

# Can Covid-19 Considered as Force Majeure Event in the Nigeria Construction Industry?

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**Abstract**— World Health Organization (WHO) declared the Chinese outbreak of Covid-19 to be a public health emergency of international concern posing a high risk to countries with vulnerable health systems. The effectiveness of quarantine also known as lockdown measures to curtail the spread of the pandemic due to novel infectious pathogens where no vaccine is available has often been a subject of debate. The study aimed at evaluating whether covid-19 is considered as force majeure event in the Nigeria construction industry. Descriptive statistics is used for data interpretation and presentation. The researcher submitted an online questionnaire survey titled “Can Covid-19 considered as force majeure event in the Nigeria construction industry?” Thirty three respondents across professionals in the built environment responded to the questionnaire. The researcher adopted the use of descriptive statistic in the analysis and data was presented in figures and tables. From the findings, it was discovered that covid-19 has a great effect in the construction industry in Nigeria as it has hinders site work, affect Bill of Quantities, affect project completion, affect Law of contract and therefore is capable of causing Force Majeure event in the Nigeria construction industry. The study further discovered that Professionals are faced with some challenges ranging from professional challenges and the one caused by Covid-19 in the construction industry. It is therefore recommended that parties should tender a claim relieving them from Force majeure event in a good time; Force Majeure provision in a contract agreement should be review in other to mitigate Covid-19 challenges poses in the contract.

**Keywords**— Covid-19, Force Majeure, Nigeria, Construction Industry, Law of Contract.

## I. INTRODUCTION

The novel corona virus disease known and called Covid-19 is currently a highly infectious virus that spreads rapidly among the humans and was regarded as responsible for having tremendous health issues, economic and social impacts on every facet of the environment (Sohrabi et al., 2020). Since covid-19 escalate due to traveling associated cases, a border screening have being introduced and implemented by many countries. China one of the major investor in Nigeria has ban travel to Hubei province the origin of the covid-19 (Phelan et al., 2020). According to WHO, the key goal is to minimize the economic impact of the virus and to counter misinformation on a global scale. The introduction of some measures such as quarantine or lockdown to curtail the rapid spread of the pandemic due to novel virus infectious where vaccine is still not available in the wide world has often been a major problem in the construction sector and other economic activities nationwide (Anzai et al., 2020). The Nigerian minister of finance Ahmed Zainab reported that, the corona virus outbreak has impacted negatively to oil revenue in Nigeria which will cause a mid-term review of the 2020 budget. Looking at how significant the covid-19 had on business in china, Iain elder, et al, (2020) suggest the major steps parties to construction contract will take in safeguarding their positions in view of the emerging situation. Numerous numbers of contractual provisions suggested a special list of events of the force majeure which are capable of becoming force majeure beyond the control of the parties, such as pandemics, epidemics or disease. However, Iain Elder et al,

(2020) opine that, if the provision does not include language to that effect then it will be necessary to consider whether covid-19, or its impact on the Construction project, is captured by a different concepts, such as “Act of God”, action by government, or a catch-all provision. Therefore, the study aimed at evaluating whether covid-19 is considered as event of force majeure in the Nigeria construction industry.

## II. COVID-19 THE GLOBAL PERSPECTIVE

The novel corona virus disease (formally known and called 2019 – nCov and renamed Covid -19) has a cases of about 51800 as at February 15, 2020, including more than 1600 deaths in Hubei province of china. And about 526 laboratories confirmed new cases have been reported across 25 other countries (Vetter et al., 2020). As of 29 February, 2020, over 85,700 cases of covid-19 were identified across 62 countries and territories worldwide according to worldometer, a reference website that provides real-time world statistics. Currently SARS-COV-2 has now spread to all continents excluding Antarctica. Of these 62 countries, Italy has the highest/largest outbreak of covid-19 outside Asia (Porcheddu et al., 2020). So many countries across the globe confirmed travelling as major issue, which include Australia, France, Canada, Germany Cambodia, France, Japan, Nepal, Singapore, Taiwan, South Korea, Thailand, United Arab Emirate, USA and Vietnam. Vietnam identified the first human being to human being transmission outside Wuhan - china, yet; there is knowledge gaps which exist on how to characterize the risk, which include confirmation of zoonotic

source, transmission efficiency, exact clinical systems, the severity of the disease and finally the fatalities rates.

