

May 2020

LONG TITLE

A Bill for an Act to Repeal the Quarantine Act and Enact the Control of Infectious Diseases Act, Make Provisions Relating to Quarantine and Make Regulations for Preventing the Introduction into and Spread in Nigeria of Dangerous Infectious Diseases, and for Other Related Matters (HB. 836)

SPONSORS

Rt. Hon. Femi Gbajabiamila (Lagos:APC) - *Speaker, House of Representatives*

Hon. Tanko Sununu (Kebbi:APC) - *Chairman, House Committee on Healthcare Services*

Hon. Pascal Obi (Imo:APM) - *Chairman, House Committee on Health Institutions*

OBJECTIVE

This Bill seeks to Repeal the Quarantine Act, Laws of the Federation of Nigeria 2004 (originally enacted in 1926) and enact the Control of Infectious Diseases Act, make provisions relating to quarantine and make regulations for preventing the introduction into and spread in Nigeria of dangerous infectious diseases, and for other related matters.

SCOPE OF THE BILL AND POWERS

1. Responsibility for Administration of the Act

The Director-General of the Nigerian Centre for Disease Control (DG NCDC) is placed in charge of administering the contents of the Bill subject to any general or special directions by the Minister of Health. The DG may appoint any public officer, officer of any statutory body; or employee of a prescribed institution, to be a Health Officer for the purposes of this law. He may also delegate his powers to any such officer appointed. The powers conferred upon the Director General under this Act may be exercised by him in person or through officers of the Centre.

2. Powers of the President

Under Part 2 of the bill dealing with control of infectious diseases within the Federal Republic of Nigeria, the President has powers to:

- Declare a Public Health Emergency;
- Designate Public Health Emergency Zones;
- However, to do this the President must be **satisfied** that there is an outbreak or imminent outbreak of an infectious disease that poses substantial risk of a significant number of human fatalities/ serious disability in Nigeria.
- He may also designate **by order**, the whole of or such area in Nigeria to be a restricted zone and may in such order place a prohibition or restriction subject to such conditions as he may think fit. Those areas will be designated “**Public Health Emergency Zones.**”
- The order is valid for 14 days and will expire at this time unless the President revokes it before then. The President may however renew the order for a maximum of 14 days at a time.
- However, copies of the order must be presented to both Houses of the National Assembly as soon as possible. The National Assembly has power to annul the order **through a resolution passed by both chambers.**
- The President may also issue orders prohibiting and restricting movement of persons, which is enforceable by the Police or any public officer or statutory body authorised to do so in writing by the DG. Offenders may be arrested without warrant.

Under Part 3 of the bill dealing with prevention of international spread of infectious diseases:

- The President, where he has reason to believe that a dangerous infectious disease may be introduced into Nigeria from or through any area in Nigeria or elsewhere, may, by notification in the Gazette, declare that area to be an infected area. In addition, the President may issue an order prohibiting the entry of persons from such areas into Nigeria and specify conditions for exceptions (clause 26).

3. Powers of the Director- General (DG), Nigeria Centre for Disease Control (NCDC) in Controlling Spread of Infectious Diseases Within Nigeria

The DG has wide discretionary powers to prevent and curb the outbreak and spread of infectious disease within Nigeria. Some of the powers of the DG include the following:

- a. To institute public health surveillance programmes to determine the existence, prevalence or incidence, or to determine the likelihood of a possible outbreak

