

## **Law and Spirituality in Nigeria: Post Covid-19 Pandemic Reflections and Human Right Perspectives**

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### **Abstract**

*Nigeria is globally recognized as one of the most religious practising countries in the globe today and its religious leaders amongst notable church leaders in the world. This assertion is not untrue considering the number of the Nigerian population who are committed to the faith, values, beliefs and the spiritual inclinations of their respective denominations and church leaders. However, there have been frictions between the faith teaching of the church and the law especially when the government forms a policy that does not align with the teaching of faith. The lockdown policy in the covid-19 pandemic era and the use of surgical nose masks was deemed an act of doubt in God and there are churches that refused the lockdown policy and were subsequently held liable for breaking the law. Does the right to religion encompass the right to one's spiritual conviction? This research examines the human right perspectives on spirituality and the human right legal perspectives in the nation of Nigeria.*

**Keywords:** Covid-19 Pandemic, Human Right, Law, Spirituality.

### **Introduction**

The essence of spirituality is to invoke a dimension of existence that is higher than the natural realm. Spiritual things are inspired and are not human in nature. In fact a discourse on spirituality reinvigorates the philosophy of appearance and reality in the context of the existence of God – the basis of every spiritual belief. However, the aim of this paper is the investigation of the right to a spiritual life which is analogous to the right to religion. Faith teaching is a central theme in the Christian religion irrespective of the denomination. And the teaching of faith exposes to a life that believe in things unseen.<sup>3</sup> Faith believes that no sickness can negatively affect a Christian who has an unwavering faith in Jesus. This theme of faith cannot be suspended from the values of Christianity. And if this value of faith is suspended by the government as a result of a pandemic, then we might begin to examine a similitude of human right violation which if justified on the ground of public policy may lead scholars to redefining the right to religion and the restriction of spirituality in circumstances where it is necessary. The right to religion is guaranteed under the Constitution of Nigeria 1999<sup>4</sup> and

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<sup>3</sup> Hebrews 11:1 which provides that 'Faith is the substance of things hoped for, the evidence of things not seen' King James Version.

<sup>4</sup> Constitution of Nigeria, §38 provides: '(1) Every person shall be entitled to freedom of thought, conscience and religion, including freedom to change his religion or belief, and freedom (either alone or in community with others, and in public or in private) to manifest and propagate his religion or belief in worship, teaching, practice and observance. (2) No person attending any place of education shall be required to receive religious instruction or to take part in or attend any religious ceremony or observance if such instruction ceremony or observance relates to a religion other than his own, or religion not approved by his parent or guardian. (3) No religious community or denomination shall be prevented from providing religious instruction for pupils of that community or denomination in any place of education maintained wholly by that

various regional and international legal regulations that protects the right to thought and religion.<sup>5</sup> The Federal government of Nigeria just like most countries of the world issued directives to completely lock down the whole nation. The ‘stay in your home’ policy was desirable for the protection of public safety and health and this may be justified in the fundamental right to every man to health.<sup>6</sup>

However, the lock down was made to also affect religious worship centres including churches. The response of prominent church leaders in Nigeria to the lock down policy on religious centres was met with confrontations. These confrontations were not mere but firmly based on religious and spiritual perspectives of the Christian faith. Bishop David Oyedepo<sup>7</sup>, a prominent Nigerian Pastor opposed the policy and vowed to keep his church opened as he believes that the only prominent or workable means of treatment against COVID-19. He stated firmly that ‘shutting down churches would be like shutting down hospitals. There are many, many places that would never have any medical solution but in church’<sup>8</sup>. There were hosts of other churches in towns and villages across Nigeria who secretly attends vigils during the covid-19 pandemic lockdown but were arrested and jailed for disobeying public order.

The circumstance is a peculiar one and it may be necessary to examine this impending conflict between the law and spirituality. A careful examination of the Constitutional provisions of the law relating to religion will reveal some aspects of religion which have been left idle in the books and have undoubtedly been revived for a discourse in through the pandemic experience of the world.

