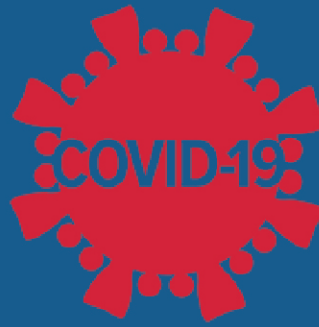




www.prawa.org



Number 2 30TH MARCH 2020

TO:

STATE HOUSES OF
ASSEMBLY AND THE
NATIONAL ASSEMBLY.

COVID-19: OPEN LETTER TO STATE HOUSES OF ASSEMBLY AND THE NATIONAL ASSEMBLY.

As at 30th March, 2020, the President of the Federal Republic of Nigeria and about 5 state Governors have made regulations for the prevention of the spread of COVID-19. As at the same date, the Lagos State House of Assembly had passed a bill titled "The Emergency Corona virus Pandemic Bill 2020' and this was also signed into law by the Governor of the state, Babajide Sanwo Olu. These are all commendable steps taken in the right direction at this precarious period in the life of our nation in particular and the world in general.

Section 4(7) of the 1999 Constitution of the Federal Republic of Nigeria provides 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 any matter outside the exclusive legislative list and any matter included in the concurrent legislative list. By virtue of section 4 (3) & (4) the National Assembly shall have power to make laws for the peace, order and good government of the federation with respect to any matter included in the Exclusive Legislative list and any matter in the concurrent legislative list

PRAWA believes that COVID-19 and its devastating effects on humanity has brought to focus the important role of the Legislature in the maintenance of peace, order and good governance of the citizens in a democratic society and that this is the most appropriate time for the legislature to demonstrate with all sense of responsibility and purpose its willingness to effectively and efficiently deliver on its obligation to make laws for the good and sustenance of our dear Nation.

www.prawa.org

We have observed closely and recorded the incontrovertible fact of COVID-19 posing an existential threat to humanity and the resultant global crisis and several emergency responses from different governments. These urgent and necessary responses are contemplated by several National Constitutions (Nigeria inclusive).

Expectedly, at a time like this, the responsibility and obligations of both the National Assembly and the State Houses of Assembly to evoke their constitutional powers of law making for the good people of Nigeria generally and the respective states in particular are activated. These responsibilities are further highlighted in the Fundamental Objectives of government under S. 17(3) of the constitution of the Federal Republic of Nigeria to safeguard the health of citizens and to provide adequate health care facilities.

PRAWA therefore, commends the Lagos State Assembly for providing the legal framework for the implementation of preventive measures against the ravaging COVID-19 pandemic by enacting the Corona virus Pandemic Bill 2020 into law; the President of the Federal Republic of Nigeria for making COVID Regulation 2020 pursuant to the Quarantine Act (CAP Q2 Laws of the Federation of Nigeria 2004) and several other states for making the regulations on measures to prevent COVID-19 Pandemic.

We equally acknowledge that the President of the Federal Republic of Nigeria and the respective state executives and legislature are well within their powers going by Quarantine Act and the 1999 Constitution to make these regulations.

Section 4 of the Quarantine Act (2004) provides that,

The President may make regulations for all or any of the following purposes-

(c) preventing the spread of any dangerous infectious disease from any place within Nigeria, whether an infected local area or not, to any other place within Nigeria;

(d) preventing the transmission of any dangerous infectious disease from Nigeria or from any place within Nigeria, whether an infected local area or not, to any place within Nigeria.

However, PRAWA is concerned about the punishment provided by the Act. Under Section 5 of the Act on Penalties - 'any person contravening any of the regulations made under this Act shall be liable to a fine of N200 or to imprisonment for a term of six months or to both'. Paragraph 10 (1) of Akwa Ibom State Quarantine and Restriction of Movement Regulations 2020 provides that,

(i) Any person who contravenes the provision of these Regulations shall be prosecuted in accordance with the Quarantine Act, Cap. Q2, Laws of the Federation of Nigeria, 2004 and the Akwa Ibom State Infectious Disease (Control of Spread) Law, 2014 or any other applicable law in that regard.

The Lagos law provides a fine of N100, 000 for defaulters, one-month imprisonment in the correctional centre or three months community service and where the offence is not spelled out, it attracts N200, 000 and also allows the leadership of the various arms of government to structure their own restriction format.

Our concerns stem from the fact that the Regulations and Laws made pursuant to the Quarantines Act mostly restrict/ derogate on some of the fundamental human rights of citizens/ residents of Nigeria. Though these restrictions have the backing of Section 45 of the constitution of the Federal Republic of Nigeria (as amended) , it is clear that the effects of these restrictions are felt mostly by the poor masses, the vulnerable in our society, who would find it difficult to meet up with their economic and social needs at this period. Already, the activities these classes of persons engage in daily to put food on their tables have been criminalized making them to be disproportionately negatively impacted by the laws.