- of an infectious disease/any other disease which the Minister declares to be a disease (by notification in the gazette); **clause 5**
- b. To mandate a person suspected of having an infectious disease to undergo medical examination and treatment; **clause 6**
 - c. To order a post-mortem examination of the body of a person who has died and is suspected to have been a case or carrier or contact of an infectious disease for the purpose of determining the cause of the death investigate into any outbreak or suspected outbreak of a suspected disease; **clause 7**
 - d. To obtain relevant information from healthcare professionals on patients suspected to be a case or carrier or contact of an infectious disease notwithstanding restrictions imposed by any written law, rule of law, rule of professional conduct or contract; **clause 8**
 - e. To require the owner or occupier of any premises or vessel i.e. ship, boat, aircraft - to cleanse or disinfect it in the manner and within the time specified in a written notice; **clause 10**
 - f. To order the destruction of any animal and the disposal of any food or water (by written notice) if he considers such animal, food or water to be a source for the transmission of an infectious disease; **clause 11**
 - g. To prohibit the conduct of a wake over the body of a person that has died whilst being, or suspected of being, a case or carrier or contact of an infectious disease by written order; **clause 12**
 - h. To detain and isolate in a hospital a person who is, or is suspected to be, a case or carrier or contact of an infectious disease in a hospital or other place for such period of time and subject to such conditions as he may determine; **clause 13**
 - i. To order any person who is, or is suspected to be, a case or carrier or contact of an infectious disease to undergo surveillance for such period of time and subject to such conditions as the Director thinks fit; **clause 14**
 - j. To prohibit the entry and exit of persons from an isolation centre designated by the Minister of Health without permission; **clause 15**
 - k. To prohibit or restrict the movement of goods in an isolation centre designated by the Minister of Health; **clause 15**
 - l. To authorise the destruction, disposal or treatment of any goods, structure, water supply, drainage and sewerage system or other matter within the isolation area known or suspected to be a source of infection; **clause 15**
 - m. To direct (by written notice) the owner or occupier of the building to reduce overcrowding or to close a building or part thereof within the time specified in

- the notice; **clause 16**
- n. To order the closure of a premises for a period not exceeding 14 days where there is reason to believe that there exist on any premises conditions that are likely to lead to the outbreak or spread of any infectious disease; **clause 17**
 - o. To conduct any surveillance or contact tracing measure at the premises; **clause 18**
 - p. To order, prohibit or restrict for a period not exceeding 14 days, a meeting, gathering or public entertainment in any place likely to increase the spread of any infectious disease; **clause 19**
 - q. To issue directions on “preventative action” to a case or carrier of an infectious disease who is carrying on an occupation, trade or business to prevent disease outbreak or spread. This includes temporary closure or stopping the occupation/trade/business – **clause 20.**
 - r. To direct any person or class of persons not protected or vaccinated against an infectious disease to undergo vaccination or other prophylaxis within such period as may be specified. This includes where such outbreak is “imminent.” – **clause 47.**

4. Powers of the DG and Port Health Officers with respect to International Spread of Infectious Diseases

The DG also has powers to curb the international spread of infectious disease. His powers and duties here intersect with that of Port Health authorities. They include the following:

- a. To obtain information from all vessels (ships, boats or air crafts), persons and articles coming from foreign areas or countries declared by the President to be an infected area. Failure to comply is an offence, which attracts a fine not less than ₦1,000,000 (One Million Naira) or to imprisonment for a term not exceeding 6 months or to both.; **clause 28**
- b. To order the disinfection and treatment of vessels and vehicles, as well as clothes and personal effects of any infected person arriving in Nigeria; **clause 31**
- c. To mandate an infected ship to anchor at a quarantine anchorage unless otherwise directed until it has been granted “pratique” i.e. clearance, by a Port Health Officer; – **clause 32**
- d. To grant *pratique* i.e. issue clearance to ships in Nigerian waters after compliance with quarantine regulations; – **clause 34**
- e. To take food and water samples for human consumption or sale on a vessel for analysis to ensure there is no contamination and that the food is fit for human

- consumption; – **clause 38**
- f. To inspect and examine articles, merchandise, baggage or cargo on board a vessel where there is suspicion of contamination and direct seizure and disposal of same; – **clause 38**
- g. To take measures when a vessel or vehicle arrives Nigeria. The DG or Port health Officer may do the following:
- i. inspect the vessel or vehicle or any person or goods on board;
 - ii. subject persons on board the vessel or vehicle to medical examination;
 - iii. direct health and sanitary measures to be taken in respect of a vessel or vehicle;
 - iv. obtain necessary information required to ascertain the health of persons on board, among others;
 - v. inspect the journal or log-book of the vessel or of the vessel's papers; and
 - vi. direct the vessel master, owner or agent to share a copy of the passenger and crew list and cargo manifest immediately on arrival.
 - vii. Failure to comply is an offence, which will attract a fine not exceeding ₦1,000,000 (One Million Naira); **clause 29**
- h. To require every person on an international voyage leaving or arriving in Nigeria to undergo vaccination or other prophylaxis against all or any of the diseases as may be prescribed; (*this refers to vaccinations against diseases listed in the schedule to the bill*); and
- i. To require such travellers to produce a valid international certificate of vaccination or other prophylaxis; **clause 30**
- j. To require such person to undergo vaccination or other prophylaxis and subject him to isolation or surveillance where there is no proof of vaccination; **clause 30**
- k. To refuse entry for non-Nigerians who have not undergone vaccination for against prescribed diseases and have no proof of such vaccination or other prophylaxis.

