive task force that would monitor the perpetuation of child labour in all areas. This can be achieved by eliciting the support of the public to contact the task force in the event that they see any child that is being subjected to child labour.

Commendably, the Alliance 8.7 Global Coordinating Group virtually held meeting on May 19, 2020.¹³¹ This meeting was attended by the Minister of Labour and Social Affairs who expressed the determination of the country to reassess the National Plan of action for the elimination and eradication of the worst form of child labour.¹³² The Minister also delved into the intended efforts of the country to facilitate the establishment of an inter-regional forum on migration, strengthen the legal system and enthrone better mechanisms for enforcement of laws. The need to initiate a National Plan on Child Labour was also discussed. However, whether these verbal statements would be matched with concrete actions is a different matter entirely.

The discovery of the vaccines is commendable and may help to eradicate COVID-19. However, the eradication of the virus is dependent on several factors. Developing countries like Ethiopia and Nigeria should work on their capacity to monitor adverse effects on the use of vaccines. There is also need to enlighten their respective populations on myths and misinformation about the vaccines. It is also important to ensure greater access to the vaccines so that persons in the rural areas would enjoy equal benefit. Except these are done, eradicating COVID-19 may be a farce.

CONCLUSION AND RECOMMENDATIONS

This paper is an attempt to expose the need for children to be protected from unwarranted exploitation especially in the face of the present epidemic in Nigeria and Ethiopia. The ongoing pandemic does not only pose a threat to the health and economic life of the world, but also to the

¹³⁰ Section 1 of the CRA.

¹³¹ Alliance 8.7: Ethiopia, https://www.alliance87.org/pathfinder_countries/ethiopia/.

¹³² *Id.*

future of vulnerable children. If sustainable future must be guaranteed, then child labour, a phenomenon which affects the all-round development of the child must be eradicated. Undoubtedly, there are several legislative tools and policies that are geared towards protecting the child from child labour. These instruments are worthless without enforcement. Accordingly, government needs to map out better strategies for the enforcement of child labour laws in Nigeria and Ethiopia. Although poverty is generally perceived as a prime cause of child labour, yet, laws are not mere theoretical postulations. Government is urged to enforce these laws dealing with child labour while increasing efforts to expand educational and skill acquiring opportunities for children to obliterate their engagement in labour activities during childhood. Therefore, specific steps such as setting up of Special Child Labour Task Force to monitor child labour in visible and non-visible areas and improve the economy are desirable.

In Nigeria, it is distillable from the daily update of the Nigeria Centre for Disease Control, the number of cases of persons infected with COVID-19 as well as the number of deaths continues to increase daily. The worrisome trend has continued to have devastating impact on all persons, including children and indeed many facets of the country. This places a huge burden on government to review its policies and strategies. On this score, government must pay attention to the monitoring and enforcement of child labour laws, specific needs of the future generation, our children. The rights of children must be respected and enforced. In Ethiopia, the rights of children are constitutionally guaranteed unlike the situation in Nigeria where rights of children are non-justiciable, though the Child Rights Act 2003 protects children's rights. However, rights of children to education, survival and development are not protected under the Ethiopian Constitution. The task of taking care of children is left in the hands of parents. It is suggested that government in Ethiopia should make provision for and enforce the right of children to education as enshrined in Convention on the Rights of the Child.¹³³ This will help to reduce child labour in the country. The Child Rights Act in Nigeria captures these rights. The government needs to enforce these rights is important.

Governments in Nigeria and Ethiopia must show sincerity in providing economic assistance to indigent families. Intriguingly, the economic assistance that the government has announced in response to the virus has exposed failures in Nigeria's social protection systems

¹³³ UNCRC Art.6(2).

and its impact on the most vulnerable people.¹³⁴ On this footing, it is important for governments in these countries to plan a workable social security system that would cater for the needs of the vulnerable- the needy, disabled elderly and children. As earlier noted, Nigeria and Ethiopia are signatories to the UNCRC which places an obligation on governments to ensure that “children survive and develop in the best possible way.”¹³⁵ Survival as used in this context includes protection of children in the face of difficult circumstances like COVID-19 pandemic. On this premise, it is important to note that every child has a right to live; a right to food, water and other basic necessities needed for his continued existence. No doubt, helping to provide basic needs for poor families will reduce the prevalence of child labour in the country. In addition, it is desirable that government should make efforts to trace families who have been orphaned as a result of COVID-19 with a view to providing networks for their care so as to reduce the risk of their being subjected to child labour.

In a bid to mitigate the devastating impact of COVID-19 on children, the government must increase efforts in providing inclusive healthcare. For instance, it is on record that hospitals have been dragging their feet in attending to patients for fear of contracting COVID-19. It is suggested that the pediatric unit of public hospitals need to be adequately equipped to cater for the health needs of children. Government must take all such measures as are necessary for promoting the development of the child.

The education of the child, for instance must be taken more seriously. Ethiopia has taken steps to facilitate education of the child. In Nigeria, it is gratifying to note that the Federal government, through its minister for education disclosed that all students in Nigeria have now been granted free access to the follow e-learning portals.¹³⁶ These e-learning platforms have been allegedly declared subscription free for Nigerian students in primary and secondary levels during the period of this lockdown as precipitated by COVID-19 pandemic. This initiative is quite

¹³⁴ *Nigeria: Protect Most Vulnerable in COVID-19 Response-Extended Lockdown Threatens Livelihoods of Millions*, HUMAN RIGHTS WATCH,(April 12, 2020:6:15PM), <https://www.hrw.org/news/2020/04/14/nigeria-protect-most-vulnerable-COVID-19response>.

¹³⁵ Art. 6.

¹³⁶ Azeezat Adedigba, *COVID-19: FG launches free e-learning portals for students*, (April 25, 2020:11:12PM), <https://www.premiumtimesng.com/coronavirus/389775-COVID-19-fg-launches-free-e-learning-portals-for-students.html>.

commendable. However, whether the innovation will rise to reality is very doubtful in view of the present state of facilities in the country. For instance, this initiative fails to address some key issues such as: How many homes have steady electricity supply? How many homes can afford electronic gadgets that can access internet facilities? What is the fate of children who reside in rural areas where electricity and phone facilities do not exist? The answers to these questions are negative as they tilt against the interests of children.

It is worthy to note that in providing effective education for children during the COVID-19 pandemic and indeed at all times governments must incorporate all children irrespective of the social status of their parents. In Nigeria, for instance, government initiative of providing e-learning portal during the pandemic was designed for the benefit of few rich families who could afford constant power supply through generating sets to power android phones and laptops. Indubitably, this leaves out children in rural areas who do not have access to constant electricity supply and electronic facilities. Therefore, neglecting economically disadvantaged children offends the provision of Section 18(1) of the Constitution of Nigeria (1) of the Constitution which places an obligation on government to promote science and technology. Government must device a means to provide modern educational tools like phones for students at affordable rates. Again, the issue of the poor power supply must be given attention if the country must grow. Except this is done, the present efforts of the government would remain mere fireworks.

It is important to add that there is need to abolish cultures that encourage child labour. It is on record that some states are yet to domesticate child labour laws in the northern part of Nigeria. This has been attributable to the fear that domesticating laws would affect their ingrained cultural beliefs. This is a call to the domestication of Child labour laws and abolition of cultures that encourage child labour.

The enforcement of child labour laws in the face of the present pandemic is the heart of this research. Government in Nigeria and Ethiopia must make the enforcement of child labour laws a priority. This can be achieved by setting up a children COVID-19 task force for the purpose of implementing the provisions of the Act. This means that there is absolutely no legal justification for a child to hawk in the streets or be involved in other forms of child labour in

COVID-19 era. To turn a blind eye to this stark reality would expose the child to the disease and facilitate its spread. Government must act now to protect children during this pandemic.

Finally, governments in Nigeria and Ethiopia should embark on public education. It is good enough that the public is being educated on the risks and preventive measures of COVID-19, but it would be better if active hotlines are made available to enable the public reach the relevant agencies on the challenge of children who are being subjected to exploitative labour. Members of the public in these counties should be given opportunity to call relevant agencies upon sighting a child labourer.

CHILD PROTECTION AND THE UNSEEN CHALLENGES OF THE COVID-19 PANDEMIC IN ETHIOPIA AND NIGERIA

Ngozi Chuma Umeh*

Abstract

Child protection concerns the prevention and response to the three most egregious harms facing children - abuse, exploitation and violence. This article highlights challenges that affect child protection within the realities of the COVID-19 control measures and thereafter gives content to the usefulness and need for multisectoral collaboration in the implementation of children's rights as part of the broader response to the COVID-19 challenges. Efforts to contain the COVID-19 pandemic are necessary to the health of the world's population. However these efforts as identified are exposing vulnerable groups and especially children in Nigeria and Ethiopia to increased risk of maltreatments, violence, sexual abuse and exploitation. School closures, movement restrictions, overcrowded spaces at home, loss of jobs by parents, isolation all increase the possibility that children are experiencing physical, psychological, and sexual abuse- especially children already living in urban slums, violent homes as well as unhealthy and unstable families. For many children in Nigeria and Ethiopia, growing economic vulnerabilities will intensify the likelihood of child labour, child marriage and child trafficking. It is argued that despite having enabling laws, Nigeria and Ethiopia have not been decisive about fulfilling their normative obligations. Normatively, it is the central role of governments to see that promises made to children under the United Nations Convention on the Rights of the Child (UNCRC) African Charter on the Rights and Welfare of the Child (ACRWC) and indeed other human rights treaties and national legislation on children are kept. The methodology used in this article is of a qualitative nature that conceptualises child protection as a progressive protective environment involving multidisciplinary components that are interconnected in the sense that child protection is not only descriptive but normative and prescriptive.

Keywords: Child protection, Ethiopia, Nigeria, COVID-19

INTRODUCTION

The COVID-19 pandemic is having tremendous effect on the well-being of children in many African countries, including Nigeria and Ethiopia. Children's rights are under threat and the response measures adopted by most governments are inadvertently putting children at lifelong risks. The immediate socioeconomic outcome of measures adopted to stop the spread of the virus is most damaging to children in African countries in urban slums, remote communities, poor

neighbourhoods, areas of armed conflict and for those already in vulnerable situations in Nigeria and Ethiopia. The drastic COVID-19 pandemic measures by certain number of African countries as well as regional monetary organisations are common knowledge.¹ While it may not be immediately possible to estimate the number of African children that are being affected in multiple ways by the response measures, it might help to state that children in Nigeria and Ethiopia have been in the global poverty line, and African children born before 2020 account for 43 per cent of world poverty generally.² It is obvious that more children will fall into disadvantaged situations as a result of the pandemic response, adding to the percentage.

Moreover, before the emergence of the pandemic, disparities and even widening gaps exist. Education system in Nigeria for instance already faces considerable challenges due to conflicts and displacements.³ In Ethiopia, 90 percent of children at late primary school age presently cannot read and about 14 percent of primary school-aged children do not have access to school. Recent large-scale learning assessments of learners in Ethiopia further indicate that 89 percent of children do not achieve minimum proficiency at the end of primary school.⁴

Several Nigerian children are being left behind because they live in urban slums, or in communities torn by conflict, terrorism or herdsman attack.⁵ For children in Ethiopia, urban and rural disparities between regions are affecting the availability of resources and infrastructure as well.⁶ Child labour and corporal punishment is still a major challenge in Nigeria,⁷ and children remain victims of systemic prejudice and discrimination. We also find that child labour and

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¹ T Herman et al 'Covid-19: Initial responses of certain African countries' *Legal Briefings* (2020)

² K Watkins & M Quattri 'Child poverty in Africa: An SDG emergency in the making' *Briefing Paper* (2019)

³ Ammo A 'Worrisome statistics about education in Nigeria' available online at <https://educeleb.com/worrisome-statistics-about-education-in-nigeria/> (accessed 14 May 2020); see also Centre for the Study of Economies in Africa 'Nigerian education in focus' available at <http://cseaafrica.org/wp-content/uploads/2019/03/Nigeria-Education-in-focus.-issue1-2.pdf> (accessed 14 May 2020).

⁴ See Ethiopia Learning Poverty Brief available at <http://pubdocs.worldbank.org/en/431381571223517237/SSA-AFCE3-ETH-LPBRIEF.pdf> (accessed 14 May 2020).

⁵ Centre for the Study of Economies in Africa 'Nigerian education in focus' *supra* note 3 at 2.

⁶ Save the Children 'Children's rights in Ethiopia: A situational analysis' (2003) available at https://resourcecentre.savethechildren.net/node/7545/pdf/childrens_rights_in_ethiopia_a_situation_analysis.pdf (accessed 14 May 2020).

⁷ As provided in 2017, about 51 percent of Nigerian children are involved in child labour according to the National Bureau of Statistics.

violence against children is prevalent in Ethiopia.⁸ The magnitude of physical, psychological and sexual violence in the home and society are widespread in both countries and in sub-Saharan Africa generally.

Hence, we cannot claim that Ethiopia or Nigerian children's rights are being protected when an Ethiopian child from a rural area, cannot access online learning because they live in a remote community. In most States in Nigeria, children rely on street hawking for survival, they noticeably stand at traffic junctions, weaving between cars and displaying their wares. Sexual activities involving children in exchange for something of value also abound.⁹ In the context of Nigeria and Ethiopia, reasonable proportion of women aged 20 to 24 years are married or in a union before age 15 and before age 18.¹⁰ Boko haram and Fulani herdsmen menace in Nigeria have increased the spate of child abductions and the likelihood of turning kidnapped children into violent radicals that could join armed groups in order to kill or main.¹¹

The good news is that there is progress in terms of the rate of reduction that has been observed with respect to child marriage, child labour, and some other areas of child protection in Ethiopia and Nigeria, even though gaps remain.¹² The government of Ethiopia targets the year 2025 in order to eliminate the practice of child marriage for instance.¹³ The Nigerian government has also committed to end child early forced marriage by 2030 in line with target 5.3 of the

⁸ A Pankhurst et al 'Understanding Children's Experiences of Violence in Ethiopia: Evidence from Young Lives' Office of Research - *Innocenti Working Paper UNICEF* (2016).

⁹ The National Bureau of Statistics 2017 Multiple Indicator Cluster Survey (MICS), indicates that about 43 per cent of Nigerian children aged between 5 and 10 are engaged in the worst forms of child labour, including work in quarry granite and gravel, commercial sexual exploitation and armed conflict available online at <https://www.ilo.org/africa/about-us/office> (accessed 14 June 2020).

¹⁰ Ethiopia and Nigeria rank very high in terms of child marriage prevalence and these child brides are usually resident in rural areas live in poor households and have less education. See UNICEF's 'Report Ending Child Marriage: A profile of progress in Ethiopia' available at https://www.unicef.org/ethiopia/sites/unicef.org.ethiopia/files/2018-10/Child%20Marriage%20Ethiopia-%20online%20version_0.pdf (accessed 14 June 2020). Nigeria has the 11th highest prevalence rate of child marriage globally and it is most common in the North West and North East of Nigeria, see <https://www.girlsnotbrides.org/child-marriage> (accessed 14 June 2020).

¹¹ About 8,000 children have been recruited by the Boko Haram terrorist movement and used by the group in combatant and non-combatant roles, according to Sylvester Tunde Atere, the national project officer of the United Nations Office on Drugs and Crimes (UNODC) available online at <https://www.aa.com.tr/en/africa/8-000-children-recruited-by-boko-haram-un/1526122> (accessed 15 June 2020).

¹² UNICEF's Report 'Ending Child Marriage: A profile of progress in Ethiopia' available at https://www.unicef.org/ethiopia/sites/unicef.org.ethiopia/files/2018-10/Child%20Marriage%20Ethiopia-%20online%20version_0.pdf 9 (accessed 14 June 2020).

¹³ As above, 11.

