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Protecting lives & livelihoods: interrogating the abuse of human rights in the midst of a global pandemic

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ABSTRACT

This study attempts to review some of the measures countries implement to mitigate the upsurge of the corona virus disease (Covid-19). It delves into how the Ghanaian state abused its powers in the name of 'protecting lives and livelihoods'. It focuses on the introduction and subsequent implementation of draconian measures that infringe on the rights of the citizen and how the state (government) abuses its authority under such conditions. The study uses Ghana's implementation of COVID-19-related measures as a case. Thus, the various directives of the president and state agencies are reviewed. Key among the issues is the use of emergency powers as granted by the 1992 Constitution of Ghana and the introduction of executive instruments that ultimately curtailed citizens' rights. The Imposition of Restrictions Act, 2020 (Act 1012), Article 21 (4) (c) & (d) as well as Article 31 of the 1992 Constitution of Ghana, Section 169 of the Public Health Act, 2012 (Act 851), etc. are among some of the legal sources that are interrogated by the study. In addition, the ban on public gatherings (religious, social, and political) is questioned from the perspective of human and other related rights citizens enjoy. The study thus examines the rationale behind the use of emergency powers during the COVID-19 pandemic and how such exercise of powers affects the rights and freedoms of citizens (the very people that such exercise of power is meant to protect).

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1. Introduction

Over hundred years from the last pandemic, in 2020, the world was struck again with another pandemic; a novel coronavirus which the World Health Organization (WHO) had earlier confirmed on January 12, 2020, was responsible for respiratory illness in many people in Wuhan and many other countries. And just after two months on March 11, 2020 the WHO declared that the outbreak of the disease which was first sited in Wuhan, a city in China reached the pinnacle of a global pandemic (Human Rights Watch, 2020). As the spread of the virus progressed from one country to the other, Ghana recorded its first case on the 12th of March, 2020 (Kenu et al., 2020), just a day after the WHO's declaration of the novel coronavirus as a pandemic.

As the world faced one of the deadliest respiratory diseases coupled with the absence of a vaccine to fight it off, governments witnessed the death of thousands of their citizens and millions of infected persons. As of May 25, 2020, governments of states and many countries, as a way of managing the spread, followed in the footsteps of China and instituted draconian measures which fundamentally infringed on the rights and freedoms of their citizens (irrespective of the idea of public emergency)¹ (Ritchie et al., 2020; Ntim & Botchway, 2023).

Similarly, Ghana upon recording the first two imported cases instituted measures in an effort to detect, contain and prevent the spread of the disease. This course of action included a ban on all public

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gatherings, closure of schools, churches, mosques and other places of worship on March 16, 2020; ban on entry for travellers coming from a country with more than 200 confirmed Covid-19 cases within the previous 14 days on March 17; a mandatory quarantine of all travellers that arrived in the country 48 hrs prior to the closure of the country's borders on March 22; a partial lockdown of Accra including Kasoa in the Central Region and Kumasi on March 30 (Kenu et al., 2020). However, the restrictions on Accra and Kumasi were short-lived as it was lifted on April 20, 2020 and the directive of the use of face masks made compulsory on April 26 of the same year.

The approach taken by the Government of Ghana in addressing the public health threat was perceived to be aligned with the principles outlined in the 1992 Constitution of Ghana. This alignment extended to the established protocols for managing emergencies that posed a risk to the continuity and security of the state, such as the emergence of the COVID-19 pandemic. Specifically, the constitutional provisions about declaring a state of emergency are embedded in Articles 31 and 32 of the 1992 Constitution. Complementing these constitutional provisions is the Emergency Powers Act of 1994 (Act 472), hereafter referred to as the EPA, which stands as the primary comprehensive legislation governing the declaration of a state of emergency. Notably, other provisions within specialized statutes exist that can be invoked during emergencies particular to their respective domains (Addadzi-Koom, 2020).

Following the constitutional guidelines, an Executive Instrument (EI) was initiated and specific measures and protocols were promulgated to stem the spread of the novel corona virus. Consequently, these policy responses from the Government could be deemed not to have been arbitrary and were captured in the EI in accordance with the powers found in the Emergency Powers Act and the provisions of Articles 31 and 32 of the 1992 Constitution respectively. That is, although the three weeks' lockdown in the capital city of Accra and Greater Kumasi, communities designated as hotspots of Covid-19 on March 30, 2020 (Ibrahim, 2020) was against the fundamental freedoms and liberties of the residents in these communities, the regulation had the force of law as the normless (*Exception*) in this instance was the law itself. In other words, it may seem fair to argue that the crisis to some extent permitted the suspension of certain rights and liberties for the preservation of security and public health.

Despite the basis for the policy responses, as a liberal democracy and a democratizing state for that matter, these measures adopted by the government did not pass without a debate from civil societies and citizens especially when instances of abuse from the security agencies were recorded and made known on various media and social media platforms about the constitutionality of these measures, usually citing the 1992 Constitution and International norms. A case in point are the recorded videos of military brutalities of citizens who defied the rule of lock-down when seen outside of their immediate homes (US State Department, 2021).

In an attempt to arrest the rapidly increasing infections and the spread, the government after announcing the commencement of lockdown and other Covid-19 regulations put together a joint Military and Police operation to enforce the measures adopted. In the process of carrying out such enforcement duties, there were barrage of human rights abuses recorded and publicized in almost all the news outlets and media houses in Ghana as early as April 1, 2020 when the announcement on lockdown was made. The violations span from enforced squats, sit-ups and push-ups, violent clubbing and canning with fan belts and horsewhips to lethal force, including a discharge of firearm (Nkrumah et al., 2020).