Provisions on vaccination in clause 30 are specifically enforceable by the port health officer. However, the DG has additional powers here:

- **clause 44** authorises the DG to issue a written order for the **medical examination of persons arriving in Nigeria** for the purpose of preventing the spread or possible outbreak of any infectious disease in Nigeria. Failure to comply with the order without reasonable excuse is an offence.
- In addition, **clause 45** authorises the Minister of Health to order for the **medical examination of persons leaving Nigeria during a public health emergency** relating

to an outbreak of an infectious disease that has been so declared by the President, for the purpose of preventing the spread of that infectious disease outside of Nigeria. Similar to clause 44, failure to comply with the order without reasonable excuse is an offence.

5. Additional Provisions on Vaccination and other Prophylaxis

Part IV of the Bill makes extra provisions on vaccinations as follows:

- a. Responsibility of a parent or guardian in Nigeria to ensure that every child in Nigeria is vaccinated against the diseases set out in the 4th schedule to the bill (Diphtheria, Measles, Polio and Meningitis).
- b. Registrar of births to issue a vaccination notice to such parent/guardian upon the child's registration- **clause 46.**
- c. The DG may order certain persons to undergo vaccination or other prophylaxis where there is an outbreak or suspected outbreak of any infectious disease in any area in Nigeria if he thinks it necessary or expedient to do so to secure public safety - **clause 47.**
- d. Only medical practitioners or a nurse or a suitably trained person employed by or working under the supervision of a medical practitioner can administer vaccines. They are to keep record of vaccinations and share same with NCDC - **clause 48.**
- e. The DG or his designated officer may grant postponements and exemptions from vaccinations where there is a valid medical reason - **clause 49.**
- f. Medical practitioners may issue a certificate of unfitness to persons who are in his opinion not fit to be vaccinated for a period of time. Information of such cases are to be shared with the NCDC - **clause 50.**
- g. Failure to comply with the provisions of this part of the bill on Vaccinations is an offence - **clause 51.**

6. Powers of the Minister of Health

- a. To provide general or special directions to the DG NCDC;
- b. To approve guidelines or procedures developed by NCDC for health professionals, hospitals, labs etc., to enable them comply with the requirement to transmit patient information on infectious diseases - **clause 8**
- c. To declare any premises to be an isolation area for the purpose of preventing the spread or possible outbreak of an infectious disease, by issuing such notice in the Gazette - **clause 15**

- d. To hear appeals from aggrieved persons affected by the DG's order:
 - i. to close and disinfect their premises- **clause 17**
 - ii. prohibiting or restricting, meetings, gatherings, and public entertainment- **clause 19**
 - iii. to suspend their occupation, trade or business- **clause 20**
 - iv. NB: The Minister's decision is final.
- e. To order relevant operators such as telecoms companies (via a written order) to disseminate health advisories and provide customer information to the NCDC so as to facilitate dissemination of health advisories notwithstanding the application of any other right of disclosure a relevant operator may have under any written law or rule of law; **clause 25**
- f. To order for the medical examination of persons leaving Nigeria during a public health emergency relating to an outbreak of an infectious disease that has been so declared by the President- **clause 45**
- g. To suspend any or all of the provisions of Part IV on Vaccinations during an epidemic or infectious disease. This can be lifted after the termination of such epidemic, after which persons affected will be required to comply with the provisions - **clause 52**
- h. To prescribe fees for vaccinations and other prophylaxis by notification in a gazette. - **clause 53**
- i. To approve emergency measures formulated and implemented by NCDC for the control of an infectious disease in any area - **clause 61**
- j. To make Regulations for carrying out the purposes and provisions of the Act. Some of these include regulations on:
 - i. quarantine stations for persons and animals;
 - ii. cleansing, disinfecting, fumigating and treatment of vessels and premises;
 - iii. vaccinations and other prophylaxis and the issuance of certificates relating thereto;
 - iv. etc. - **See clause 79**

7. Medical Practitioners and Health Professionals

- Medical practitioners who have treated a carrier of a prescribed infectious diseases or suspects that a patient is a carrier must notify the DG of this fact (clause 4). The same applies to persons in charge of medical and diagnostic laboratories. It is an offence not to furnish this information.
- Healthcare professionals are also required to comply with mandatory disclosure requirements in the bill. This includes obtaining relevant information from a

patient suspected to be a case or carrier or contact of an infectious disease for the purpose of investigating outbreaks or the suspected outbreak of an infectious disease and sharing same with NCDC.