Sustainable Development Goals.¹⁴ There is also a commitment towards ending child labour by 2025 in support of Target 8.7 of the Sustainable Development Goals aiming to eradicate all forms of child labour.¹⁵ In 2016, the Ministry of Women Affairs and Social Development launched a 'National Strategy to End Child Marriage' aimed at reducing child marriage by 40 percent and end the practice entirely by 2030. But the bad news is that subsisting trends of progress have been stalled as COVID-19 is pushing existing threats further into the background of already battered countries making child protection harder. Yet this makes the need for working across sectors and with government obvious and vital.

With the outbreak of COVID-19 and the attendant response measures, the vulnerability of marginalised children become more elastic as schools remain closed, businesses collapse, financial losses intensify and government spending is restricted. This has short-term and far reaching implications for children and it is necessary to acknowledge the varied dimensions of the pandemic on children. According to the International Monetary Fund (IMF), average income level is expected to fall in more than 170 countries, including Africa.¹⁶

Particularly for countries in Africa, and precisely in Ethiopia and Nigeria, a reduction in income translates to decline in basic necessities, like food, clothing and shelter. Lack of these basic necessities has drastic effect on children whose families struggle to make ends meet. The long term impact on societies is huge. It is also difficult to imagine the plights of children in these African countries having their education upset, or put on hold, even as the cyberspace struggles to overcome digital divides and skill gaps, as large numbers of the children remain unconnected.

The security of children restricted to their homes is equally affected by the pandemic response, especially for children from dysfunctional families. Immunisation campaigns and inoculations

¹⁴ Federal Republic of Nigeria, Implementation of the SDGs: A National Voluntary Review, (2017); Population Council, Child Marriage Briefing Nigeria (2004) available at www.popcouncil.org (accessed 13 June 2020).

¹⁵ In 2017, Nigeria made a moderate advancement in efforts to reduce the worst forms of child labour. The Borno State government was part of an action plan between United Nations and the non-governmental Civilian Joint Task Force (CJTF) which sought to end the recruitment and use of children by the CJTF. Labour inspectors also conducted 4,694 child labour inspections and found 606 violations, and the National Agency for the Prohibition of Trafficking in Persons and Other Related Matters convicted 10 perpetrators for crimes related to the worst forms of child labour, see Nigerian Tribune, NAPTIP DG raises alarm over high cross-border trafficking of children, June 22, 2017 available at <http://www.tribuneonline.ng.com/naptip-dg-raises-alarm-high-cross-trafficking-children/> (accessed 14 June 2020), U.S Department of State Trafficking in persons report 2017 Nigeria. Washington DC. June 27, 2017, available at <https://www.state.gov/documents/organisation/271344.pdf> (accessed 14 June 2020).

¹⁶ International Monetary Fund 'Regional economic outlook, Sub-Saharan Africa: COVID-19: An unprecedented threat to development' (2020).

programmes have also been put on hold. This will worsen health outcomes for children. Other push and pull of COVID-19 challenges relate to child labour, trafficking and child marriage.

At this critical time, Africa and indeed, Ethiopia and Nigeria require renewed and intensified commitment by all that ultimately translates into regionally coordinated action and national cooperation among all relevant groups and stakeholders. The urgency of regional and international cooperation for children is now more apparent than ever. A regional or national community incapable of protecting its most vulnerable group against violence, abuse and exploitation cannot live up to the African spirit that offers shared prosperity, stability and hope. If the African States, cannot come together to defend the rights of children, especially now that the global community considers the priorities of the ‘post-COVID-19’, what hope is there for cooperation in other areas?

This paper focuses on designating the adoption of multisectoral collaboration as a valuable approach in the execution of child protection laws on account of the damaging effects of the COVID-19 pandemic on children in vulnerable situations in Ethiopia and Nigeria. This paper has five sections. The present section is the introduction. The second section provides an overview of child protection, especially, its normative implications. The third section discusses some COVID-19 interventions risks affecting children, while the fourth section looks towards possible child protection strategies in relation to the effect of COVID-19. The fifth section is the conclusion.

1. UNDERSTANDING THE CONCEPT OF CHILD PROTECTION

1.1 Conceptualising Child Protection: Normative Values

Child protection has no legal definition but situations and circumstances assist in identifying those children who are at risk of serious harm. It is often difficult to define “child protection”, and the measures that must be taken in order to accommodate a wide variety of children, backgrounds, and circumstances. In conceptualising the normative import of child protection, the questions what is a systems approach to child protection and whether child protection present an understanding of shared responsibilities under considerations of valuing is significant. In an affirmative sense, children require strong and responsive families and communities that support

them in order to flourish. Creating a policy environment and socio-cultural programs that reflect these understanding is considered critical for effective protection of children's rights.¹⁷

The UN Convention on the Rights of the Child (CRC)¹⁸ provides a broad legal framework aimed at improving children's living conditions by addressing armed conflict, family abuse, child labour and similar circumstances as well as advancing opportunities for sufficient care, adequate education, and health.¹⁹ Within the context of the CRC, every child undoubtedly has rights irrespective of ethnicity, gender, religion, language, abilities, or any other status.²⁰ Hence it could be argued that there is a correlation between children's protection and their human rights. There exists diverse scholarship discuss around children's rights and the concept of child protection.²¹ All the same, scholars agree that the CRC has principles of protection which also extends to issues of provision and participation.²²

The CRC as articulated targets many levels where actions and support for children's protection ought to occur. Child protection touches on many varied facets of a child's life and takes place at the intersection between human agency and its cultural and social perception. As a result, it has to be approached from various perspectives, combining different sources of knowledge and ways of thinking. This definitely involves many important aspects of a child's life and achieving successful protection must be able to consider this multidimensionality. In this sense, a multidimensional approach to child protection becomes a conceptual tool necessary for an effective and goal-oriented social policy for children. Along this consideration is the integration of the perspective of the child. These standards are much more about social values and protective

¹⁷ N Isokuortti et al 'Effectiveness of child protection practice models: a systematic review' (2020) 108 *Child Abuse & Neglect* 1046.

¹⁸ United Nations Convention on the Rights of the Child; UN General Assembly Resolution 44/25; Office of the United Nations High Commissioner for Human Rights: Geneva, Switzerland, 1989. The African Charter on the Rights and Welfare of the Child (ACRWC) Adopted 1990 OAU Doc CAB/LEG/24.9/49 (1990) entered into force November 29 1999 is also instructive in this regard.

¹⁹ PN Stearns 'History of Children's Rights' in MD Ruck, M Peterson-Badali, & M Freeman (Eds.) *Handbook of Children's Rights: Global and Multidisciplinary Perspectives* (2017) 3–20.

²⁰ UNICEF UK. What is the UNCRC? 2020. Available online: <https://www.unicef.org.uk/what-we-do/unconvention-child-rights/> (accessed on 2 April 2020).

²¹ AV Chernaya 'Children's Rights Concept in Modern Social and Humanitarian Discourse' (2018) 9 *Journal of Social Studies. Education* 140–167.

²² Juha Hämäläinen, Kaisa Pihlainen & Riitta Vornanen 'Sustainable Family Life and Child Welfare: A Conceptual Framework' (2020) 12 *Sustainable Family Life and Child Welfare: A Conceptual Framework* 9112.

environments that must be pursued in line with progressive interdisciplinary discourse in order to deepen understandings of successful child protection and the ways it can be improved.

These highlights already show that appreciating child protection touches on a variety of aspects of a child's life. Indeed, such an endeavour requires commitments and prioritisation, and only constant interdisciplinary efforts will further deepen progress towards understanding child protection issues and ways it could be improved. Many scholars have looked at child protection from an individual model perspective.²³ They have concentrated on factors which are beneficial or adverse for the process of growing up, and have considered areas of psychological and biological development like physical, cognitive, emotional and psychological.²⁴ Certainly, it has been acknowledged that there is a connection between individual child and his/her environment.²⁵ But the broader inclusiveness and connectedness of a child in different levels, system and norms of a society has not been prioritised with respect to child protection.

Meanwhile, there is now growing understanding that we need to recognise a variety of layers and complex social groups and norms which all influence each child and which has to be taken into consideration when conceptualising child protection.²⁶ This may have informed Marta Santos²⁷ ideas on child protection as having to do with assuming the place of a child and appreciating what it means for a child to feel protected and to have around him or her, an environment that creates a sense of being valued. This exceptionally involves enjoying safety and being aware that if something goes wrong and if there is a risk or a fear, everything around will be ready to intervene early enough for fear not to increase and early enough for all the wrongdoings around the child to be abated and for the child to be able to look ahead with a lot of hope in the future.

²³J Allison *et al Theorizing childhood* (1998) 23.

²⁴G Graf & G Schweiger *Introduction: Conceptualising children's well-being* (2015) 5-8; Allison *et al Supra* note 23, at 24.

²⁵As above

²⁶See General Comment no 5 on 'State Party Obligations' interpretation of Art 1 and the UN CRC Committee's General Comment 5 on interpretation of article 4 (General Measures of Implementation of the CRC) CRC/C/GC/5. The Committees' Interpretation of Article 1 from a regional perspective and in the context of its express wording and placement within the ACRWC as a whole is considered beneficial in the light of the Committee's 'Africa's Agenda for Children 2040' and the African Union Agenda 2063 as well as UNSDG which have direct bearing on child protection. See also J Aldgate 'Child well-being, child development and family life' in *Child well-being: Understanding Children's Lives* 21-38 (20110); U Bronfenbrenner *The ecology of Human Development: Experiments by nature and design* (1979) 13.

²⁷Excerpts from Marta Santos Pais, UN Special Representative of the Secretary-General on Violence Against Children (2019).

It is about having an environment that safeguard children from abuse as well as neglect, responding to existing cases, making sure victimised children get healed and making sure children grow in a very healthy environment that nurtures their holistic growth.²⁸ This is synonymous with fostering a healthy, enabling environment to ensure a child's well-being, capable of living free of violence and realising the full opportunities at home, school, or the community in general.²⁹

While protection and rights are conceivably universal in some way, rights are usually realised in specific contexts because of the differences in regulation in different systems and policies. Children are successfully protected when a system (State) and the normative context in which it is embedded place maximum priority on guaranteeing children are free from violence, abuse, exploitation, as well as manmade and natural emergencies.³⁰ States ordinarily should define child protection based on their legislative framework which is expected to consider all groups of children suffering from extreme form of abuse or violence and would set a legislative framework to address it. In doing so States must look at child protection from law, culture, religion (global and regional normative standards), structural and systemic perspectives as well as behavioural perspectives.³¹

Guided by the CRC, UNICEF, World Vision International, as well as Save the Children, States are increasingly making reference to system's approach as against isolated issue based child protection approach in their mandate to establish and otherwise strengthen comprehensive child protection programs. Although there is currently no generally accepted definition of a child protection system and many child protection agencies and national governments have developed their own. One can still find similar themes, characteristics and components in given definitions that are relative to multidimensionality and context. The common goal is a commitment towards bringing different issues together.

²⁸ Agnes Igoye, & Vasileia Digidiki excerpts from interview with Prof. Jacqueline Bhabha, Harvard Law School (2019).

²⁹ Hala Aldosari excerpts from interview with Prof Jacqueline Bhabha, Harvard Law School (2019).

³⁰ Aldgate (n 27 above) 23

³¹ Graf & G Schweiger *supra* note 24 at 6; Allison et al *supra* note 23 at 26.

UNICEF for instance, defines Child protection systems to encompass laws, policies, regulations and services needed across all social sectors and to support prevention and response to protection related risks.³² According to the reasoning of Save the Children, a child protection system includes: laws and policies; a meaningful synergy across government departments and between sectors at different levels; knowledge and data on child protection issues and good practices; minimum standards and oversight; preventive and responsive services; a skilled child protection workforce; budget; children's voices and participation; and a conscious and supportive public.³³ World Vision strategy on child protection system focuses on a set of coordinated formal and informal elements working together to prevent and respond to abuse, neglect, exploitation and other forms of violence against children.³⁴

The normative thrust behind the foregoing definitions is a progressive protective environment and emphasis is on protecting all children which includes both prevention and response to harm that compromise child development. It significantly entails components that are interconnected and work individually and collectively to strengthen protection and reduce vulnerability that compromise child development. The fundamental premise is on governmental commitment to protection rights through appropriate policies, adequate funding, legislation and enforcement, coordination mechanism across services and sectors, preventive and responsive care, workforce roles and capacity, open discussion, communities, civil society, and social norms, monitoring and data. As such, all of these components together make up a robust child protection system.

Normatively, child protection requires a holistic design and implementation that recognises that every child has a right to grow up healthy, safe, and secure with opportunities and experiences to be able to flourish in childhood and in later life. This indeed connects to the aforementioned multidimensionality of child protection and why it is best approached from an interdisciplinary perspective that aims to progressively incorporate knowledge from different disciplines. Children's lives are surrounded and shaped by different types of social environments including family, community, civil society organisations and international organisations, and legal systems.

³² UNICEF Child Protection Strategy (2008).

³³ Fact sheet on National Child Protection Systems in Swaziland, Save the Children, (2010).

³⁴ A Systems Approach to Child Protection, A World Vision Discussion Paper, World Vision International, (2011).

Obviously, a systems approach to child protection goes beyond a distinct issue, connects several sectors and disciplines, and should be rights-based and child-centred.

1.2 Defining Child Protection in the light of COVID-19 Crisis

From the foregoing section, it could be gathered that child protection encompasses a specific subset of the whole field concerning children's rights, including the prevention and response to abuse, exploitation and violence. It is an integrated heterogeneous field which is expected to progressively draw on many disciplines that are of importance to a child's life, and any conceptualisation must be able to do justice to this multidimensionality.³⁵ Ultimately, this involves taking a wide range of measures to provide protection, combat deprivation, enhance access to quality basic services, and improve the overall safety of every child. Here, governments are expected to take the necessary legal, policy, budgetary, administrative and other appropriate measures to ensure the full protection of children's rights as provided in the CRC, the African Charter on the Rights and Welfare of the Child (ACRWC), other relevant international and regional instruments and national laws relating to children.

Child protection is a global, regional, and national level challenge at the same time. At the national level, strengthened institutions as well as other infrastructures are needed to implement the rights of children, and a lack of infrastructure or weak institutions could lead to a minimum level of protection. It suffices to state that the Nigerian Constitution affirms the rights of all persons including men, women and children alike. The Child Rights Act is Nigeria's specific legislation aimed at echoing the principles contained in the CRC³⁶ and the ACRWC.³⁷

The ACRWC³⁸ is the principle regional document governing the implementation of children's rights in Africa and has been widely ratified by member States of the African Union (AU). It provides the overarching implementation obligations of state parties, with cross-cutting

³⁵ B Asher et al 'multifaceted concept of child well-being' in Asher Ben-Arieh, Ferran Casas, Ivar Frones, and Jill E. Korbin (eds) *Handbook of child well-being: Implications for child well-being: Theory, indicators, measures and policies* (2014).

³⁶ Signed and ratified by Nigeria on 19 April 1991.

³⁷ Adopted and ratified by Nigeria on 13 July 1999 and 23 July 2001 respectively.

³⁸ ACRWC supra note 18, Adopted and ratified by Nigeria on 13 July 1999 and 23 July 2001 respectively, adopted in Ethiopia 11 July 1990, ratified 2 October 2002 and entered into force on 29 November 1999.

implications for the Charter as a whole.³⁹The Child Rights Act sets out the rights and responsibilities of the Nigerian child and further provides a system of child justice administration. The Act has provisions on ‘best interest of the child to be of paramount consideration in all actions’ as well as ‘a child to be given protection and care necessary for his/her well-being’.

Likewise, Ethiopia as a member state to both the CRC⁴⁰ and ACRWC,⁴¹ has been taking various measures to ensure the realization and observance of the rights of children. Particularly, the 1995 Constitution of the Federal Democratic Republic of Ethiopia improved in many ways the legal protection of children. Article 36 of the Constitution relates specifically to the rights of children, and was drafted taking the provisions of the CRC into account.⁴² These measures range from formulation of several policies with focus on children to the adoption of National Plan of Action for Children (2003-2010 and beyond).⁴³

Based on the idea that Child protection does not exist in a vacuum, but are embedded within a broader context or environment, it relies on people and institutions that are properly equipped to carry out the work.⁴⁴ How children, legal systems, families, neighbourhoods, formal and informal organizations are unified around a common goal is significant with respect to the future, and whether the system as presently given meets the goals and challenges of today. Within the highly contextualized approach to adequate child protection systems the most important question is: Are Ethiopian and Nigerian children being protected from the impact of COVID-19 in a manner consistent with their rights?

