



LEGAL ANALYSIS OF THE PROPOSED CONTROL OF INFECTIOUS DISEASES BILL 2020

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Control of Infectious Diseases Bill: Briefing Paper

Introduction:

The continuing spread of coronavirus (also known as COVID-19) has posed serious social, economic, legal and political challenges across the globe, necessitating state and national authorities to modify existing emergency response mechanisms and make new policy choices compatible with the new realities created by the disease. It is within this context that Nigeria is seeking to repeal the outdated National Quarantine Act 2004, and replace it with a new law titled, **Control of Infectious Diseases Act (CIDA) Bill 2020**. The proposed legislation aims to enlarge the powers of the President, the Nigeria Centre for Disease and Control (NCDC) and the Minister of Health to prevent and manage the outbreak of infectious diseases such as COVID-19 which has claimed over 80 lives across various states in Nigeria.

Sponsored by Hon. Femi Gbajabiamila, the Speaker of the House of Representatives, CIDA Bill speedily passed first and second reading only days after it was transmitted to the country's lower legislative chambers on the 26th of April 2020. Spread across forty-three pages, four schedules and six sections, the bill contains robust provisions regarding the control and prevention of international spread of infectious diseases in Nigeria, vaccination and prophylaxis of patients, maximum enforcement powers of the national disease control body, including to investigate, arrest, serve notices, disclose -demand information and other saving provisions.

Some of the bill's provisions have attracted heavy criticism, particularly the sections concerning compulsory vaccination, limits on constitutional freedoms and excessive discretionary power to conduct public health surveillance programmes and epidemiological investigations and surveys of people, animals, or vectors to determine the existence, incidence or likelihood of a possible outbreak of an infectious disease. This policy brief examines the contentious provisions of the bill with a view to deepening understanding of the troubling sections, and the accompanying limitations (if any), placed on the enjoyment of human rights and fundamental freedoms.

Troubling Sections of the Bill

1. **Overreaching police powers to apprehend persons suffering from infectious diseases:** *Enforcement or police officers may apprehend and take any person suffering from an infectious disease whom the officer finds on any street, public, place, shop or public transportation to a hospital*—Section 24. First of all, how will police officers make a determination that a person is suffering from an infectious disease? By mere physical observation? Or based on sound medical diagnosis?

For a country with a high record of abuse of power by state security agents, such omnibus clauses granting the police unfettered powers to apprehend persons suffering a disease will open the gateway for unrestrained repression of civil liberties. Since the Nigerian government-imposed lockdown on three major Nigerian cities of Lagos, Ogun and the Federal Capital Territory, the overbearing conduct of security operatives have resulted in the brutality and eventual killings of over 20 citizens in the name of enforcing the lockdowns and public safety measures. The database of closing civic spaces in Nigeria—www.closingspaces.org—documents these atrocities and continues to track ongoing ones. Conferring powers on police officers to make health judgments, will aggravate the situation, and roll back the gains that have been made to protect the civic space and human freedoms during a pandemic.

2. **Isolation of persons at undisclosed locations:** The Bill grants unparalleled powers to the Director-General of NCDC to detain members of the public and minors, indefinitely, at a hospital or undisclosed locations if they are suspected to be a case or carrier of an infectious disease. (Section 13(1)(2)). This power is extreme and overly discretionary. Subjecting individuals to indefinite detention without any clear justification or medical evidence that demonstrates the presence of an infectious disease is dangerous to public safety. More tellingly,



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the right to detain at undisclosed locations could be explored for ulterior motives where there are no checks and balances. This provision is a clear breach of the constitutional guarantee of free movement and privacy, including the prohibition against torture, inhuman and degrading treatment.

3. **Unilateral declaration of isolation areas, destruction of suspicious or known sources of infectious disease such as structures, goods, sewage, etc.:** The Bill grants unfettered powers to the Minister of Health to declare any premises to be an isolation area for the purpose of preventing the spread or possible outbreak of an infectious disease. Likewise, NCDC's Director-General may also impose movement restrictions within the isolated area. This power is so expansive that it includes authorizing the destruction of any known or suspicious source of infectious disease. (Section 15(1)(2)(3)a-d). Health or police officers will also have the power to **'take any action'** to give effect to the orders under Section 15(3), including the powers to arrest without warrant any person who contravenes a movement order within an isolated area.