### **Religion and Spirituality**

The Supreme Court in Canada in the case of *Syndicat Northcrest v. Anselem*<sup>9</sup> where the court states:

‘Defined broadly, religion typically involves a particular and comprehensive system of faith and worship. Religion also tends to involve the belief in a divine, superhuman or controlling power. In essence, religion is about freely and deeply held personal convictions or beliefs connected to an individual’s spiritual faith and integrally linked to one’s self-definition and spiritual fulfilment, the practices of which allow individuals to foster a connection with the divine or with the subject or object of that spiritual faith.’<sup>10</sup>

These understanding preferred by the Canadian court personifies an integral part of religion. For example, the African customary law is founded on the myth of a superhero that becomes a deity and possesses extra-ordinary powers.<sup>11</sup> The Christian experience is not different from these as the foundation of faith is based on the extra-ordinary power of God who rules in the affairs of men. Religion has further been described as a mortal being’s relation to that which

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community or denomination. (4) Nothing in this section shall entitle any person to form, take part in the activity or be a member of a secret society.’

<sup>5</sup> Universal Declaration of Human Rights, 1948

<sup>6</sup> Constitution of Nigeria, § 17(3)(d)

<sup>7</sup> Bishop David Oyedepo is a prominent Nigerian Pastor renowned for his teachings on faith. He is the General Overseer and Founder of the Living Faith Church, Worldwide aka Winner’s Chapel.

<sup>8</sup> Samuel Ogundipe, *Coronavirus: Oyedepo holds service, vows to keep Winners Chapel open*, PREMIUM TIMES, [www.premiumtimesng.com/news/headlines/383340-coronavirus-oyedepo-holds-service-vows-to-keep-winners-chapel-open.html](http://www.premiumtimesng.com/news/headlines/383340-coronavirus-oyedepo-holds-service-vows-to-keep-winners-chapel-open.html)

<sup>9</sup> *Syndicat Northcrest v. Anselem*, [2004] SCC 47

<sup>10</sup> SIR DENNIS BYRON, *Infra note 37*, at 15

<sup>11</sup> ENCYCLOPEDIA, <https://www.encyclopedia.com/religion/encyclopedias-almanacs-transcripts-and--maps/african-traditional-religions>.

they perceive as holy, sacred, absolute, spiritual, divine, or worthy of special respect.<sup>12</sup> So far, it may be deduced that one cannot conveniently eradicate the spirituality of a religion. This position may further be deciphered when *Scolnicov* affirmatively states that:

The role religion plays in constituting personal identity is an individualistic justification for respecting freedom of religion. In protecting freedom of religion we are protecting and assisting people in holding on to and cultivating their spiritual identity. [...] Religions are coherent, all-encompassing, externally derived, alternative normative systems to the state. [...] Religious freedom is unique, a double-sided right, encompassing the freedom to criticize and change ideas, and the right to preserve identity, a freedom of doing and of being.<sup>13</sup>

Cultivating spiritual identity is very crucial to any religious ideology and where the right to be 'spiritual' is held in captivity by any executive or administrative order, then we may be looking towards redefining what the law meant by 'freedom of religion'.

What religion means was the subject of consideration in the case of *Nikulnikoff v. Archbishop of Russian Orthodox Greek Catholic Church*<sup>14</sup> The court defined religion to mean:

... Man's relation to Divinity, to reverence, worship, obedience, and submission to mandates and precepts of supernatural or superior beings. In its broadest sense it is a form of belief in the existence of superior beings exercising power over human beings by volition, imposing rules of conduct, with future rewards and punishments. Bond uniting man to God, and virtue whose purpose is to render God worship due to him as source of all beings, and principles of all government.

According to Professor Nwabueze, freedom of religion has two basic elements to wit: freedom of belief and the expression of that belief via teaching, practice, worship or any other religious rites.<sup>15</sup> The jurisprudence and reasoning of the Nigerian courts cannot be clearly deciphered in terms of precedent. In the suit of *Ojiegbe v. Ubani*<sup>16</sup> which was held based on the provisions of the 1960 Constitution which is *in pari materia* with section 38 in the 1999 Constitution the issue was on the right to express and preach one's religion. The case was brought by a member of the Seventh Day Adventist Church who claimed that holding election on a Saturday which is the day of the worship violates his right to religion under this section which protects their right to manifest and propagate their religion. The case bordered on election petition in which the petitioner alleged that the conduct of the 1956 Parliamentary Elections on a Saturday contravened the freedom of religion of Nigerians who are members of the Seventh Day Adventist Church. The court however failed to pronounce on this point because it was not raised at the Lower Court hence, its dismissal. Commenting on this suit, *D. O. Aihe & P.A. Oluyede*<sup>17</sup> was of the view that the right to religion is not negative in any respect because assuming the appellants argument was accepted by the court, the election would have been nullified. The consequence would be that anybody whose day of worship falls on an election

<sup>12</sup> BRITANNICA, [www.britannica.com/topic/religion](http://www.britannica.com/topic/religion).