In emergencies like the COVID-19 crisis, protective factors surrounding a child are diminished while elements of danger increase. Children are exposed to increased protection risks

³⁹ ACRWC, art. 1 titled ‘Obligations of state parties’.

⁴⁰ Ethiopia ratified the Convention on the Rights of the Child (CRC) on December 9, 1991 by virtue of Proclamation 10/1992.

⁴¹ Ethiopia also ratified the African Charter on the Rights and Welfare of the Child (ACRWC) on October 2, 2002 by virtue of Proclamation 283/2002.

⁴² Article 36 of the Ethiopian Federal Constitution.

⁴³ African Network for the Prevention and Protection Against Child Abuse and Neglect ‘Desk Review and Analysis of Literature on Child Protection in the Eastern African Region’ (Ethiopia, Kenya, South Sudan, Rwanda, Tanzania and Uganda) 2011.

⁴⁴ M Rothery “Critical Ecological Systems Theory.” In N Coady and P. Lehmann, (Eds.) *Theoretical Perspectives for Direct Social Work Practice* (2007) 89

as a result of the COVID-19 crisis in a number of ways that are explicit or hidden. Manifestly, the virus may cause loss of parental care due to death, illness or isolation, thereby placing children at intensified risk for violence, neglect or exploitation. Absence of parental care places children at risk of family separation, child marriage, exploitation, and violence, while caregivers struggle to identify the means to care for abandoned children. This may lead to a multitude of horrible consequences with children likely being forced to resort to negative coping mechanisms such as child labour, child marriage, and family separation.

It could also take an indirect route as mitigating measures adopted by many countries to curtail the spread of the COVID-19 virus have resulted in interruption to children's usual environments, practice, and relationships. What's more, many of the prevention and control measures have also affected the treatment and medical appointment schedules of children services, leaving many children and families susceptible to risk. Moreover, the social distancing measures have affected delivery of vital support and treatment services as well as contact with informal support networks.⁴⁵ Heightened tensions in the household due to added stressors that could come in the form of economic uncertainty, job loss or disruption to livelihoods and social isolation may lead to intimate partner violence and witnessing of violence by children. During the pandemic, recognising children at risk is intrinsically more difficult given that many adults who would usually make out signs of abuse, such as teachers, healthcare workers, coaches, extended family, neighbours and community members are no longer in regular contact with children.⁴⁶

For children living in the streets, access to help and support services is also disrupted and even more challenging. Actions involving the closure of courts and the suspension of trials and proceedings, could lead to the awaiting trial of children who might otherwise be released or placed in reform homes. Knowing the risk of experiencing certain forms of violence, exploitation, and abuse increases for children, it is important that States take steps to keep children safe and protected. To do so, States including Ethiopia and Nigeria must work across the rights-based progressive protection environment that connects several sectors and disciplines.

⁴⁵ Organisation for Economic Co-operation and Development 'Policy Responses to COVID-19: Combating COVID-19's Effects on Children' (2020) available on <https://www.oecd.org/coronavirus/policy-responses/combating-covid-19-s-effect-on-children-2e1f3b2f/> (accessed 24 July 2021).

⁴⁶ As above

Hence, the whole idea is to ultimately situate child protection in the light of key principles of the ACRWC- non-discrimination,⁴⁷ best interest of the child,⁴⁸ right to survival and development,⁴⁹ participation⁵⁰ through progressively strengthened protective environments that would reinforce coordinated responses to violations relating to abuse, exploitation and violence. A purposive child protection system approach considers that children are connected to the family (which in the African spirit could mean extended family members), through the community (non-State actors, businesses, civil society, human rights institutions) which exist within a wider societal system, holding their governments to account for the protection of children's rights. Here, particular attention ought to be paid to developing and fostering cooperation, coordination and collaboration among stakeholders.

2. HIDDEN DISRUPTIONS OF COVID-19 TO CHILD PROTECTION IN ETHIOPIA AND NIGERIA

Children are usually vulnerable during crisis or emergencies and the COVID-19 pandemic is not an exception. Efforts to contain COVID-19 are exposing vulnerable groups, especially children to increased risk of maltreatments, violence, abuse and exploitation. Beyond the direct impact on the health of parents and child-caregivers, who may have to be separated from their children, socio-economic and psychological disruptions caused by certain measures adopted as a response to cushion the spread of COVID-19 also present hidden risks to child protection.

Experiences from the pandemic in Nigeria and Ethiopia for instance, pose distinct challenges to child protection. Younger children rely on their parents and even caregivers for care, basic needs and protection. Some parents and caregivers that contracted the virus are unable to provide care and support to these children as a result of anxiety, sickness or death and these consequences expose children to vulnerable situations of violence, exploitation and abuse. This could involve neglect, social exclusion and stigmatisation of surviving children as suspected carriers of COVID-19 virus within the community. Most times, ensuring alternative care arrangements for the surviving children is made difficult because of failure of documentation of the deceased by the treatment centre.

⁴⁷ ACRWC art. 3.

⁴⁸ ACRWC art. 4(1).

⁴⁹ ACRWC art. 5.

⁵⁰ ACRWC art. 7.

During the pandemic, for example, children left at home whose single parent did not survive COVID-19 in a community in Nigeria, presented family level financial difficulties that caused particular protection risks for her children, including psychological distress, child marriage, child labour and the engagement of her adolescent girls in transactional sex in order to get money for food and basic necessities.⁵¹ As well, caregivers/parents who are expected to work in isolation centres find themselves separated from their family and children.⁵² This has financial implications for the caregiver's household as the caregiver may be unable to provide alternative and attentive care to their children thereby heightening vulnerabilities of the children to abuse, violence or exploitation.⁵³

Outside the family, but within the immediate environment of the child, social distancing and isolation mean that children are restricted from playing with one another. Sociologists, psychologists, philosophers and anthropologists have often highlighted the importance of forms of play, friendship and aesthetic experience in the life of children.⁵⁴ According to Finnis 'Friendship involves acting for the sake of one's friend's well-being'.⁵⁵ This means that children learn and benefit from each other during social interaction and play. A denial of this elementary 'form of good' as a result of social distancing and isolation measures affects children linguistic, cognitive and emotional development.

With the closure of schools as a result of concerns about the spread of COVID-19 through schools, children's access to education and social interaction with their peers are impacted. This will definitely stall progressive development with regard to 'Africa's Agenda for Children 2040' and the AU Agenda 63. In sub-Saharan Africa, including Ethiopia and Nigeria, it has been found that the out-of-school rate is much higher.⁵⁶ This in essence portrays that a good number of

⁵¹ Interview with the village Head of Urualla Community in Ideato North Local Government Area of Imo State Nigeria on April 29, 2020.

⁵² UNICEF Ethiopia Novel Corona virus Situation Report No. 9.

⁵³ Interview with a health worker working in one of the isolation centres in Lagos on March 29, 2020.

⁵⁴ J Finnis *Natural law and natural rights* (1980) 87; HH Joachim, Aristotle: *The Nichomachean Ethics* (ed) DA Rees (1955) 244; JB Hepler *Social development of children: The role of peers in Children and schools* (1997) 19(4) 242; EP Fisher *The impact of play on development: A meta-analysis in Play and Culture* (1992) 5(2)159

⁵⁵ Finnis *supra* note 54 above 88.

⁵⁶ UNESCO Institute for Statistics and EFA Global Monitoring Report, 'Progress in Getting All Children to School Stalls', Policy Paper 14/Fact Sheet 28, United Nations Educational, Scientific and Cultural Organization, Montreal and Paris, June 2014, p. 1; Data for sub-Saharan Africa: UNESCO Institute Statistics Data Centre, accessed 9 May 2020; higher estimates found in the following sources: United Nations Children's Fund and UNESCO Institute for Statistics, Eastern and Southern Africa Regional Report, Global Initiative on Out-of-School Children, UNICEF and

primary-school-age children who are not attending school are resident in African countries and that proportion is rising with the closure of schools as most schools in Ethiopia and Nigeria do not have adequate technology and required skills for online learning.

Children who live in the streets and in remote communities that are difficult to access are at greater risk of this digital divide and skill gaps. In addition, children with disabilities are disproportionately likely to be out of school due to lack of necessary accommodation for quality education. Children's development suffers due to their inability to engage in learning and productive activities, supervised school play and interactions. Experiences from Ethiopia and Nigeria also show that children receive more beatings and corporal punishment when they are at home with parents, neighbours, extended family members and community members.⁵⁷

The imposition of staying at home measures as well as suspension of social and economic activities and its attendant effect on regular income generation is equivalent to a decrease or shortage of basic necessities, like food, clothing and shelter. Lack of basic needs of life has drastic effect on children that could result to hunger and ill health. Children who are unable to feed or play often get frustrated and are usually stressed.

Perspectives from some family friends and neighbours presented child protection risks related to sexual violence and sexual assault. In Ethiopia and Nigeria, several girls and even boys were sexually assaulted during COVID-19 lockdown by family members, community members and local vigilante groups charged with enforcing community and state lockdown.⁵⁸ Enforcement agents particularly leveraged on the Quarantine Act, suspension of laws/rights, including laws punishing criminal offences and closure of courts, thus making it very difficult to report any cases of domestic violence and sexual assault against women.⁵⁹

UIS, Nairobi, June 2014, accessed 30 April 2020; and United Nations Children's Fund West and Central Africa Regional Office and UNESCO Institute for Statistics, Regional Report: West and Central Africa, Global Initiative on Out-of-School Children, UNICEF and UIS, Dakar, March 2014, (accessed 30 April 2020).

⁵⁷ Global Initiative to end all corporal punishment of children: Country report for Ethiopia and Nigeria, available online at www.endcorporalpunishment.org (accessed 20 April 2020).

⁵⁸ British Broadcasting Corporation News June 6 'Ethiopia: Over 100 children sexually abused during Covid-19 lockdown' available at <https://everygirlafrica.com/ethiopia-over-100-children-sexually-abused-during-covid-19-lockdown/>; Every Girl Africa News June 11 'Nigeria: Governors declare 'State of Emergency on sexual violence against women and children' <https://everygirlafrica.com/nigeria-governors-declare-state-of-emergency-on-sexual-violence/> (accessed 18 June 2020).

⁵⁹ On February 3 and 6, Women Aid Collective (WACOL) and other organizations held a protest against police in Enugu state, Nigeria accusing security officials of gross human rights abuses and sexual abuse, see Human Rights

Children are usually on the frontlines of those most vulnerable during crisis situations. In Nigeria, sexual violence and assault is an on-going and serious problem. Many girls still remain ensnared at home with their abusers as the state is placed under lockdown. Since the lockdown began on 23rd March 2020 in Nigeria, the Mirabel Centre, a sexual assault referral centre in Nigeria, has provided services to several clients and most of these cases have been incidences of defilement. There are growing concerns that the lockdown has led to an increase in rape and other forms of sexual violence as children remain in close proximity with perpetrators over a prolonged period of time. It is also possible to infer connection between children being out of school due to the enforced lockdown and the increase in reported cases of defilement.

Children with disabilities are also more likely to be abused, because they are seen as easy targets. Reports show that 70 percent of all children with disabilities and up to 80 percent of girls with disabilities have experienced sexual abuse.⁶⁰ At the same time children with disabilities face disruptions, health risks and exclusion under COVID-19 measures. The social distancing and closure of schools have caused disruptions to daily routines. Most care givers of children with disabilities were also affected by the mandatory lockdown measures. This could mean lack of access to important resources, special sessions and specific assistive devices that accommodate specific learning needs.

It is important to recognize the threat COVID-19 poses to child protection and respond accordingly. Children will fall victim to sexual violence and abuse in horrific numbers if actors⁶¹ in a child protection system don't act now to put systems in place to respond to their needs. Collectively, in Africa, we need to provide extra support towards child protection during crisis situations and in everyday environments. The next section looks at possible ways of mitigating potential harmful impacts of the Covid-19 for children in Ethiopia and Nigeria.

Watch February 6, 2020 available at hrw.org/news/2020/02/06/. Nigerians also took to the streets to protest series of rape cases- Source alazeera.com

⁶⁰ WHO (2020) Disability considerations during the Covid-19 outbreak; UNICEF (2020) Covid-19: Children at heightened risk of abuse, neglect, exploitation and violence amidst intensifying containment measures, available at <https://www.who.int/publications/i/item/disability-considerations-during-the-covid-19-outbreak> (accessed 23 April 2020)

⁶¹Including the child, family, community, State, Civil society organizations and International organizations.

3. LOOKING AHEAD TOWARDS CHILD PROTECTION STRATEGIES IN MITIGATING POTENTIAL HARMFUL IMPACTS OF THE COVID-19

It would seem that the COVID-19 pandemic is currently less of a threat than the increased risk of maltreatments, violence, abuse and exploitation of children within communities. If necessary precautions are taken, we can protect ourselves from the virus, but child protection concerns are happening in different homes and getting embedded within our communities. With the different issues of child protection in Nigeria and Ethiopia, it is considered that barriers and exacerbated burden children experience can be reduced if key stakeholders take appropriate responsive and remedial actions.

Protecting children made vulnerable by COVID-19 measures ought to be a priority and African States can draw upon the child protection framework⁶² provided by United Nations Children's Fund (UNICEF) to build protective environments within their communities. Protective environments principally resonate with efforts to defend children from actions or situations that place their progressive development and well-being at risk. It is the commitment to adopt measures and structures that prevent and respond to physical, sexual, emotional or psychological abuse, commercial sexual exploitation, child trafficking, child labor, abuse in the home and community, and harmful and abusive traditional practices, such as female genital mutilation (FGM; also known as cutting) and child marriage.⁶³ It is about responding to different abuses and violations of rights that children encounter.

What the foregoing suggests is that achieving effective child protection involves a multidisciplinary and multidimensional approach that intersects various levels of protection. Hence the family, including parents, children, grandparents, aunts, uncles and more distant relatives within a clan, village or community, being the basic unit of any society is an aspect of the various levels of child protection. Other levels of protection include community, institution (school, church, health centres), national (country laws), and international. Any of the abovementioned levels of protection becomes a risk factor affecting the protection of children,

⁶² Child protection from violence, exploitation and abuse [fact sheet] New York: UNICEF; May 2006 <http://www.unicef.org/protection> (accessed April, 2020)

⁶³ Drawn from a reading of T Medrano & A Tabben-Toussaint 'Manual 1: Child Protection Basics, FHI 360 Child Protection Toolkit' Research Triangle Park (2012)6.

when for instance; children's rights are not being enforced by the State as a result of lockdown, during crisis like the COVID-19 pandemic, when a family or community member abuses a child, absence of international co-operation and coordination etc. This means that all actors are expected to live up to their responsibilities to ensure protective environment and systems are created and sustained.

An important aspect of creating effective protective environment for children is consciousness raising and awareness campaigns. If children, families, communities, institutions and stakeholders do not understand the issue of child protection, bringing about attitudinal change in national systems at the family, community, institutional and national levels becomes very difficult. If people in government do not understand and respect dignified living, if civil society organizations do not understand and respect children's rights, if media personnel do not understand and respect children's rights, how can they advance, advocate, enforce and protect children's rights?

It is consciousness raising that can change social norms, attitudes and practices that facilitate and tolerate abuse or violence against children. Consciousness raising will also assist in opening discussions for children to be free to speak up about child protection issues affecting them or other children.⁶⁴ Children are less vulnerable to exploitation and abuse when they are aware of their rights and services available to protect them. Consciousness raising will as well encourage people in the community to come forward to report child abuse. It is often difficult to get population or administrative based survey on child protection because people are not reporting.