Of all the troubling provisions of the bill, this is the most alarming. Nigerian citizens are vested with the fundamental right to property, as guaranteed by Section 43 and 44 of the Nigerian Constitution. The right to property is protected against arbitrary seizure, isolation and destruction by the Nigerian Constitution, the Land Use Act, as well as the various states urban and regional planning laws. When the government carries out demolitions, forced isolation and forced evictions in the name of disease control, individuals' fundamental rights to property, dignity and fair hearing are violated. Illegal forced evictions and demolitions also violates the fundamental right to life, dignity, and housing, as expressed in the African Charter on Human and Peoples' Rights, ratified into Nigerian law.

Furthermore, the powers conferred on the police or an enforcement officer to arrest **'without warrant'** or **'take any action'** to give effect to restrictive orders on movement around isolation areas waves a red flag. Given some of the present failings of enforcement officers in the country, a bigger problem of misinterpreting and abusing this power is imminent, especially where police officers are empowered to **'deploy any action'** on or detain without the need for evidence.

4. **Compulsory vaccination against diseases:** By Sections 47 and 48 of the proposed Bill, the Director-General can order the compulsory vaccination of members of the public to prevent or contain a 'suspected' outbreak of a disease. Informed medical consent is a right guaranteed to every person. The arbitrary power to enforce compulsory vaccinations without a clear establishment of public health justification disregards the virtue of personal autonomy and citizens' rights to make informed medical choices. Rule 19 Part A of the Code of Medical Ethics in Nigeria, including Section 23 of the National Health Act 2004 requires that individuals be furnished with full information of diagnostic details, benefits, and risks. It insists that consent be obtained before medical intervention.

In sharp contrast to the above provisions, this Bill is silent on the need for informed consent. It imposes no obligation on the NCDC to inform members of the public of any health risks that may follow compulsory vaccinations. There is no provision for legal responsibility for drug reaction or other negative side effects, especially where informed consent is neither sought nor obtained. The particular provision of the bill is draconian, inconsistent with the principle of human freedoms, and should be expunged without much ado.

5. **NCDC Director-General's immunity and Minister of Health's absolute powers:** The Bill shields NCDC Director-General of any liability for any legal action brought against him/her in respect of the discretionary actions taken in the implementation of provisions of the Bill. (Section 20(1)). The Minister of Health equally enjoys similar overreaching powers to decide the fate of any person who is aggrieved by any restrictive order on gathering and meetings. (Section 20(5)). An aggrieved person may, however, within 7 days from the date of restrictive order appeal to the Minister of Health whose decision on the matter is final.



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Gatherings and meetings fall within the purview of the constitutionally-protected freedoms of association and assembly. The Minister's power to make final judicial determinations in respect of restrictive orders on gathering and meetings not only usurps the constitutional powers of the judiciary, but also, effectively deprives aggrieved persons the right to fair hearing. The Court of Appeal in **Akulega vs. Benue State Civil Service Commission [2002] 123 FWLR 255 at 288** stresses the importance of the sanctity of the right to a fair hearing to all citizens, with particular emphasis on matters concerning fundamental rights. This right is to be preserved regardless of the ultimate guilt or innocence of the parties involved. It also stresses the duty of the court to look into alleged violations of such rights with due diligence. It is therefore the obligation of the courts, and not the Minister of Health, to look into the matters touching on constitutional rights and freedoms.

6. **Breaches of individual privacy, confidentiality agreements, and doctor-patient data privacy:** The Bill proceeds on authoritarian clauses that compel a medical officer or individual to disregard confidentiality agreements when the NCDC director general demands information. Part A, Rule 19 of the Code of Medical Ethics in Nigeria directs that all communications between patient and practitioner be treated with strict confidentiality unless compelled by law, overriding common good or consent of the patient to be divulged. On the other hand, Section 8 of the proposed Bill requires healthcare professionals to reveal or divulge such information to NCDC's Director-General in the name of investigating into any outbreak or preventing a possible outbreak of an infectious disease.

