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The COVID-19 Pandemic and Corporate Governance Challenges in Nigeria and South Africa: A Human Rights Perspective

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Abstract

COVID-19 presents dire consequences on the global economy, especially, in the administration of companies and business output. Curtailment measures against COVID-19 adopted by business managers affect the nature of board meetings, board decision-making processes, the promotion of online operations, insecurity of jobs and tenure of employment, mandatory rules for taking COVID-19 vaccinations, compulsory testing, surveillance, and data monitoring among others with human rights implications. The article makes a spirited and original assessment of some of the challenges of corporate governance during the COVID-19 pandemic. The article addresses some of the corporate governance challenges faced in the era of the current pandemic, preventive and control measures that have been taken to address the spread of the pandemic in the workplaces, and further highlights workplace human rights violations during the pandemic, by citing well-selected examples from different parts of the world. Similarly, with the aid of appropriate examples,

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the article highlights the different conflicts of interest that exist between companies and stakeholders on the one hand, and between the company as an entity and the rights of the employees of the entities, on the other hand. It relies mainly on literature, relevant judicial decisions, and statutory provisions from Nigeria and South Africa in addition to relevant international instruments that have universal application. However, by way of comparative analysis, discussions in this article draw largely from common developments in selected industries such as the banks, hospitals, agro-allied, and even football industries. This is due to the nature of the COVID-19 pandemic which still ravages the world and has consequently necessitated a common approach as directed by the WHO.

Keywords: Corporate governance; COVID-19; human rights; WHO

1 INTRODUCTION

On 11 March 2020, the World Health Organization (WHO) announced that an outbreak of the viral disease COVID-19, first identified in December 2019 in Wuhan, China, had attained the status of a “global pandemic”.¹ Based on “the alarming levels of spread and severity”, various governments across the globe have been urged to take urgent and aggressive action to stop the spread of the virus.² Perhaps, the COVID-19 pandemic ranks as one of the most topical issues of the twenty-first century; since it managed to force the world to a grinding halt. Globally, there have been about 255,324,963 reported cases with almost 5,127,696 confirmed deaths as of 18 November 2021.³ While the world still grapples with the health implications presented by the pandemic, the global economy has been hit hard. The economic damage is unfortunately too glaring, and it represents arguably the worst economic shock the world has experienced in decades.⁴ It follows that running a business in the midst of the pandemic is an unprecedented challenge for companies worldwide.

The advent of the COVID-19 pandemic has negative impacts that call for greater commitment to corporate social responsibility with increased pressure and demands from various stakeholders, and radical uncertainty about the future.⁵ Business managers and various governments are therefore constrained to take preventive and control measures. Some of these measures include physical distancing of at least one meter, wearing of face masks, and observance of sanitary/hygienic practices. Other measures involve the use of Ultraviolet Germicidal Irradiation (UVGI) and enhancement of indoor ventilation in public places and work or business environments as recommended by the WHO and health experts.⁶

The aforementioned curtailment measures have spurred a significant improvement and

- 1 WHO “WHO Director-General’s Opening Remarks at the Media Briefing on COVID-19” <https://www.who.int/director-general/speeches/detail/who-director-general-s-opening-remarks-at-the-media-briefing-on-covid-19---11-march-2020> (accessed 25-09-2021).
- 2 Human Rights Watch “Human Rights Dimensions of Covid-19 Response” <https://www.hrw.org/news/2020/03/19/human-rights-dimensions-covid-19-response> (accessed 22-08-2021).
- 3 WHO “WHO Coronavirus (COVID-19) Dashboard” <https://covid19.who.int> (accessed 20-11-2021).
- 4 The World Bank “The Global Economic Outlook during the Covid-19 Pandemic: A Changed World” <https://www.worldbank.org/en/news/feature/2020/06/08/the-global-economic-outlook-during-the-covid-19-pandemic-a-changed-world> (accessed 21-08-2021).
- 5 Paine “Covid-19 is Rewriting the Rules of Corporate Governance” <https://hbr.org/2020/10/covid-19-is-rewriting-the-rules-of-corporate-governance> (accessed 21-08-2021).
- 6 WHO Press Briefing “Coronavirus (COVID-19) — Third Wave and Vaccine Rollout in Africa” <https://www.afro.who.int/health-topics/coronavirus-covid-19> (accessed 25-09-2021); CDC “Ventilation in Buildings” <https://www.cdc.gov/coronavirus/2019-ncov/community/ventilation.html> (accessed 25-09-2021).

promotion of online operations,⁷ and have also affected the nature of board meetings, board decision-making processes, the security of jobs that can now rely on Artificial Intelligence (AI), and tenure of employment.⁸ By extension, corporate responses to the pandemic have entailed the observance of mandatory requirements of administering COVID-19 vaccinations, compulsory testing, and surveillance monitoring among others.⁹ Importantly, these responses have attendant and very interesting human rights implications such as the right to privacy, choice of medical treatment, and employees' occupational safety.

Labour-related rights enjoy domestic and international imprimatur and Member States of International Labour Organizations are enjoined to take appropriate steps to safeguard these rights.¹⁰ Human rights law also recognises that when there are serious public health threats and public emergencies threatening the life of the nation, restrictions on some rights can be justified. Such derogations will be allowed when they have a legal basis and are strictly necessary. The restrictions will also be allowed if they are based on scientific evidence and are neither arbitrary nor discriminatory in their application. The said derogations can be excused for the greater good of the State when they are of limited duration, respectful of human dignity, subject to review, and proportionate to achieve the objective.¹¹ The COVID-19 pandemic clearly afforded and still affords such context as introduced above. Sending workers home in compliance with lockdown directives was a palpable action. However, some businesses, especially, within the banking sector, hospitals and agro-allied industries saw the period of lockdown as an opportunity to