<sup>13</sup> A. Scolnicov, *The Right to Religious Freedom in International Law: Between Group Rights and Individual Rights* 2011 ROUTLEDGE 44, 51 57 (2011).

<sup>14</sup> *Nikulnikoff v. Archbishop of Russian Orthodox Greek Catholic Church*, 142 Misc. 894, 225 NY S. 653.

<sup>15</sup> B.O. Nwabueze, *Freedom of Religion, The Religious Neutrality of the State Under the Constitution and the Sharia Controversy*, Enugu Spiritan International School of Theology, 2 2001.

<sup>16</sup> *Ojiegbe v. Ubani*, [1961] 1 All NLR 188.

<sup>17</sup> D.O. Aihe and P.A. Oluyede, *Cases and Materials on Constitutional Law in Nigeria*, Oxford University Press, 104 -105 (1979).

day even if it is not on Saturday, would have a locus to seek nullification of the election as a violation of his right to religion. With respect to the learned scholars, it may be far too reaching to say that an election may be canceled because it was held on a date of religious value. The correct reasoning may be that every individual is free to exercise his religious freedom. Just like to exercise right to vote is not a mandate. A citizen may choose not to elect the right. What matters is that a right is not restrained by any means besides the right to religion unlike the right to life which may be lawfully restricted requires a more dexterous legal scholarship.

In the case of *Medical and Dental Practitioners Disciplinary Tribunal v. Okonkwo*<sup>18</sup> The Supreme Court was to pronounce on the constitutionality of the patient's decline to undergo blood transfusion on the ground that being a member of Jehovah's Witness, such was against his religion. The court respecting the right of the patient to religion in this regard held that:

The right to freedom of thought, conscience or religion implies a right not to be prevented, without lawful justification, from choosing the course of one's life, fashioned on what one believes in, and a right not to be prevented, without lawful justification, ... The sum total of the rights to privacy and of freedom of thought, conscience or religion which an individual has, put in a nutshell, is that an individual should be left alone to choose a course for his life, unless a clear and compelling overriding state interest justifies the contrary. The law's role is to ensure the fullness of liberty when there is no danger to public interest. Ensuring liberty of conscience and freedom of religion is an important component of that fullness. The courts are the institutions society has agreed to invest with the responsibility of balancing conflicting interest in a way to ensure the fullness of liberty without destroying the existence and stability of society itself. It will be asking too much of a medical practitioner to expect him to assume this awesome responsibility in the privacy of his clinic or surgery, unaided by materials that are available to the courts or, even, by his training. This is why, if a decision to override the decision of an adult competent patient not to submit to blood transfusion or medical treatment on religious grounds, is to be taken on the grounds of public interest or recognized interest of others, such as dependent minor children, it is to be taken by the courts.

The position of the Nigerian apex court is significant in this regard as it recognizes the fact that a right to medical treatment may be subject to the consent of an adult who possesses such independent power to make a decision. A medical doctor may not by his level of compassion do a blood transfusion against the religious belief of the patient who is at the verge of death. This point was also made in the English suit of *Sideway v. Board of Governor Bethlehem Royal Hospital*<sup>19</sup> where **Lord Scarman** held that:

The courts should not allow medical opinion of what is best for the patient to override the patient's right to decide for himself whether he will submit to the treatment offered him.

Is the position the same where public interest is threatened? Can this position be different in the case of the covid-19 pandemic? It may therefore be necessary to examine the fate of

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<sup>18</sup> *Medical and Dental Practitioners Disciplinary Tribunal v. Okonkwo*, [2001] FWLR, [pt.44] 542

<sup>19</sup> *Sideway v. Board of Governor Bethlehem Royal Hospital*, [1985] 1 AC 871

religion and the spiritual factor of it in case of a pandemic. In *Shodeinde v Registered Trustees of the Ahmadiyya Movement in Islam*,<sup>20</sup> Eso JSC said:<sup>21</sup>

Now it appears to me that matters of faith are hardly matters for a court of law, but once there the court should deal with them without passion, but only with justice according to the law being a guide.

The Justice of the Supreme Court recognizes the peculiarity of faith or religious related matters and the need for a judge to handle it without any form of bias or passion as the case may be.