Whilst these concerns on the infringement of fundamental rights and liberties were true and justified, first the regulations were not arbitrary as it had the force of law as stipulated in the constitution and the Emergency Powers Act. Again, International human rights law guarantees everyone the right to the highest attainable standard of health and as such compels governments to take steps to prevent threats to public health and to provide medical care to those who need it (Human Rights Watch, 2020). Human rights law also recognizes that in the situation of dire public health threats and public emergencies that threaten the life of a nation, restrictions on some rights can be justified when they have a legal basis, are strictly necessary, based on scientific evidence and neither arbitrary nor discriminatory in application, of limited duration, respectful of human dignity, subject to review, and proportionate to achieve the objective (Human Rights Watch, 2020; Adenipekun, 2020).

This study represents a measured attempt to analyze the intricate interplay between security and liberty in view of the impositions from the Government of Ghana. In effect the discussion is a contribution to the debate on emergency powers and rights using Ghana's context in the hey days of the Covid-19 pandemic as a case in point.

2. A brief understanding of emergency powers and rights

Political and constitutional theorists have long been concerned with the notion of emergency. Scholars like Max Weber in defining the concept of the state took cognizance of the idea of exception and violence by defining the state as 'a human community that successfully claims the monopoly of the legitimate use of physical force within a given territory' (Weber, 1946 cited in Mitropolitski, 2011). In this limitless debate on emergency and the use of violence in both constitutional and political discourses, the ingenuity of the idea of divine violence examined by Walter Benjamin puts our quest to understand emergency powers in proper perspective as we discuss subsequent explications and understandings by other scholars like Schmitt. In his analysis of the existence of a pure form of violence, Walter Benjamin expressed the notion and idea of emergency powers tangentially in his conceptualization of divine violence. Divine violence, according to Walter thus resided outside of the law and was excluded from the juridical order by the Sovereign (Giordanego, 2016). Divine violence is therefore neither law making nor law-preserving but law-destroying according to Benjamin; it is justice interceding with the sole aim to defend the sacredness of the human life (Kopin, 2015). Carl Schmitt expounding on this, has extensively critiqued liberalism when he grounded the sovereign's power on the basis of his ability to decide on the exception. Schmitt's interest focused on the irregular and pathological characteristics of law and reality. Thus, the exception comprises sudden urgent, usually unforeseen events or situations that require immediate action, often without prior time for reflection and consideration-without allowing for pre-planned responses (Gross, 1999).

Following from this, the sovereign power is conceptualized as the ability and the right to suspend the legal system and declare a state of exception if the country faced an existential threat to its integrity and also its existence (Schmitt, 2005). As Mouffe points out, the most important function of the state is to ensure its perpetuity and thus it is the Sovereign's prerogative to ensure that the nation-state (including its people) persist (Mouffe, 2005). In other words, the survival of the state is the duty and preoccupation of the sovereign and a quintessential definition of sovereignty. As Vaughan-Williams frames it, 'for Schmitt, the essence of sovereignty is understood to be a monopoly on the ability to decide on the exception', thus rephrasing and correcting the Weberian theorization of sovereignty as the monopoly on the use of violence (Vaughan-Williams, 2008, p. 329). As a matter of fact, grounding the state of exception both within and beyond the law was Schmitt's most significant hunch, hence regarded as a phenomenal and outstanding legal theorist (Giordanego, 2016).

In explaining the realm of the exception, Schmitt states that the exception lies outside of the norm and thus the decision on exception is above the normative framework; it involves the temporary suspension of the legal constraints on sovereignty, and yet the existence of the possibility of the law (norm) is very much defined and determined by the exception (Schmitt, 2005). Simply, one come to realize the normal on the basis of the exception; the norm is explained and identified in reference to the exception. The legal order therefore is negatively characterized by its opposite, that is a state of exception which highlights what is comprised within the law, and thus what the realm of such a law is, by creating a situation in which the normative order does not apply (Giordanego, 2016). Thus, in Jef Huysmans' words, 'the norm does not define the exception but the exception defines the norm' (Huysmans, 2006).

Again, in his further critique of liberalism as a farce for its supposition of pre-established norms covering and applying to all situations, Schmitt argues vehemently that the presence and existence of exceptional concrete situations require the judge to make decisions which catapult him into the role of law making and his or her decision creates new law which does not emanate from pre-established norms in dealing with the exception. *The need to decide on the exceptional, concrete situation also underscores the role of policy makers. The exception requires concrete decisions that are not, and cannot be constrained by a priori rules* (Gross, 1999).

By simplification, emergency powers hinges on contingency and are usually invoked in the presence of exceptional circumstances where it requires government to respond rapidly to an emergency and these powers are intended to be used temporarily.