- 7 Obiezu "Nigeria Launches Africa's First Digital Currency" <https://www.voanews.com/a/nigeria-launches-africa-s-first-digital-currency/6286460.html> (accessed 29-10-2021). Some major online platforms have enjoyed a significant upsurge in financial performance and stock value as a result of improvements in their business climate during the pandemic. Jumia, for instance, witnessed an increase of over 50%, from 3,1 million to 4,7 million, in the volume of transactions during the first six months of 2020, as opposed to the same period in 2019. See UNCTAD "Covid-19 and E-Commerce: A Global Review" <https://unctad.org/webflyer/covid-19-and-e-commerce-global-review> (accessed 09-11-2021). Andrey Popov, in a review of this report, noted that China's online share of retail sales rose from 19,4% to 24,6% between August 2019 and August 2020. In Kazakhstan, the online share of retail sales increased from 5% in 2019 to 9,4% in 2020. Thailand saw downloads of shopping applications jump 60% in just one week during March 2020. According to the report, one of the challenges is that the pandemic has mostly benefited the world's leading digital platforms thereby dwarfing smaller players who may have tried to have a stronger foothold during the pandemic. Torbjörn Fredriksson, UNCTAD's digital economy head expressed fears that a huge digital divide existed between and within countries which would only be worsened by the pandemic — resulting in even deeper inequalities that would threaten to derail progress on the UN sustainable development goals. See Popov "How Covid-19 Triggered the Digital and E-commerce Turning Point" <https://unctad.org/news/how-covid-19-triggered-digital-and-e-commerce-turning-point> (accessed 07-11-2021).
- 8 Hobbs "How can Boards Engender Trust through Governance of AI?" <https://www.linkedin.com/pulse/how-can-boards-engender-trust-through-governance-ai-andrew-hobbs> (accessed 25-09-2021).
- 9 Ajasa "Exclusive: Ravaged by Covid-19, GT Bank Imposes Mandatory Vaccination for Staffers, Threatens to Slash Salaries by 50%" <https://thenewsguru.com/nigeria-news/exclusive-ravaged-by-covid-19-gtbank-imposes-mandatory-vaccination-for-staffers-threatens-to-slash-salaries-by-50/> (accessed 25-09-2021); Toh "Big Data Could Undermine COVID-19 Response" <https://www.hrw.org/news/2020/04/13/big-data-could-undermine-covid-19-response> (accessed 25-09-2021).
- 10 ICESCR GA Res 2200A (XXI), 21 UNGAOR Supp (No 16) at 49, UN Doc A/6316 (1966) 993 UNTS 3, hereinafter referred to as ICESCR. See Arts 6 and 7 which provide for the rights to work of one's choosing and of favourable working conditions <https://www.refworld.org/docid/3ae6b36c0.html> (accessed 22-08-2021); See also UN Committee on Economic, Social and Cultural Rights hereinafter referred to as CESCR, General Comment No. 18: The Right to Work (Art 6 of the Covenant) E/C.12/GC/18, 3 <https://www.refworld.org/docid/4415453b4.html> (accessed 22-08-2021).
- 11 Human Rights Watch "Human Rights Dimensions of Covid-19 Response" <https://www.hrw.org/news/2020/03/19/human-rights-dimensions-covid-19-response> (accessed 22-08-2021).

arbitrarily violate the well-being of their employees.¹²

This article, therefore, examines the challenges of corporate governance¹³ in this era of COVID-19 particularly from a human rights perspective. It relies mainly on literature, relevant judicial decisions, and statutory provisions from Nigeria and South Africa in addition to relevant international instruments that have universal application. However, by way of comparative analysis, discussions in this article draw largely from common developments in selected industries such as the banks, hospitals, agro-allied and even football industries. This is due to the nature of the COVID-19 pandemic which still ravages the world and has consequently necessitated a common approach as directed by the WHO.

From this introductory remark, the second section examines some challenges facing corporate governance in this era of COVID-19 and the third section highlights the preventive and control measures against COVID-19 in corporate governance. Section 4 assesses human rights violations in corporate governance during the COVID-19 era. It becomes a lure to contemplate the possible nexus between corporate governance and human rights (within the context of this article). The consequences of poor human rights practices can adversely impact a company's stakeholder relations, financial performance and prospects for sustainable value creation. In the lockdown periods, businesses ought to have operated in manners that took cognisance of the stakeholder-centric interests (human and labour rights included). But of course, there were ethical lapses and inattention to human rights demands (which this article will address in section 4). In the context of this article, labour rights fall well within the cadre of human rights. The right of an employee to good working conditions and commensurate pay is a labour and human right as well. This article in section 4, explores how businesses flagrantly disregarded the labour/human rights in issue. While section 5 discusses the protection and enforcement of human rights in corporate governance in the COVID-19 crisis, section 6 contains the conclusion.

2 CHALLENGES FACING CORPORATE GOVERNANCE DURING THE COVID-19 ERA

The economic implications of the Coronavirus are heavily felt in the corporate world. The pandemic has made it a daunting challenge for enterprises to run business in an environment remoulded by the continuing effects of the pandemic. Policy measures by businesses, birthed in response to the viral outbreak have proved to be short of sufficient in addressing the prevailing circumstances. The pandemic fostered a historic economic shock, proving to be far worse than the Global Economic Crisis of 2008.¹⁴ By many margins, it is the worst in decades to have ever been witnessed. It follows that the economic implications of the COVID-19 pandemic are rife

12 The Legal 500 "Covid-19: Employment Issues under Japanese Labour Law" <https://www.inhouselawyer.co.uk/legal-briefing/covid-19-employment-issues-under-japanese-labour-law/> (accessed 06-03-2022).

13 This article adopts the definition of corporate governance according to the OECD. According to the OECD, "corporate governance refers to the procedures and processes according to which an organisation is directed and controlled". See OECD "Glossary of Statistical Terms" <https://stats.oecd.org/glossary/detail.asp?ID=6778> (accessed 10-03-2022). In the context of this article, corporate governance includes or involves the specification of rights and responsibilities amongst the stakeholders in an organisation. Hence, this article addresses the responsibilities of businesses in the terms of respecting the human rights of their employees as far as COVID-19 is concerned.

14 Patalano and Roulet "Structural Developments in Global Financial Intermediation: The Rise of Debt and Non-bank Credit Intermediation" <https://www.oecd-ilibrary.org/docserver/daa87f13-en.pdf?expires=1632915087&id=id&accname=guest&checksum=036ACAE083FC6C586484F9CBFF7C30AE> (accessed 29-09-2021).

without doubt.

Many corporations¹⁵ in developed countries especially in the global north that were hit hard by the impact of the virus have received or will receive financial support from various governing bodies. For instance, Pennsylvania's governor, Tom Wolf, announced on 29 November 2021 that 5,860 businesses received funding support in 2021 alone through the COVID-19 Hospitality Industry Relief Program (CHIRP).¹⁶ Again, in 2020, the African Development Bank launched a US\$50 facility to support energy access companies through and beyond the pandemic.¹⁷ The current stress in financial markets as a consequence of the COVID-19 pandemic has severely strained access to credit for businesses, ranging from large corporations to small and medium-sized enterprises (SMEs). The fragilities that arose from high corporate debt and leverage as occasioned by the global financial crisis of 2008 are now being tested by the sharp deterioration in economic and credit market conditions resulting from the spread of the virus.¹⁸

Elevated market risk aversion has been reported to have caused corporate credit spreads in major markets to double, which has increased financing costs for businesses to levels that could contribute to distress and default,¹⁹ and also contributed to sharp declines in consumption and investment. Business output and revenues across industries have fallen dramatically which has exposed underlying structural vulnerabilities in the corporate sector, including the rise of corporate debt to gross domestic product (GDP).²⁰ For instance, amid ballooning debts of more than US\$1,5 billion, Football Club Barcelona could not retain the services of its most important player, Lionel Messi.²¹ Due to the huge revenue loss occasioned by the pandemic in the football industry, where football clubs in many leagues were forced to play games without spectators for months, and some had to pay rebates to sponsors and broadcast partners, the financial relief from the Union of European Football Associations (UEFA) is needed by football clubs in Europe.²²

The new environment created by the continuing effects of the pandemic reportedly displays a very adverse atmosphere of tension marked by heightened expectations for societal engagement and corporate citizenship.²³ There is a great deal of expectation from the larger society with regard to policy responses of businesses to the pandemic which has evolved in its return phases to work. The communities, for instance, will expect the corporations (particularly those that have not been seriously affected by the strains of the pandemic) to see the prevailing circumstance created by the pandemic as an opportunity to engage in more corporate social responsibility schemes. These schemes, if embraced, will help to send a positive message of inclusiveness to the communities hosting these companies. Regarding corporate social responsibility schemes, the private sector has created an impact that African governments could never have achieved alone. But both corporate and government action to curb the spread of the pandemic, is seemingly focused on urbanised areas and momentary humanitarian relief which may be arguably justified particularly in third-world countries.²⁴ Apart from tackling core structural challenges, business managers are expected to focus their attention more on the underprivileged and other vulnerable persons such as the elderly and persons with disabilities

15 Even though "corporation" is usually used in a strict sense to refer to a large company or a group of companies, it is interchangeably used as a term that refers also to a commercial business in this article.