## **Religious Rights and Human Rights Legal Regimes**

The individualistic nature of religious rights is express in the constitution of Nigeria 1999 (as amended). It provides that “The Government of the Federation or of a State shall not adopt any religion as State Religion.”<sup>22</sup> This item further reinvigorates the spirit of the law towards the individual nature of religious rights. However, it is further important to examine the various international and regional legal instruments that reinforce the religious rights while paying attention to the tenor of the law. The **preamble** of the Universal Declaration of Human Rights states:

[...] Whereas disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind, and the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people, [...]

Every person is entitled to all the rights set forth in this Declaration, without exceptions of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.<sup>23</sup> Every person 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 teaching, practice, worship and observance.<sup>24</sup>

Furthermore, the International Covenant on Civil and Political Rights provides that:

### **Article 18**

1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.
2. No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.
3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.
4. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.

<sup>20</sup> *Shodeinde v Registered Trustees of the Ahmadiyya Movement in Islam*, (1983) NSCC 523.

<sup>21</sup> *The Registered Trustees of the Apostolic Church v Olowoloni* (1990) 6 NWLR (Pt 158) 514 538

<sup>22</sup> Constitution of the Federal Republic of Nigeria, § 10, 1999 (as amended)

<sup>23</sup> § 2.1 UDHR 1948

<sup>24</sup> § 18 INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS, 1966

**Article 24**

1. Every child shall have, without any discrimination as to race, colour, sex, language, religion, national or social origin, property or birth, the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State.

**Article 26**

All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

**Article 27**

In those countries in which ethnic, religious or linguistic minorities are in existence, persons that are members of such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own way of life, to profess and practise their own religion, or to use their own language.

Also the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, 1981 provides for the following in relation to religious rights as follows:

**Article 1**

1. Every person shall have the right to freedom of thought, conscience and religion. This right shall include the freedom to have a belief or whatever belief of his choice, and right, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.
2. No person shall be subject to force which would deter his freedom to have a religion or belief of his choice.
3. Freedom to manifest a persons religion or beliefs may be subject only to such exceptions as are prescribed by statute and are necessary to protect public safety, order, health or morals or the fundamental rights and freedoms of others.

**Article 2**

1. No person shall be subjugated to discrimination by any Government, institution, group of persons, or person on grounds of religion or other beliefs.
2. For the purposes of the present Declaration, the phrase "intolerance and discrimination based on religion or belief" means any distinction, exclusion, restriction or preference based on religion or belief and having as its purpose or as its effect nullification or determent of the recognition, enjoyment or practise of human rights and fundamental freedoms on an equal basis.

African Charter on Human and People's Rights provides that 'Freedom of conscience, the profession and free practice of religion shall be guaranteed. No one may, subject to law and

order, be submitted to measures restricting the exercise of these freedoms.’<sup>25</sup> Examining the tenor of these laws, they provide similar intents and to this end we may through the instrument of interpretation examine important phrases such as ‘...no one may, subject to law and order, be submitted to measures restricting the exercise of these freedoms’. A literal interpretation of these provisions will mean that religious freedom and the embedded spiritual values may not be restricted by any law or order.

The right to freedom of thought, conscience and religion is institutionalised by the Constitution of Nigeria 1999. Section 38 provides as follows:

[1] Every person shall be entitled to freedom of thought, conscience and religion, including freedom to change his religion or belief, and freedom [either alone or in community with others, and in public or in private] to manifest and propagate his religion or belief in worship, teaching, practice and observance.

[2] No person attending any place of education shall be required to receive religious instruction or to take part in or attend any religious ceremony or observance if such instruction ceremony or observance relates to a religion other than his own, or religion not approved by his parent or guardian.

[3] No religious community or denomination shall be prevented from providing religious instruction for pupils of that community or denomination in any place of education maintained wholly by that community or denomination.

[4] Nothing in this section shall entitle any person to form, take part in the activity or be a member of a secret society.