Children living on the streets are often left behind because most of the data captured come from household surveys and people are not always willing to report.⁶⁵ Hence, it is an important responsibility of Governments to strengthen capacity and commitment in this regard. The

⁶⁴ This is principally based on the understanding that consciousness raising implies a process of developing awareness of an unfair situation, with the aim of making people want to help in changing it, as drawn from LR Pruitt 'A Survey of Feminist Jurisprudence' (1994) 16 *University of Arkansas Little Rock Law Review* 183-210.

⁶⁵ WHO (2020) Disability considerations during the Covid-19 outbreak; UNICEF (2020) Covid-19: Children at heightened risk of abuse, neglect, exploitation and violence amidst intensifying containment measures, available at <https://www.who.int/publications/i/item/disability-considerations-during-the-covid-19-outbreak> (accessed 23 April 2020)

success level of reporting will only bulge when the quality of services rendered by the State is good. In this regard, services are expected to be provided within a social environment that promotes the well-being, self-respect and dignity of the child. Indeed, people must be encouraged to trust the system.

A policy agenda is usually the outcome of a prevalence data, so identifying the problem through a reporting system can assist in backing up data. If the number of mothers and children who come forward with their stories do not get an encouraging response, the number of cases will remain invincible and children will become more vulnerable. Media and civil society organisations can be engaged to respond and cover protection issues considerably and openly. Their capacity and authority require strengthening to be able to respond to child protection exploitation and abuses.

Governments of Nigeria and Ethiopia need to demonstrate commitment to creating, enforcing and implementing strong legal frameworks that comply with normative standards, policies and programs. When looking at the issue of child protection from the legal point of view, it is possible to say that not much has been done to curb this problem in Ethiopia and Nigeria, even though legal framework with regard to the protection of children's rights against exploitation and abuse exists. Ethiopia and Nigeria have acceded, ratified and to some extent domesticated the CRC and ACRWC. But it has never been given much importance. The biggest gap as can be observed is in the implementation of the child rights.

The CRC and the ACRWC constitute essentially "bills of rights" for all children, a set of laws of binding obligations for governments, and a minimum standard of responsible behavior for communities and families with respect to children. They set normative values which speak to the neglect and abuse that children face in all countries (at different levels) daily, and acknowledges every child's right to survive and progress physically, psychologically and socially. The CRC and the ACRWC emphasise that the "best interest of the child" be a primary consideration in all actions and decisions affecting children. Therefore, it is the responsibility of governments to ensure that policies exist that protect children and strengthen and build the capacity of the system to uphold these policies.

Let's look at a case of child defilement that happened in my community for instance during the lockdown, the perpetrator was a 20 year old man and son to Landlord who defiled a 5 year old girl. The Landlord and other neighbours within the community tried to settle the matter after the parents of the defiled child involved the police. However, the parents refused and chose to take the case to court but the alleged defiler was released on bail. They all live in the same compound, so the parents are now constantly harassed and reminded that taking the defiler (Landlord's son) to court didn't make a difference. Nobody seemed concerned about the physical and mental effect of the crime on the victimised child. It is as if the parents coming forward to expose the abuse of their child didn't have any impact and they feel terrible about the whole situation.

Apparently, governments need to review gaps in the justice system and explore ways to amend and improve the legal process in a manner that will facilitate deterrence from such crimes of violence and abuse against children. Swift action is needed from all bodies of the law, if governments keep giving light punishments to violators and abusers of children's rights, it will not discourage others from carrying out similar crimes because they know they won't be held liable.

The dynamics of several protection problems, such as child trafficking, child labour and child marriage are also obvious during the pandemic. Some families in Ethiopia for instance, became overwhelmed by social and economic problems and could not fully provide for their children. In such an emergency, young children from disadvantaged backgrounds are at the risk of child labour and trafficking and marriage because they are unattended to and are exposed to the economic hardship of their families as well as inadequate nutrition. Recognising these challenges, communities which are considered the second safety net for children can step in to help children in need.⁶⁶

Communities can provide more formal responses through groups such as churches and community/town development unions. These groups have been known to consider the needs of children and families, mobilize resources to support them and monitor and report child protection

⁶⁶ International Save the Children Alliance 'A common responsibility: the role of community-based child protection groups in protecting children from sexual abuse and exploitation' *Discussion paper* (2008).

violations.⁶⁷ The work of communities in protecting children can be enhanced with government involvement, media and civil society engagement. It is the national government that should provide the framework of child protection at the local and State level and these systems must be well harmonised and mutually supported. Active community participation has been highlighted as a very necessary part of child protection strategy.⁶⁸

We also see the magnitude of the COVID-19 threat with respect to access to education for children. In Ethiopia and Nigeria, schools have been closed from the 16 March 2020 and 23 March 2020 respectively, and many children are currently staying at home.⁶⁹ This places at risk the improvements made by both countries education provision that has experienced considerable progression. The closure of schools is also affecting underprivileged children and there are possibilities that it could have a long-term impact on increasing inequality. Appreciating the above challenges, the Ministry of Education in Ethiopia and Nigeria have been encouraging students to continue online learning from home. But the challenge is that both countries are not sufficiently prepared for online education due to inadequate ICT infrastructure in the rural areas, skill gaps, underdeveloped capacity and inadequate institutional capacity.

There have been significant developments too. Governments in Ethiopia and Nigeria have not overlooked what is possible within the resource-constrained education environment. Innovative solutions to keep primary and secondary school children learning while at home, has been achieved using radio, television, whatsapp messaging. However, there is no such strategy or accommodation for pre-primary school children and university undergraduates as well as children with disabilities.⁷⁰ Wide inequalities by family wealth and urban-rural locations are also affecting the extent to which children have access to media technologies at home.

More so, account must also be taken that apart from having online access, children may lack sufficient support from parents to be able to understand media lessons. This is highly dependent on the literacy of parents themselves. Parents may not have the time to support media learning

⁶⁷ As above.

⁶⁸ As above.

⁶⁹ A Medinilla, B Byiers and P Apiko 'African Regional Responses to COVID-19' (2020) 272 Discussion Paper 2.

⁷⁰ See Ethiopia Learning Poverty Brief available at <http://pubdocs.worldbank.org/en/431381571223517237/SSA-AFCE3-ETH-LPBRIEF.pdf> (accessed 14 May 2020); Centre for the Study of Economies in Africa 'Nigerian education in focus' *supra* note 3 at 2.

resource as a result of economic difficulties caused by COVID-19. Governments need to consider how best to reach all children including, identifying more creative means to improve media learning.

CONCLUDING THOUGHTS

It is possible to protect children from abuse, exploitation and violence if all levels of protection, from the family, community and governments work together in a coordinating and reinforcing manner to cushion the effect of the COVID-19 pandemic and develop timely and relevant strategies. It is noteworthy that every level of protection has an important responsibility in ensuring children's safety and well-being. Listening to children's voices and perspectives is also a core value in coordinating appropriate response.

It is hoped that governments in Ethiopia and Nigeria will prioritise access to education for all children in their response to COVID-19 schools closure, as well as how parents are supporting children's learning at home and measures taken to limit the pandemic further aggravating disparities. It is further hoped that governments in Africa, will cooperate with the international community to coordinate equitable and effective responses for children and families amidst the global pandemic as it affects other child protection issues as have been highlighted.

Mainly the approach adopted in this paper concerns a series of progressive interconnected spheres of influence, from a focus on the child rights up through the family and the community into concerns about the society as a whole. This is based on the need to show underlying intersections necessary for advancing competences and the urgent need to link people in order to ensure that collaborations are efficient. Indeed, most of the complex and challenging child protection issues are connected in all these spheres of influence.

AN OVERVIEW OF THE LEGAL IMPLICATIONS OF COVID-19 ON PERFORMANCE OF CONTRACTUAL OBLIGATIONS IN ETHIOPIA

Alemayehu YismawDemamu*

Abstract

Since the first COVID-19 case was confirmed, the government of Ethiopia has taken measures to contain the spread of the virus, and thereby, ease the socio economic impact of the pandemic. Although these emergency measures were swift, as time went, they remain short lived due to various reasons. Businesses are forced, inter alia, to cut back production and service delivery, lay off employees temporally, lack working capital making it difficult to continue operating. Businesses are especially challenged to meet their contractual obligations and keep their commercial relations worthy. As a result, this article overviews the effects of COVID-19 pandemic on the performance contractual obligations and shows the legal relief adopted in Ethiopian law to escape the liabilities of resulted damage. To that effect, the article employs doctrinal research method and hence, assesses domestic laws, books, journal articles, web information, and foreign jurisprudences. Thus, it argues that the COVID-19 pandemic affects the performance of contractual obligations but parties may use force majeure or if not, vary contractual terms to save themselves from the pitfalls of the current pandemic.

Keywords: Contractual obligations, COVID-19, Force majeure, Variation of contracts

INTRODUCTION

The Novel Coronavirus (COVID-19) is an infectious respiratory virus that spread from person to person.¹ The virus was first identified in an investigation during an outbreak in Wuhan, China in December 2019.² Although health officials are still tracing the exact source of this new coronavirus, early hypotheses link it to a seafood market in Wuhan, China from where it has spread around the globe hitting the majority of countries. Deeply concerned by the alarming

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¹ World Health Organization(WHO), *Coronavirus: An Overview* (July 23, 2020), https://www.who.int/health-topics/coronavirus#tab=tab_1.

² Center for Disease Control and Prevention(CDC), *What You Should Know About COVID-19 to Protect Yourself and Others* (July 23, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/downloads/2019-ncov-factsheet.pdf>.

level of spread and severity, on March 11, 2020, the World Health Organization (WHO) declared the COVID-19 outbreak a global pandemic.³ At the present (on July 21, 2021), the virus has spread to all continents and more than 192,281,847 people are infected in nearly 220 countries.⁴ The virus has led to more than 4,134,016 deaths globally so far.⁵ In Africa, the first COVID-19 case was confirmed on 14 February, 2020 in Egypt.⁶ In Sub-Saharan African countries when it was confirmed in Nigeria.⁷ Since then, it has spread to dozens of African countries within weeks.

In Ethiopia, the first case of COVID-19 was reported on March 13, 2020.⁸ At the time, the government was furious and took swift response. It devised and implemented various strategies to contain the spread of the virus: including people coming from outside the country quarantining for at least 14 days; shutdown of nurseries, schools, and universities; closure of churches and mosques; cancelled public events and meetings; closed international flight routes; and imposed travel restrictions, mandatory quarantine procedures, and lockdowns.⁹ On April 16th 2020, the government passed a State of Emergency Proclamation which was lasted for five months.¹⁰ The approval of the Proclamation was brought with the enactment of State of Emergency Proclamation No.3/2020 Implementation Regulation.¹¹ The government had issued different directives and protocols such as Directive No. 64/2020: Tax Debt Remittance to Mitigate the Impact of COVID-19 on taxpayers),¹² COVID-19 Workplace Response Protocol,¹³

³ World Health Organization(WHO), *Archived: WHO Timeline-COVID-19* (July 23, 2020), <https://www.who.int/news-room/detail/27-04-2020-who-timeline---covid-19>.

⁴Worldometer(July 21, 2021),<https://www.worldometers.info/coronavirus/countries-where-coronavirus-has-spread/>

⁵ *Ibid.*

⁶ Egypt Today Staff, *Egypt Announces First Coronavirus Infection*, EGYPT TODAY(July 23, 2020), <https://www.egypttoday.com/Article/1/81641/Egypt-announces-first-Coronavirus-infection>.

⁷*Coronavirus: Nigeria Confirms First Case in Sub-Saharan Africa*, BBC NEWS(July 23 2020),<https://www.bbc.com/news/world-africa-51671834>.

⁸ WHO Africa, *First Case of COVID-19 Confirmed in Ethiopia*, WORLD HEALTH ORGANIZATION ETHIOPIA(July 23, 2020)<https://www.afro.who.int/news/first-case-covid-19-confirmed-ethiopia?country=30&name=Ethiopia>.

⁹ Sibhatu Biadgilign and Muluneh Yigzaw,*COVID-19 IN Ethiopia: Current Situation, Missed Opportunities, and the Risk of Health System Disruptions*, 35 PAMJ 1, 1(2020).

¹⁰ State of Emergency Proclamation Enacted to Counter and Control the Spread of COVID-19 and Mitigate Its Impact, Proclamation No. 3 /2020, *Federal NegaritGazetta*, (2020), preamble. The preamble of the proclamation states that the proclamation is meant to create public awareness; strengthen precautionary measures; contain the spread of the disease, and thereby, mitigate the humanitarian, social, economic and political damages which would be caused due to the virus.

¹¹ State of Emergency Proclamation No. 3/2020 Implementation Regulation, Regulation No.466/2020, *Federal NegaritGazetta*, 2020.

¹² Ministry of Finance, Tax Debt Remittance to Mitigate the Impact of COVID 19 on Taxpayers Directive, Directive 64/2020, 2020.

and Directive No 30/2020: A Directive Issued for the Prevention and Control of COVID-19 Pandemic.¹⁴ Different strategies, standards and protocols such as Risk Communication and Community Engagement Strategy for COVID- 19 Outbreak Response,¹⁵ Cleaning and Disinfection Protocol for COVID-19¹⁶ and Quarantine and Border Control Implementation Guideline were also enacted and implemented.¹⁷ Aside to this, the government had created awareness to the public in collaboration with the media, and other appropriate organizations.¹⁸ It also mobilized resources from the community, private institutions and development organizations, and extended social protections for the vulnerable parts of the community.¹⁹

Although several strategies were developed, they were not sustainable or implemented. Gradually, they have loosened and short-lived.²⁰ Regional and local governments also failed to follow and supervise the implementation of these measures.²¹ As well, the people could not stay at home for prolonged periods as the majority of them don't have enough food and other essential items.²² Besides, the perception and awareness of the people to the virus was not to the expected level.²³ Consequently, the number of deaths and infected are increasing each day. On July 20, 2021, the number of confirmed cases and deaths reached 277,877 and 4,359, respectively.²⁴

¹³ Ministry of Labor and Social Affairs, COVID-19 Workplace Response Protocol, 2020.

¹⁴ Ethiopian Public Health Institute, A Directive Issued for the Prevention and Control of COVID-19 Pandemic, Directive Number 30/2020, 2020.

¹⁵ Ministry of Health and Ethiopian Public Health Institute, Risk Communication and Community Engagement Strategy for COVID- 19 Outbreak Response in Ethiopia (RCCE), (2020).

¹⁶ Ministry of Health and Ethiopian Public Health Institute, Cleaning and Disinfection Protocol for COVID –19, (2020).

¹⁷ Ministry of Health and Ethiopian Public Health Institute, Quarantine and Border Control Implementation Guide, (2020). The Ministry of Health and Ethiopian Public Health Institute, for instance developed Standards for quarantine, isolation and treatment centers(2020), Infection prevention and control interim protocols in health caring centers (2020), Quarantine& border control implementation guide(July 2020), Protocol for transporting COVID-19 patients, Protocol health care facility COVID-19 Preparedness and response protocol, etc.

¹⁸ Mekonnen Hailmariam, COVID-19 in Ethiopia, *Assessment of How the Ethiopian Government has Executed Administrative Actions and Managed Risk Communications and Community Engagement*, 13, RISK MANAGEMENT AND HEALTHCARE POLICY 2803, 2806(2020).

¹⁹ *Ibid.*

²⁰ Sibhatu Biadgilign, and Muluneh Yigzaw, *supra* note 9, at .1

²¹ *Ibid.*

²² *Ibid.*

²³ *Id.*, at 2.

²⁴ Ethiopian Public Health Institute, *COVID-19 Reported Cases in Ethiopia* (July 20, 2021), <https://covid19.ephi.gov.et/2021/07/>.