23 Paine "COVID-19 is Rewriting the Rules of Corporate Governance" <https://hbr.org/2020/10/covid-19-is-rewriting-the-rules-of-corporate-governance> (accessed 26-08-2021).

24 OECD "Developing C and Development Co-operation: What is at Stake?" <https://www.oecd.org/coronavirus/policy-responses/developing-countries-and-development-co-operation-what-is-at-stake-50e97915/> (accessed 29-09-2021); Nwagu "How Business can Fight Covid-19 in the Poorest Communities" <https://www.lbs.edu.ng/lbsinsight/how-business-can-fight-covid-19-in-the-poorest-communities/> (accessed 29-09-2021).

and persons suffering from underlying diseases.²⁵ Therefore, actions that will limit the impact of industrial activities on the environment by business managers have become imperative to promote corporate governance during the pandemic such as the protection of labour rights and provision of occupational safety measures. Actions here could include governments and non-governmental organisations (NGOs), encouraging corporations even in the global south to fully embrace “carbon trading”.²⁶

3 PREVENTIVE AND CONTROL MEASURES AGAINST COVID-19 IN CORPORATE GOVERNANCE

As a result of the widespread effect of the COVID-19 pandemic across jurisdictions, similar preventive and control measures which are not peculiar to corporate governance have been adopted in line with the recommendations of the WHO. In response to the pandemic, steps that have been taken by business managers to curtail the spread of the pandemic include physical distancing for at least one metre, the use of Ultraviolet Germicidal Irradiation (UVGI), enhancement of indoor ventilation, thermal screening, and the establishment of task forces to ensure compliance with COVID-19 protocols in work or business environments as recommended by the WHO and health experts. Other measures include restriction of travel, suspension of public gatherings, and arrangements for working remotely.²⁷ But beyond merely stating these immediate and basic actions, corporations especially those that offer essential services (like banks) must comply with all the recommended COVID-19 protocols.²⁸ This will entail embracing prevention-oriented policies like ensuring maximum workplace hygiene, allowing admittance into business precincts only upon fully satisfying the conditions of wearing a face mask, and proper hand sanitation, offering safer working alternatives, heightening the monitoring of physical channels to quickly identify infected individuals, and developing a

25 OECD “COVID-19: Protecting People and Societies” <https://www.oecd.org/coronavirus/policy-responses/covid-19-protecting-people-and-societies-e5c9de1a/> (accessed 29-09-2021).

26 Carbon trading is the process of trading permits and credits that allow the permit holder to emit carbon dioxide. The model used in all current carbon trading schemes is called “cap and trade”. In this model, a government or intergovernmental body sets an overall legal limit on emissions (the cap) over a specific period, and grants a fixed number of permits to those releasing the emissions. A polluter must hold enough permits to cover the emissions it releases. See “What is Carbon Trading” [https://www.fern.org/publications-insight/what-is-carbon-trading-584/#:~:text=Carbon%20trading%20is%20the%20process,Trading%20System%20\(EU%20ETS\)](https://www.fern.org/publications-insight/what-is-carbon-trading-584/#:~:text=Carbon%20trading%20is%20the%20process,Trading%20System%20(EU%20ETS)) (accessed 12-03-2022).

27 WHO “Coronavirus Disease (COVID-19) Advice for the Public” <https://www.who.int/emergencies/diseases/novel-coronavirus-2019/advice-for-public> (accessed 29-09-2021); CDC “Ventilation in Buildings” <https://www.cdc.gov/coronavirus/2019-ncov/community/ventilation.html> (accessed 25-09-2021).

28 Buehler *et al.* “Leadership in the Time of Coronavirus: Covid-19 Response and Implications for Banks” <https://www.mckinsey.com/industries/financial-services/our-insights/leadership-in-the-time-of-coronavirus-covid-19-response-and-implications-for-banks> (accessed 29-09-2021).

playbook for addressing contamination.²⁹

The various new mutations of the virus have called for a greater degree of concern,³⁰ and a revised approach in the curtailment and control measures. The Occupational Safety and Health Administration (OSHA) has therefore proffered useful recommendations to assist employers in providing a safe and healthful work environment for employees during the pandemic in line with Article 7(b) of the International Covenant on Economic, Social and Cultural Rights (ICESCR) which guarantees “[s]afe and healthy working conditions”.

According to the recommendations, employers must facilitate the vaccination of their employees, instruct infected workers, unvaccinated workers who have had close contact with someone who tested positive for the virus, and all workers with COVID-19 symptoms to stay home to prevent or reduce the risk of transmission of the virus that causes COVID-19.³¹

Further, employers of labour are required to implement physical distancing in all communal work areas for unvaccinated and otherwise at-risk workers and also provide workers with face coverings or surgical masks, as appropriate, unless their work task requires a respirator or other personal protective equipment (PPE).³² According to the OSHA guidelines, it is especially important for employers to educate and train workers on COVID-19 policies and procedures using accessible formats and in languages they understand. The guidelines also underscore the imperative of recording and reporting COVID-19 infections and deaths, implementing protections from retaliations,³³ and setting up an anonymous process for workers to voice concerns about COVID-19-related hazards.³⁴

Banks in the global south may find it worthwhile to revisit the measures that the African Development Bank (ADB) had adopted in a bid to curb the spread of the new mutation of the virus. In response to the outbreak, the ADB had among many measures adopted the following: a 14-day self-quarantine for employees returning from high-risk countries; a close monitoring of situations through its medical centre, emergency management team, and its operational and

29 Sikakulya *et al.* “Use of Face Masks to Limit the Spread of the COVID-19 among Western Ugandans: Knowledge, Attitude and Practices” <https://journals.plos.org/plosone/article?id=10.1371/journal.pone.0248706> (accessed 29-09-2021).