Religious freedom encompasses a number of components such as teaching, practice, propagation and observance. Where any of the following has been subjected to law and order then it may be necessary examine whether or not the jurisprudence of the freedom of religious rights is changing. And where the law seeks to regulate the spirit realm or what may be jurisprudentially identified as the divine law according to the natural law philosophy of Thomas Aquinas.<sup>26</sup>

### **Does the force of public interest matter in religious rights?**

The term public interest was considered in detail by the Court of the Federal Court of Australia in its Opinion in *McKinnon v Secretary, Department of Treasury*<sup>27</sup> where Tamberlin J noted:

“9. The expression ‘in the public interest’ directs attention to that **conclusion or determination** which best serves the advancement of the interest or welfare of the public, society or the nation and its content will depend on each particular set of circumstances. There will, as in the present case, **often be competing facets of the public interest** that call for consideration when making a final determination as to where the public interest lies and these are sometimes loosely referred to, in my view, as opposing public interests...

10. The expression ‘the public interest’ is **often used in the sense of a consideration to be balanced against private interests or in contradistinction to the notion of individual interest**. It is sometimes used as a sole criterion that is required to be taken into account as the basis for making a determination. In other instances, it appears in the form of a list of considerations to be taken into account as factors for evaluation when making a determination...”

<sup>25</sup> Art. 8, African Charter on Human and Peoples' Rights (Banjul Charter), 1981

<sup>26</sup> Thomas Aquinas was an Italian Dominican friar, philosopher, Catholic priest, and Doctor of the Church. An immensely influential philosopher, theologian, and jurist in the tradition of scholasticism.

<sup>27</sup> *McKinnon v Secretary, Department of Treasury*, [2005] FCAGFC 142

Public interest refers to the comprehensive welfare of the society that necessitates recognition and protection; and something in which the society as a whole has a part; especially an interest that justifies government regulation.<sup>28</sup> In Nigeria, the term public interest is often used in terms of public interest litigation. This means the practice of catalyzing social transformation through court decisions that reform legal rules, enforce existing laws and articulate public culture.

Sequel to the foregoing, it might be necessary to examine that the peculiarity of religion in the context of 'public interest'. Nigeria as a nation is one of the world's most religious centres and of course has a number of religions i.e. the traditional religions in terms of custom peculiar to over 240 ethnic groups, Islam and Christianity. Perhaps there is an executive order that affects the Christian community within a State, it is only logical to assume that anything done by an association such as the Christian Association of Nigeria (CAN) is done in the interest of all Christians and not the other counterpart religions nor the whole citizens. Public therefore ought to be defined within the class of people who are affected by a particular specific issue. The public interest litigation Development Law Group of Olisa Agbakoba legal<sup>29</sup> have recently advocated for the fundamental rights implementation for the Establishment of Ecclesiastical Courts in Nigeria for Christians to have their spiritual affairs adjudicated upon by persons adequately schooled in Ecclesiastical law or biblical jurisprudence. The main reason for this view is that Nigeria as a multi-religious country prohibits the existence of State religion however, the Constitution expressly provided for special courts that address issues relating to customary law and Islamic law. It is based on this premise that 'public' as a term is not just capable of general meaning but special meaning depending on the circumstance where it is used. Public has been defined to refer to a set of people in a country who share common interest, activity, or feature as a particular kind of society.<sup>30</sup>

In furtherance of the foregoing, the Covid-19 situation presents a highly controversial reaction from the church especially amongst the Pentecostal faith who hold the doctrines of faith dearly and who believe that healing is of Christ and by faith sickness cannot affect Christians who believe. Bishop David Oyedepo is one of world's renowned preachers of faith who holds full services during the lockdown period. The Nigeria Centre for Disease Control (NCDC) is the body responsible for carrying out of all policies relating to the safeguard of societal health and in the exercise of their duties, imposed sanctions on religious centres who conduct religious services during the lockdown. The rationale of the NCDC and the Federal Government of Nigeria is legal and sensible owing to the nature of the pandemic. However, the law is not suspended by the pandemic and it is no reason to restrict by law and order the religious freedom of Christians whose faith and spiritual inclination forbids them to fear.<sup>31</sup>

The response to the pandemic by the church was one that may be reliably termed as a battle between the law and spirituality. If the rationale for the lockdown is to protect the public health, if an individual seemingly risks his health in the public space on the ground on the freedom of his religious belief in divine health, then the government may be treading the path of breaching fundamental rights. The jeopardy of this situation is the fact that there is no provision for ecclesiastical courts that may objectively and reliably adjudicate on matters relating to the rights of churches in Nigeria. Public interest may be of significance but the

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28 Bryan A. Gardner (ed.), *Black's Law Dictionary*. 7th ed., St. Paul, Minn.: West Publishing Co., 1979

29 Olisa Agbakoba Legal (OAL) is a top tier law firm in Nigeria with a revered interest in public interest litigation and human rights advocacy.