- The bill specifically mentions in clause 8(4) that this disclosure of information shall be made irrespective of any *restriction on the disclosure of information imposed by any written law, rule of law, rule of professional conduct or contract*. The failure of health care professionals, hospitals etc. to comply is an offence. Failure of a patient to disclose the required information is also an offence.
- **Clause 48** provides that only medical practitioners or a nurse or a suitably trained person employed by or working under the supervision of a medical practitioner can administer vaccines. They are also required to keep record of vaccinations and share same with the NCDC.
- **Clause 50** allows medical practitioners to issue a certificate of unfitness to persons, who are in their opinion unfit to be vaccinated for a period of time. Information of such cases are to be shared with the NCDC.
- **NB:** “Medical practitioner” under the bill means a medical practitioner registered or exempted from registration under the Medical and Dental Practitioners Act. While “nurse” means a registered nurse or enrolled nurse within the meaning of the Nursing and Midwifery (Registration, etc.) Act.

8. Offences and Enforcement

- Most of the provisions of this law are enforceable by the NCDC via authorised health officers or a police officer.
- Failure to comply with orders issued by the DG for the purpose of controlling infectious disease is an offence that attracts penalties. Some of the penalties are indicated in the individual sections. However, where there is no penalty expressly indicated, any person guilty of the offence shall –
 - in the case of a first offence, be liable on conviction to a fine not exceeding ₦100,000 (One Hundred Thousand Naira) or to imprisonment for a term not exceeding 6 months or to both; and
 - in the case of a second or subsequent offence, be liable on conviction to a fine not exceeding ₦200,000 (Two Hundred Thousand) or to imprisonment for a term not exceeding 12 months or to both. (clause 68)
- For the purpose of investigating outbreaks and suspected outbreaks of infectious diseases, Health officers can enter, inspect and search any premises without warrant, using such force as may be necessary. They may also demand the production of books, documents, take samples, effect seizures, etc.(clause 54)

- Similarly, for the purposes of an investigation into an offence punishable under the Act, any Police Officer or any Health Officer who is authorised in writing in that behalf by the Director General may require any person to the aforesaid. (clause 55)
- Police and Health Officers are granted ***powers of arrest, even without warrant*** in some cases. An example is where person fails or refuses to go into isolation, leaves an isolation area; fails to undergo or submit to surveillance, medical examination or treatment or comply with any condition relating to same; or being required to comply with any of these, attempts to leave Nigeria without the approval of the DG. (clause 57)
- Trial of Offences under the Act are to be heard by a Magistrate Court. The Court may, notwithstanding anything in the Criminal Procedure Code, award the full punishment with which the offence is punishable. **(clause 69)**

9. List of Infectious Diseases and Dangerous Infectious Diseases

There appears to be a difference between infectious diseases and dangerous infectious diseases prescribed in the schedules to the bill.

- The 1st schedule identifies as infectious diseases, about 33 diseases such as Leprosy, Malaria, Measles etc. It also lists 4 Sexually Transmitted Infections (STIs) - Chlamydia Genital Infection; Genital Herpes and Gonorrhoea; Non-Gonococcal Urethritis; and Syphilis as infectious diseases.
- The 2nd schedule lists Plague, Severe Acute Respiratory Syndrome (SARS) Yellow Fever, and Coronavirus disease as “dangerous infectious diseases.”
- The 3rd schedule lists only Yellow Fever as the disease for which compulsory vaccination is required for international travelers. It is unclear if this list will be further populated.
- The diseases requiring compulsory vaccination for minors as listed in the 4th schedule include Diphtheria, Measles, Polio and Meningitis.
- Lassa Fever and Ebola Virus, two diseases that Nigeria has battled with is absent on the list.