30 Even as the Delta variant of coronavirus continues to rampantly spread and dominate across the world, newer worries have cropped up with the emergence of a variant which has come to be known as the “Mu” variant, which according to some medical experts, is quite concerning and fearsome. While it has been branded as a “Variant of Interest” by the WHO, latest reports have said that the variant is making its presence felt internationally, and has spread to over 49 US states and 40 different countries worldwide. See “Coronavirus: Is The ‘Mu’ Variant Deadlier Than Delta? Decoding All Known COVID-19 Mutations Circulating Right Now” <https://timesofindia.indiatimes.com/life-style/health-fitness/health-news/coronavirus-is-the-mu-variant-deadlier-than-delta-decoding-all-known-covid-19-mutations-circulating-right-now/photostory/86063698.cms> (accessed 12-09-2021). A very recent variant of the COVID-19 virus is the Omicron B.1.1.529 which was first spotted in South Africa in December 2021. See CDC “What You Need to Know About Variants” <https://www.cdc.gov/coronavirus/2019-ncov/variants/about-variants.html> (accessed 12-02-2022).

31 US Department of Labour “Protecting Workers: Guidance on Mitigating and Preventing the Spread of COVID-19 in the Workplace” <https://www.osha.gov/coronavirus/safework> (accessed 29-09-2021). The US OSHA guidelines on mitigating and preventing the spread of COVID-19 in the workplace are nothing short of an ideal model recommendation for business owners and employers of labour. This reason forms the sole inspiration for the mention of the said guidelines in this article.

32 *Ibid.*

33 Retaliations could be in the form of riots or protests by concerned people over certain COVID-19 related policies put in place to curb or mitigate the spread of the virus.

34 *Ibid.* CDC “Your Guide to Masks” <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/about-face-coverings.html> (accessed 29-09-2021).

executive crisis committees.³⁵ Also, staff had regularly been provided with medical guidance and there were preventive measures put in place to protect staff and families from contamination by the virus.³⁶

The impetus for the point re-emphasised above is the perceived attitude of laxity among various corporations in jurisdictions like Nigeria.³⁷ This attitude is likely informed by the notion that the virus has, for reasons unexplained, been lenient in the African region. Regardless, the compliance protocols should not be relaxed especially now that new mutations of the virus seem to be more dangerous than before.³⁸

4 COMPARATIVE ANALYSIS OF HUMAN RIGHTS VIOLATIONS IN SELECTED INDUSTRIES DURING THE COVID-19 ERA

Poor management of labour/human rights can expose and have exposed businesses across jurisdictions to legal, operational, and reputational risks.³⁹ In determining how companies responded to increased risks and impacts such as workforce disruption, key employee risks, and succession planning associated with the Coronavirus crisis, the Corporate Human Rights Benchmark (CHRB), part of the World Benchmarking Alliance (WBA), decided to conduct a study looking into the commitments and practices of 229 of the largest global companies in the areas of health, human resources management (HRM), work organisation, social and environmental responsibility, and crisis management.⁴⁰ It was discovered by the CHRB that most companies failed to respond well to the crisis of the pandemic by assessing the twin threats to lives and livelihoods, and devising ways to prepare against future challenges, and as a consequence thereof, the workers suffered deep-rooted inequalities. Only six per cent of these global companies consulted with workers' representatives, communities, and vulnerable groups such as women, migrant workers, disadvantaged racial or ethnic groups, and persons with underlying health conditions in order to determine how companies responded to increased risks and impacts as explained above.⁴¹

Since the outbreak of the Coronavirus, reduction of wages, unjustified, arbitrary, or mass dismissals, violations of the right to health which included lack of implementation of adequate

35 ADB "African Development Bank Announces Bold Measures to Curb Coronavirus" <https://www.afdb.org/en/news-and-events/press-releases/african-development-bank-announces-bold-measures-curb-coronavirus-34879> (accessed 29-09-2021). The ADB guidelines are ideal and comprehensive recommendations (for purposes of this article).

36 *Ibid.*

37 The various corporations referred to include companies in the banking sector. The authors of this article are first-hand witnesses to the perceived laxity towards compliance to COVID-19 safety protocols in banking halls. In the course of investigating, it was discovered that customers were only allowed into the bank if they wore nose masks, had their hands sanitised and body temperature checked; but upon gaining admittance into the banking halls, most customers would pull down their nose masks and even flout the rules as to physical distancing.

38 CDC "What You Need to Know about Variants" <https://www.cdc.gov/coronavirus/2019-ncov/variants/about-variants.html>. (accessed 8-03-2022).

39 PRI "Theme 1: Protecting Workers' Rights through the Covid-19 Crisis" <https://www.unpri.org/covid-19-resources/theme-1-protecting-workers-rights-through-the-covid-19-crisis/6342.article> (accessed 18-09-2022).

40 Murphy and Swissa "Opinion: Companies and Investors need to Prioritise Human Rights Long after the Pandemic" <https://news.trust.org/item/20210525150738-6ne42/> (accessed 14-09-2021).

41 *Ibid.* WBA "COVID-19 and Human Rights" https://assets.worldbenchmarkingalliance.org/app/uploads/2021/02/CHBR-Covid-Study_110221_FINAL.pdf (accessed 30-09-2021). The crisis of the pandemic ushered in a very tense environment. While businesses strived to survive the onslaught of the pandemic, there were heightened expectations from stakeholders such as workers' representatives, migrant workers, people with underlying health conditions etc, to also consider their interests. Unfortunately, only 6% in the report by the CHRB cared to consult with these categories of people.

health measures, exposure to or a lack of support for workers in high-risk situations, either in the workplace or in transport, “forced vacation” without pay and drops in social benefits, among others by companies, have been alleged in Mexico by the media, civil society, and other public information sources.⁴²

In the *maquiladora* industry⁴³, a very common denominator among many of the Mexican-based companies was their refusal to suspend operations when the virus broke out, and insufficient or non-existent health measures to safeguard against COVID-19.⁴⁴ It was reported by the Business and Human Rights Resource Centre (BHRRC) that the *maquiladora* industry, ill-famed for its low pay, often below the legal minimum wage, informed workers that they could go home either without any pay, with an extreme reduction in pay, or in exchange for their vacation days.⁴⁵ This effectively meant that workers, already living hand to mouth because of low pay, were forced to work in often perilous circumstances. In Ciudad Juárez, there were reports of *maquiladora* companies such as Regal maquila company forcing employees to work under threat of dismissal.⁴⁶

In the agricultural sector, farm workers of companies like Rancho Los Pinos fared no better than their counterparts in the *maquiladora*. At the start of May 2020, workers reported that at least 70 farms in the company area had not taken any sanitary measures to stop the spread of the disease.⁴⁷ The experience reviewed overcrowding in transportation and pregnant women and elderly people have continued to work in the fields.⁴⁸

In India, some journalists’ unions⁴⁹ accused media companies of “turning the lockdown into a lockout”. *Times of India Group*, the richest media company was alleged to have responded to the COVID-19 crisis by resorting to arbitrarily firing employees though it could well afford to keep them on the payroll.⁵⁰ Similarly, *The Indian Express Group* enforced pay cuts ranging

42 BHRRC “Economies of Care or Abuse? Company Behaviour in Mexico During Covid-19” https://media.business-humanrights.org/media/documents/Mexico_COVID-19_Report_EN_Final.pdf (accessed 23-09-2021); BHRRC “Companies in Mexico Putting Profit Ahead of Worker Health & Safety during Pandemic” <https://www.business-humanrights.org/en/from-us/media-centre/companies-in-mexico-putting-profits-ahead-of-worker-health-safety-during-pandemic-new-report-finds/> (accessed 16-09-2021).