3. Liberty and security: reading from Agamben's critique of Schmitt

To comprehend the juxtaposition of emergency powers and human rights, it is essential to unpack Agamben's critique of Schmitt by looking at his peculiar reading of Schmittian exception as a paradigm for governments in contemporary politics (Giordanego, 2016). The Universal Declaration on Human Rights were adopted on the backdrop of the horrors of the holocaust and the concentration camps. In concert, the international community avowed to prevent the tragedy from happening again; for an individual to be stripped off his or her legal and natural rights. Thus, specific and deliberate provisions on the protection of human rights have been spelt out and clearly outlined in the 1948 UN Declaration of Human Rights which almost every state is a signatory to Adenipekun (2020). Although, the document makes the case for exceptions as in the case of a pandemic and threat to public health, many civil society organizations, individuals and some state governments were apprehensive on the quick invocation of emergency powers. This apprehension is appreciated on reading Agamben's account and explication of modern state of exception and the decline of democratic values and norms and how easily and predisposed governments are in abusing the rights of their citizens on the basis of exceptional situations and emergencies.

Starting from this standpoint, subsequent arguments will be concerned with Agamben's conceptualization of Exception and its connection to the condition of bare life after which this article will proceed to outlining instances or cases in Ghanaian history that validates the call for a scrutiny or interrogation into the executive instruments for specifically dealing with the Covid-19 and reasons for abuse of human rights. The discussion will highlight the difficulty in finding a balance between security and liberty as exemplified in the case of the pandemic.

3.1. Agamben and the state of exception

As already indicated in the earlier section on Schmitt, the idea of the exception is not peculiar to Agamben. The peculiarity emerges from his reading and the interpretation of the concept of sovereignty. In Schmitt's Political Theology, he defines the Sovereign as he who decides on the exception. The implication of this definition is that the exception is tied to accounts of necessity, drawing on the ancient maxim according to which *necessitas legem non habet* [necessity has no law] (Gross, 1999; Vinx, 2016). Thus, the necessity becomes situations of contingencies, which according to Schmitt is the prerogative of the sovereign to decide. The justification for Schmitt's account of sovereign exceptionality emerges out of extraordinary situations, emergencies that fall outside of the normative order. Succinctly, the relevance of sovereign exceptionality is to deal with lacunae in the law. It is this central idea in the Schmitt account that Agamben questions and interrogates; the subjectivity of necessity and on what causal qualities can we attribute to the contingent event, to conditions of necessity?

Agamben begins his inquiry by analysing this idea of lacuna in the law that sovereign power is necessarily obliged to fill by formulating a general theory of the state of exception, which, according to him has become 'the dominant paradigm of government in contemporary politics'. His reading of emergence of exception stems from Foucault's concept of biopolitics and Benjamin's idea of divine violence (Humphreys, 2005; Pan, 2009; Mcloughlin, 2013; Giordanego, 2016). By this Agamben focuses his analysis of the exception by underscoring the 'biopolitical significance' of exceptionalism as a rampant political machinery especially for the West. According to Foucault, the seal of modern politics/government is the entry of bodies into political life. The centrality of Agamben's thought, around which the theory of the state of exception revolves, is the indistinct dichotomy between the external and the internal, between the private life – which he calls *zoe* – and the public sphere, the one characterizing life as *bios* (Agamben, 1998). This Aristotelian distinction of bare life and life within the public sphere for Agamben does not hold as increasingly, the corporeal becomes the platform for which politics takes place and power is

exercised (Agamben, 1998). So, although there have been won conflicts with central powers in our history for greater liberties and rights, simultaneously this has increased and opened an avenue for greater inscription of individuals' lives within the state order, thus offering a new and more dreadful foundation for the very sovereign power from which they wanted to liberate themselves (Arendt, 1958). For Agamben, such suspension of the law is pivotal in that it directly affects people's lives, not as subjects of politics or citizens, but as human beings as such (Giordanego, 2016). This Foucauldian interpretation by Agamben of the crisis of rights is an evidence of the increasing perplexity of classic liberal conceptions of juridical politics (Agamben, 2005). For Agamben and Foucault, it is not the rights-bearing free citizen that marks the beginning of the modern age, but the entry of the body into political calculations (Agamben, 1998).

In cementing this point, Agamben cites Hannah Arendt's critical examination of the application of universal human right and the decline of the rights of man, which she attributes to the decline of the nation-state as an ideal. She illuminates on the problem with universal human rights basing her arguments on the denial of rights for minorities, refugees and countless stateless persons with whom all other qualities and specific relations were lost except the fact of their humanity; the very foundation of human right which for Arendt human rights presupposes. These very rights that are supposed to be given on account of being human alone for such groups are denied (Arendt 1951 cited in Agamben, 2005).

Agamben extends Arendt's argumentation of the radical crisis of rights to his analysis in biopolitics. Thus, according to Agamben the rights of man is not a founding achievement of the Enlightenment, but a symptomatic sign of the further encroachment of sovereign power into the field of life as biopolitics. This Aristotelian distinction does not hold anymore for Agamben, since the sovereign power needs to blur the lines in order to legitimize its ever-growing control over the lives of its citizens. He explicates this with the resurrection of a figure in Roman history who is reduced to bare life, *Homo Sacre* (Agamben, 1998).

Stressing on this point, Vaughan-Williams has also argued that the meaning of the concept of 'bare life' does not lie in the reduction of political to natural life, of *bios* to *zoe*, but in the indistinction between the two of them: 'bare life is a form of life that is amenable to the sway of the sovereign power because it is banned from the realm of law and politics ...'. This double-edged relationship between sovereign power and sovereign subject leads Agamben to posit a reformulation of Schmitt (Sovereign is he who decides on the exception), in the claim that, in modern biopolitics, sovereign is he who decides on the value or the nonvalue of life as such. Life - which, with the declarations of rights, had as such been invested with the principle of sovereignty - now itself becomes the place of a sovereign decision (Vaughan-Williams, 2009).