1. Role and Importance of Public Health Laws

Public health laws are tools that assist government to protect citizens against threats to their health. The legal basis of public health is rooted in the basic rights of the people to health, safety and life and their corresponding right to protection and defense from those threats. Controlling the spread of infectious diseases and how the population are expected to act thereto is a core function of public health laws.

Law can be **proactive** by contributing to the prevention of infectious diseases by improving access to vaccinations, facilitating screening and education of those at risk of infection. It can also be **reactive** by supporting access to treatment and authorising public health authorities to limit contact with infectious individuals and to exercise emergency powers in response to disease outbreaks.

However, while public health laws are necessary, they should balance private rights with the public health interest in an ethical and transparent way. According to the world health organisation (WHO), public health powers should be based on the principles of public health necessity, reasonable and effective means, proportionality, distributive justice, and transparency.

2. Federal laws on public health in Nigeria

Federal legislations addressing public health issues in Nigeria are fragmented and outdated. While there are individual pieces of legislation addressing issues such as food, drugs, tobacco control, public smoking, animal disease prevention etc., there is no federal legislation that comprehensively addresses the control of spread of infectious disease. Some States have adopted legislation on public health and control of infectious diseases. However, there appears to be limited response of such laws to modern day developments.

The NCDC Act, which was signed into law in 2018 establishes the Nigeria Centre for Disease Control, which is modelled after the US Centre for Disease Control and Prevention (CDC). The Centre has the responsibility for leading the response on disease outbreaks and public health emergencies, among others. However there are no detailed prescriptions in the law on the procedure for containing outbreaks of infectious diseases or measures to be taken to ensure compliance with government guidelines in the event of an outbreak or pandemic like the corona virus.

3. Brief Background on the Existing Quarantine Act and its Gaps

- The Act was originally enacted in 1926; it is limited in scope and fails to address modern day issues.
- It describes “**dangerous infectious disease**” as including cholera, plague, yellow fever, smallpox, sleeping sickness and typhus. A “**dangerous infectious disease**” **under the Act may also be designated so by notice** by the President for a disease of an infectious or contagious nature. - *section 2*
- The Act gives the President power to declare any place, by notice as an infected local area- *section 3*. This area may be within **Nigeria or outside Nigeria**. However, the place must be a **specific area** such as a local government area, an island, a commune, a town, a quarter of a town, a village, a port etc.- *section 2*.
- The Act gives the President power to make **Regulations** in various circumstances such as in preventing the introduction of a dangerous infectious disease into Nigeria or any part thereof from any place outside Nigeria whether such place is an infected local area or not. - *section 4*
- Other areas within the ambit of the President in making Regulations under this Act, include the powers to prescribe the powers and duties of Officers that may be charged with carrying out the regulations, fixing the fees and charges to be paid for any matter or thing to be done under the Regulations, etc.
- **The Act also gives the Governor in respect of a State**, the same powers that may be exercised by the President subject to the same conditions and limitations. However, this is **subject to the extent** that the declaration and regulations have not been made by the President.
- The Act empowers the President and Governor of a State to provide such sanitary stations, buildings, equipment as they deem fit- *section 6*
- The only penalty in the law relates to breach of the Regulations, which attracts a **N200 fine** for offenders or 6 months imprisonment or both.
- President Buhari issued the 2020 COVID-19 Regulations pursuant to this Act, including the lock down order for FCT, Lagos and Ogun States. Many legal experts have argued that the Orders are not properly grounded in law.

4. Need for a Modern Public Health Law

In contrast to Nigeria, many advanced countries have adapted their existing public health laws to contemporary needs, enabling them to customise their responses to evolving emergencies. The Quarantine Act is currently deficient and its proposed replacement (this bill) fails to adequately consider human rights implications, as well

as, modern forms of infections and epidemics e.g. acts of bio terrorism, contamination from chemicals or radiation, etc. A modern public health law should be based on the scientific knowledge and social circumstances of the current times and should properly delineate and coordinate the roles of federal and state health authorities in managing public health crisis.

5. Wide Discretionary Powers to the DG of NCDC

The Bill gives the Director General of NCDC wide discretionary powers that could infringe on an individual's constitutionally given rights such as the freedom of movement, association, right to property, privacy etc. on largely subjective circumstances. Except in a few instances where aggrieved persons can appeal to the Minister of Health, the exercise of these powers are not subjected to a procedure or administrative review.