### III. MEASURES TAKEN BY GOVERNMENT WHOLEWIDE

Since covid-19 escalate due to traveling associated cases, a border screening have being introduced and implemented by many countries. China itself has ban travel to Hubei province the origin of the covid-19. Consequently, according to Haider et al., 2020, government worldwide felt the need to ban travel from china the origin of covid-19, with two exceptions: North Korea has put a stop to all Chinese from coming in and Kyrgyzstan has temporarily closed its borders with china. Covid-19 is caused by a betacoronavirus named SARS-coV-2 that affects the lower respiratory track of human being and manifests as pneumonia. Despite the rigorous and global containment and the introduction of quarantine (lockdown) efforts, the incidence of the covid-19 continues to shot up, with 90,870 confirmed cases and more than 3,000 deaths worldwide and still counting.

#### A. Global Health Emergency of WHO

The World Health Organization (WHO) have declared the covid-19 as public health emergency that will attract international concern which pose a high risk to countries with vulnerable health systems on 30<sup>th</sup> January, 2020. The emergency committee set up by WHO has stated that the spread of the covid-19 can be curtailed and interrupted by prompt treatment, early detection, isolation, and to implement a robust system in tracing contacts. Other useful strategic and objectives include a means of ascertaining clinical severity, the extent of transmission and optimizing treatment options. A key goal is to minimize the economic impact of the virus and to counter misinformation on a global scale. In light of the forgoing, various researchers and professional bodies have committed to make so many articles pertaining to the covid-19 immediately and make available via open access to support the global response.

#### B. Covid-19 Global Response

According to Sohrabi et al., (2020), the EU mobilize woofing sum of 10,000,000 as research fund in her effort to deciphering the path physiology of covid-19 which will contribute to so many efficient and clinical management of people infected with the corona virus, as well as public health preparedness and response

#### C. Introduction of Lockdown Measures

Anzai et al., (2020), opine that, the effectiveness of quarantine or lockdown measures to curtail the rapid spread of a pandemic due to the novel infectious pathogens where vaccine is still not available has become an issue of debate. Under normal circumstance, border control is an effort that does not go beyond entry screening. All travelling arrangements that include tourist tours is outbound from china that is organized by the Chinese travel agencies were suspended and later cancelled, and all non-urgent travel with business purposes both inbound and outbound were reduced greatly (Anzai et al., 2020). Among various kind of disasters, epidemic disease outbreak may pose tremendous treats for

human beings, and it may, if inefficiently controlled, further become a pandemic and lead to a global crisis (Yu et al., 2020). Chinazzi et al., (2020) maintained that, the concurrent and presence of both travel and transmissibility restriction, however, produce a larger synergistic effect that is visible by both delaying the pandemic activities in china and the number of international cases imported. In the moderate transmissibility reduction, the pandemic is delayed to last quarter of June, 2020 and the total numbers of the international cases importations by 1<sup>st</sup> march, 2020 is twenty six (26) and five (5) detected cases daily for the forty percent (40%) and ninety percent (90%) travel restrictions scenarios respectively. WHO announce the current novel corona virus disease known as covid-19 on the 30<sup>th</sup> Jan, 2020 as public health emergency that concerns the international community (Gilbert et al., 2020). The entire six (6) continent in the world reported confirmed cases of covid-19.