3.2. Human rights, public health and the Covid-19 pandemic

The Covid-19 pandemic underscored the delicate balance between safeguarding public health and upholding individual rights. While the need for swift and comprehensive responses to the crisis is evident, the erosion of fundamental freedoms raises critical concerns. According to human rights reports on countries during the Covid-19, about 60 percent of countries have regressed in their human rights scoring prompting the significance of a critical interrogation into the issue of human rights in a pandemic (Human Rights Watch, 2020). As earlier mentioned, the Covid-19 pandemic has been a challenge to human rights and human rights law globally. The disease as well as the measures adopted to contain it continuously affect the enjoyment of internationally protected human rights (Adenipekun, 2020). Although, democratic states have been dealing with a genuine crisis and extraordinary policies have been warranted, recent regression of democratic norms vis-a-vis the suspension of certain fundamental human rights have caused worry to human rights defenders and many people. There has been reported cases of human rights violations around the world, from censorship and the silencing of criticism, to the excessive use of police force. Vulnerable populations like minority groups and migrants have found themselves amenable to abuse, as well as to Covid-19-related stigma and violence (Davis, 2020). While the pandemic requires strong responses, we need to ensure that states do not normalize oppressive surveillance and undermine human rights, including the right to freedom of expression and information, the right to privacy, personal and bodily autonomy.

The Universal Declaration of Human Rights, adopted in 1948 by the General Assembly of the UN spells out some of the basic human rights with subsequent international legal instruments further expanding on some of these rights (Adenipekun, 2020). For instance, Article 12 of the International Covenant on Economic, Social and Cultural Rights provides that 'States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.' Also, Article 6 of the African Charter on Human and Peoples' Rights provides the right to liberty and security of person. Chapter V of the 1992 Constitution of the Republic of Ghana (as amended) recognizes the right to life. It provides that 'No person shall be deprived of his life intentionally except in the exercise of the execution of a sentence of a court in respect of a criminal offence under the laws of Ghana of which he has been convicted.' The Constitution also guarantees the rights to freedom of expression, movement, protection of personal liberty and respect for human dignity.

However, International Law, as well as Municipal Laws allow for a restriction of the enjoyment of certain human rights in times of public health concerns like pandemics: that is both international and municipal law stipulate that public health may be invoked as a reason for limiting certain rights. Measures of public health actions by governments must however ensure protection and advancement of the health of the population as a whole, while at the same time protecting basic human rights and social values (Human Rights Watch, 2020). International law provides two ways in which such a balance could be achieved—protection of public health and derogation (Adenipekun, 2020).

In protecting public health, the legal standards for assessing the validity of limitations on human rights are outlined in the Siracusa Principles, a non-binding document adopted by the UN Economic and Social Council in 1985. The document enumerates a number of safeguards that must be ensured and states must specifically see to it that these restrictions should at the least be provided for and carried out in accordance with the law, directed toward a legitimate objective of general interest, strictly necessary in a democratic society to achieve the objective, the least intrusive and restrictive available to reach the objective, based on scientific evidence and neither arbitrary nor discriminatory in application, of limited duration, respectful of human dignity, and subject to review (Adenipekun, 2020).

In addition, Article 4 (1) of the International Covenant on Civil and Political Rights (ICCPR) permits states parties to derogate temporarily from some of their obligations to human rights treaties in the event of a 'public emergency which threatens the life of the nation.' In doing so a country must issue a formal statement that it cannot uphold the rights of the general public and must provide a justifiable cause for needing to derogate for international human rights standards. International law again requires the state to apprise the UN of any derogation and the state must officially proclaim the state of emergency to its own people, using its own domestic mechanisms for doing so. Derogations are only permitted in the following situations: in extreme circumstances, the measures must be proportionate, it must not be inconsistent with other international law obligations, and it must not be discriminatory. These measures are intended by law to ensure that crises are not used as pretext for human rights abuses and the suppression of individual freedoms (Adenipekun, 2020). They are therefore meant to ensure a balance between international obligation and domestic responsibility of states (Botchway, 2019).

The reality of managing the Covid-19 crises however show clear cases of human rights violations during the outbreak. It is evident that some measures taken by countries to confront the Covid-19 pandemic have constituted violations of human rights and have not complied with the legal conditions to restrict human rights as stipulated and outlined by international law (Davis, 2020). The outbreak of the Covid-19 pandemic has highlighted the inequities in the accessibility of health care services in many countries, especially developing countries and the dearth of health care infrastructures, providing the fertile ground for human rights infringement (Elshobake, 2021). Undermining the right to freedom of expression and the right to access information, gross negligence in protecting detainees from Covid-19 infection, all of these constitute clear violations of the principles of international human rights law and include the series of the various kinds of abuses featured in media reportage (Adenipekun, 2020; Human Rights Watch, 2020).

