

ACTION GROUP ON FREE CIVIC SPACE

CONTROL OF INFECTIOUS DISEASES BILL 2020

**MEMORANDUM SUBMITTED TO DEPUTY
DIRECTOR/CLERK COMMITTEE ON
HEALTHCARE SERVICES**

The Action Group on Free Civic Space represents a loose network of organizations, student unions, social movements and active citizens working on different thematic issues, but committed to ensuring that government regulation in the name of national security does not shrink the civic space in Nigeria.

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Introduction

Sponsored by Hon. Femi Gbajabiamila, the Speaker of the House of Representatives, the Control of Infectious Diseases Bill 2020, is being considered as a strategic legal framework for repositioning and strengthening the national disease control agency—National Center for Disease Control (NCDC)—and relevant health officials to undertake the important task of preventing and managing the outbreak of infectious diseases such as COVID-19 which has claimed over a hundred lives across various states in Nigeria.

Nigerian civil society organizations, student unions, social movements, grassroots associations and active citizens, under the auspices of the **Action Group on Free Civic Space**, have extensively examined the provisions of the draft bill and note that the Bill requires major revisions to several sections. We make the following observations, highlighting some troubling sections for further review:

This memorandum outlines FIVE (5) major observations:

1. **The repeal of the Quarantine Act, and replacing it with the Control of Infectious Disease Bill 2020, is timely and imperative. Best practices exist and should be considered.**
2. **Numerous provisions of the bill infringe on constitutionally-protected rights and freedoms.**
3. **Granting overreaching powers to health officials, diseases control agency and law enforcement officers or the police to prevent and manage the outbreak of infectious diseases, is worrying.**
4. **Individual privacy, confidentiality agreements, and doctor-patient data privacy should not be sacrificed at the altar of disease control**
5. **Compulsory vaccination against diseases should be reconsidered.**

Legal Arguments and Recommendations

1. **Repealing the Quarantine Act, replacing it with the Control of Infectious Disease Bill 2020, is timely and imperative, BUT...**

The **Action Group on Free Civic Space** notes that 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. Exploring legislative interventions that will address the evolving infectious diseases proactively, as this present bill seeks to do, is timely and imperative. We further recognize that public health agencies may have to recourse to rights-restricting measures to protect population health, particularly in disease control and prevention, and during health emergencies.

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Having said that, we take the view that the use of international human rights standards, as a paradigm for containing or preventing the outbreak of an infectious disease, is a good strategy for achieving the highest attainable standard of health for all. To adopt a human rights approach to health, key principles of **participation, equality, non-discrimination and accountability**, must undergird all disease control and prevention strategies. To ensure participation, the development of new action plans, policy priorities, legal frameworks, program planning, design and implementation should be preceded by adequate consultations to accommodate the views of a broad spectrum of the population. Non-discrimination and equality mean that national disease control and prevention strategies must prioritise the identification of vulnerable groups, their health needs, inherent prejudices or biases while ensuring that all persons—irrespective of their social and economic background, identity, sex, religion, ethnic group, sexual identity—have equal access to healthcare. Accountability means that health implementing agencies and officials are held accountable for the outcomes resulting from the implementation of disease control and prevention strategies, including for negligent conduct, or the adoption of coercive or harmful practices in public health.

Being an interconnected right, fully realizing the right to health during a pandemic is largely dependent upon the provision of other determinants of adequate standard of living, including food, housing, safe water, a healthy environment and a well-equipped and well-groomed law enforcement infrastructure. For instance, adherence to frequent handwashing recommended as a major health protocol for containing the spread of coronavirus is premised on the availability of constantly water supply. Importantly, health officers and related enforcement mechanisms should be better equipped and groomed to respect and protect human rights of citizens while carrying out their statutory functions of health promotion, disease control and prevention.