Aside to health concerns, the COVID-19 pandemic has affected the overall economic situation of the country.²⁵ The pandemic has, *inter alia*, lowered exports(e.g. flower exports), reduced or delayed imports, depressed tourism, contracted services(transport, restaurants, entertainments), lowered remittance flows, disrupted the wholesale and retail trade, depressed revenue, and increased unemployment in Ethiopia.²⁶ It has created challenge and uncertainties for many, if not all, small and medium enterprises²⁷ mostly in urban areas embedded in food production, export, construction, and service industries.²⁸ Businesses are experienced increasing hardship and difficulty to meet contractual obligations being under pressure to perform contractual obligations but at risk of breaching them.²⁹

In view of these problems and challenges, this article focuses on: 1) to investigate the implications of the COVID-19 on performance of contractual obligations, 2) to determine the legal relief of non-performance of contractual obligations, 3) to appraise whether COVID-19 event constitutes a *force majeure* under law of Ethiopia 4) to determine whether variation of contract can be a way-out to escape liabilities of non-performance resulted due to the COVID-19 pandemic. To this effect, the article employed doctrinal research method. Hence, it has gazed the Ethiopian Civil Code, policies, guidelines and, protocols. It has also considered books, journal articles, web information, observations, and documented knowledge from the lived experience and practices of other countries.

²⁵ See generally African Union Commission and UNDP Regional Service Center Africa, *The Impact of the COVID-19 Outbreak on Governance, Peace and Security in the Horn of Africa* (November 19,2020), https://au.int/sites/default/files/documents/38904-doc-horn_of_africa_regional_brief_vupdated6_-_read-only_4.pdf.

²⁶ Nasir Ababulgu and Hika Wana, *The Horrors of COVID-19 and the Recent Macro economy in Ethiopia*, JOURNAL OF KNOWLEDGE ECONOMY1, 13(2021). See also United Nations, *Policy Brief: The World of Work and COVID-19*, 2020, p.2. See also Charlene Marie Kalenkoski and Sabrina Wulff Pabilonia, *Initial Impact of the COVID-19 Pandemic on the Employment and Hours of Self Employed Coupled and Single Workers by Gender and Parental Status*, IZADP, 2020, 1, at 1.

²⁷ Alemayehu Geda, *The COVID-19 Damage on the Ethiopian Service Sector: A Supplement Using Google Search Trend* “Big data”, 11-12 (2020).

²⁸ Nasir Ababulgu and Hika Wana, *Supra note 26*, at 7. See also AbrihamEbabuEngidaw, *Small Business and Their Challenges During COVID- 19 Pandemic in Developing Countries; in Case of Ethiopia*, RESEARCH SQUARE 1, 2(2020). See generally Yohannes Ayele, Habtamu Edjigu and Getaneh Mihret, *Assessing the Impact of COVID-19 on Small-scale Manufacturing Establishments in Ethiopia*, (2021). For instance, in manufacturing establishments, over 95% of them have seen a drop in revenue by 55% on average. 87% of the firms’ sale were decreased. There are firms which have reported lay off workers. Close to 90% of the firms lost demand for their products. 95% of the firms don’t have provision of business loans.

²⁹ Kevin Otieno Onyango, *Non-performance: The Impact of COVID-19 on Contractual Obligations*, 2(2020).

The rest of this article is organized in three sections. Section one attempts to present the actual or potential implications of COVID-19 on performance of contractual obligations. Section two discusses the legal reliefs of non-performance contractual obligations and within that context analyses the concept of *force majeure*, and whether COVID-19 forms *force majeure* under Ethiopian Civil Code. It also presents the possibilities of employing variations of contracts to escape the liabilities of non-performance caused due to the pandemic. Finally, the article ends with concluding remarks.

1. THE IMPACT OF COVID-19 ON PERFORMANCE OF CONTRACTUAL OBLIGATIONS

Beyond the public health concerns and socio-economic impacts, the COVID 19 pandemic has resulted in an unprecedented shock to businesses around the world.³⁰ In many countries, the pandemic has led to a sharp drop in consumer spending, sudden change in revenue, fall in investment, and slump in international trade.³¹ It has forced a significant number of businesses particularly those involved in the manufacture, sale and distribution of goods to be temporarily closed.³²

About the beginning of the outbreak, businesses were challenged managing the impacts on employees and arranging support.³³ Whilst the pandemic subsists, many businesses experienced increasingly hardships which making it difficult for them to meet contractual obligations and protect bottom lines.³⁴ Consequently, businesses in different countries are focusing on their contractual relations: for instance, in Russia, businesses are considering to amend or cancel their contracts³⁵, many Kuwait businesses are unable to fulfil their contractual obligations and are figuring out how they can escape the impacts of the pandemic³⁶, in Kenya,

³⁰ Philip Kotsis and Ahmed Amin, *How COVID-19 is characterized under Kuwait Law*, 1(2020).

³¹ *The Impact of COVID-19 Pandemic on Contracts Regarding the Manufacture, Distribution and Sale of Goods*, SQUIREPAATTONBOOGS, 6(2020).

³² *Ibid.*

³³ Dominic Rebelo and Luisa H. Cetna, *COVID-19 and its Impact on Contractual Relations: How to Mitigate Damages, Renegotiate Your Contracts and Avoid Disputes (Part I)*, 1(2021).

³⁴ KPMG LAW, *COVID-19 and Contractual Obligations*, 1(2020).

³⁵ Julia Zagonek and Pavel Boulatov, *COVID-19: Legal Impact on Contractual Obligations*, WHITE AND CASE, 1 (May 24, 2021).

³⁶ Philip Kotsis and Ahmed Amin, *Supra note 30*, at 1.

businesses could not perform their obligations, and most contracts are at risk of breach.³⁷ Similarly, in Ethiopia, businesses have not escaped the contractual impacts of the pandemic. It disrupts the supply chain, and puts strain on commercial relationships of businesses.³⁸ It puts businesses under increasing risk of failing to meet contractual obligations.³⁹ The situation will worsen the longer the crisis continues.

Given the critical impacts of the pandemic on the performance of contractual obligations (both for existing and new contracts), countries are taking different remedial measures, for instance, the Belgium authorities have adopted a statutory moratorium (law) subsequent to both first and second waves of in the country.⁴⁰ The moratorium enjoins the creditors to stay away from enforcing debts, terminating existing contracts, and initiating bankruptcy proceedings against debtor who fail to perform contractual obligations due to the COVID-19 lockdown.⁴¹ Similarly, the Chinese government has issued force majeure certificates, and insulated companies from claims by foreign companies for non-delivery of products or the non-purchase of product inputs that had been contracted.⁴² In Ethiopia, however, the government did not issue any specific directives or take any measure to ease the impacts of the pandemic on the performance of contractual obligations, except for the Federal Housing Corporation which has declared a 50% reduction of house rent.⁴³ Whatever the circumstances, it is important to think ahead and be in a state of readiness to resolve those contractual challenges and navigate continuous scenarios to protect the future of the business and preserve important commercial relationships.

³⁷ Kevin Otieno Onyango, *Supra note 29*, at 2&3.

³⁸ See Generally Abebe Demsew, *Assessment on impact of COVID-19 on Ethiopian Construction Industry*, 10 IJES 26889, (2020). See also UNITED NATIONS ETHIOPIA, SOCIO-ECONOMIC IMPACT OF COVID-19 IN ETHIOPIA, 17(2020).

³⁹ *Ibid.*

⁴⁰ *Belgian Government Imposes Temporary Statutory Moratorium on Creditors' Rights*, LOYENS & LOEFF (July 23, 2020), <https://www.lexology.com/library/document>.

⁴¹ *Ibid.*

⁴² *Sponsored Briefing: Legal effects of Covid-19 on The Business Life*, MORAL AND PARTNERS LAW FIRM (July 23, 2020), at 11, <https://www.legalbusiness.co.uk/co-publishing/sponsored-briefing-legal-effects-of-covid-19-on-the-business-life/>.

⁴³ Zodidi Dano, *Covid-19: Ethiopia's rental body reduces April rent by 50%*, AFRICAN NEWS AGENCY/ANA, (Apr 15, 2020). <https://www.iol.co.za/news/africa/covid-19-ethiopias-rental-body-reduces-april-rent-by-50-46714347>.

2. LEGAL RELIEFS OF NON-PERFORMANCE OF CONTRACTUAL OBLIGATIONS

In the Ethiopian law of contract, the general rule is where a party fails to perform his/her contractual obligations, such failure constitutes a breach of contract and gives rise to liability in favor of the counterparty.⁴⁴ However, this is not necessarily true. There are circumstances in which parties may challenge and be relieved of liabilities of non-performance. There are legal reliefs or defenses to non-performance or delay in the performance of contractual obligations, which could assist in an economic downturn. This includes the doctrine of *force majeure* and variation of contracts. Thus, this section is dedicated to address these basic legal reliefs.

2.1. *Force Majeure*

The concept of *force majeure* (superior force) has its origins in Roman Law.⁴⁵ The Roman Law, with the name of “*vis major*” or “*vis divina*”, designated unenforceable and irresistible events that excused a debtor of performance.⁴⁶ The concept was later adopted by the French Civil Code (Napoleon Code) in 1804 and followed by other civil laws such as those of Quebec and Greece.⁴⁷ Similarly, the concept of *force majeure* has been recognized in international instruments, such as the CISG and the UNIDROIT principles.⁴⁸

Over the years, the concept of *force majeure* relates to supervening unforeseen events that make performance impossible. This includes cases of subsequent impossibilities which are external supervening events occurring after contract formation and are beyond the control of the aggrieved party, i.e. fires, floods, droughts, earthquakes, civil riots, terrorist attacks, etc., which

⁴⁴ Civil Code of The Empire of Ethiopia, Proclamation No 165/1960, *Negarit Gazeta: Gazette Extraordinary*, 1960, Art 1771, (herein after the Civil Code).

⁴⁵ Annerine (AJ) van Schalkwyk, *The Nature and Effect of Force Majeure clauses in the South African Law of Contract*, 2(2018).

⁴⁶ *Ibid.*

⁴⁷ *Ibid.*

⁴⁸ Yohannes Hailu Tessema, *Force Majeure and the Doctrine of Frustration under the UNIDROIT Principle, CISG, PECL and the Ethiopian Law of Sales: Comparative Analysis*, 58 JOURNAL OF LAW, POLICY AND GLOBALIZATION 33, 35(2017).

render the performance of a party's contractual obligations not just excessively onerous as in hardship-type situations, but impossible whether on a temporary or permanent basis.⁴⁹

At present, in civil law jurisdictions, for any event to qualify as *force majeure*, it shall satisfy three elements cumulatively. These include that the event occurred shall be external, unforeseeable and irresistible.⁵⁰ The external element requires the event occurred to be “external” or “outside” the debtors spheres of activities or control, and shall include, for instance, acts of god, acts of war or authority of law.⁵¹ But some jurisdictions qualify, in certain instances, events that are normally internal to the debtors' spheres of activities or control such as employees striking as *force majeure*.⁵² The unforeseeable element, on its behalf, demands the event shall not be foreseeable at the time of formation of the contract.⁵³ If the event could have been seen at time of the contracting, it doesn't constitute force majeure. As well, to constitute *force majeure*, the event shall be irresistible. The event occurred shall render the performance of obligation under the contract impossible, and not merely onerous or burdensome.⁵⁴ It shall also render the impossibility of performance of the contract permanent, not temporary.

Apart from the concept of *force majeure*, in civil law jurisdictions, parties do have a freedom to agree and incorporate a *force majeure* clause in their contract. They can dictate the scope, applications and effect of *force majeure*.⁵⁵ In such cases the *force majeure* clause or the intent of the parties governs whether an event constitutes a *force majeure*. But, later, if the party invoking the *force majeure* clause is at fault in either inducing or avoiding the force majeure event, it will not benefit from the clause. Nonetheless, the latter may exempt certain faults or negligent acts of the parties. In general, in civil law jurisdiction, *force majeure*, both as concept and a clause, produces an effect. It relieved the parties all of liabilities regarding non-performance of an obligation.⁵⁶

⁴⁹ Klaus Peter Berger and Daniel Behn, *Force Majeure and Hardship in the Age of Corona: A Historical and Comparative Study*, 6 MCGILL JOURNAL OF DISPUTE RESOLUTION 78, 90(2019-2020).

⁵⁰ Marek Katsivela, *Contracts: Force Majeure Concept or Force Majeure Clauses?*, UNIF. L. REV. 101, 103(2007).

⁵¹ *Id.*, at 104.

⁵² *Ibid.*

⁵³ *Id.*, at 105/

⁵⁴ *Id.*, at 106.

⁵⁵ Dominic Rebelo and Luisa H. Cetna, *Supra note 33*, at 2.

⁵⁶ Marek Katsivela, *supra note 50*, at 102.

2.1.1. *Force Majeure* under the Ethiopian Civil Code

In Ethiopia, the concept of *force majeure* has been recognized under Articles 1792-1794 of the Civil Code. The Code under Article 1792(1) aptly defines *force majeure* as “an occurrence which the debtor could normally not foresee and which prevents him absolutely from performing his obligation.” Thus, in Ethiopia, *force majeure* stands on two cumulative basic elements:

- 1) The event could not “normally” be foreseen by a debtor at the time of formation of the contract. In the code, the degree to which the event could normally be foreseen will be determined by an average person, and not by individual debtors.⁵⁷
- 2) The event shall prevent the debtor “absolutely” from performing his obligations. The event occurred shall prevent any person from performing contractual obligations.⁵⁸

Accordingly, nether an event which makes performance absolutely impossible but should normally have been foreseen, nor one normally unforeseeable but increases the difficulties and costs of performance of obligations without making it absolutely impossible, are *force majeure* events.⁵⁹ This approach of the Ethiopian Civil Code on *force majeure* is strict and inspired by French Civil Code. However, the Civil Code is different from the French one as it doesn’t require events which resulted in non-performance shall be external and so can’t be imputed to debtors.⁶⁰

In addition to events which meet the preceding requirements, in Ethiopia there are enumerated events which amount to *force majeure* such as an unforeseeable act of a third party for whom the debtor isn’t responsible; an official prohibition preventing the performance of the contract; natural catastrophe such as an earthquake, lightning or floods; international or civil war; or the death or a serious accident or unexpected serious illness of the debtor.⁶¹ The events are not exhaustively illustrated so that any event which meets the requirements of Article 1792(1) may constitute *force majeure*. Therefore, parties who are prevented from performing their obligations

⁵⁷ GEORGE KRZECZUNOWLCZ, FORMATION AND EFFECTS OF CONTRCATS IN ETHIOPIAN LAW, 142(1983).

⁵⁸ *Id.*, 142.

⁵⁹ TILAHUN TESHOME, BASIC PRINCIPLES OF ETHIOPIAN CONTRACT LAW, 126 (2nd, 1999).

⁶⁰ GEORGE KRZECZUNOWLCZ, *Supra* note 57, at 142.

⁶¹ Civil Code, Art 1793.

due to such and other *force majeure* situations will be released of the liabilities of non-performance obligations.

Although all of the events which constitute *force majeure* are not enumerated exhaustively, cases such as a strike or lockout of employees, an increase or reduction of raw materials and the enactment of new legislations don't form *force majeure* due to the policy reasons of the country.⁶² But, the parties are still at freedom to agree otherwise and make these events form *force majeure*, and, thereby, release the debtor from liability for the resulting damage.

Furthermore, in Ethiopian law, parties are free to agree to limit their liability.⁶³ They are at freedom to establish their liability at fault only.⁶⁴ In that context, parties are free to incorporate *force majeure* clause in their contract and limit their liability to fault.⁶⁵

2.1.2. Would the COVID-19 Pandemic Fall Within the Concept of *Force Majeure* Under the Civil Code?

To argue whether the COVID -19 pandemic constitutes a *force majeure* event in Ethiopia it is wise initially to distinguish between one) the general evaluation of the pandemic from a political, socio-economic or health-related standpoint, and two) the legal qualification of the pandemic as a *force majeure* event.

Regarding COVID-19, the Director-General of the World Health Organization (WHO) declared the outbreak as pandemic on 30 January 2020.⁶⁶ In his statement, advised “all countries should be prepared for containment, including active surveillance, early detection, isolation and case management, contact tracing and prevention of onward spread of 2019-nCoV infection, and

⁶² TILAHUN TESHOME, *supra* note 59, at 128.

⁶³ Civil Code, Art 1887.