4. Emergency powers and the rule of law in Ghana: a step back in history

The memories of human rights abuses run deep in many Ghanaians. The country's experiences of a one-party state and military regimes and the human right abuses suffered by citizens in its long journey to democratization is a testament of how far we have come as a country. That said, it is important to take a step back in history to undertake critical analysis of Ghanaian politics from the era of decolonization to establish the justification for apprehensions on the part of many human rights defenders and citizens in the country during the invocation of emergency laws and restrictions of human rights as a measure to ensuring management and containment of the Covid-19 pandemic. To comprehend the concerns of human rights advocates and citizens regarding the invocation of emergency laws in response to COVID-19, it is essential to trace the trajectory of Ghanaian politics from the era of decolonization. The era of political turbulence in the 1950s, marked by the National Liberation Movement and the quest for self-determination, witnessed instances of human rights abuses and the enactment of laws such as the Preventive Detention Act. While some arguments attempt to contextualize these actions within the realm of countering terrorism, it is imperative to acknowledge that the abuses during this period constituted severe violations of human rights.

Just after winning elections as the first elected leader of the country, Kwame Nkrumah and the Convention Peoples' Party (CPP) government successfully passed the Deportation Act of 1957, the same year that ethnic, religious and regional parties were banned. This was an impetus for subsequent Acts. The Preventive Detention Act of 1958 was passed, giving powers to the Prime Minister to detain certain persons for five years without trial (Nelson & Gyamerah, 2006; Ninsin & Drah, 1991). Amended in 1959 and again 1962, the Act was seen by opposing parties as a flagrant abuse of human rights and restriction of individual freedom (Ninsin & Drah, 1991).

The one-party regime which proclaimed Nkrumah as president for life and the CPP as the only legitimate party eroded democratic principles and norms of the freedom of action and expression entailed in democratic politics by reducing social diversity to uniformity causing discontent among the populace. This promoted and encouraged insurrections and coups (Botchway, 2018). Intermittent military regimes therefore became a characteristic of Ghana's political history – from the National Liberation Council in 1966 to the Provisional National Defence Council (PNDC) in 1979. Since the government of a military regime is not based on the explicit consent of the people, there were countless human rights abuses and violations of human rights. This was possible primarily because military regimes derived their right to rule from the barrel of the gun and populism, appropriating genuine social discontent for its own advantage (Haynes, 1991).

Despite the justifications military regimes gave for their actions, including claims of addressing democratic deficits and socioeconomic disparities, their political actions often contradicted their stated intentions (Gyimah-Boadi, 2010). This dissonance undermined the very rationales they presented for their interventions. The experiences of one-party and military rule, marked by violations of democratic tenets such as freedom of association and expression, necessitate examining the measures implemented by democratically elected governments during the COVID-19 pandemic. This investigation aims to determine whether these actions, taken under the guise of emergency powers, veer into the realm of abuse of rights.

5. Dealing with the Covid-19 pandemic in Ghana: interrogating the measures adopted

It is important to emphasize that most developing countries (including Ghana) had serious challenges in finding the appropriate strategies to contain and mitigate the spread of the Covid-19 and that the 'economic and societal ramifications of dealing with the risks poses enormous challenges' (Arko & Asekere, 2021, p. 17). Indeed, as argued by Botchwey (2021, p. 1), the emergence of the Covid-19 pandemic has 'provided a stern test of preparedness of states to respond to the unexpected, and has forced a rethink of emergency and welfare systems previously thought unassailable.' Thus, states that actually considered themselves 'to have the most robust systems have seen the most devastating impact' (Botchwey, 2021, p. 1) and subsequently the adopted measures and policy guidelines that are at times deemed inimical to the welfare of the citizenry in normal times (Hlovor & Botchway, 2021; Ntim & Botchway, 2023).

As far as Ghana is concerned, despite attempts to justify the lockdown imposed on some areas of the country, on the basis that government is 'delaying the spread of infection in order to limit pressure on the country's poor public health infrastructure', and the assumption that 'the virus pandemic was evolving and needed strategic planning to allow Ghana Health Service (GHS) address teething problems of health and medical supplies' (Arko & Asekere, 2021, p. 27), the fact that such actions affected some fundamental rights of the citizens cannot be denied. It is however important to underscore the fact that the state, and for that matter political leaders having 'a duty and primary responsibility for using governmental resources, communication channels and all other relevant avenues to protect their constituents' and for that matter the state as a whole, especially during emergency situations does not imply the guarantee of abusing such duty and responsibility (Watkins & Clevenger, 2021, p. 2). Indeed, the political leadership of the state really matters and it is at the centre of the fight against the Covid-19 pandemic.

In an attempt to deal with the Covid-19 in Ghana, the state has introduced policies and measures that under diverse guise may be deemed as forms of mandatory vaccination. These include for instance, policies requiring Covid-19 vaccination before certain rights can be exercised or before some public services can be accessed. It also extends to policies that requires that in order to return to work, employees must be vaccinated. In fact, the situation where governments have sought and actually insisted on not just introducing lockdowns, but pursued compulsory vaccination has negative ramification on not just the right to association, movement, etc., but also the right to personal autonomy. Thus, these policies and measures conflict with the citizen's right to determine what should be done to their body (Adegbite, 2021). It must however be noted that though some pronouncements on the need for all Ghanaians to be vaccinated are commonly alluded to by duty-bearers, there is no official legislation to that effect. This makes the question of mandatory vaccination in the country a less contentious issue among citizens as the measure is usually perceived as a plea by the state rather by compulsion or legal requirement.²

The idea of locking down communities, cities, towns and entire countries in the name of protecting the health of the people is in itself an affront on the mental health of the people (Asekere & Arko, 2021). Thus, the policy to restrict free movement of the people, coupled with their inability to practice certain religious and cultural believes and social practices as a result of social distancing and limited timeframes for religious and social gatherings, etc. influence their mental wellbeing. This is relevant once it is universally acknowledged that the right to health is not just a fundamental part of human rights but also key to living a dignified life (Kunbuor, 2021; WHO, 1946).