43 Plamex (Plantronics) that manufactures communication devices.

44 At Plamex (Plantronics), a *maquiladora* company that manufactures communication devices, located in Tijuana, Baja California, workers said they were not provided with personal protective equipment such as gloves and facemasks, nor instructed to maintain a healthy distance from one another. According to the workers, the company refused to close even after two employees died from the infection and another had contracted the virus. At Amphenol, Lear, Hubbell, and Syncreon, workers voiced similar concerns that eventually became protests; BHRRC “Economies of Care or Abuse? Company Behaviour in Mexico during Covid-19” 8.

45 *Ibid.*

46 BHRRC “Economies of Care or Abuse? Company Behaviour in Mexico During Covid-19” 9. A “death bonus” became the colloquial phrase for any figure paid on top of workers’ wages during this period. See also, “A bonus of 700 pesos is not worth more than my life” <https://www.elheraldodejuarez.com.mx/local/un-bono-de-700-pesos-no-vale-mas-que-mi-vida-noticias-de-ciudad-juarez-5124807.html> (accessed 16-09-2021); and Ajasa, “EXCLUSIVE: Ravaged by Covid-19, GT Bank imposes mandatory vaccination for staffers, threatens to slash salaries by 50%” <https://thenewsguru.com/nigeria-news/exclusive-ravaged-by-covid-19-gtbank-imposes-mandatory-vaccination-for-staffers-threatens-to-slash-salaries-by-50/> (accessed 25-09-2021), where Guarantee Trust Bank Plc ordered the reduction of staff salary by 50% in Nigeria.

47 BHRRC “Economies of Care or Abuse? Company Behaviour in Mexico During Covid-19” 13. See also “Unprotected, More than 30 Thousand Day Labourers in San Quintín” <https://www.lavozdelafrontera.com.mx/local/desprotegidos-mas-de-30-mil-jornaleros-en-san-quintin-5186309.html> (accessed 16-09-2021).

48 *Ibid.* BHRRC “Economies of Care or Abuse? Company Behaviour in Mexico During Covid-19” 13.

49 The National Alliance of Journalists (NAJ) and Delhi Union of Journalists (DUJ).

50 “Media Companies ‘Using Lockdown’ to Lay Off Employees, Cut Salaries” <https://www.google.com/amp/s/m.thewire.in/article/media/lockdown-journalists-lay-off-pay-cut/amp> (accessed 30-09-2021).

from 10 per cent to 30 per cent for the regular staff. *The Quint* was another media giant that sent home nearly half of her workers on leave without pay until further notice while the more unfortunate ones were simply laid off.⁵¹

In Nigeria, eight banks⁵² laid off at least 3,754 workers within the lockdown period in 2020, notwithstanding the warning by the Central Bank of Nigeria (CBN) that banks should desist from sacking employees.⁵³ Interestingly, none of the banks' financial statements submitted to the Nigerian Stock Exchange (NSE) made a clear explanation of why there was a cut down in staff strength in line with international best practices.⁵⁴ About a thousand workers were sacked by *Access Bank* without full pay or disengagement entitlements, even after the bank had declared a profit of ₦102,3 billion (Naira) thereby compelling the affected staff to join the already bloated labour market which led to public outcry and condemnation. The sacking of the staff came just as the bank reportedly donated ₦1 billion to the Federal Government to help in the fight against COVID-19.⁵⁵

In the United Kingdom, *Virgin Atlantic* was heavily criticised after it forced staff to go on an eight-week unpaid leave period amid a drop in demand and unprecedented travel bans caused by the pandemic.⁵⁶ Furthermore, *Britannia Hotels* allegedly sacked and evicted workers across the United Kingdom because of the pandemic; but some of the disengaged workers alleged that security officers were sent to turn off the power in order to force them out of staff accommodation.⁵⁷ Kevin Readell, a nurse based in Oklahoma City, United States of America, was fired for insisting on wearing a mask while with patients. His employers were apparently less concerned for the safety of the health workers in their employ. They were rather worried that

51 *Ibid.*

52 Fidelity Bank, Access Bank, Zenith Bank, United Bank for Africa (UBA), Guarantee Trust Bank, First Bank, Union Bank and First City Monument Bank.

53 Ibemere "Eight Banks Sacked 3,754 staff in 2020" <https://www.google.com/amp/s/www.ripplesnigeria.com/eight-banks-sacked-nearly-3754-staff-in-2020/%3famp> (accessed 30-09-2021).

54 *Ibid.* In *Ebere Onyekachi Aloysius v Diamond Bank PLC* (2015) 58 N.L.L.R 92, the National Industrial Court of Nigeria held that employers of labour cannot arbitrarily dismiss employees. The court in this case noted that dismissing employees without just cause or with no reason at all was no longer obtainable in the twenty-first century. This decision was a bold move as it was a significant departure from the decision of the Supreme Court of Nigeria in *Fakuade v O.A.U.T.H* (1993) NWLR pt 291 47 where it was held that an employer of labour had the unfettered right to hire and fire at will.

55 Abiola Ojo, one of the sacked employees who partook in protests against the arbitrary lay-off, had noted that the termination of his employment was on the 1st of May 2020, a time "when Covid was biting hard". The reason given by the bank was "restructuring". See Alabi "Sacked Workers of Access Bank Protest Non-Payment of Full Entitlement" <https://dailytrust.com/sacked-workers-of-access-bank-protest-non-payment-of-full-entitlement> (accessed 17-09-2021).

56 Brown "The Companies People are Vowing to Boycott after the Coronavirus Pandemic is Over" <https://www.google.com/amp/s/metro.co.uk/2020/03/26/companies-people-vowing-boycott-coronavirus-pandemic-12460345/amp/> (accessed 17-09-2021). Some may consider the criticism against Virgin Atlantic as unjustified because the company was in financial trouble; thus causing the management to force the staff to go on unpaid leave for eight weeks. However, what this article has sought to highlight is the conflict of interest (in this case, as seen between Virgin Atlantic and the staff that were forced to embark on an 8-week unpaid leave period).

57 Brown "The Companies People are Vowing to Boycott after the Coronavirus Pandemic is Over" <https://www.google.com/amp/s/metro.co.uk/2020/03/26/companies-people-vowing-boycott-coronavirus-pandemic-12460345/amp/> (accessed 17-09-2021).

staff wearing the face masks would cause fear and anxiety amongst other nurses and patients.⁵⁸

The foregoing incidents represent only a few of the several human rights violations by business managers across the globe. Respect for the rights of stakeholders (especially employees) has been an often-ignored issue (in corporate governance) but the pandemic, thankfully, has brought the matter to the limelight. It is therefore necessary to examine the extent to which human rights can be protected in corporate governance in spite of the pandemic.