### IV. AFRICAN PERSPECTIVE

Egypt is the first country in Africa to record the first case of covid-19 on the 14<sup>th</sup> February, 2020 (Gilbert et al., 2020). China being the top most commercial partner of Africa, there is a tendency though which severe acute respiratory syndrome Covid -19 could reach the African countries due to the volumes of travels (Gilbert et al., 2020). Communities with dense traffic with china like Africa are the most vulnerable. most of the African countries don't have sufficient and appropriate diagnosis centers to cater for the challenges of covid-19 outbreaks which if care is not taking, the disease will hit Africa (Velavan & Meyer, 2020). According to WHO, the countries in Africa that are at risk of covid-19 include, (Algeria, Angola, Cote D'ivoire, the democratic republic of the Congo, Ethiopia, Ghana, Kenya, Mauritius, Nigeria, south Africa, Tanzania, Uganda and Zambia) due to the business link and volumes of travel between the countries and china (Velavan & Meyer, 2020). (Rasmussen et al., 2020) opined that, Egypt, Algeria and South Africa had the highest importation risk of covid-19 due to the moderate to high capacity in responding to the outbreaks. And Nigeria, Tanzania, Sudan, Ethiopia, Kenya Angola and Ghana had minimum risk with a variable capacity and high vulnerability. The African union commission, African center for disease control and prevention (ACDC), and WHO came up with a strategy which allow for collaboration, communication and effective coordination and also established the Africa taskforce for corona virus preparedness and response (AFTCOR) with view to having (6) streams of work vis: diagnosis in the laboratory and sub typing, clinical management, supply chain management of patients with severe covid-19 and stockpiles. (Nkengasong & Mankoula, 2020).

### V. NIGERIAN PERSPECTIVE

Nigeria records its first confirm case on 27<sup>th</sup> February, 2020 when an Italian citizen arrived in Lagos and tested positive for covid-19, and the second suspected case was reported in contact with the Italian citizen which later confirmed to be negative on 13<sup>th</sup> march, 2020. The federal

government of Nigeria gave the assurance to its citizen of her redness to strengthen surveillance at the five international airports (Abuja, Enugu, Lagos, rivers and Kano) to prevent the spread of covid-19 on the 28<sup>th</sup> Jan, 2020.

#### CONSTRUCTION INDUSTRY IN NIGERIA

According to Sanusi, (2009), the last decade Nigerian witness several changes, which have assisted all sectors of the nation's economy, especially the construction and building sector. With tremendous growth rates in the last decade, the construction industry in Nigeria has outgrown all other sectors of the Nigerian economy. However, construction industry's contribution to the Nigerian gross domestic product (GDP) and employment of labor are still not encouraging. Despite the huge success recorded, the industry faces significant challenges among which are, lack of local skilled labor in some complex project, unavailability of materials, power shortage and unethical practices that are very common in the industry. However, there are several opportunities that exist in the industry especially in the ICT, subcontracting sectors and education which makes the sector very attractive for investors. Isa et al., (2013) opine that, the construction industry in Nigeria has witnessed an overwhelming upsurge in construction contracting dominated by expatriate companies with few indigenous companies. Isa et al., (2013) in a related development observed that, Nigeria is one among the developing countries that her construction industry is still struggling with a lot of intrinsic challenges, from material and equipment capital base, inadequate technical and managerial know-how to insufficient financial. However, Isa et al., (2013) in another development suggest that, the industry is also full of inherent potentials, such as self-sufficiency in cement production that will stabilize the materials sector and the huge deficit in physical infrastructure (road, airport, rail, and sea port) that will be of important to creating job opportunities to our teaming youth for sustainable development (International Council for Building (CIB)).

#### REQUIREMENT FOR EXIT AND ENTRY TO NIGERIA

The federal government of Nigeria issued an embargo to travelers from high covid-19 incidence countries of china, Italy, Norway, Japan, Spain, Iran, France, South Korea, UK, Germany, Switzerland and Netherland, effective from 21<sup>st</sup>/3/2020 from 19/3/2020 to 22/4/2020 of initial period. And directed the stoppage of all visa on arrival to travelers of the affected countries.

##### 1. NEGATIVE IMPACT OF COVID-19 TO NIGERIA BUDGET

According to the Nigerian minister of finance Ahmed Zainab, the corona virus outbreak has impacted negatively to oil revenue in Nigeria which will cause a mid-term review of the 2020 budget. The development came as a result of dropped from the international oil price which dropped to 52 dollars below the budget benchmark of 57 dollars/barrels that has negative impact on the nation's estimated revenue for the fiscal year. However, the study aimed at evaluating whether covid-19 is a force majeure in Nigerian construction industry

##### 2. IMPACT OF COVID-19 TO THE NIGERIA CONSTRUCTION INDUSTRY

To relate covid-19 with force majeure, it's considered how the force majeure events provisions in construction contract and related to law of doctrine of frustration which may be engage in the context of the covid-19 outbreak.