6. Potential Infringement on Existing Human Rights Safeguards

The law authorises interferences with freedom of movement, personal liberty, the right to control one's health and body, privacy, and property rights. Some of these provisions may be challenged in a court of law. For example:

- i. Privacy rights* – i.e. the DG can demand telecoms operators to share customer information so as to transmit health advisories irrespective of laws in place. Failure to comply is an offence. This raises issue of privacy rights and right to private and family life guaranteed in section 37 of the Nigerian Constitution.
- ii. Mandatory disclosure of health information:* The DG can also mandate health professionals to share medical records of persons with infectious diseases so as to prevent an outbreak or spread, irrespective of existing medical rules and ethics.
- iii. Compulsory medical treatment:* This should only be used as a last resort where an individual is unable or unwilling to consent to treatment, and where their behaviour creates a significant risk of transmission of a serious disease. Compulsory treatment orders should restrict individual liberty only to the extent necessary to most effectively reduce risks to public health
- iv. Forceful entry without warrant:* Businesses or premises can be forcefully entered to remove persons for quarantine, to decontaminate and disinfect and can also be temporarily shut down or marked as a place with a case

of infectious disease. Also, the requirement for owner of the premises to reduce overcrowding and punishment for failure to do same is not realistic in light of Nigeria's current poor housing realities. By this provision, most Nigerian citizens are already potential offenders.

- v. *Use of Force*: The provision for a Police or Health Officer to use "force" as may be necessary in enforcement is subjective and leaves room for abuse and arbitrariness.
- vi. There is no clear provision on non-discriminatory exercise of powers by the DG e.g. on grounds of gender, religion, ethnicity or background.
- vii. There is also no provision for relief for those who have suffered economic loss or hardship due to a public health order affecting their property or facilities.

7. Criminalisation of failure to take vaccines and non-compliance with DG's orders

This is one of the most controversial portions of the bill. Vaccines are a touchy subject for many. Although the application of criminal sanctions to address public health crises, mandate compliance and protect the health of the general population is not an unusual legislative measure, it can be counterproductive to the overall public safety objective. Emphasis should be on proactive and preventative measures like awareness and enlightenment and promoting the capacity and personal responsibility of citizens to comply.

8. Rights of Minors

Some provisions of the law on surveillance, isolation and treatment make references to minors and mandates their parents/guardians to ensure compliance. It needs to be emphasised that minors will not be penalised where their parent/guardian fails to act.

Furthermore, for the purposes of this bill, a minor is defined as a person under 21 years of age. This seems to create a conflict with the Child Rights Act which defines a child as someone below the age of 18 years. As this standard is applied across several laws and policies, there may be need for the bill to harmonise the age limit. Moreover, there is the question of the practicability of parents compelling 18 to 20 year olds, who are considered to be adults, to submit to quarantine, isolation or medical treatment and then having the said parent/guardian punished for failing to do so.

9. National Assembly's (NASS) Power to Annul President's Order

Clause 3(7) of the Bill gives the National Assembly powers to annul a President's order of a Public Health Emergency and/ or designated Public Health Emergency Zones where a Resolution is passed by both Houses of the National Assembly with the caveat that the action will not prejudice anything previously done by virtue of the order. This is contradictory as an annulment envisages that any actions done pursuant to the annulled order are null, void and to no effect.

10. Legislative Competence of NASS

There have been questions over the power of NASS to make extensive public health laws or regulations that are applicable country-wide, with some arguing that it should be left to the States. This is because it is not indicated in the exclusive legislative list. Section 4 (7) of the CFRN states that *"the House of Assembly of a State shall have power to make laws for the peace, order and good government of the State or any part thereof with respect to the following matters, that is to say-*

- (a) any matter not included in the Exclusive Legislative List set out in Part I of the Second Schedule to this Constitution;*
- (b) any matter included in the Concurrent Legislative List set out in the first column of Part II of the Second Schedule to this Constitution to the extent prescribed in the second column opposite thereto..."*

The exclusive legislative list in item 54, mentions "Quarantine" but not "Public Health" or "Disease control." Item 68 however notes that NASS may legislate on *"Any matter incidental or supplementary to any matter mentioned elsewhere in the (exclusive legislative) list."* It should be noted that these items are also not on the concurrent list and it may be argued that NASS is not precluded from establishing a model Federal Law that may be domesticated by States. Also, it is of note that while this bill retains "Quarantine" as its subject matter, its contents extends beyond public health and control of diseases to ports and immigration, vaccinations/ drugs, law enforcement (police) etc. which are all exclusive matters. All these issues have to be carefully considered by Legislators.