5 PROTECTION AND ENFORCEMENT OF SELECTED HUMAN RIGHTS IN CORPORATE GOVERNANCE DURING THE COVID-19 ERA

The COVID-19 pandemic highlights the conflicts of interest existing between companies and stakeholders. The State has an important role to play in balancing the competing interest between the interests of the company as an entity and the rights of the employees of the corporate organisations. On one end is the going concern of companies to ensure survival; while the other end echoes the clamouring of stakeholders especially as it relates to the rights of the employees as already discussed in the preceding section.

As noted, governments of each country must facilitate the ease of doing business so that going concerns may flourish. The pandemic affords an opportunity for governments to support enterprises, especially the SMEs that have been hit hard by the pandemic. Again, the pandemic affords governments at various levels the chance to protect the often-ignored labour rights. The government of each country must, therefore, ensure that business managers regard the interest of the various stakeholders, especially the employees.

In domestic and international law,⁵⁹ there is a corporate obligation to respect human rights and sovereignties must protect against human rights abuses, within their respective jurisdictions, by third parties including private and state-owned business enterprises.⁶⁰ For instance, the inalienable right of workers to human dignity is inherent and statutory. According to the preamble to the ICESCR⁶¹ the “recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world”. The ICESCR also recognises that the right to freedom from fear and want can be achieved whereby everyone may enjoy his economic, social and cultural rights, as well as his civil and political rights.⁶² Also, Article 23(3) of the UDHR provides that: “Everyone who works has the right to

58 Port *et al.* “As Coronavirus Spreads so do Reports of Companies Mistreating Workers” <https://www.google.com/amp/s/www.washingtonpost.com/business/2020/03/31/worker-retaliation-mistreatment-coronavirus/%3foutputType=amp> (accessed 17-09-2021); Ellis “The Oklahoman Nurse says Boss Ordered him not to Wear Mask’ Sues OKC Hospital for Wrongful Termination” https://tulsaworld.com/news/state-and-regional/nurse-says-boss-ordered-him-not-to-wear-mask-sues-okc-hospital-for-wrongful-termination/article_9575b024-a76d-5eaa-8cf3-53c832168eb8.html (accessed 30-09-2021).

59 See African Charter on Human and Peoples’ Rights (ACHPR), 1981; Article 10 (freedom of association), Article 11 (freedom of assembly), Article 12 (freedom of movement) and Article 27 (Precautionary principle). See Organization of African Unity (OAU), African Charter on the Rights and Welfare of the Child, 1990, CAB/LEG/24.9/49 <https://www.refworld.org/docid/3ae6b38c18.html> (accessed 29-10-2021); International Covenant for Civil and Political Rights (ICCPR), 1966 hereinafter referred to as ICCPR; Article 12 (freedom of movement), Article 21 (freedom of peaceful assembly) and Article 22 (freedom of association); ICCPR Treaty Series, 171 <https://www.refworld.org/docid/3ae6b3aa0.html> (accessed 29-10-2021) and UN General Assembly, Universal Declaration of Human Rights, 1948, 217 A (III) hereinafter UDHR.

60 UN Human Rights “Guiding Principles on Business and Human Rights: Implementing the United Nations’ Protect Respect and Remedy Framework” https://www.ohchr.org/documents/publications/guidingprinciplesbusinesshr_en.pdf (accessed 23-09-2021).

61 ICESCR. See also ACHPR 1981, Art 5 which provides that: “Every individual shall have the right to the respect of the dignity inherent in a human being and to the recognition of his legal status.”

62 See also Art 10(1) of the ICCPR which provides that: “All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.”

just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.”⁶³

The Governor of Edo state in Nigeria, Mr Godwin Obaseki, has prohibited all residents of the state from accessing public gatherings such as having access to the banks among others, except if such a person presents evidence of COVID-19 vaccination. But in a swift move, a Federal High Court in Port-Harcourt presided over by Justice Stephen Dalyop Pam granted an order restraining Edo State Governor, Godwin Obaseki and Edo state government from enforcing a directive that all residents who have not taken COVID-19 vaccines will be prevented from accessing banks, event centres, public places, among others, from the middle of September 2021.⁶⁴ Also in the US state of Ohio, a law has also been enacted prohibiting mandatory COVID-19 vaccination by students and employees.⁶⁵

Articles 8⁶⁶ and 9⁶⁷ of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR),⁶⁸ recognise the rights to private and family life, and freedom of thought, conscience, and religion. Both provisions respectively indicate that individuals including employees of companies should have control over the actions in which they partake. Compulsory vaccination may however be reasonably justified where it can be confirmed that it will work directly in line with an aim to protect the interests of public health and safety.⁶⁹

The general rule of medical ethics and international human rights law is that a person must give permission before they receive any type of medical treatment, test, or examination.⁷⁰

This general rule of voluntary and informed consent to medical treatment is not without exceptions, especially where there is a risk to public health based on legal ethical, and social considerations. The concept of compulsory vaccination against COVID-19 might be premised on the need to prevent risk to public health. Of course, this must encompass the individual interest of a patient who may be suffering from some underlying diseases which could be complicated

63 Some of these international instruments have been domesticated in some countries. See, for instance, Gelber “The Universal Declaration of Human Rights at 70: Protection of Human Rights in Australia” <https://www.internationalaffairs.org.au/australianoutlook/the-universal-declaration-of-human-rights-at-70-protection-of-human-rights-in-australia/> (accessed 09-03-2022). See also ACHPR (Ratification and Enforcement) Act (the African Charter Act) of 1979 which ratifies the ACHPR.

64 *Charles Osaretin v Governor of Edo State* (2021) FHC/PH/FHR/266/2021.

65 Donovan and Kent “Ohio Law Prohibits COVID-19 Vaccination Mandates for Public Schools; Outlaws Mandates of Vaccines without ‘Full’ FDA Approval and ‘Discrimination’ against Unvaccinated” <https://www.bricker.com/industries-practices/schools/insights-resources/publications/ohio-law-prohibits-covid-19-vaccination-mandates-for-public-schools-outlaws-mandates-of-vaccines-without-“full”-fda-approval-and-“discrimination”-against-unvaccinated> (accessed 09-11-2021).

66 Article 8 of ECHR provides that everyone has the right to respect for his private and family life, his home, and his correspondence. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety, or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

67 Article 9 of ECHR provides that everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice, and observance. Freedom to manifest one’s religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.

68 As amended by Protocols No. 15 (CETS No. 213).

69 Chia “Student Essay: Is Compulsory COVID-19 Vaccination a Violation of Human Rights?” <https://www.hhrjournal.org/2021/07/student-essay-is-compulsory-covid-19-vaccination-a-violation-of-human-rights/> (accessed 09-11-2021).