##### 3. EVENT OF FORCE MAJEURE

The test of force majeure event would have to satisfy the following criteria (Nicholas et al, 2020);

1. The event must be beyond the reasonable control of the affected party
2. The affected party must have taken all reasonable steps to seek to avoid or mitigate the event or its consequences
3. The affected party's ability to perform its obligations under the contract must have been prevented, impeded or hindered by the event.

##### 4. THE EVENT THAT CAUSES FORCE MAJEURE

The event that constitute force majeure are; political force majeure, that deals with risk related to the changes in the legal or political environment and the natural force majeure or non-political force majeure, that deals with the physical risks which might impact on a project or business. Iain Elder et al, (2020) viewed these different categories as often provide different remedies like an extension of time (EOT) and increased costs (for cases of political force majeure) or an EOT for completion and relief from termination (for cases of natural force majeure e.g. Covid-19). So many contractual provisions have set out a special list of force majeure events which are deemed to be event of force majeure beyond the control of the parties, such as pandemics, epidemics or disease. However, if the provision does not include language to that effect then it will be necessary to consider whether covid-19, or its impact on the project, is captured by different concepts, such as action by government, act of God and a catch-all provision (Iain Elder et al, 2020)

##### 5. CONSEQUENCES

Xiang et al., (2020) suggest that, Contractual remedies of force majeure event to include an Extension of time (EOT) which performs those obligations or the suspension of contractual performance for the period of the Force majeure (FM) event to extent over long period of time, some provisions may entitle the parties to repudiate the contract. Some companies, are declaring Force majeure in response to the difficulties they face as a result of covid-19, while government of china is also issuing certificate of Force majeure to the companies that are unable to meet up with their contractual obligations in an attempts to protect the company from payments of liquidated and ascertain damages (LAD) and breach of contract claims (Xiang et al., 2020) (Brian Perrott et al, 2020).

##### 6. FORCE MAJEURE CLAUSE

1. Deciding whether the pandemic is a force majeure event depends solely on the contractual

agreement/clause. When a pandemic or disease is not expressly stated or included, it may be referring to as catch-all provision or act of God but, that will require serious consideration.

2. The parties to a contract will consider force majeure event to be excuse of non- performance if there is a force majeure clause in the contract. Aside of the concept of contract frustration, the English common law has no general concept of force majeure , and force majeure cannot be implied into an English law of contract.
3. Either of the parties (precisely the contractor) will notify in writing that, a force majeure event has occur which is beyond its control, that has delayed, prevented or hindered its performance of the contract and all efforts to avert or mitigate the event or its consequences proved abortive.
4. The contractual clause will decide whether the covid-19 is a force majeure event. Even if the contract contains a force majeure provision. There is no certainty that a party should rely solely on it to protect him against paying liquidated damages claims for non performance as a result of the situation caused by the covid-19 outbreak because of their serious impact on the party’s right and obligations. force majeure clause are interpreted strictly by the English court so, it is necessary to consider the precise terms of any clause in the contract agreement (Xiang et al., 2020) (Brian Perrott et al, 2020).

## VI. METHODOLOGY

The methodology used for this study is a case study research which relies on a digital interview and questionnaire survey distributed among the players and professionals in the construction industry. Descriptive statistics is used for data interpretation and presentation. According to Igwenagu, (2016), he sees methodology as the theoretical analysis and systematic, methods that is applied to a field of study. It comprises the theoretical analysis of the body of principles and methods associated with a branch of knowledge. It is therefore encompasses concepts of paradigm, model, phases, theoretical and qualitative or quantitative techniques. The researcher submitted an online questionnaire survey titled “Can Covid-19 considered as event of force majeure in the Nigeria construction industry?” Thirty three respondents across professionals in the built environment responded to the questionnaire. The researcher adopted the use of descriptive statistic in the analysis and data was presented in figures and tables.