Section 55 (1) a gives the Director-General or any Health Officer the power to 'without warrant' and 'use of force as maybe necessary', enter, inspect and search any premises for the purpose of investigation into an outbreak or suspected outbreak of an infectious disease. Section 55(e) allows the Director-General to compel any person to provide any book, document, correspondence, or information requested by the DG or Health Officer.

Section 37 of the 1999 Nigerian Constitution guarantees citizen's privacy and protection from the invasion of their homes, correspondence, telephone, and telegraphic communications. Section 14 of the Freedom of Information Act restricts the disclosure of personal data without obtaining consent. The bill's provisions on invasion of citizens' homes negate these human rights protections. If passed into law, human rights and freedoms will be caged. Press freedom will be under threat. It further signals that the days of patient-doctor confidentiality is over. Provisions of this kind that hold enormous potential to put a knife on civil liberties have no place in democracy.

7. **Arbitrary restriction on freedom of association, gatherings, and public entertainments:** Section 20 of the Bill empowers the Director-General to stop any meeting or gathering that is '*likely to increase the spread of an infectious disease*'. With the absence of statutory safeguards to prevent the abuse of this power, there is a strong likelihood that intolerant regimes, including overzealous state agents, will proscribe all sorts of meetings, including human rights meetings, accountability conferences, public protests, civil demonstrations, and the like, in the name of disease prevention. These provisions will further embolden authoritarians to erode the democratic rights of citizens, including, clamping down on associations and gatherings that examine and critique the failings of government.

8. **Movement restrictions and heavy fines for default:** Section 16(1) (2)a-b of the proposed legislation gives the President the power to restrict movement and gatherings around high-risk zones if he/she '*..is satisfied that there is an outbreak or imminent outbreak of an infectious disease that poses a substantial risk of a significant number of human fatalities or incidents of serious disability in the country.*' Through a presidential declaration, the period of restriction can be renewed for an additional period. (Section 16(4)). The penalties for default includes fines ranging from N50,000 to Two Million naira (N2,000,000) or imprisonment for upon conviction for any person, master, surgeon, agent of a vessel who wilfully neglects or refuses to



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carry out or obstructs the execution of any emergency measure formulated and implemented by the Director-General of the NCDC.

Recommendations:

We acknowledge the proactiveness of deploying legislative interventions to address evolving infectious diseases. However, as we have pointed out above, the proposed Bill is replete with dangerous and ambiguous clauses that threaten both human freedoms and dignities. We therefore re-echo the sentiments of the current Director General of the NCDC when he stated unequivocally that drafting a bill in the middle of a crisis is not a priority. Like he rightly stated, the Bill requires more consultation. On that premise, we recommend as follows:

1. The use of draconian and coercive language throughout the entire draft statute is unnecessary. Resorting to repressive and forcible methods of conducting surveillance, investigation and prevention of infectious disease will create an atmosphere of fear in the country, considerably contract the spaces for civic engagement, thereby frustrating the exploration of solutions. Vaccination in particular, should not be administered on anyone without consent.
2. Redraft several provisions of the bill in order to conform to legally-binding human rights standards that Nigeria has signed on to. A functional statute rests on the pillars of respect for citizen's rights, separation of powers, gender sensitivity, socio-cultural norms, religious ethics and, provision of security, food, and water for members of the public subjected to restrictive provisions.
3. Conduct a comprehensive assessment of existing and related legislative frameworks to identify gaps that limit the country's ability to deal with the outbreak of infectious disease. In doing this, efforts must also be made to improve information-sharing and collaborative working among agencies to boost the efficiency of emergency and coordinated responses to the outbreak of infectious diseases.
4. Review the excessive powers granted to the NCDC Director-General, the Minister of Health and other law enforcement officers to subjectively arrest without warrant, confiscate properties, and obtain information without any restraint.
5. Review and expunge the time limitation on the right to file complaints at magistrate courts. The limited time frame is impractical and deprives aggrieved persons adequate opportunity to be heard for the redressal of wrongs done to them.
6. Subject the Bill to public hearing and proper consultations amongst key stakeholders to ensure accountability and due process of thought and information exchange.

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