2. Numerous provisions of the bill infringe on constitutionally-protected rights and freedoms

: The power conferred on the Minister of Health declare any premises to be an isolation area (Section 15(1)(2)(3)a-d)), and on the NCDC Director General (DG) to impose movement restrictions within an isolated area, including authorizing the destruction of such areas, for the purpose of preventing the spread or possible outbreak of an infectious disease, is extreme and should be revised. 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 numerous existing legislation such as the Nigerian Constitution, African Charter on Human and Peoples' Rights, 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 numerous interconnected rights, such as the fundamental right to life, dignity, property, housing etc. Control of infectious diseases should, at no time, be used as an excuse to repress these rights.

Section 20 of the Bill also empowers the DG of NCDC 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

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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 pave the way to clamp down on diverse associations and gatherings converging at various times and locations to campaign for social justice and deliver social goods.

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 duty of the courts to give 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 is therefore the obligation of the courts, and not the Minister of Health, to look into the matters touching on constitutional rights and freedoms. Finally, there is need to review and expunge the time limitation on the right to file complaints at magistrate courts. (**Section 55 (3)a-2b**) The limited time frame of only 48 hours to seek legal redress at the Magistrate Court is impractical and deprives aggrieved persons adequate opportunity to be heard for the redressal of wrongs done to them.

3. Granting overreaching powers to health officials, diseases control agency and law enforcement officers or the police to prevent and manage the outbreak of infectious diseases, is worrying. (S.24)

First of all, how will police officers determine that a person is suffering from an infectious disease? By mere physical observation? Or based on sound medical diagnosis. 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 has 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—is replete with records of disease containment measures radically overstretched beyond context and enforced in ways that hurt civic freedoms. For a country with a high record of abuse of power by state security agents, such omnibus clauses granting the police unfettered powers to make health judgments and apprehend persons suffering a disease will open the gateway for unrestrained repression of civil liberties, and roll back the gains that have been made to increase respect for human rights.

Similarly concerning is the unparalleled powers granted to the DG 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, the right to detain at undisclosed locations could be explored for ulterior motives where there are no checks and balances.

4. Individual privacy, confidentiality agreements, and doctor-patient data privacy should not be sacrificed at the altar of disease control (S.55)

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Section 55 of the bill, in its entirety, should be revised, particularly sections 55 (1) (a) and 55(e) which empower the DG of NCDC to compel any person to provide any book, document, correspondence, or information requested. Section 37 of the 1999 Nigerian Constitution guarantees citizens' 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 authorizing health officers to invade citizens' homes in the name of disease control 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.

5. **Compulsory vaccination against diseases should be reconsidered. (Sections 47 & 48)**

Sections 47 and 48 of the Bill empower the DG of NCDC to order the compulsory vaccination of members of the public in order to prevent or contain a 'suspected' outbreak of a disease. The bill is silent on the need for informed consent prior to any vaccination. Informed medical consent is a right guaranteed to every person. Furthermore, the bill 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 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. The particular provision of the bill is draconian, inconsistent with the principle of human freedoms, and should be reconsidered.

6. **The bill duplicates already existing laws and agency functions (Section 5(1)):**

Several provisions of the bill have already been covered by numerous legislations. For instance, the Nigeria Centre for Disease Control and Prevention (Establishment) Act, 2018 provides for the reporting, detection, workforce development, preparedness, and emergency responses to disease outbreaks in compliance with the requirements of International Health Regulations. We see nothing that the Control of Infectious Diseases Bill 2020, seeks to achieve that is not already covered by this law.

Both Sections 11 and 39 of the Bill authorise the DG of NCDC to undertake the destruction and disposal of infected animals, food and water considered to be a source for the transmission of an infectious disease. The National Agency for Food and Drug Administration Control Act, 1993 already regulates and controls the importation, exportation, manufacture, advertisement, distribution, sale, destruction and use of food, drugs, cosmetics, medical devices, bottled water, and chemicals in the country. Likewise, Section 40(1) of the Bill provides guidelines for the importation of vectors of diseases. The Nigeria Agricultural Quarantine Service Establishment Act, 2017 and Animal Disease Control Act already outlines public health measures to be applied where plants or animals infected with diseases are transported into Nigeria.