11. Jurisdiction for Trial of Disputes and Offences

The Bill makes several references to the Magistrate Court in settling disputes especially in cases of seizures of substances and also indicates that it will hear trial of offences under the bill. However, the bill's scope extends to Port Health and Port Health Officers, air crafts, ships in Nigerian waters etc., which question the appropriateness of the Magistrate Court to hear cases involving these issues.

12. Religious and Personal Sensitivities

The fact that Nigeria is a multi-ethnic and multi religious country cannot be completely ignored in lawmaking. There might be religious or personal sensitivities surrounding the Director-General's powers to prohibit a wake for a deceased person or order a post-mortem examination of the body of a person for the purpose of determining the cause of the death or investigating any outbreak/suspected outbreak of an infectious disease where this is carried out without the cooperation and authorisation of the deceased's family. The UK's Corona Virus Act 2020 (in schedule 28, part 4) requires local authorities, in disposing of a deceased, to have regard to the desirability of disposing of a dead person's body or other remains in accordance with the dead person's wishes (if known) or otherwise in a way that appears consistent with the dead person's religion or beliefs.

13. Need for NASS to Open Up the Legislative Process & Utilise Experts

One of the controversies that trailed this bill was that it was not circulated to members to study after it was introduced and before it was listed for second reading. It was also contended that a ruling was made that the bill should proceed to 2nd reading in spite of objections to that effect and that bill should be subjected to a public hearing.

Public input on bills is a key indicator of a responsive and accountable parliament. If like the Speaker of the House of Representatives had argued during the 2nd reading of the bill, that NASS lacks adequate time and resources to conduct a public hearing, and is not legally mandated to hold public hearings, targeted consultations with stakeholders should be sought on the bill. With this particular bill, due to its specialised nature, the input of public health law and infectious disease experts is imperative.

With respect to chamber proceedings, it is not uncommon for bills to progress without requisite quorum or support of members, owing mostly to the use of "voice vote" and the power of the Presiding Officer to make a final call on the answer. In this regard, the deployment of e-voting as against voice voting is crucial. In addition, every NASS bill should be properly "gazetted" (this is currently not the case) to avoid cases of multiple unofficial versions of bills floating around, and then published so that legislators and the public can study its contents and develop informed opinions.

EXAMINING OTHER JURISDICTIONS

1. United States

The US Public Health Service Act (PHSA) provides the legal authority for the Department of Health and Human Services (HHS), among other things, to respond to public health emergencies. It authorises the HHS secretary to lead federal public health and medical response to public health emergencies. Section 319 of the Act authorizes the Secretary to determine that a public health emergency exists. This determination triggers emergency powers that permit the federal government to engage in activities such as assisting state and local governments, suspending or modifying certain legal requirements, and expending available funds to address the public health emergency.

Pursuant to this law, the HHS declared a public health emergency in the US on January 31, 2020, in response to COVID-19 which triggered President Donald Trump's issuance of a proclamation of national emergency on the virus. This included his suspension of entry into the US of foreign nationals of certain countries, institution of a federal quarantine, release of policies to accelerate the acquisition of personal protective equipment and other polices.

2. The United Kingdom (UK)

The primary piece of legislation that addresses public health emergencies in the UK is the Public Health (Control of Disease) Act 1984. It was amended in 2009 over concerns that the law could not stand up to a challenge based on Human Rights Act 1998. Some of its provisions were subsequently repealed by a subsequent Health and Social Care Act 2008.

Under the Health and Social Care Act 2008, the Secretary of State may make regulations (referred to as "health protection regulations") to prevent, protect against, control, and provide a public health response to an incident or to the spread of infection or contamination in England, even if the threat originated from outside the country. These include imposing or enabling restrictions or requirements on individuals and providing local authorities with functions to monitor public health risks.

Pursuant to this, the UK Parliament approved the Health Protection (Coronavirus) Regulations 2020 on 9 March 2020. On 26 March 2020, these regulations were replaced with **the Health Protection (Coronavirus, Restrictions) (England) Regulations 2020**, which contain Rules on movement restrictions and business closures announced by

the Prime Minister on 23 March 2020. The Regulations allow the police to take action necessary to enforce the new restrictions. The Regulations are to apply during the 'emergency period' which commences upon the introduction of the Regulations until a date to be specified by the Secretary of State. The need for such restrictions and requirements must be reviewed once every 21 days.