## VII. RESULT OF THE STUDY

The result of the study was presented in two sections. The first section presented the background information of the respondents in terms of their discipline, level of study, professional membership, and duration of practice. Table 1 shows the background information of the respondents:

### DATA ANALYSIS

#### BACKGROUND DATA OF THE RESPONDENT

SN	Items	Frequency	percent
1	Level of study		
	i. HND/DEGREE	9	27.3
	ii. PGD/MASTER	15	45.5
	iii. PHD	9	27.3
	Total	33	100.0
2.	Discipline		
	i. Q/S	15	45.5
	ii. ARCHITECTURE	3	9.1
	iii. BUILDING	5	15.2
	iv. URP	1	3.0
	v. OTHERS	9	27.3
	Total	33	100.0
3.	Professional Membership		
	i. MNIQS	6	18.2
	ii. MNIA	1	3.0
	iii. MNIOB	3	9.1
	iv. TOPREC	1	3.0
	v. OTHERS	22	66.7
	Total	33	100.0
4	Duration of Practice		
	i. 1 - 5yrs	9	27.3
	ii. 6 - 10yrs	17	51.5
	iii. 11 and above	7	21.2
	Total	33	100.0

Table 1 indicated that the level of study of the respondent were Hnd/Degree, Pgd/Master and PhD respectively. The table showed that 9 Hnd/Degree students made up the 27.3% of the participants while 15 Pgd/Masters students constituted 45.5% and also 9 PhD students constituted 27.3%. This implied that only holders of first, second and third degree partake in the study. Therefore, holders of first, second and third degree were evenly represented. The table also indicated that respondents used in this study differed according to their discipline/profession. 15 participants (45.5%) were Quantity Surveyors, 3 participants (9.1%) were Architectures, and 5 participants (15.2%) were Building Technology, 1 participant (3.0%) study Urban and Regional Planning, while 9 other respondents constituted (27.3%) respectively. This shows that reasonable numbers of professionals in the built environment were represented and involve in the study. Figure 1 shows Professional participation in the study

The above radar diagram depict the professional perceptions and it frequency responses together with it exact percentages. Quantity surveyor has 15 responses which represent 46 percent that shows Quantity surveyor has more responses because the study is more direct to the quantity surveying profession, Architecture has 3 responses which represent 9 percent which has low response , Building Technology has 5 responses which represent 15 percent and is the second after Quantity Surveyors because the study is also direct to the Building profession, Urban and Regional Planning has very low representation of 1 response with 3 percent and finally, others which comprises different professionals in the built environment also has 9 responses which represent about 27 percent. This shows that reasonable numbers of professionals in the built environment were represented and involve in the study.

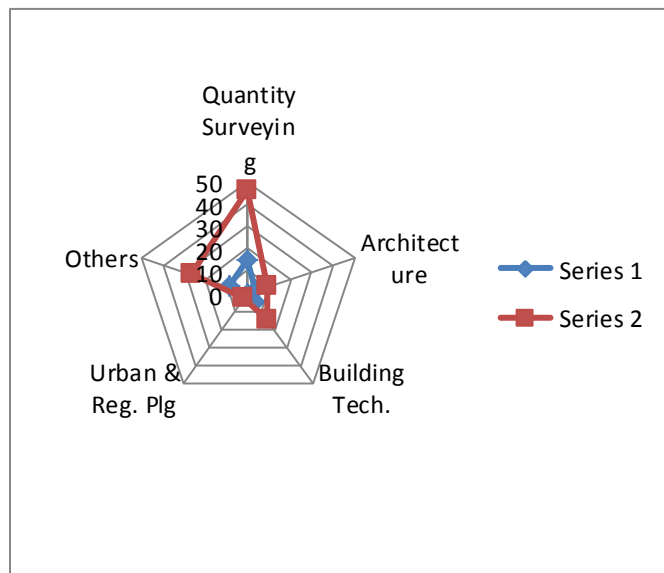


Figure 1. Professional participation

Moreover, the table 1 indicated that the participants in the study comprised of professional membership of their respective field of study. 6 out of 15 Quantity Surveyors are members of the Nigerian Institute of Quantity Surveyors (MNIQS) which constitute 18.2%, 1 out of 3 Architectures is a member of the Nigeria Institute of Architectures (MNIA) and constitute 3.0%, 3 of 5 Building Engineers are members of the Nigerian Institute of Builder (MNIOB) which made up 9.1%, the only Urban and Regional Planner that participated in the study is a registered member of Town Planning Registration Council (TOPREC) with 3.0%, lastly. 22 other professionals constituted 66.7% respectively. Therefore, the professional membership is also represented in the study. Lastly, the table also indicated the duration of practice of the professional members. 9 members across the professionals that practice between 1 – 5 years constituted 27.3%, 17 members between 6 – 10 years of practice constituted 51.5% and 7 members across the profession practiced between 11 years and above. Therefore, based on the duration of practice, it shows that the members are vast in their respective field of endeavors.