Other existing legislation include Nigeria Data Protection Regulation, 2019 which regulates the use of data in Nigeria; The National Primary Health Care Development Agency (NPHCDA) Act 1992 which

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establishes the National Primary Health Care Development Agency for handling emergency responses for vaccine-preventable diseases, and the Child Rights Act, 2003 which provides guidance regarding issues of compulsory immunisation of minors and how the best interests of children in Nigeria can be protected. Instead of duplicating existing laws and regulations, a comprehensive assessment of existing and related legislative frameworks is necessary in order to avoid duplicity and to identify gaps that limit the country's ability to deal with the outbreak of infectious disease.

For the above reasons, we recommend as follows:

Conclusion:

- 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, and considerably contract the spaces for civic engagement, thereby frustrating the exploration of orthodox and unorthodox solutions to the pandemic.**
- 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. 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.**

For further enquiries, please contact:

1. SPACES FOR CHANGE (S4C)
2. COMMUNITIES ALLIANCE AGAINST DISPLACEMENT
3. NETWORK ON POLICE REFORM IN NIGERIA (NOPRIN FOUNDATION)
4. AFRICA NETWORK FOR ENVIRONMENT & ECONOMIC JUSTICE (ANEEJ)
5. WOMEN AFRICA
6. GLOBAL RIGHTS
7. CIVIL RESOURCE DEVELOPMENT AND DOCUMENTATION CENTRE (CIRDDOC), ENUGU, NIGERIA
8. CHITRA NAGARAJAN
9. CITIZENS CENTER FOR INTEGRATED DEVELOPMENT AND SOCIAL RIGHTS (CCIDESOR)
10. RULE OF LAW AND ACCOUNTABILITY ADVOCACY CENTRE (RULAAC)
11. CENTRE FOR ADVANCEMENT OF DEVELOPMENT RIGHTS (CEADER)
12. CHILD HEALTH ORGANIZATION (CHO)
13. VISION SPRING INITIATIVE
14. YOUTH FORUM FOR SOCIAL CHANGE (YOFSOC)
15. COMMUNITY LIFE PROJECT

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16. FEMI AFOLAYAN, RADIO NIGERIA
17. SOUTHEAST CIVIL SOCIETY ALLIANCE FOR PUBLIC ACCOUNTABILITY (SECSAPA)
18. KEBETKACHE WOMEN DEVELOPMENT & RESOURCE CENTRE
19. KOYENUM IMMALAH FOUNDATION (KIF)
20. CENTRE FOR TRANSPARENCY ADVOCACY (CTA)
21. WOMEN IN EXTRACTIVES(WIE)
22. WOMEN LIBERTY AND DEVELOPMENT INITIATIVE
23. STEPHANIE PEACEBUILDING AND DEVELOPMENT FOUNDATION
24. PUBLIC ENLIGHTENMENT PROJECTS
25. YOUTHS AND ENVIRONMENTAL ADVOCACY CENTRE
26. CENTER FOR DEVELOPMENT SUPPORT INITIATIVES -CEDSI
27. INTERNATIONAL MEDICAL LAW CENTRE
28. OPEN ARMS INITIATIVE FOR SUSTAINABLE DEVELOPMENT
29. ECHOES OF WOMEN IN AFRICA INITIATIVES
30. IMO PROGRESSIVE LAWYERS ASSOCIATION
31. WORLD IMPACT DEVELOPMENT FOUNDATION
32. CENTRE FOR CORRECTIONS AND HUMAN DEVELOPMENT
33. SMALL SCALE WOMEN FARMERS ORGANIZATION IN NIGERIA (SWOFON)- KWARA CHAPTER
34. THEIOS CAREGIVERS INITIATIVE
35. ORGANIZATION FOR THE SUSTAINANCE OF THE NIG. ENVIRONMENT (OSNE)
36. BRAIN BUILDERS INTERNATIONAL
37. MEADOWS COMMUNITY AND DEVELOPMENT OUTREACH *(MCDO)*
38. BAZARAB EDUCATIONAL FOUNDATION (BEF)
39. CENTRE FOR ECOLOGICAL AND COMMUNITY DEVELOPMENT
40. RUHAMA'U WOMEN EMPOWERMENT COOPERATIVE SOCIETY.
41. NETWORK FOR PEACE AND PATRIOTISM PROPAGATION, COMMUNITY SERVICE AND ORPHANS CARE IN NIGERIA (NEPPCON)
42. MINNA EMIRATE YOUTH ASSOCIATION (MEYA)
43. NIGER STATE EMIRATE YOUTH ALLIANCE (NEYAK)
44. HAUSA/FULANI STAKE HOLDER NIGER STATE.
45. SULEJA EMIRATES STUDENT ASSOCIATION (SESA).
46. GURARA AGRICULTURAL GRADUATION OF NIGERIA (GAGAN)
47. NIGERCARE AID DEVELOPMENT INT
48. FOUNDATION FOR ENVIRONMENTAL RIGHTS ADVOCACY & DEVELOPMENT FENRAD
49. VISION FOR YOUTHS AND TEENS
50. ACE AND VANGUARD LEGAL PRACTITIONERS
51. WILDAN CARE FOUNDATION
52. ADVOCACY CENTRE FOR DEVELOPMENT
53. MOTHERHEN DEVELOPMENT INITIATIVE
54. FAIDA COMMUNITY DEVELOPMENT ASSOCIATION
55. FOUNDATION FOR YOUTH AWAKENING & EMPOWERMENT
56. PEOPLE EMPOWERMENT INITIATIVE
57. LAWANTI COMMUNITY DEVELOPMENT & EDUCATION FOUNDATION
58. JEWEL HEALTH & DEVELOPMENT INITIATIVE
59. SAIF ADVOCACY
60. CIVIL SOCIETY FOR HIV&AIDS IN NIGERIA (CISHAN)
61. TEENAGERS EMPOWERMENT INITIATIVE (TEMIN)
62. CIVIL SOCIETY ACTION COALITION ON EDUCATION FOR ALL (CSACEFA)
63. NEW AGE YOUTH DEVELOPMENT INITIATIVE
64. VOLUNTARY ACTION FOR LIFE (VAL)
65. NEEDY RESPONSE INITIATIVE
66. JOINT ASSOCIATION OF PEOPLE WITH DISABILITY
67. JEWEL AWARENESS INITIATIVE (JAI)
68. RURAL HEALTH MISSION