30 COLLINS, [www.collinsdictionary.com/amp/english/public](http://www.collinsdictionary.com/amp/english/public).

31 Trivedi, D., Chaudhari, S. P., Bhatt, A., & Pathak, M. (2022). Global Research Trend in Vaccine Design. *Vaccines*, 10(12), 2034. <https://doi.org/10.3390/vaccines10122034>

common interests of the people affected by a circumstance are what the courts should consider in any circumstance. The pandemic affects the general public; the restriction of exercise of faith affects the practice of Christians in exercise of their religious practices.

At one end of the ideas canvassed, when addressing this issue, academic comments and judicial officers have taken it as sacrosanct that the “*public interest*” relates to the interests of members of the public as a whole, or at least to a substantial segment of them - that it should be distinguished from individual, sectoral or regional interests.<sup>32</sup> At the other end of the spectrum it is also widely accepted that the “*public interest*” can extend to certain private ‘rights’ of individuals - rights that in many societies are regarded as being so germane or fundamental that their protection is seen as being in the societal interest, for example privacy, procedural fairness<sup>33</sup> and the right to be silence.

Making an informed assessment as to how the “*public interest*” applies in a particular situations can be thought of as a three stage process: firstly, identification of **the relevant sample size population** – the “*public*” whose interests are to be reviewed in making the judgment, secondly, identification of **the various “interests”** applicable to an issue, and thirdly, an investigation and **measuring of each applicable “public interest”**, including the balancing of conflicting or competing “*public interests*”.<sup>34</sup>

It is however very important to state that public interest and any matter that falls under the purview of the term must be construed bearing in mind the importance of human rights and the need to ensure that they are not violated.

The concerns about the cloak of public interest and the ideological gaps in the Nigerian legal system also be gleaned from the provisions of the Companies and Allied Matters Act 2020 (CAMA 2020).<sup>35</sup> The president of Nigeria, President Buhari executed the new CAMA which neither specifically addresses nor exempts non-profit, non-government, or religious organizations nor contains terminologies about religion, some NGOs and religious organizations especially the church raised concerns about the statute. The Christian Association of Nigerian (CAN), the recognised umbrella body of Nigeria Christian groups, and NIREC criticized CAMA as possibly unconstitutionally breaching the freedom of association and religion by placing some minute religious organizations under the regulation of the government. Under the statute, the federal government has comprehensive and discretionary powers to withdraw, revoke the certificate of any business or association; suspend and remove trustees and appoint replacements of their choice to manage the affairs of the organization **“in the public interest”; take charge of the finances of any association or group; and merge two associations without the consent and approval of their members.**<sup>36</sup> This law has raised a lot public concerns and it is quite obscene that such law that defies the nature of democracy claims to be so in public interest.

In *Adamu v. A.G. Bornu State*<sup>37</sup> the appellants brought an application to contend that Gwoza Local Government Area of Borno State (a northern State in Nigeria highly dominated by the

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<sup>32</sup> Leslie A. Pal and Judith Maxwell, *Assessing the public interest in the 21st Century: A framework*, external advisory committee on smart regulation (2005)

<sup>33</sup> Attorney General (NSW) v Quin, (1990) 64 ALJR 627 and; Lord Keith in Glasgow Corporation v Central Land Board, [1956] SC(HL) 1.

<sup>34</sup> chris wheeler deputy ombudsman, speech – what is the public interest? – government solicitors conference 6 (NSW Government Publication, September 2016)

<sup>35</sup> Chauhan, V., Chaudhari, S., & Chauhan, K. (2024). Research Journey of Advances in Human Biology: Visualisation Approach. *Advances in Human Biology*. [https://doi.org/10.4103/aihb.aihb\\_63\\_24](https://doi.org/10.4103/aihb.aihb_63_24)