⁶⁴ *Id.*, Art 1887.

⁶⁵ GEORGE KRZECZUNOWLCZ, *Supra* note 57, at 144.

⁶⁶ International Health Regulations Emergency Committee, *Statement on the Second Meeting of the International Health Regulations Regarding the Outbreak of the Novel Coronavirus*, (January 30 2020), <[https://www.who.int/news-room/detail/30-01-2020-statement-on-the-second-meeting-of-the-international-health-regulations-\(2005\)-emergency-committee-regarding-the-outbreak-of-novel-coronavirus-\(2019-ncov\)](https://www.who.int/news-room/detail/30-01-2020-statement-on-the-second-meeting-of-the-international-health-regulations-(2005)-emergency-committee-regarding-the-outbreak-of-novel-coronavirus-(2019-ncov))>.

to share full data with WHO”.⁶⁷ As well, China has declared COVID-19 as *force majeure* to apply in relation to many commercial contracts signed by its companies.⁶⁸ On February 29, 2020, Bruno Le Maire, the French Minister for economic affairs and finance, had already indicated that, in his view, the COVID-19 epidemic constituted a “*case of force majeure for company*.”⁶⁹

In spite of these declarations and statements, the question whether a *force majeure* event does in fact exist in Ethiopia remains a legal issue as it. It has to be determined by courts in each individual case. Typically, the *force majeure* event is not the pandemic as such, but the factual or legal effects of the public health crisis. Factual effects involve illness or quarantine or even death of key personnel, production facility closures, or interruption of supply chains. Legal effects relate to lockdowns, curfews, travel restrictions and other measures by governments and public authorities which are issued in reaction to the crisis.

Therefore, neither the declaration of the WHO Director-General nor *force majeure* certificates issued by public authorities, in and of themselves, would amount to a legal *force majeure* determination. Rather, they may be taken as an indicative effect for the factual existence of force majeure. But, they may not prejudice a domestic court’s factual evaluation of the COVID-19 situation in a given case. Thus, whether COVID-19 pandemic is a *force majeure* event in Ethiopia shall be determined by considering the requirements specified in the Civil Code. Accordingly:-

- 1) The COVID-19 pandemic must have been unforeseeable /unpredictable at the conclusion of the contract.⁷⁰ The unforeseeable/unpredictability requirement is primarily a question of time and place. Thus, if the contract was signed on or around March 13, 2020 (i.e. the date on which the first case of COVID-19 was declared in the country, it may be argued that it would satisfy the enforceability condition as the pandemic and the governmental lockdown measures could not have been foreseen at the time. However, this is still subject to the views that our courts may adopt.

⁶⁷ *Ibid.*

⁶⁸ Sponsored briefing, *Supra note 42*.

⁶⁹ Emilie Vasseur , David Bakouche , et al, *France: COVID-19 Outbreak: Impact On the Contracts Enforcement and The Role of the Judge*(07 May 2020) <https://www.mondaq.com/france/litigation-contracts-and-force-majeure/929602/covid-19-outbreak-impact-on-the-contracts-enforcement-and-the-role-of-the-judge>.

⁷⁰ Civil Code, Art 1792(1).

Regarding contracts concluded with international parties such as China and/or other countries affected by the pandemic at that time, the date to be retained may be March 11, 2020, the date on which the World Health Organization declared the COVID-19 was a major public health emergency of international concern.

However, there could be doubt with regard to contracts concluded after March 13, 2020 and March 11, 2020 worldwide. On one hand, it may be argued that the spread of the pandemic was public knowledge at the time those contracts were executed and that it was expected that appropriate actions would be taken by the government if the pandemic worsened. On the other hand, although there has certainly been common knowledge of a global pandemic, it may be considered that the unprecedented impact of the COVID-19 on businesses and on the economy at large, could not have been foreseen.

2) The COVID-19 pandemic must prevent parties absolutely from performing obligations.⁷¹ The pandemic must be irresistible/insurmountable. Thus, under this requirement, parties shall primarily determine whether the pandemic was resistible or irresistible. If they found that the pandemic was irresistible, it is important to consider whether the parties could have mitigated the consequences of such pandemic, or whether all reasonable measures were taken to render the pandemic resistible. In this regard, analysis shall be made on whether measures could have been taken by the parties to minimize the impact of the Covid-19 and resulting lockdown measures on their business activity; it was actually impossible for the impacted party to fulfil its contractual obligations during the lockdown; and the pandemic was so empowering that its consequences could not be prevented or managed.

Therefore, if the COVID -19 pandemic brought mere difficulty to perform the contract or has made the performance of obligation more onerous, the pandemic will not meet the requirement of irresistibility. As well, the COVID-19 and resulting governmental measures certainly do not satisfy the requirement of irresistibility if performance of the obligation is possible though other mechanisms though time consuming and expensive. Similarly, if parties could have certainly limited its consequences by adopting anticipatory and precautionary

⁷¹*Ibid.*

measures or by implementing alternative practices, the pandemic is not irresistible. The pandemic must be a real obstacle to performance of the contract.

Under Ethiopia laws, parties may rely on a *force majeure* clause to escape liabilities of non-performance affected by COVID-19. Whether a party can rely on *force majeure* clause under the current circumstances will depend first and foremost on whether such a clause was included in the contract. If it is included, then whether the COVID-19 pandemic may be regarded as a *force majeure* event will depend on (i) the actual wording of the clause, (ii) the nature of the party's contractual obligations and (iii) the actual impact of the pandemic on that obligation. A specific reference to an "epidemic" or a "pandemic" will make it easier to succeed on a *force majeure* claim. If the clause does not use such specific language, the party will need to consider whether COVID-19 can be argued to fall under a general catch-all *force majeure* clause. If such wording is included in the contract, noting, however, that as *force majeure* is a creature of contract the Courts will be reticent to expand the agreed definition set out in a contract.

Here, it is important to note that the *force majeure* event need not be COVID-19 itself. It is the consequences of COVID-19 and their impact on a party's ability to fulfill a contractual obligation, which will be relevant to any analysis. Such consequences may happen because of COVID-19 measures such as social distancing, travel restrictions, curfews or a full lock-down which would ordinarily be deemed to be outside a party's control. However, such events must have translated into a physical or legal constraint to the party's ability to perform its obligations and not merely created additional economic hardship for the party. Thus, a party seeking to rely on a *force majeure* clause in their contract should do so with care, because a wrongful claim could result in a finding of contractual breach or repudiation of the contract and could entitle the other party to claim damages or terminate the contract.

Therefore, whether Covid-19 could be considered as a *force majeure* event is not as straightforward as it may appear from the legal perspective. Fulfillment of this requirement will thus depend on each transaction and the courts will, on a contract-by-contract basis, assess whether performance was actually possible in view of the current pandemic and curfew orders.

2.1.3. Jurisprudence on *Force Majeure* of Pandemics in Ethiopia

In Ethiopia, it is worth noting there is relatively little or no jurisprudence on the doctrine of *force majeure*. As far as I am aware, there is no reported case law regarding the operation of *force majeure* clauses in the context of epidemics or pandemics. The courts have generally been reluctant to establish exoneration of liability on the basis of force majeure, whether in terms of tortious or contractual liability. In spite of this, I am of the opinion that the COVID-19 outbreak satisfies the characteristics of *force majeure* given the outbreak contains both natural component, the virus itself, and a government element, such as the curfew measures which make the execution of contracts even more difficult. But, I suggest the situation still needs to account the date and context in which the contract was executed.

Although Ethiopian courts don't hold judgment yet, there are jurisdictions which ruled the COVID-19 pandemic a *force majeure*. In France, that inspired, courts have qualified COVID-19 as *force majeure*. On March 2020, the Colmar Court of Appeal delivered that the COVID-19 pandemic constitutes a *force majeure* event.⁷² In the case concerned, one of the litigants, Mr. Victor G was unable to attend the hearing due to administrative detention as he had been in contact with persons likely infected by the virus.⁷³ Consequently, the Colmar Court of Appeal held that **"these exceptional circumstances, which led to the absence of Mr. Victor G. from today's hearing, constitute a force majeure event, being external, unforeseeable and irresistible, given the time-limit imposed for the ruling and the fact that, within that time-limit, it will not be possible to ascertain that there is no risk of contagion and to have an escort authorized to take Mr. G. to the hearing"**.⁷⁴

Similarly, in German, the Paderborn Regional Court ruled the COVID-19 pandemic as *force majeure* on September, 25, 2020.⁷⁵ The case was brought by a student against an event agency for repayment of a EUR 10,000 deposit which the class had made for the organization of a student ball since the organization of the ball failed due to COVID-10 protection ordinance of

⁷² See <https://www.bakermckenzie.com/en/insight/publications/2020/03/france-decision-declare-covid19-force-majeure>.

⁷³ See <https://www.jdsupra.com/legalnews/france-covid-19-hardship-force-majeure-88108/>.

⁷⁴ *Ibid.*

⁷⁵ See <https://www.lexfutura.ch/en/whats-keeping-us-busy/article/erstes-gerichtsurteil-in-deutschland-zu-covid-19-als-ereignis-hoherer-gewalt-force-majeure/> (September 25, 2020, 3 O 261/20).

the state off North Rhine-Westphalia.⁷⁶ In its decision, the Paderborn Regional Court enjoined the event agency to refund the deposit ruling the COVID-19 pandemic is *force majeure* event.⁷⁷ The court in its reasoning specified “the Corona pandemic and its consequences represent an external event outside the control of the parties. Because there has never been a pandemic of this magnitude before, it was also unforeseeable for the individual. Even with the application of the most reasonably expected care, it was unavoidable for the individual. The corona virus thus constitutes an event falling under the concept of *force majeure*.”⁷⁸

2.2. Variation of Contracts

There are circumstances in which the COVID-19 pandemic may not constitute a *force majeure* event or where the parties fail to incorporate *force majeure* clause of the pandemic in their contracts. As specified in the preceding section, in both cases, the affected parties cannot use the pandemic as a *force majeure* event and seek any relief of non-performance of contractual obligations. But, if the continued performance of contractual obligations has been difficult or has become excessively costly due to the COVID-19 pandemic, parties may still rely on variation of contracts and seek legal relief.

Variation of contracts is all about altering some terms of the contract.⁷⁹ As a concept, variation does not intend to alter the root of the original contract. The original contract continues to exist in an altered form.⁸⁰ It merely qualifies the existing rights and obligations of the contracting parties. Variation is thus different especially from rescission where the alteration does away with the original contract or releases parties for contractual terms in its entirety.⁸¹

2.2.1. Variation of Contracts under the Ethiopian Civil Code

In Ethiopia, as a rule, the Civil Code adopts the principle of non-revision.⁸² A contract remains in force even where the conditions of its performance and the obligations assumed are upset by

⁷⁶ *Ibid.*

⁷⁷ *Ibid.*

⁷⁸ *Ibid.*

⁷⁹ Look Chan Ho, Novation, *Variation and Rescission – A Question of Intention?* CORPORATE RESCUE AND INSOLVENCY 1, 1(2008).

⁸⁰ *Ibid.*

⁸¹ *Ibid.*

⁸² Code, Art 1764(1).

unforeseen upheavals. A party may not be released from his obligation because change of circumstance render his performance more onerous. Theoretically, this is justified since the contracting party presumes business risks and expects the performance of the contract will change due to some economic events while entering into contract.⁸³ But, the Code defeats this rule and allows contractual terms to be altered when the change in the balance of the contract is sweeping and quite unforeseen. The Code, however, grants the contracting parties and not the court to regulate the effects of such changes.⁸⁴ This reaffirms the general rules of formation of the contract which provide that contracts are created or varied by the agreement (mutual consent) of the parties.⁸⁵ As well, it is in line with article 1731(1) which provides the binding effects of contracts on the parties; similarly, courts are prohibited from varying contractual terms through guise of interpretation.⁸⁶

Accordingly, the contracting parties can vary (revise) their contracts affected by unforeseen and unexpected upheavals. The parties can do this in two ways: one, they can avail of such remedy by incorporating the possibilities of unexpected economic changes in their original contract.⁸⁷ Or, second, although the party who is favored by the change would resist, the parties are free to negotiate, and fix the unbalanced contractual terms in a new contract.⁸⁸ In addition, the Code allows contracting parties, in their original or new contract, to divulge the task of varying contractual terms where circumstances which would modify the economic basis of their contract happened.⁸⁹

In spite of the preceding section, courts may vary contractual terms on the grounds of equity plus when the ground is expressly supported by exceptional legal provisions. The first exceptional ground is when there is an inequitable contract between families or other relationship giving rise to special confidence,⁹⁰ excluding other confidential relationships such as superior-inferior relationships. In doing so, however, the court shall take precaution and apply this ground

⁸³ GEORGE KRZECZUNOWLCZ, *Supra* note 57, at 112-113.

⁸⁴ Civil Code, Art 1764(2) and 1763.

⁸⁵ *Id.*, Art 1675 and 1711, and 1731(2).

⁸⁶ *Id.*, Art 1714(2) and 1733.

⁸⁷ *Id.*, Art 1764(2).

⁸⁸ *Id.*, Art 1764(2).

⁸⁹ Civil Code, Art 1765.

⁹⁰ *Id.*, Art 1766.

with great restraint.⁹¹ Secondly, the court may revisit a contract made with an administrative body whose performance is upset by the acts of the government.⁹² The third exceptional ground stands on the interdependence of the respective obligations of the parties. At times, a party's performance of obligations become partially impossible due to *force majeure* events, but the impossibility doesn't constitute grounds for the other party to cancel the contract. As a result, the party will be relieved of paying damage to the extent of the impossibility.⁹³ Pursuant to this, the court varies (reduces) the obligations of the other party proportionately, restoring the balance of the contract.⁹⁴ Lastly, the court may postpone the time of performance of the contract affected by unforeseen event to the maximum of six months, but "...having regard to the position of the debtor and the requirements of justice."⁹⁵ In doing so, the court shall take all necessary cares, and construe the position of the debtor and the requirement of justice with great curiosity.

2.2.2. May Parties Vary their Contracts During the COVID-19 Pandemic?

The impacts of the current COVID-19 pandemic have proved extremely severe. Although measures taken such as social distancing, closure of commercial establishments, and a ban on travel are necessary, they paralyze many business activities and make compliance with contractual obligations unfeasible.⁹⁶ They render the continued performance of the obligations difficult, more expensive or even impossible.⁹⁷ As a result, contracting parties may wonder about the mechanisms that could be invoked to adjust obligations.

In Ethiopia, the rules allow parties to renegotiate and vary their contractual terms when performance of obligation has become difficult or impossible due to COVID-19 pandemic. Thus, the parties, under the concept of variation, may alter some of the terms of their original contract and handle the impacts of the pandemic through different mechanisms. The parties can easily handle the impacts of the pandemic and adjust the obligations they assumed if they have

⁹¹ GEORGE KRZECZUNOWLCZ, *Supra* note 57, at115.

⁹² *Id.*, Art 1767.

⁹³ GEORGE KRZECZUNOWLCZ, *Supra* note 57,at117.

⁹⁴ *Ibid.*

⁹⁵ Civil Code, Art 1770(1&2)

⁹⁶ Anaëlle Idjeri, *Covid-19 and business contracts: What strategy to follow?* SOULIER-ADVOCATS,1 (May 24, 2021) <https://www.soulier-avocats.com/en/covid-19-and-business-contracts-what-strategy-to-follow/>.

⁹⁷ *Ibid.*

incorporated a clause to that effect in their original contract. But, due to different reasons, the parties may not have done this. In such cases, although the parties who are favored by changes of the pandemic rarely agree to the alteration, the parties may sit for renegotiation, and alter certain contractual obligations which have become more difficult or expensive due to social distancing, lockdowns and curfews in their new contract. Instead of regulating the effects of the current pandemic themselves, the parties may provide arbitrators, in advance in the original contract, tasked with revising the conditions of performance contracts impacted by Covid-19 pandemic. Alternatively, they can confide the same task to arbitrators and escape the severe effects of the pandemic, in their new contract, and even after the pandemic has affected the performance of their contractual obligations.