In Ghana, the Public Health Act, 2012 (Act 851) is the law that revises and consolidates the country's laws that relate to public health and seeks to 'prevent disease, promote, safeguard, maintain and protect the health of humans and animals...' (Republic of Ghana, 2012, p. 8). Subsequently, this Act, with its numerous sections, cover a wide range of issues as far as the matter of public health and related emergencies are concerned. But of particular interest to this study are the sections that bother on 'Declaration of infected area, order for evacuation' (Section 2); 'Isolation of contacts' (Section 11); compensation for affected individuals and related issues (Sections 12 and 13); public vaccination, compulsory vaccination; power of entry for vaccination; examination and vaccination at point of entry (sections 21, 22, 25 and 26 respectively). Also of interest are the provisions of Section 34 – 'Declaration of place as quarantine area' and Section 169 – 'Declaration of public health emergency' and Section 170 – 'Emergency powers in respect of public health matters.'

For the avoidance of doubt, Section 169 empowers the Minister to declare a state of emergency when certain conditions are met. Specifically, the section provides that: '(1) The Minister shall declare a public health emergency by Executive Instrument where there is a situation that poses an immediate risk to health, life property or the environment.' And that:

(2) To meet the criteria for a public health emergency, the incident should (a) immediately threaten life, health, property or the environment; (b) have already caused loss of life, health detriments, property damage or environmental damage; OR (c) have a high probability of escalating to cause immediate danger to life, health, property and the environment.

With regards to Section 170 of the Public Health Act (Act 851), the Minister is given unbridled discretionary powers as s/he is clothed with the authority to 'direct a public health official' in a manner he deems fit during a perceived public health emergency. The so-appointed public health official is

subsequently 'immuned from prosecution and indemnified from acts performed' provided s/he 'acts in good faith' (Section 172). These provisions and other related ones give room for the misuse and abuse of power by the state and appointed officials. For instance, it is in the exercise of such discretionary powers that the country's land borders remained closed as at the time of this study. Thus, as indicated by earlier studies, despite the adverse effects of such measures on the lives and livelihoods of the affected persons (those on the country's borderlands), the president has refused to open the country's land borders while allowing flights into the country on daily basis. It even took several agitations from affected persons before the beaches and some hotels were allowed to re-open (at which time people suffered several hardships already). Indeed, the hope of applying discretionary powers by acting fairly and reasonably and in compliance with the requirements imposed by law is virtually disregarded under these Covid-19 related emergencies. The effect is a seemingly total neglect of the provisions of Articles 23 and 296 of the 1992 Constitution of Ghana.³ It consequently infringes on the rights and liberties of the people and denies some of certain basic needs that enhance their ability to live dignified lives.

It is also interesting to note that as far as emergency powers are concerned, the 1992 Constitution of Ghana does not leave any room for chance. Thus, Articles 31 and 32 of the Constitution captioned 'Emergency Powers' together with the Emergency Powers Act 1994 (Act 472) virtually cover everything about emergency as far as the country is concerned. It is therefore curious to know why the state introduced the Imposition of Restrictions Act, 2020 (Act 1012) – an Act of Parliament whose very passage was shrouded with controversy (Botchway & Hlover, 2022). The Act 1012 accordingly was not needed in the first place as all relevant matters of emergency had already been captured by existing laws. It only sought to give more untamed powers to the executive arm of government, particularly the presidency and created a 'demi-god' for a republic (Addadzi-Koom, 2020).

Indeed, considering the fact that the WHO defines health as 'a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity' implies that any attempts at 'protecting lives and livelihoods' in the midst of a pandemic such as the Covid-19 should not overlook key elements of this definition such as the 'state of complete physical, mental and social well-being'. This is especially so considering the fact that the same WHO Constitution affirms that '[t]he enjoyment of the highest attainable standard of health is one of the fundamental rights of every human being without distinction of race, religion, political belief, economic or social condition' and that governments across the world 'have a responsibility for the health of their peoples which can be fulfilled only by the provision of adequate health and social measures' (WHO, 2006, p. 1).

Thus, the provision of adequate relevant health and social facilities and measures are the key to dealing with the pandemic in question. It is because the state has failed in this regard that unnecessary imposition of sanctions and restrictions has become normal. We argue that the introduction of preventive measures such as social distancing, wearing of masks and regular washing of hands and sanitising frequently-touch-objects such as door handles, etc. could be sufficient and that some of the lockdowns (especially in some areas such as beaches, religious centres, etc.) were not just unnecessary but also infringed on the rights of the people. The state is actually hiding behind the pandemic to abuse its emergency powers.

In fact, as demonstrated by Kumi (2022, p. 1), the space within which even civil society organisations operate has even become restricted with the introduction of 'COVID-19 inspired legislations' and that Covid-19 related measures and legislations have not just disrupted activities of civil society, but also increased 'existing threats to civic space' and created 'uncertainties for Ghana's 2020 elections' as these measures promoted the 'curtailment of freedoms of expression, movement and peaceful assembly'. Thus, in the name of dealing with the Covid-19 pandemic, a central entity for building, sustaining, and promoting well-structured and civilised communities are undermined (Botchway, 2019b).