The second part of the analysis, centered on the presentation of data of the respondents based on the effects of Covid-19 in the construction industry. It is shown in the analyses that, any mean score that is less than or equals to 0.5 ( $\sum \leq 0.5$ ), was considered as “disagreed” by the respondents and any mean score that equals to 1 ( $\sum = 1$ ), was considered as a “neutral” ground of the respondents, while, any mean score that is equal or greater than 1. ( $\sum \geq 1$ ) was considered as an “agreed” opinion of the respondents. All the responses were presented in tables.

Data presented in table 2 indicated that all the responses were positive that is, all the average scores of the respondents were equal or greater than 1. This suggest that the majority of respondents are practicing their respective profession (M=1.0909), they agreed that Covid-19 hinders site work (M=1.1212), Covid-19 affect Bill of Quantities (M=1.1818), Covid-19 affect Project Completion (M=1.0000), Covid-19

may likely affect Law of contract (M=1.1818) and lastly, Covid-19 may be considered as Force Majeure (M1.0606).

TABLE 2. Effects of Covid-19 in the Construction Industry

Statements	N	Mean	Std. Deviation
Professional Practice	33	1.0909	.29194
Covid-19 Hinders site work	33	1.1212	.33143
Covid-19 Affects Bill of Quantities	33	1.1818	.39167
Covid-19 Affects Project Completion	33	1.0000	.00000
Covid-19 May likely Affects law of Contract	33	1.1818	.39167
Covid-19 May be considered as Force Majeure	33	1.0606	.24231
Valid N (listwise)	33		

TABLE 3. Professional Practice and challenges of Covid-19 in the Construction Industry

Statement	N	Mean	S. Deviation
Are you interested to practice?	33	1.0909	.29194
If yes, What are the professional challenges in your discipline?	33	2.0909	.80482
Did you agree that present Covid-19 poses great challenge in construction industry?	33	1.0000	.00000
Covid-19 Affects both side of contract (Employer/Contractor)	33	1.0000	.00000
Valid N (listwise)	33		

Data presented in table 3 indicated that majority of the participants also agreed that most of the professionals are interested to practice (M=1.0909), but faced with professional challenges in their discipline (M=2.0909), many agreed that present Covid-19 poses great challenge in construction industry (M=1.0000) and Covid-19 affect both sides of contract (Employer/Contractor) (M=1.0000) respectively.

### Discussion of Findings

From the findings, it was discovered that covid-19 has a great effect in the construction industry in Nigeria as it hinders site work, affect Bill of Quantities, affect project completion, likely affect Law of contract and therefore is capable of causing Force Majeure in the Nigeria construction industry. The study further discovered that Professionals are face with some challenges ranging from professional challenges and the one cause by Covid-19 in the construction industry. This was clear because most of the participants agreed that they have interest to practice but are facing challenges with their professional body, also most of the participants agreed that the present Covid-19 poses challenge in the construction industry, and agreed that Covid-19 affects both sides of the contract (employer/contractor).

### VIII. RECOMMENDATIONS/CONCLUSION

Based on the findings of the study, the following recommendations are suggested as measures of urgent consideration:

Since Force Majeure event refers to the occurrence of an event outside the reasonable control of the parties, and which prevent that party from performing its obligations as expected under the contract. The party should submit a claim relieving the parties from Force majeure event in a good time, to review or consider the steps to take in a contracts to mitigate or reduce possible effects of COVID-19 upon your work force and the ability to perform contracts, Steps should be in place

by the parties in safeguarding their positions in view of the evolving situation like Covid-19 and Force Majeure provision in a contract agreement should be review in other to mitigate Covid-19 challenges poses in the contract. Therefore, it was concluded that covid-19 has a great effect in the construction industry in Nigeria as it has hinders site work, affect Bill of Quantities, affect project completion, affect Law of contract and therefore is capable of causing Force Majeure event in the Nigeria construction industry.

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