The parties, however, shall give their mutual consent while renegotiating and readjusting the performance of their contractual obligation impacted by COVID-19 pandemic. Otherwise, the new contracts, which are subsequently varied, may not have effect before the law. Moreover, the altered contracts, like their formation, shall be accompanied by consideration of anything of value or forms other money, such as relinquishing of existing rights. In this absence, the new contracts will be ineffective, and neither party can claim breach of the new terms. A party who requires a variation, as rule, must offer the considerations. But, if both contracting parties didn't perform their obligations, both shall offer some form of considerations. Furthermore, the new contract is subjected to the same form of the original contract. The contracting parties shall stick to the previous form while they prepare their new contract.

Aside from variation by themselves, in Ethiopia, contracting parties can even ask the court to order the judicial revision of the contracts whose performances have been changed by the current pandemic. Typically, this works in some exceptional circumstances provided by the law. Hence, judicial revision is avail for parties: one) who have concluded contract with parties whom they are families or do have other relationships giving rise to special confidence, but the condition of its performance has become inequitable due to the current pandemic, two) who entered into a contract with an administrative body, but its performance is excessively expensive or impossible due to acts of governments taken to contain the spread of the virus, and Three) whose performance of obligation is partially impossible because the other party could perform

his obligation affected due COVID-19 measures, but can't cancel or require the cancellation of the contract. The court may alter the time of performance and grant parties a maximum of six months to perform their obligations which has become difficult or impossible due to COVID -19 measures.

CONCLUSION AND THE WAY FORWARD

COVID-19 has certainly created an unprecedented situation wherein businesses are facing many challenges resulting in significant losses if not addressed properly. The government has issued laws and taken regulatory measures to contain the spread of the COVID-19 pandemic and save the business community from a wide range of economic impacts of the virus. These legal and regulatory measures advise businesses to take various precautionary steps and measures to ensure their continuous existence. As such, though government hasn't issued any COVID-19 related legislation on contractual issues, businesses whose performance of contractual obligations becomes impossible or more onerous due to COVID-19, do have available legal and contractual remedies. These include, as specified in the Civil Code, *force majeure* and variation of contracts. Thus, if parties are absolutely prevented from performing their contractual obligation by an event normally not foreseen such as the COVID-19 pandemic at the time of conclusion of the contract, or incorporated a COVID-19 pandemic *force majeure clause* in their contract, may be released from all liabilities regarding non-performance of an obligation. In circumstances where COVID-19 pandemic do not constitute a *force majeure* event, parties may still rely on variation of contractual terms if the continued performance of their contractual obligations has been difficult or has become excessively costly due to the current pandemic.

On the same note, attention should be paid to potential implications that COVID-19 may have on ongoing contractual negotiation which haven't yet resulted in the execution of an agreement. A typical case, for instance, a party may withdraw from the contractual negotiation unilaterally due to COVID-19 related reasons while the other party is relying on a positive outcome of the negotiation. This situation will seriously affect the parties who are in good faith and the business transactions in long run. Thus, the parties shall act in good faith during the negotiation and finalization of the agreement. They shall not rely on the positive outcome of the

negotiation only. The parties shall also act in light of the situation deriving from the COVID-19 emergency and independent of any direct impact on the transaction being negotiated. Business currently negotiating new contracts should pay great attention to the concept of *force majeure* in its present scenario. In this regard, it is advisable for the parties to insert a COVID-19 pandemic or related clause into their contract, as has been practiced in response to the Ebola virus outbreak in West Africa in 2015. In Ethiopia, this has also been affirmed by Article 1887 of the Civil Code which states that “the parties may limit their liability under the contract and provide that they will not be liable unless they commit a fault.” Therefore, contracting parties should go cautiously to the maximum and escape the bad impacts of the COVID-19 pandemic.

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ክርክሩ የተጀመረው ተጠሪዎች ታህሣሥ 09 ቀን 2012 ዓ.ም በተባራ አቤቱታ ለዓቃቤ ህጋውያን እንዲከፈል የተወሰነውን የቤት ኪራይ አበል ከጥቅምት ወር 2012 ዓ.ም ጀምሮ ግብር ከደመወዛችን ጋር ተደምሮ የገቢ ግብር እንዲቆረጥበት አመልካች ደብዳቤ ጽፏል፡፡ በቤት ኪራይ አበል ላይ የገቢ ግብር እንዲከፈልበት ግልጽ ህግ ሳይኖር ግብር እንዲቆረጥ መደረጉ ስህተት ነው፡፡ ስለሆነም በቤት ኪራይ አበላችን ላይ ከጥቅምት ወር ጀምሮ በገቢ ግብር ስም የተቆረጠብን የሁለት ወር ክፍያ ተመላሽ ይደረግልን ወደፊትም በቤት ኪራይ አበላችን ላይ የገቢ ግብር እንዳይቆረጥ ይደረግልን በማለት ጠይቀዋል፡፡

አመልካች ለቀረበበት ክስ በሰጠው መልስ ለተጠሪዎች የሚከፈላቸው የቤት ኪራይ አበል ከገቢ ግብር ነፃ ስለመሆኑ ያልተደነገገ ስለሆነ ከገቢ ግብር ነፃ ነው ሊባል አይችልም፤ በቤት ኪራይ አበሉ ላይ ግብር የተቆረጠውም በደብዳቤ ሳይሆን በመመሪያ መሠረት በመሆኑ ክርክራቸው ተቀባይነት የለውም፤ ስለሆነም ክሱ ውድቅ ይደረግልን በማለት ተከራክሯል፡፡

ፍርድ ቤቱም የግራ ቀኝን ክርክር ከመረመረ በኋላ በአዋጅ ቁጥር 240/2008 እና በደንብ ቁጥር 162/2010 እንዲሁም በመመሪያ ቁጥር 1/2011 የቤት ኪራይ አበል ግብር የሚቆረጥበት ስለመሆኑ በግልጽ አልተደነገገም። የግብር ምጣኔውም ቢሆን በግልጽ የተቀመጠ አይደለም፤ በግልጽ ባልተደነገገ ነገር ላይ ተነስቶ በቤት ኪራይ አበል ላይ ግብር መጣል የህጋዊነት መርህን ይጥሳል፤ ለዓቃቤ-ህጋውያን የቤት ኪራይ አበል የሚከፈልበት ምክንያትም ከሥራው ባህሪ አስቸጋሪነት የተነሳ ደህንነታቸው ተጠብቆ ሥራቸውን እንዲሰሩ ለማስቻል ስለሆነ ግብር ሊቆረጥበት አይገባም። የቤት ኪራይ አበልም ወጪ እንጂ ገቢ ነው ሊባል የሚችል አይደለም፤ ስለሆነም አመልካች በገቢ ግብር ስም ከተጠሪዎች ከጥቅምት ወር 2012 ዓ.ም ጀምሮ የቆረጠውን ገንዘብ ሊመልስ ይገባል ለወደፊቱም ከቤት ኪራይ አበላቸው ላይ የገቢ ግብር ሊቆርጥ አይገባም በማት ወስኗል።

አመልካች በዚህ ውሳኔ ቅር በመሰኘት ለደቡብ ጎንደር መስተዳድር ዞን ከፍተኛ ፍርድ ቤት ቅሬታውን ያቀረበ ቢሆንም ፍርድ ቤቱ አቤቱታውን ሳይቀበለው ቀርቷል።

ይህ የሰበር አቤቱታ የቀረበው ይህን ውሳኔ ለማስለወጥ ሲሆን አመልካች በቅሬታው ላይ ለተጠሪዎች የሚከፈለው የቤት ኪራይ አበል ገቢ በመሆኑ የገቢ ግብር ሊቆረጥበት ይገባል። ህጉ ግልጽ ሆኖ ሳለ የገቢ ግብር ህጉ ጉዳዩን እደማይዛው ተደርጎ መወሰኑ ስህተት ስሆነ የሥር ፍርዱ ይሻርልን በማለት ጠይቋል።

ተጠሪዎች ለቀረበባቸው የሰበር አቤቱታ በሰጡት መልስ የሥር ፍርዱ መሠረታዊ የሆነ የህግ ሥህተት የሌለበት በመሆኑ ሊጸና ይገባል በማለት ተከራክረዋል። ክርክሩም በዚሁ ተጠናቋል።

እኛም መዝገቡን መርምረናል። እንደመረመርነውም ተጠሪዎች በያዙት ኃላፊነት ምክንያት የቤት ኪራይ አበል እንዲከፈላቸው ተወስኗል። በዚህ የተነሳም የቤት ኪራይ አበል እየተከፈላቸው ይገኛል። የሚከፈላቸው የቤት ኪራይ አበል ገቢ ነው ወይስ አይደለም የሚለውን በተመለከተ አዋጅ ቁጥር 240/2008 አንቀጽ 2 (14)'ን ማየት ይገባል።

ገቢ ማለት

መደበኛ ያልሆነን ገቢ ጨምሮ ከማንኛውም ምንጭ በጥሬ ገንዘብ ወይም ወይም በዓይነት የተገኘ ወይም በማናቸውም መንገድ ለግብር ከከፋዩ የተከፈለው፣ በስሙ የተያዘለት ወይም የተቀበለው ማንኛውም የኢኮኖሚ ጥቅም ነው- ይለዋል።

ከማናቸውም ምንጭ ሲል ገቢው ከስጦታ፣ ከማትጊያ ወይም በቅጥር ምክንያት የተገኘ/የሚገኝ ቢሆንም እንኳ ገቢው የተገኘበት መንገድ እግምት ውስጥ ሳይገባ ለግብር ከፋዩ የተከፈለው ማንኛውም የኢኮኖሚ

ጥቅም ገቢ መሆኑን ይናገራል። በዚህ የተነሳም በአንቀጽ 2 (9) ላይ እንደተመለከተው ከመቀጠር የሚገኝ ክፍያም ገቢ ነው ማለት ነው። ከመቀጠር የሚገኝ ገቢ ደግሞ አንቀጽ 2 (9) እና አንቀጽ 12 (ሀ) መሠረት “..... ደመወዝ፣ ምንዳ፣ አበል፣ ጉርሻ ... ወይም ሌላ የአገልግሎት ክፍያ...”ን ይጨምራል። ስለሆነም አበል ከመቀጠር የሚገኝ ገቢ መሆኑን መረዳት ይቻላል። አበል የሚለው ጥቅል ስያሜ (without the need to mention the specie) ማናቸውንም በአበል ስም የሚከፈል ክፍያን የሚጨምር ነው። ሁሉም ዓይነት አበል ቢሆን ከገቢ ግብር ነፃ ካልተደረገ በቀር ገቢ ተገርጎ ይወሰዳል [አንቀጽ 12 (2)] ። ስለሆነም ለዓቃቤ ህጋውያን የሚከፈላቸው የቤት ኪራይ አበል ገቢ ነው።

ይህ ቢሆንም ግን የቤት ኪራይ አበል በልዩ ሁኔታ ከመቀጠር የሚገኝ ገቢ ትርጓሜ ውስጥ ሊወጣ የሚችል በመሆኑ ይህን ለመረዳት የአዋጁን አንቀጽ 62 ማየት ያስፈልጋል። አዋጅ ቁጥር 240/2008 አንቀጽ 62 (1)ን ስንመለከት የቤት ኪራይ አበል ከገቢ ግብር ነፃ ከተደረጉት ዝርዝር ውስጥ አናገኘውም። በአንቀጽ 62 (2) ላይ እንደተመለከተው ከአዋጁ በተጨማሪ የመንግስት ምክር ቤት አንድን ገቢ ከገቢ ግብር ነፃ ሊያደርግ እንደሚችል የተደነገገ በመሆኑ አዋጁን ተከትሎ በመንግሥት ምክር ቤት የወጣውን ደንብ ቁጥር 162/2010 ማየት ይገባል። በዚህ ደንብ በአንቀጽ 54 ላይ ከገቢ ግብር ነፃ የተደረጉት ገቢዎች ዝርዝር ሲጠቀስ የቤት ኪራይ አበል ከዝርዝሩ ውስጥ የለም። ደንብ ቁጥር 1/2011ን ብናየውም የቤት ኪራይ አበል ከገቢ ግብር ነፃ ከተደረጉ ገቢዎች ዝርዝር ውስጥ አልተመለከተም። ስለሆነም የቤት ኪራይ አበል ከገቢ ግብር ነፃ ያልተደረገ ለግብር ከፋዩ የሚሰጠው የኢኮኖሚ ጥቅም በመሆኑ ገቢ ነው ማለት ነው። ማንኛውም ገቢ ደግሞ የገቢ ግብር ሊከፈልበት የሚገባ ስለመሆኑ በአዋጁ አንቀጽ 9 ላይ ተመልክቷል። ከዚህ ስንነሳ ገቢን በተመለከተ የህጉ አቋም ማንኛውም ገቢ የገቢ ግብር ሊከፈልበት የሚገባ መሆኑን የሚያሳይ ነው። መርሁ ይኸው ነው። የሥር ፍርድ ቤት ገቢ የሚለውን የህጉን የትርጉም ክፍል በመዘንጋት ገቢ የቤት ኪራይ አበልን የሚጨምር ስለመሆኑ ግልጽ አይደለም ማለቱ ስህተት ነበር። በዚህ ረገድ ህጉ ግልጽ ነው። ህግ አውጪው ከዚህ

በላይ ግልጽ ሊሆን አይችልም። የውሎ አበል እና የህክምና አበል ከገቢ ግብር ነፃ ከሆነ የቤት ኪራይ አበልም ነፃ መሆን አለበት የሚለው ክርክርም ቢሆን ትክክለኛ አመክኒዮ ቢመስልም በግልጽ የተቀመጠውን የህጉን መርህ ለመጣስ ምክንያት አይሆንም። ልዩ ሁኔታ መነበብ ያለበት በጣባቡ በመሆኑም የቤት ኪራይ አበል ከገቢ ግብር ነፃ ስለመሆኑ በልዩ ሁኔታው ላይ በግልጽ ሳይመለከት ትርጉሙን አስፍቶ የቤት ኪራይ አበልን እንደሚጨምር አድርጎ መተርጎም አይገባም። አይቻልምም። ህግ የማውጣት ውጤት አለው። የህግ አውጪውን ሚና መውሰድ ነው። ፍርድ ቤቶች ደግሞ ይህን እንዲያደርጉ አልተፈቀደም።

ግብር የሚጣልበት መንገድ እና ምጣኔውም ቢሆን በግልጽ የተቀመጠ በመሆኑ በታክስ ህግ መርህ መሠረት ዕርግጠኝነት (certainty) ይጎድለዋል ሊባል አይችልም [አዋጅ ቁጥር 240/2008 አንቀጽ 8 (1) (ሀ)፣ አንቀጽ 10 (1) (2) እና አንቀጽ 11] ። ስለሆነም ከፍ ሲል በተጠቀሰት ምክንያቶች አመልካች ለተጠሪዎች በሚከፈለው የቤት ኪራይ አበል ላይ የገቢ ግብር መቆረጡ ተገቢ ነበር።

ድርብ ግብርን በተመለከተ መሠረታዊ ሃሳቡ ከአንድ የገቢ ምንጭ ላይ ድርብ ግብር እንዳይጣል መከላከል ነው። ለዓቃቤ ህጋውያን የሚከፈለው የቤት ኪራይ አበል በሠንጠረዥ ሀ ላይ እንደተመለከተው ከመቀጠር የሚገኝ ገቢ ሲሆን አከራዮች ከሚያከራዩት ቤት ላይ የሚቆረጥባቸው ግብር ደግሞ ምንጩ በሠንጠረዥ ለ ላይ እንደተመለከተው ከቤት ኪራይ ከሚገኝ ገቢ የሚቆረጥ ግብር ነው። የገቢ ምንጮች አንድ አይደሉም። ስለሆነም ዓቃቤ ህጋውያን ለቤት ኪራይ ከሚከፈላቸው አበል ላይ የሚቆረጠው ግብር መሠረታዊ የሆነውን ድርብ ግብር እንዳይኖር የሚያዘውን የግብር ህግ ጥሷል በማት የቀረበው ክርክር ተቀባይነት ያለው ሆኖ አላገኘውም።