6. Conclusions

As alluded to earlier, the imposition of restrictions and related measures adopted by the state affect the following fundamental rights and freedoms of the individual: the freedom of association; freedom of movement; religious liberty; the right to personal autonomy; the right to bodily autonomy; the right to informed consent; the right to the security of the person, etc. Accordingly, the various restrictive policies

adopted by the Ghanaian state amidst the Covid-19 pandemic has serious ramifications for the enjoyment of certain fundamental rights of Ghanaians and all persons residing in Ghana; the imposition of restrictions on various activities affected the freedom of movement of the people, the freedom of association and religious liberties, rights of social interactions, economic activities, the pursuit of happiness, etc. For instance, private educational institutions and their employees were not spared as schools were closed for several months. Aside the impact on the incomes of private school teachers, the right to education in general was negatively affected as most people who could not readily access online education were 'left behind' (Abubakari, 2021).

Moreover, the incomes and wages of many self-employed individuals including commercial drivers, market women, and private school teachers were severely affected to the extent that it became 'a matter of risking death either by starvation at home or by contracting Covid-19 while seeking a means of survival' (Botchwey, 2021, p. 1). Thus, despite the several measures undertaken by the government to mitigate the effects of the Covid-19 and its related policies, the question of infringement on fundamental human rights persisted (and still does on a minimal scale). Consequently, the government's introduction of allowances for frontline health workers and exemption of income taxes for all health sector workers; the provision of free electricity for one million lifeline consumers, and 50% absorption of electricity costs for all other consumers; the supply of free water to all households and business establishments; the distribution of 'hot meal'/food packs during the lockdown period in some selected areas do not necessarily address the question of undermining the rights of citizens.

It is therefore not out of place to agree with Botchwey (2021) that Ghana's emergency responses and existing social support systems 'did very little' to support the most vulnerable during the Covid-19 crisis, and that to a large extent it actually had negative implications for the enjoyment of fundamental rights. Thus, as human rights are usually deemed to be interdependent, indivisible and interrelated, any policy or action that infringes on one has the highly probability of affecting other rights negatively (World Conference on Human Rights, 1993). Hence, an imposition of restriction on the movement of people subsequently affects their right to enjoy the good life and the pursuit of happiness as they may not be able to work to earn income that would improve their living standards due to the said restriction on movement. This is notwithstanding the fact that states have been clothed with the primary obligation of protecting and promoting human rights.

To be emphatic, some of the measures and policies introduced by the government in the wake of the Covid-19 pandemic are an affront on constitutionalism which is deemed as a vital ingredient to emerging democracies (Date-Bah, 2019). Thus, through these measures, the Executive arm of government has not just compromised Ghana's democratic processes, but have to some extent also trampled some democratic rights of the citizens and overlooked its obligations under the pretence of emergency. This is notwithstanding the fact that Article 31(10) of the 1992 Constitution of Ghana stipulates that nothing done during a state of emergency (so pronounced by the state through Parliament) be deemed to have trampled the rights of the citizens as captured under Articles 12 to 30 of the Constitution. In our view, this is problematic as it gives undue powers to the state under the pretence of 'emergency'. According to Date-Bah (2019, p. 4), the provision (as in Article 31[10]) 'means that any derogation from the Bill of Rights has to be by legislation.' Thus, even unfair and unjust laws could be passed by the state so long as there is an emergency. It even becomes more problematic when the Executive (without legislative power) decides to introduce measures and policies in the name of an emergency such the Covid-19 to curtail the rights of the people.

Indeed, at a time when the Covid-19 pandemic has been seen as being a litmus test in gauging the government's (states') responsiveness to human rights and fundamental freedoms – a referendum on the state of the government's compliance with generally accepted principles of human rights norms, most states (including Ghana) are deemed to have failed at a certain point. Thus, the introduction of draconian legislations and policies during the early days of the pandemic betrayed the government's trust in the very mantra of 'protecting lives and livelihoods'.⁴ Consequently, the state imposing unrestricted restrictions on various aspects of the lives of the citizens (without question) is the equivalent of the Feudalist mentality of the individual being a subject, rather than a citizen with rights. That is to say the state (being sovereign) could not err as far as dealing with its 'subjects' are concerned, as the former is ordained by God to exercise rulership over the latter – a scenario we find very questionable.

We indeed agree with the view that ‘responding to the COVID-19 pandemic is desirable’ but ‘balancing same with human rights considerations is more important’ (Adegbite, 2021, p. 256). And that, the government of Ghana, and for that matter all states, must focus on policies that are ‘decent enough to respect citizens’ rights, as a matter of respect for human rights and constitutional norms’ (261).

7. Recommendations

It could be argued that the lifestyle, personality, and worldviews of the citizen are important elements to consider in introducing measures aimed at dealing with the Covid-19 pandemic. For brevity, we assume three distinct yet related personality of citizens – the neighbour’s keeper, the collectively responsible persona, and the life enjoyer (NP-CR-LE). These three groups of citizens may have different but related priorities which to some extent influence their views and acceptance or otherwise of government policies regarding the Covid-19 pandemic. Whereas as the neighbour’s keeper sees themselves as a possible determinant of the spread of the virus or receiver, the life enjoyer is all about benefiting and maximising happiness at the present. In effect, while the former is cautious of spreading or receiving the virus from others, the latter is either a disbeliever of the existence of the virus in the first place or does not think about the future – thus making good use of the present time irrespective of the outcome. The collective responsibility-oriented citizen is of the view that all have the responsibility to fight and defeat the virus together. This particular citizen is to some extent similar to the neighbour’s keeper.

