

## BRIEFER

---

# Civic space implications of Nigeria's Coronavirus Disease (COVID-19) Health Protection Regulations 2021

The President of Nigeria signed the Coronavirus Disease (COVID-19) Health Protection Regulations 2021 on January 26, 2021. These regulations are issued in accordance with the Quarantine Act of 1926 (Section 4), which grants the President powers to issue regulations to prevent the spread of any dangerous infectious disease in Nigeria. The regulations aim to protect the health and wellbeing of Nigerians in the face of widespread and rising numbers of COVID-19 cases in Nigeria.

The Regulations are generally in accordance with international best practice for regulations issued during public health emergencies. Part I (Restrictions on Gatherings) does not place a blanket prohibition on gatherings; rather, the restrictions are narrowly tailored to require participants in gatherings to abide by social distancing requirements and a 50-person cap for enclosed venues. Similarly, Part II (Operations of Public Places) does not absolutely prohibit activities in public places; rather, the regulations require individuals to wear face coverings, engage in handwashing or sanitizer use and

### STATE OBLIGATIONS TO PROTECT HUMAN RIGHTS DURING A PUBLIC EMERGENCY

To protect and promote a healthy civic space while responding to the COVID-19 pandemic, governments should:

- clearly articulate threats presented by COVID-19;
- narrowly tailor and minimize restrictions or limitations on rights and freedoms when enacting pandemic responses;
- publicly announce COVID-19 response measures including a state of emergency, legislation, and policy;
- adopt short term response measures with possibility for review;
- respect the rule of law; and
- if restricting human rights and freedoms, formally derogate from human rights treaty obligations to ensure transparency and accountability for its actions.

Please refer to the Open Government Partnership's Guide to Open Government and the Coronavirus, for more details on state obligations while responding to the coronavirus. The Guide contains [a section](#) that specifically addresses civic space issues.

temperature checks, and businesses to adopt similar hygiene practices to prevent the spread of the coronavirus.

However, the Regulations do contain a few provisions that may restrict civil society and fail to meet applicable human rights standards governing pandemics:

- The Regulations **do not appear to have a set expiry or date of review**, which means the restrictions on gatherings and public spaces may potentially remain in place beyond the COVID-19 pandemic. The lack of expiry or review date contravenes the international legal principle of limiting the duration of emergency measures<sup>1</sup>, and could indefinitely undermine civil society's ability to protest or hold large meetings.
- The Regulations also grant **wide discretion to state security agencies** including the Nigeria Police Force, the Nigeria Security and Civil Defence Corps, the Federal Road Safety Corps, the Nigeria Immigration Service, the Federal Airport Authority of Nigeria, and other relevant local, state, and federal government bodies to enforce the Regulations. It is concerning that the Regulations do not also refer to guidelines for operations of law enforcement during emergency situations, or include a provision to hold accountable perpetrators of human rights violations in the course of enforcing the Regulations, such as officers who abuse protestors while enforcing the public gathering cap.<sup>2</sup>
- The Regulations apply **different caps on religious gatherings than all other forms of public gatherings**: religious gatherings must not exceed 50% capacity of enclosed venues, while all other gatherings in enclosed spaces are capped at 50 persons. The different cap on religious gatherings may aim to accommodate the reality that religious gatherings often exceed 100 people. However, the different caps could lead to unintended discrimination against non-religious or religious gatherings, depending on the venue size. For example, a civil society organization may organize a gathering for its members in an enclosed

---

<sup>1</sup> See for example African Commission on Human and Peoples' Rights (ACHPR), 449 Resolution on Human and Peoples' Rights as central pillar of successful response to COVID-19 and recovery from its socio-political impacts (ACHPR/Res.449 (LXVI) 2020) (August 7, 2020) ("Emphasizing the need for limiting the time and scope of the application of measures suspending or restricting rights and for bringing such suspension or restriction of rights to a complete end.")

<sup>2</sup> See *id.* (the ACHPR calls on member states to ensure that personnel of law enforcement institutions are given strict and enforceable guidelines on enforcing emergency regulations, with priority being given to the use of persuasion and community engagement for fostering public compliance and to use force or detention only as a last resort measure in exceptional cases). See also the ACHPR Special Rapporteur on Prisons, Conditions of Detention and Policing in Africa's Press Release on Reports of Excessive Use of Force by the Police during the COVID-19 Pandemic (noting the need to abide by international human rights principles during states of emergencies, and urging states to take appropriate measures to end abuse of authority by police and security forces during the pandemic).

venue that has a 200 person capacity, but only be able to host 50 people, while a religious gathering would be permitted to host 100 people in the same venue. Conversely, in a smaller venue with a 50 person capacity, a religious organization would only be able to host 25 people while a non-religious gathering could host 50 people.

- **It does not appear that these Regulations were drafted in consultation with civil society and other stakeholders.** Providing avenues for civil society and other stakeholder engagement in decision-making and implementation of public health standards can help lawmakers draft COVID-19 response measures that respect and promote human rights.<sup>3</sup> Similarly, supporting a transparent and easily accessible process to develop the Regulations can help the public better understand and abide by the Regulations upon enactment.

ICNL will continue to monitor governments' responses to the COVID-19 pandemic and their impacts on civic space. We stand ready to provide further technical assistance as needed.

---

<sup>3</sup> The ACHPR's 449 Resolution calls on Member States to put in place avenues for consultation with and participation of people in decision-making and implementation of public health measures including through engaging community leaders, civil society organizations, women groups, and religious organizations.