በአጠቃላይ የሥር ፍርድ ቤት ለተጠሪዎች በሚከፈለው የቤት ኪራይ አበል ላይ የገቢ ግብር ሊቆረጥበት አይገባም ያለበት ምክንያት ከህጉ መንፈስ የራቀ በመሆኑ ሊታረም የሚባው ሆኖ አግኝተነዋል። ስለሆነም የሚከተለውን ውሳኔ ሰጥተናል።

ውሳኔ

የደቡብ ጎንደር መስተዳድር ዙን ከፍተኛ ፍርድ ቤት በመ.ቁ. 75132 ሚያዝያ 29 ቀን 2012 ዓ.ም በዋለው ችሎት የሰጠው ትዕዛዝ እና የእስቴ ወረዳ ፍርድ ቤት በመ.ቁ. 01-17077 የካቲት 02 ቀን 2012 በዋለው ችሎት የሰጠው ፍርድ ሠረታዊ የሆነ የህግ ሥህተት የተፈጸመበት በመሆኑ ሽረነዋል።

ለተጠሪዎች በሚከፈለው የቤት ኪራይ አበል ላይ የገቢ ግብር መቆረጡ ተገቢ ነው ብለናል። በዚህ የተነሳም አመልካች ከተጠሪዎች የቤት ኪራይ አበል ላይ የተቆረጠውን የግብር ገንዘብ ሊመልስ አይገባም ብለናል።

ከሣራ እና ወጪ ይቻላል።

ትዕዛዝ

የእስቴ ወረዳ ፍርድ ቤት ፍርዱ የተሻረ መሆኑን ተረድቶ በዚህ ፍርድ ቤት ውሳኔ መሠረት እንዲያስፈጽም ታዟል። ይፃፍ።

መዝገቡ ተዘግቷል። ወደ መዝገብ ቤት ይመለስ።

ያስቻሉት ዳኞች ፊርማ አለበት።

የአማራ ብሔራዊ ክልላዊ መንግስት ጠቅላይ ፍርድ ቤት ሰበር ሰሚ ችሎት

የሰ.መ.ቁ. 92742

የካቲት 16 ቀን 2013 ዓ.ም

ዳኞች፦ ጸጋዬ ወርቅአየሁ
ፍቅሬ ጥላሁን
ምትኩ ወንዴ
ዓለሙ ዮሐንስ
አያሌው አምሳሉ

አመልካች ይሞሽት ቅድስት ማርያም ቤተ-ክርስቲያን
ተጠሪ ደብረ-አባይ ቅዱስ ሚካኤል ቤተ-ክርስቲያን

መዝገቡ የተቀጠረው ለምርመራ ነበር። መዝገቡን መርመረን የሚከተለውን ፍርድ ሰጥተናል።

ፍርድ

ከመዝገብ ምርመራው እንደተረዳነው ተጠሪ ጥር 21 ቀን 2005 ዓ.ም በተባሉ አቤቱታ ከአመልካች ጋር እስከ 2003 ዓ.ም ድረስ በጋራ ለህዝብ አገልግሎት ስንሰጥ ቆይተናል፤ በ2003 ዓ.ም ተጠሪ ራሱን ችሎ ከአመልካች ተገንጥሎ ለጎጡ ማኅበረሰብ አገልግሎት ሲሰጥ አመልካች በብቸኝነት ሲስትጠምበት የነበረውን 800 ሄክታር መሬት እና የሣር አላባ ግምት ግማሹን እንድታካፍለን መጋቢት 12 ቀን 2002 ዓ.ም በጽሁፍ ተስማማን፤ ይሁንና ከስምምነቱ በኋላ ድርሻችንን እንድታካፍለን ብንጠይቃት ፈቃደኛ አልሆነችም። ስለሆነም አመልካች የመሬቱን ግማሽ 400 ሄክታር እንድታካፍለን፤ የ2009-2010 ዓ.ም አላባ ግማሹን ብር 280,000 እና ከተቀማጭ ገንዘቡ ውስጥ ብር 19,500 እንድታስረክበን ይወሰንልን በማለት ጠይቋል።

አመልካች ለቀረበባት ክስ በሰጠችው መልስ በጋራ ስንጠቀም መቆየታችን ይታወቃል፤ ነገር ግን መጋቢት 12 ቀን 2002 ዓ.ም ተደረገ የተባለው ስምምነት ውል ሳይሆን ተጠሪ ራሱን ችሎ እንዲወጣ የተባሉ የድጋፍ ደብዳቤ ነው። ሃብት ለማካፈል አልተስማማሁም። በስሜ የተሰጠኝን ይዞታ ለተጠሪ የማካፍልበት ምክንያት የለም፤ ተቀማጭ ገንዘብም የለም፤ የሣር አላባም ቢሆን የማካፍልበት ምክንያት የለም፤ ታካፍያለሽ ቢባል እንኳ ግምቱ ልክ አይደለም፤ ስለሆነም ክሱ ውድቅ ሊሆን ይገባል በማለት ተከራክራለች።

ፍርድ ቤተም የግራ ቀኙን ክርክር እና ማስረጃ ከመረመረ በኋላ አመልካች ከይዞታዋ ውስጥ ሲሰውን ለተጠሪ ለማስረከብ የውል ግዴታ የገባች በመሆኑ ግማሹን ለተጠሪ ታስረክብ፤ የሣር አላባውን በተመለከተ የተጠሪን ድርሻ ብር 266,666.66 አመልካች ለተጠሪ ታካፍል፤ ስለተቀማጭ ገንዘብ በውሉ ላይ የተመለከተ ነገር የሌለ በመሆኑ ተጠሪ የሚካፈለው ተቀማጭ ገንዘብ የለም በማለት ወስኗል።

አመልካች በዚህ ውሳኔ ቅር በመሰኘት ለባህር-ዳር እና አካባቢዋ ከፍተኛ ፍርድ ቤት ቅሬታዋን ያቀረበች ቢሆንም ፍርድ ቤቱ አቤቱታዋን ሳይቀበላት ቀርቷል።

ይህ የሰበር አቤቱታ የቀረበው ይህን ውሳኔ በመቃወም ሲሆን አመልካች በቅሬታዋ ላይ ከተጠሪ ጋር የተደረገው ውል ሳይኖር ተጠሪ ራሱን ችሎ ቢቋቋም የማንቃወም መሆናችንን በተገለጸበት ሰነድ መነሻነት ሃብቴን እንዳከፍል መወሰኑ ስህተት ነው፤ በመካከላችን የጸና ውል የለም፤ ውል አለ ቢባል እንኳ የውል መሠረታዊ ሁኔታዎችን ያሟላ ባለመሆኑ ተቀባይነት የለውም፤ የህዝብ ውሳኔም ሆነ የቤተ-ክርስቲያኗ ውሳኔ ሳይኖር ውሳኔ እንዳለ ተደርጎ መወሰኑ ስህተት ነበር፤ የሣር አላባው ስሌትም የተሳሳተ ነው በማለት የሥር ፍርዱ እንዲሻርላት ጠይቃለች።

ተጠሪ ለቀረበው የሰበር አቤቱታ በሰጠው መልስ የሥር ፍርዱ መሠረታዊ የሆነ የህግ ሥህተት የሌለበት በመሆኑ ሊጸና ይገባል በማለት ተከራክሯል። ክርክሩም በዚሁ ተጠናቋል።

እኛም መዝገቡን መርምረናል። እንደመረመርነውም ከሁሉ በፊት ተጠሪ የቅዱስ ሚካኤል ቤተ-ክርስቲያን ክስ ባቀረበበት ሃብት ላይ ጥቅም ወይም መብት ያለው [የፍ.ብ.ሥ.ሥ.ህ.ቁ. 33(2)] መሆኑን አሳይቷል ወይስ አላሳየም የሚለው የህግ ጥያቄ በቅድሚያ ምላሽ ማግኘት የሚገባው ሆኖ አግኝተነዋል። ስለሆነም ይህን መሠረት በማድረግ ነገሩን ስናየው ተጠሪ ከአመልካች ጋር አፍርቼዋለሁ የሚለው ሃብት ተፈራ የሚለው ራሱን ችሎ ከቅድስት ማርያም ቤተ-ክርስቲያን ተገንጥሎ ከመውጣቱ በፊት በቅድስት ማርያም ቤተ-ክርስቲያን ውስጥ ድርብ ታቦት በነበረበት ጊዜ ነው። በዚህ ጊዜ ሃብት አፍርቻለሁ ለማለት ተጠሪ የህግ ሰውነት ያለው/የነበረው (የፍ.ብ.ህ.ቁ. 398) መሆኑን ማሳየት ይገባል። ከክሱ ማመልከቻ በግልጽ እንደሚነበበው ግን ተጠሪ ከአመልካች ተገንጥሎ ራሱን ችሎ ከመቆሙ በፊት ድርብ ታቦት እንጂ ቤተ-ክርስቲያን አልነበረም። የተቀደሰ ታቦት መሆኑ ብቻውን ለቅዱስ ሚካኤል የህግ ሰውነት አያስገኝለትም። ከፍ ሲል የተጠቀሰው ህግ ደግሞ የህግ ሰውነት የሚሰጠው ለቤተ-ክርስቲያን እንጂ ለታቦት አይደለም። የተቀደሰው ታቦት የህግ ሰውነት የሚያገኘው ከአመልካች ተገንጥሎ ራሱን ችሎ ሲወጣና ቤተ-ክርስቲያን ሲሆን ነው። አንድ ታቦት ቤተ-ክርስቲያን ሆነ፤ ራሱን የቻለ ህጋዊ ሰውነት አገኘ ለመባል ታቦቱ ብቻ ሳይሆን የሌሎችን ንዋየ ቅድሳት መኖርና በተለየ የጸሎት ሥርዓት ቤተ-ክርስቲያኑ መባረኩ አስፈላጊ ነው። አንድ ቤተ-ክርስቲያን የህግ ሰውነት አገኘ የሚባለው በዚህ ጊዜ ነው። ይህ ከመሆኑ በፊት ድርብ ታቦታት ራሳቸው የዋናው ቤተ-ክርስቲያን ንብረት/ሃብት እንጂ የህግ

ሰውነት ያላቸው አካላት ተደርገው አይወሰዱም። በዚህ የተነሳም የቅድስት ማርያም ቤተ-ክርስቲያን ንብረት የሆነው የቅዱስ ሚካኤል ታቦት ድርብ ታቦት በነበረበት ጊዜ ሃብት አፍርቷል ሊባል አይችልም። ሃብት ማፍራት የሰው ጠባይ ስለሆነ ማለት ነው። ስለሆነም ከፍ ሲል የተገለጸው ሥርዓት ተፈጽሞ አንድ ታቦት ቤተ-ክርስቲያን ከመሆኑ በፊት የህግ ሰውነት አለው፤ ሃብትም አፍርቷል ማለት አይቻልም። በተፈጥሮ ባህሪው (የህግ ሰውነት ስላልነበረው) ሃብት ማፍራት በማይችልበት ጊዜ ሃብት አፍርቻለሁ ብሎ ቢጠይቅ መጠየቁ ብቻውን መብት ያለው መሆኑን አያሳይለትም። ስለሆነም ተጠሪ ክስ ባቀረበበት ሃብት ላይ በህግ ረገድ ለመብቱ ምንጭ የሆነውን ጥቅም ወይም መብት አላሳየም። በዚህ የተነሳም ክሱ እንደቀረበ ተቀባይነት ሊያጣ ሲገባ የሥር ፍርድ ቤት ይህን ነጥብ በማለፍ በፍሬ ነገሩ ላይ ማከራከሩ ስህተት ነበር። ተጠሪ ጥቅም ወይም መብቱን ያላሳየ በመሆኑ ክሱ ውድቅ ሊሆን ይገባል ብለናል።

ተጠሪ ጥቅም ወይም መብት አለኝ የሚለው ህጋዊ ሰው ሆኖ ከተቋቋመ በኋላ በመካከላቸው ተደረገ የተባለውን ውል መነሻ በማድረግ ከሆነ ጥያቄው ተገቢነት ይኖረዋል። ነገር ግን በመካከላቸው ውል ያለ መሆኑን ማሳየት ይገባል። በተያዘው ጉዳይ ተጠሪ በመካከላችን ውል አለ በማለት ያቀረበው መጋቢት 12 ቀን 2002 ዓ.ም ተባፈ የተባለው ሰነድ የአመልካችን ጎጥ ህዝብ እንወክላልን የሚሉ 100 ሰዎች ተጠሪ ራሱን ችሎ እንዲወጣ ፈቃድ መስጠታቸውን የሚያሳይ ሰነድ እንጂ በንብረት ረገድ የተደረገ ስምምነት አይደለም። የተጠሪ ታቦት ራሱን ችሎ እንዲወጣ መፍቀድ በንብረት ላይ መስማማት ማለት አይሆንም። በአንድ ወገን የተገባ ግዴታ ብቻ ነው። ውል አይደለም። የውል ሁኔታዎችንም አያሟላም። ስለሆነም በግራ ቀኙ መካከል በንብረት ረገድ የተደረገ ስምምነት አለ ማለት አይቻልም። የአመልካች ጎጥ ነዋሪዎች ነን የሚሉት ሰዎች የሰጡት ፈቃድ ውል ነው ቢባል እንኳ ስለ ቤተ-ክርስቲያን ለመነጋገር የሚችለው ሰበካ ጉባኤው ነው። የህዝብ ወኪሉ እሱ ነው። እንጂ ቤተ-ክርስቲያኑ የሚገኝበት ጎጥ ነዋሪዎች ነን የሚሉ ግለሰቦች እየተሰባሰቡ በመፈራረም ለሌሎች ሰዎች መብት ሰጪ እና ነሺ ሊሆኑ አይችሉም። በግራ ቀኙ ሰበካ ጉባኤያት መካከል ደግሞ ተደረገ የተባለ ስምምነትም የለም። ስለሆነም ስለ ቅድስት ማርያም ቤተ-ክርስቲያን ሆኖ መነጋገር የሚችለው ሰበካ ጉባኤ (እንደተቋም) ሳይስማማ የጎጡ ነዋሪዎች መጋቢት 12 ቀን 2002 ዓ.ም አደረጉት የተባለው “ስምምነት” አመልካችን ሊያስገድዳት አይችልም። የሥር ፍርድ ቤት ነገሩን በተሳሳተ መንገድ በመረዳት በመካከላቸው ውል እንዳለ በመቁጠር አመልካች ለተጠሪ ሃብቷን እንድታካፍል መወሰኑ ስህተት ነበር። አመልካች ለተጠሪ ሃብቷን የምታካፍልበት የህግ ምክንያት የለም። ስለሆነም የሚከተለውን ውሳኔ ሰጥተናል።

ውሳኔ

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ኪሣራ እና ወጪ ይቻቻሉ።

ትዕዛዝ

የባህር-ዳር ዙሪያ ወረዳ ፍርድ ቤት ፍርዱ የተሻረ መሆኑን ተረድቶ በዚህ ፍርድ ቤት ውሳኔ መሠረት እንዲያስፈጽም ታዟል። ይፃፍ።

የተሰጠ ዕግድ ካለ ተነስቷል። ይፃፍ።

መዝገቡ ተዘግቷል። ወደ መዝገብ ቤት ይመለስ።

ያስቻሉት ዳኞች ፊርማ አለበት።

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UNIVERSITY OF GONDAR**

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Footnotes should be *Times New Roman* with font size 10, single-spaced, and justified. Footnotes should be numbered consecutively starting with 1 at the beginning of the Article, except for the footnote listing author's affiliation which is marked with an asterisk. Substantive footnotes are justified only if any further clarifications are necessary.

CITATION Standards

The purpose of citation is to make it as easy as possible for the reader to find the relevant passage in the cited publication. Accordingly, citations in the footnotes should conform to the standards laid down in the latest version of

Bluebook: Uniform System of Citations (19th ed. 2010).

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