3. Others

In Canada, legislative competence on public health matters is shared by all levels of government. Similar to Nigeria, "Health" is not listed in Canada's Constitution Act, 1867. However, their Supreme Court acknowledges that both levels can legislate on the matter depending on the nature and scope of the health problem in question. While, both federal and provincial levels have enacted laws on the issue with both of them coordinating efforts where there is a health crisis, the provincial and territorial levels are expected to take the lead in health emergencies occurring within their area with the federal government only coming where it spreads or reaches epidemic proportions.

The federal government's power to act in a public health emergency is largely governed by the Emergency Act of 1988 and the Emergency Management Act 2007. The Emergencies Act empowers the government of Canada to declare a "public welfare emergency" and take special temporary measures that result or may result in a danger to life or property, social disruption or a breakdown in the flow of essential goods, services or resources, so serious as to be a national emergency." There is however a high threshold to trigger this power. In addition, the Quarantine Act of 2005 "authorizes the Minister of Health to establish quarantine stations and quarantine facilities anywhere in Canada, and to designate various officers, including quarantine officers, environmental health officers, and screening officers."

Other countries such as South Africa and Kenya also have extensive and more up to date Public Health legislations. For instance, Kenya's Public Health Act gives health officials broad legal authority to impose various forms of restrictions during public health crises. South Africa under its Disaster Management Act 2002 declared a "State of Disaster", which lasts for 3 months (unless terminated by the Minister of Cooperative Governance and Traditional Affairs) and can be extended one month at a time. It also adopted a new regulation for COVID-19 that makes it a criminal offence to refuse testing, treatment or isolation. If an individual refuses isolation, they may be held involuntarily for 48 hours.

During this time an urgent warrant must be obtained to extend the isolation period. Any person who contravenes these regulations is subject to fines or imprisonment.

India, similar to Nigeria, is still relying on a colonial law to respond to the COVID-19 pandemic. It relied on its colonial Epidemic Diseases Act (EDA) of 1897 and provisions in its Penal Code and Disaster Management Act to enforce lock down orders and restriction mechanisms. Attempts to adopt a new law have not been successful.

SOME RECOMMENDATIONS ON DRAFTING PUBLIC HEALTH LAWS

- i. Public health laws should balance private rights with the public health interest in an ethical and transparent way.
- ii. Public health powers should be based on the principles of public health necessity, reasonable and effective means, proportionality, distributive justice, and transparency.
- iii. There should be a balance or reasonable fit between the coercive measures imposed on individuals, and the public health benefit that they seek to achieve.
- iv. Governments should carefully consider the appropriate role of criminal law when amending laws to prevent the transmission of infectious and communicable diseases.
- v. Public health laws should authorize compulsory treatment only in circumstances where an individual is unable or unwilling to consent to treatment, and where their behaviour creates a significant risk of transmission of a serious disease.
- vi. Adequate compensation of those who have suffered economic loss due to a public health order affecting their property or facilities.
- vii. Exercise of legal powers must be based on public health considerations, without discrimination on grounds of gender, tribal background, or other inappropriate criteria.
- viii. Laws should take into account, the legitimate interests and rights of individuals and groups and should only affect those rights to the minimum extent necessary to achieve desired health objectives.
- ix. Human rights protections should be incorporated into quarantine and isolation laws.
- x. The relationship between public health laws at local, state, regional or federal levels should be examined with aim of promoting a coordinated and coherent approach

Source: World Health Organisation.

<https://www.who.int/healthsystems/topics/health-law/chapter10.pdf>

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About PLAC

Policy and Legal Advocacy Centre (PLAC) is a non-governmental organization committed to strengthening democratic governance and citizens' participation in Nigeria. PLAC works to enhance citizens' engagement with state institutions, and to promote transparency and accountability in policy and decision-making processes. The main focus of PLAC's intervention in the democratic governance process is on building the capacity of the legislature and reforming the electoral process. Since its establishment, PLAC has grown into a leading institution with capacity to deliver cutting-edge research, policy analysis and advocacy. PLAC receives funding support from donors and other philanthropic sources.