The implication is that, these sort of citizens (imagined typologies) may have different rates of acceptance for the state’s measures for addressing the Covid-19 pandemic, but as humans, none is unconcerned about the infringement of their basic rights. For this reason, the state may have to adopt policies and measures that address the Covid-19 problem while bearing in mind that the citizens have rights. Thus, a delicate balance has to be struck between rights (of the citizens) and the responsibility (of the state) to ‘protect lives and livelihoods’. In effect, the state must balance its obligation with the rights of the citizens (Botchway & Hlovor, 2022; Hlovor & Botchway, 2021; Botchway, 2019).

The state indeed had the obligation to ensure the reduction of the spread of the Covid-19 and its eventual possible elimination. This therefore implied that all the necessary avenues such as appropriate administrative, budgetary, legislative, and judicial mechanisms must be employed, and much emphasis must be placed on educational, and Covid-19 sensitization programmes and awareness creation through dedicated state institutions such as the National Commission for Civic Education (NCCE), the Ghana Health Service, Faith Based Organizations, etc. When such measures are properly deployed, there may not be the need to be introducing such measures like lockdowns and vaccine mandates. The argument is that, when citizens have been well educated to understand and appreciate the dangers of the pandemic and the eventual ramifications on their lives and that of their loved ones, they may follow the relatively easy-to-accept measures such social distancing, wearing face masks, practicing regular hand-washing and the frequent use of the sanitizer, etc. The implication here is that these persons will continue to live their ‘normal’ lives though under the new normal without the undue restrictions that curtail their rights and freedoms.

The state must however put in place effective and enforceable punitive measures to ensure that individuals who do not follow the simple fundamental guidelines are duly sanctioned. This would then serve as a deterrent to ensure that in the absence of restrictive lockdowns (with their attendant problems), the seemingly ‘carrot and stick’ approach does that which do not undermine the rights, liberties and freedoms of the citizen, but would rather ensure that the mantra of *protecting lives and livelihoods* becomes a reality in Ghana.

Moreover, the outbreak of the Covid-19 (which at the onset had no known treatments, vaccines, or cures) required that all parties put aside all their political and ideological differences and to focus all available resources and energy on fighting the pandemic. Thus, dealing effectively with the Covid-19 pandemic required coordinated responses that take into consideration not just the health of the individual, but also their dignity and rights as humans. This partly stems from the fact that the state (government) has the mandate of exercising authority but only in the interest of the very people who gave them the mandate.

We are not oblivious to the idea that postulate that during crisis, leaders (the state/government) has the responsibility of making essential decisions that ‘will necessarily affect lives’ (Watkins & Clevenger, 2021, p. 7). And that irrespective of the belief that ‘crisis conditions such as high threat, time exigency, and uncertainty made bureaucratic treatment of a crisis infeasible’ (as postulated by ‘t Hart et al. (1993) cited in Watkins and Clevenger (2021, p. 7), what we are arguing for is that those decisions that may affect lives must be given careful consideration to ensure that such so-called necessary measures do not defile the dignity and rights of the very people they are purported to protect as has been the case of most Covid-19 targeting measures. We are therefore of the view that if ever the necessity arose for all persons to be vaccinated, states could adopt the ‘tool of social engagement’ ‘rather than mandatory vaccination’ to achieve the desired goals (Adegbite, 2021, p. 243).

Notes

1. We are aware of the question of public health emergency which requires that certain crucial measures are to be taken during some health emergency situations to mitigate the effects of outbreak of infectious diseases. We know that such measures, at times, become a necessity. But our position here is quite simple: public health emergency and related policies must not be used as a yardstick to unnecessarily curtail the rights and freedoms of citizens, especially where there may equally be other viable options or strategies for dealing with such health issues. More so, our interest lies in rights and freedoms (as far as this study is concerned) and nothing else.
2. The state introduced several measures that seem to be compelling individuals to vaccinate or forfeit certain rights. For instance, people could not visit certain public places (stadia, state-owned buildings, night clubs, etc.) but these are usually unforced as the state either lacked the enforcement capacity or legal backing to ensure strict compliance with such “suggestions”.
3. Whereas Article 23 stipulates that “Administrative bodies and administrative officials shall act fairly and reasonably and comply with the requirements imposed on them by law...”, Article 296 is emphatic that: “Where in this Constitution or in any other law discretionary power is vested in any person or authority -. (a) that discretionary power shall be deemed to imply a duty to be fair and candid; (b) the exercise of the discretionary power shall not be arbitrary, capricious or biased wither by resentment, prejudice or personal dislike and shall be in accordance with due process of law; and. (c) where the person or authority is not a judge or other judicial officer, there shall be published by constitutional instrument or statutory instrument, regulations that are not inconsistent with the provisions of this Constitution or that other law to govern the exercise of the discretionary power.”
4. The President of the Republic – Nana Akufo Addo has been repeating this statement in his several speeches on the pandemic and measures taken to address it. In addition, several bill boards have been erected in all the 16 administrative regions of the country with the president’s picture with the inscription quoted on them.

Disclosure statement

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