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69. MALAMSIDI PROGRESSIVE UNION (MPU)
70. SUFABEL COMMUNITY DEVELOPMENT ASSOCIATION
71. INITIATIVE FOR GIRLS AND WOMEN ENLIGHTENMENT
72. PROBITY IN NIGERIA (PIN)
73. RESCUE AMBASSADORS DEVELOPMENT INITIATIVE
74. PARENT-CHILD INTERVENTION CENTRE
75. NEW LIFE COMMUNITY CARE INITIATIVE NELCCI
76. AGENTS OF COMMUNICATION AND DEVELOPMENT (A-CODE)
77. THE NIGERIAN YOUTH PARLIAMENT.
78. UNITED NOBLE RESCUE SERVICES (UNRS)
79. RURAL YOUTH FOUNDATION
80. ENUGU STATE NETWORK OF CIVIL SOCIETY ORGANIZATIONS (ENSNET)
81. YOUNG VISIONEERS ASSOCIATION OF NIGERIA
82. PARTNERSHIP FOR CIVIC ENGAGEMENT (PACE)
83. VSO NATIONAL YOUTH ENGAGEMENT NETWORK (VSO NYEN)
84. PROJECT FOR HUMAN DEVELOPMENT
85. CONSERVATION ASSOCIATION OF MBE MOUNTAINS
86. CENTRE FOR ECOLOGICAL AND COMMUNITY DEVELOPMENT
87. RIVERS COMMUNITY CONTENT CONGRESS
88. FOUNDATION FOR THE CONSERVATION OF THE EARTH (FOCONE)
89. GREATER HEALTH INITIATIVES (GHI)
90. DEVELOPMENT DYNAMICS
91. FOUNDATION FORAFRICAN CULTURAL HERITAGE (FACH)
92. RECLAIM NAIJA
93. NETWORK OF PROBONO LAWYERS
94. CENTER FOR COMMUNITY EMPOWERMENT AND POVERTY ERADICATION
95. STAGE FOR WOMEN COALITION

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