70 NHZ “Consent to Treatment Contents Overview” <https://www.nhs.uk/conditions/consent-to-treatment/> (accessed 26-10-2021).

by the administration of vaccines or the COVID-19 vaccine.⁷¹ This must be reconciled with the extent to which the non-vaccination of the individual may endanger public safety, in the midst of rumours of side effects of COVID-19 vaccines which have led to vaccination hesitancy.⁷² It may not be out of place to intensify campaigns that will enhance vaccination confidence, rather than the current attempt by business managers and various governments to force workers to comply with COVID-19 vaccination.

In Kashmir, healthcare workers were unable to access the latest updates and guidelines pertaining to the prevention and management of COVID-19.⁷³ This was due to the sudden abrogation of the constitutional position of Article 370 of 1947 that granted semi-autonomous rights and acknowledged the special status of Jammu and Kashmir (J&K) in India which led to a major social upheaval thereby leading the government to suspend all forms of communication, internet links among other measures.⁷⁴ Also, the ban on high-speed internet impacted negatively workers who had to work from home, which denied them the opportunity of discharging their duties effectively. Modern health safety measures to combat COVID-19 require digitised contact tracing and remote diagnoses, which are rapidly scaling up in many countries. The role of big data, technology, and artificial intelligence in the prevention, detection, tracing, and treatment of the COVID-19 pandemic cannot be over-emphasised. Most countries of the world therefore now work, socialise, shop, and seek entertainment and love online in order to reduce the rate of transmission.⁷⁵

Public health surveillance has been defined as the systematic collection, storage, usage and dissemination of personal information to identify an outbreak and mitigate the spread of disease.⁷⁶ The use of new technologies, including global positioning systems, cell phone apps, and facial recognition, have become imperative for surveillance monitoring to control the spread of COVID-19 pandemic without compromising the necessity for protection of the rights to health, life, or privacy. Reports across jurisdictions indicate that this development has a negative impact on employees who are supposed to make mandatory downloads of the Contact Tracing App in India⁷⁷ and Singapore,⁷⁸ while fears have been expressed that Serco, SITEL, and Amazon Web Services in the United Kingdom have access to users' data, and these data are reported to be held for 20 years.⁷⁹

Data collection, especially during the treatment of COVID-19 and surveillance monitoring, are

71 For cases where the court made an order for COVID-19 vaccination based on the interest of the individual in the United Kingdom, see Smith "4 Important Cases about the Covid-19 Vaccine" <https://www.bih.org.uk/blog/4-cases-covid-19-vaccine> (accessed 29-10-2021).

72 Olatunji *et al.* "Infodemic in a Pandemic: COVID-19 Conspiracy Theories in an African Country" <https://www.shbonweb.com/article.asp?issn=25899767;year=2020;volume=3;issue=4;spage=152;epage=157;aulast=Olatunji> (accessed 29-10-2021).

73 Zubairi and Baqal "Kashmir: Public Health and Human Rights Crises" <https://www.hhrjournal.org/2021/07/kashmir-public-health-and-human-rights-crises/> (accessed 08-11-2021).

74 *Ibid.*

75 Davis and Williams "Health and Human Rights in the Digital Age" <https://cdn1.sph.harvard.edu/wp-content/uploads/sites/2469/2020/12/editorial.pdf> (accessed 09-11-2021).

76 Gostin, *Public Health Law and Ethics: A Reader*, 2 ed (2010) 285.

77 Phartiyal "India Orders Coronavirus Tracing App for All Workers" <https://www.reuters.com/article/us-health-coronavirus-india-app-idUSKBN22E07K> (accessed 09-11-2021).

78 Privacy International "Singapore Contact Tracing App Made Mandatory for Migrant Workers" <https://privacyinternational.org/examples/3890/singapore-contact-tracing-app-made-mandatory-migrant-workers> (accessed 09-11-2021).

79 Sekalala *et al.* "Analyzing the Human Rights Impact of Increased Digital Public Health Surveillance during the COVID-19 Crisis" <https://cdn1.sph.harvard.edu/wp-content/uploads/sites/2469/2020/12/Sekalala.pdf> (accessed 09-11-2021).

capable of infringing the right of workers to privacy⁸⁰ and clinicians are expected to maintain utmost confidentiality when dealing with patients. These rights are however not absolute because they could be derogated based on a law reasonably justifiable in democratic society.⁸¹ In determining the extent to which the human rights of workers are limited, the proper approach is to apply the rationality test to ascertain the rational connection between the intervention or the curtailment measures and the purpose for which the measures have been taken. Therefore, the measures will only be reasonably justifiable in an open and democratic society based on the protection of human dignity, equality and freedom where the measures are legal, temporary, necessary, and proportional.⁸²

The legality of the measures stipulated under regulations can be tested by ascertaining whether the regulations are lawfully made under existing relevant laws such as the Nigerian Quarantine Act,⁸³ 1926 or the South African Disaster Management Act.⁸⁴ The courts in South Africa have been very active in cases concerning the constitutionality of the regulations made to prescribe curtailment measures against COVID-19.

In *Mohamed vs The President of the Republic of South Africa*,⁸⁵ the constitutionality of Regulation 1B(i) and (ii) purportedly made under section 27 of the South African Disaster Management Act was attacked by the plaintiff for being overbroad, excessive, and unconstitutional. The high court presided over by Neukircher, J held that the restrictions in force, which constituted a blanket ban on religious gatherings, are not unreasonable and unjustifiable and therefore dismissed the application. Also, in *The Minister of Cooperative Governance and Traditional Affairs v De Beer*,⁸⁶ the South African Supreme Court of Appeal allowed the appeal against the judgment of the High Court which declared some of the measures arbitrary, excessive, unreasonable and unconstitutional.

Apart from ascertaining whether the COVID-19 curtailment regulations were made under the enabling law, Davis J in *De Beer v The Minister of Cooperative Governance and Traditional Affairs*⁸⁷ also attempted to illustrate the absurdity in rationalising the method of distribution of food as a relief package in the following words:

The practicalities or otherwise of distributing aid relief in the form of food parcels illustrates the absurdity in people living in different locations and then only in passing on the way to school or places of employment on any given day prior to the regulations, but are now forced to congregate in huge numbers, sometimes for days, in order to obtain food which they would otherwise have prepared or acquired for themselves.⁸⁸

The measures must be temporary in the sense that they must be made for a specified period, based on the necessity or exigency of the situation. In other words, the measures must be time

80 See for instance, Constitution of the Federal Republic of Nigeria, Cap C 23, Laws of the Federation of Nigeria (LFN) 2004 hereinafter 1999 Nigerian Constitution, s 37; The Nigerian Code of Medical Ethics 1995, Rules 8, 9, 24 and 44; Nigerian National Health Act, 2014, s 26.

81 Constitution of the Republic of South Africa No. 108 of 1996 s 36; 1999 Nigerian Constitution, s 39 subsec 3; *Salabiaku v France* (1988) 13 EHRR 379.

82 Muzila *et al.* "On the Take Criminalizing Illicit Enrichment to Fight Corruption" <https://documents1.worldbank.org/curated/en/958781468339641204/pdf/On-the-take-criminalizing-illicit-enrichment-to-fight-corruption.pdf> (accessed 29-10-2021).