Again some of the punishments in the Regulations /Laws are in conflict with existing laws of the National Assembly on the use of Non-custodial measures for certain classes of offences as provided for in Parts 44 & 45 of the Administration of Criminal Justice Act (2015); Part 2, Section 37 of the Nigerian Correctional Service Act (2019) and the Administration of Criminal Justice Law of different states of the Federation. These laws stipulate use of Custodial sentencing as a measure of last resort for minor/petty Offences. This is the most auspicious way to go given that social distancing is central to the fight against COVID-19 and constitutes a central requirement of the laws/ regulations made.

We wish also to emphasize that the State Assemblies should take note that there are rights that should never be tampered with in the implementation of these regulations especially right to the prohibition of torture, cruel, inhuman and degrading treatment sect. 34 and Right Against retroactive application of the law section 36 (8) of the constitution.

PRAWA has observed that Nigerians are already raising concerns regarding the punishment in the existing regulations/laws and are worried about the likelihood of further infringement of rights in the manner of enforcement. This calls for emphasis on the need for effective and efficient monitoring of the implementation and enforcement proper, whilst demanding accountability from every enforcement agency.

Given that many more states are already in the process of making their own regulations and laws especially now that COVID-19 is gradually spreading to more states of the federation (with 174 confirmed cases, 9 discharged and 2 deaths across the federation according to National Center for Disease Control NCDC), it is important that both the Executive Governors and the State Houses of Assembly make concerted efforts to tighten the already identified loose ends and ensure that they come up with legislations that would serve the citizens well and still be compliant with existing International, Regional and National Human Rights instruments and other laws of the federation.

PRAWA therefore states:

1. The need for legislations for the prevention of Spread of COVID-19 to be a reflection of the circumstances of each state and be in strict compliance with the requirements of Section 45 of the constitution especially as it concerns reasonable justification for the restrictions and derogations of rights.

2. That the regulations/ Laws should categorically give directives on the manner of enforcement and the limits of the powers of the enforcement agents.
3. That in line with Section 34 of the Constitution of the Federal Republic of Nigeria , United Nations Convention Against Torture, the Anti Torture Act of 2017 and other relevant International, Regional and National instruments, the Regulation should capture the prohibition of the use of Torture, cruel, inhuman and degrading treatment of likely offenders.
4. That the regulations should capture the duty and obligations of the state to make, provisions of palliatives for the vulnerable ones in the society and a follow-up efficient mechanism for the equitable distribution of these.
5. That irrespective of the urgency in the making of the laws, there should be involvement of civil society organizations and other relevant stakeholders for the valued and necessary inputs to the laws.
6. That conscious effort is made by the legislature to ensure that the regulations do not conflict with existing laws of the state especially the Administration of Criminal Justice Act/ Laws and the Nigerian Correctional Service Act (2019) on Non-custodial measures.
7. That given that the whole essence of enactment of the law is to prevent the spread of the virus that Custody/detention of violators should not be an option of punishment at all.
8. That high amounts as penalty as provided in the Lagos law should not be an option at all as this would be an automatic transport to custodial centers given the economic status of likely offenders who may not be able to afford these fines.
9. That the respective state assemblies should have the need for decongestion of detention facilities in mind while drafting the regulations.
10. That no state assembly should outlaw the powers of recognized independent visitors to Custodial/detention facilities like the National Human Rights Commission, OPCAT prevention of Torture Committee to visit at this period to monitor compliance with human rights standards in accordance with S. 21 of the Nigerian Correctional Service Act and Article 20 of the OPCAT. Though these visits should happen in compliance with recommended health and sanitary procedures.

11. The Regulations/ Laws should strengthen further existing orders on the prevention of the occurrence arbitrary arrests particularly of people who circulate on public roads to stock up on food, medicines and other basic needs.

Finally, PRAWA wishes to state the notable fact that in cases of emergency, presumption of innocence is paramount, putting into consideration reasons for which a particular individual had to violate a protective measure ordered. This would help save the nation a lot of embarrassing human rights violation crisis as exemplified in the case of a man that died in the hands of enforcement agents in Abuja for going out in search of food for his pregnant wife. Obviously, in his assessment that was an emergency situation. Enforcers of the laws and regulations must be carefully selected and led by officers who are courteous, well-trained professionals, and human rights promotion apologists.

Sincerely,

Ogechi Ogu
DEPUTY DIRECTOR
PRAWA.