83 CAP Q2, Laws of the Federation of Nigeria (LFN), 2004.

84 Act No 57, 2002.

85 [2001] ZACC 18- SAFLII; 2001 (7) BCLR 685 CC.

86 (538/2020) 2021 ZASCA 95; 2021 3 All SA 723.

87 *De Beer v The Minister of Cooperative Governance and Traditional Affairs* (21542/2020) 2020 ZAGPPHC 184.

88 *Ibid.* 24.

specific. The intriguing aspect of *De Beer* was made apparent when the same High Court was approached during the pendency of the appeal at the Supreme Court of Appeal, requesting the High Court to make an enforcement order of the judgment. Even though the High Court had earlier refused the leave to appeal against most of the grounds, the court refused to make the enforcement order based on the factual situation which has now reasonably justified the making of the curtailment regulations. The Court held that attempting to pin down a factual position against which the application of the principle of rationality must be judged, can be likened to attempting to hit a moving target.⁸⁹

However, in *Khosa v Minister of Defence and Military Defence and Military Veterans*⁹⁰ where the parties agreed that the regulations containing COVID-19 curtailment measures are necessary and constitutional, the issue was whether, in the enforcement of the measures, excessive use of force can be applied and have been applied by the relevant security agencies. The High Court held that notwithstanding the declaration of the State of Disaster and the lockdown under the South African Disaster Management Act, all persons present in South Africa are entitled to the right to human dignity, the right to life, the right not to be tortured in any way, and the right not to be treated or punished in a cruel, inhuman or degrading way in accordance with sections 10, 11, 12 (1)(d) and 12(1)(e) of the Constitution of South Africa, respectively.

According to WHO, countries should strike a fine balance between protecting health, minimising economic and social disruption and respecting human rights.⁹¹ Thus, governments should ensure that businesses domiciled within their jurisdiction respect human rights in their operations. This is especially important in this time of crisis occasioned by the COVID-19 virus.⁹² The aforementioned equidistance can be effected through proper enforcement of extant labour laws and enactment of new regulatory laws to address the challenges posed by the COVID-19 pandemic which were not hitherto contemplated by the legislature. By extension, governments should begin with a sufficiently robust public health response, tying reopening guidelines to testing and incidence thresholds, establishing sufficient test-and-trace regimes, and making personal protective equipment widely available. It would involve establishing and enforcing workplace standards that would keep both workers and the broader public healthier, giving workers a voice in determining appropriate standards and ensuring that they have recourse when standards are not met. This approach is expected to focus on empowering and appropriately compensating workers in the form of job-retention schemes during the COVID-19 lockdown and by creating an economic recovery that supports better-paying jobs. This approach will protect not only those at risk of contracting the virus at work, but it will also protect the broader community from the spread of COVID-19 and put the economy on a stronger footing for all and sundry.⁹³

The responsibility to respect human rights is a global standard of expected conduct for all business enterprises wherever they operate. The importance of this responsibility has been magnified by the pandemic. It exists independently of States' abilities and/or willingness to

89 *De Beer*.

90 (21512/2020) 2020 ZAGPPHC 147.

91 WHO "WHO Director-General's Opening Remarks at the Mission Briefing on COVID-19" <https://www.who.int/director-general/speeches/detail/who-director-general-s-opening-remarks-at-the-mission-briefing-on-covid-19---12-march-2020> (accessed 29-10-2021).

92 Port and McGregor "As Coronavirus Spreads so do Reports of Companies Mistreating Workers" <https://www.google.com/amp/s/www.washingtonpost.com/business/2020/03/31/worker-retaliation-mistreatment-coronavirus/%3foutputType=amp> (accessed 17-09-2021); Ellis "The Oklahoman sues OKC Hospital for Wrongful Termination".

93 Leibenluft and Olisky "Protecting Worker Safety and Economic Security during the Covid-19 Reopening" <https://www.americanprogress.org/issues/economy/news/2020/06/11/486146/protecting-worker-safety-economic-security-covid-19-reopening/> (accessed 18-09-2021).

fulfil their own human rights obligations, and it does not in any way diminish those obligations which exist over and above compliance with national laws and regulations protecting human rights.⁹⁴

Furthermore, it is expected of business managers to enact policies that will indicate their commitment to respect and protect human rights. These policies must be endorsed by the board of directors and members generally.⁹⁵ Another guaranteed way of enforcing and protecting human rights violations by companies during the pandemic is to seek redress. This will entail considering ways to reduce legal, practical, and other relevant barriers that could lead to a denial of access to remedy.⁹⁶ It is hoped that the various governments and other regulatory bodies will ensure that businesses are conducted with due regard to the rights of relevant stakeholders in society.

5 CONCLUSION

An attempt has been made in this article to assess the challenges of corporate governance amid the crisis of the COVID-19 pandemic. Essentially, the focal challenge of corporate governance becomes a quest to address the expectations earlier discussed in the article. Corporate responses to the clamouring of various stakeholders have necessitated human rights violations which, before now, were often ignored; thankfully, the pandemic has given these human rights issues the attention they deserve.

Discussions in this article affirm the competing interests of business enterprises on one hand, and that of stakeholders on the other. Further, it suggests an equidistant approach that necessitates the all-important role of the State in protecting and enforcing the interests at stake, most especially, the concerns of employees who form an essential unit in the stakeholder-centric force that fuels the company as a going concern.

As long as the pandemic lasts, businesses (especially those heavily affected by the effects of the pandemic) must adapt to the novel challenges of the environment. Therefore, economic adaptation should be encouraged in an all-inclusive approach to minimise the challenges of the pandemic on corporate governance.

94 UN Human Rights “Guiding Principles on Business and Human Rights: Implementing the United Nations’ Protect, Respect and Remedy Framework” https://www.ohchr.org/documents/publications/guidingprinciplesbusinesshr_en.pdf (accessed 23-09-2021).

95 *Ibid.* 16. The point above is made, notwithstanding the existence of the various codes of corporate governance and related laws in existence such as the Oxley Act in the US and the Cadbury Committee Report in the UK; the Financial Reporting Council of Nigeria Code of Corporate Governance 2018 (FRCN code), the Code of Corporate Governance for Licensed Pension Operators (PENCOM code), the SEC Code of Corporate Governance in Nigeria 2011 (Applicable to Publicly Listed Companies); the Code of Corporate Governance for Banks in Nigeria Post-Consolidation 2006 (CBN code) and the NAICOM Code of Corporate Governance for the Insurance Industry in Nigeria 2009 (NAICOM code). In theory, the existence of these laws is quite commendable, but the outbreak of the pandemic became a clear indication that more commitment was needed from corporate bodies to respect and protect the human rights/interests of employees. What better way to do so than by making in-house policies on corporate governance that go beyond complying with the requirements of law. These in-house generated policies are expected to have an organic flavour since concerned stakeholders have been involved in the making of such policies.

96 *Ibid.* 28.