<sup>36</sup> Companies and Allied Matters Act 2020, § 839. (1), No. 3, 2020

<sup>37</sup> *Adamu v. A.G. Bornu State*, [1996] 8 NWLR [Pt. 465] 203

Islam religion) refused to pay educators who teach Christian religious studies but it continues to pay teachers who teach Islamic religion, thereby causing the parents of Christian pupils to engage teachers who teach Christian Religion at an extra cost. The applicants further averred that Christian pupils were compelled to attend Islamic and Arabic language classes. They argued that these actions constitute a violation of their rights to freedom of discrimination and religion. The defendant argued that the matter is not justiciable being a matter of education which falls under the Fundamental objectives and directive principles of state policy. The trial court dismissed the application and held that the matter was not justiciable. The applicants aggrieved by this ruling appealed to the Court of Appeal. The Court of Appeal opined that the matter is justiciable having being brought for the enforcement of fundamental rights provided for in the constitution. The Court of Appeal also held that the local government cannot violate the right to freedom of religion and freedom from discrimination of citizens by purporting to implement the educational objectives under the fundamental objectives and directive principles of state policy.

The position of the court is very significant in this regard and it further gives life to the sacred nature of religious rights. The import of this judgment is that where there is an executive policy which may impact on religious rights as a fundamental right, and then it may be necessary to reconsider such policy. The law is not spiritual but it does believe in the spiritual rights of people unless such spiritual rights may be subsumed under the prohibited secret society.

## **Conclusion and Recommendations**

Religious freedom is a fundamental issue of all times in the world and not just within the Nigerian territory. The fundamental issue discussed in this article is the basis of a religion which is premised on the fact of spirituality. If spirituality can be regulated or caged by policy, then there may be need to revisit the fundamentals of religion and what it portrays. Section 1 of the Public Order Act empowers the governor of each sub sovereign to regulate public association meetings<sup>38</sup> and processions on public roads and places of public entertainment in the state by issuing licences in this situation. furthermore in subsection (2) of the Act provides that any person desirous of convening an assembly, gathering or procession must apply to the governor of the state not less than 48 hours before the commencement of the event. Section 2 of the Public Order Act empowers a police officer to stop any gathering, meeting or procession for which no licence has been issued or which violates any condition in an issued licence. Section 4 permits police officers to issue proclamations banning any public assembly meeting or procession for up to a period of 14 days. The constitutionality of the Act was recently challenged with respect to political rallies. In the case of *Inspector-General of Police v All Nigeria Peoples Party*,<sup>39</sup> the Court of Appeal examined the question of whether the Public Order Act, requiring that a licence to hold gatherings, permits and assemblies, was constitutional and justifiable in accordance with section 45 of the Constitution of Nigeria 1999 (as amended). The issue for determination before the court was whether such a law is reasonably justifiable in a society that claims the rule of law under democracy, or an unwarranted fundamental condition for the exercise of the freedom of assembly and association. The Court held affirmatively that the condition of a licence by the Public Order Act breaches the constitution, as it impairs the right of citizens to assemble freely and

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<sup>39</sup> *Inspector-General of Police v All Nigeria Peoples Party* (2007) 18 NWLR (Pt 1066) 457. This decision can be taken to have overruled *Chukwuma v Commissioner of Police* (2005) 7 NWLR (Pt 927) 278.

associate with others. The Court recognized the right of the government to safeguard law and order in the public, but held that the means of doing this should not stifle fundamental personal liberties. Accordingly, religious organizations do not need a police permit to hold spiritual meetings. The decision of the court in this regard further applies to the issue of spirituality in religious matters. If I believe in healing and I am walking in the public space during a pandemic, I risk myself and my health but my thoughts and conscience should be accorded the protection of the law which I have. Hence it is important to examine the religious rights in terms of its spiritual element and how to safeguard this rights when threatened by a policy purportedly imposed on the ground of public interest.

It is further recommended that the establishment of Ecclesiastical courts may be very instrumental to the protection of the rights of churches when its freedom of religion is prone to be violated by any policy or governmental restrictions. This is not an attempt to exempt the church or Christians from the State where they operate but there is a need to ensure that respect is accorded to rights which possess constitutional force. This is further important should in case the church seeks a redress concerning any violation of its rights, such causes of action should be exclusively reserved for the Ecclesiastical courts to ensure a fair determination of such disputes. The recognition of Sharia Courts in the Nigerian Constitution<sup>40</sup> further agrees with the need for establishment of courts who have the requisite religious understanding to adjudicate issues relating to the rights or practice of a particular religion. Sir Dennis Byron opined in his speech titled 'Spirituality and Justice' states that:

'the typical solutions of economic logic and political concoction to the problems of crime, violence, injustice and poverty are inadequate. The world today cries out for moral and spiritual wisdom that can help us navigate the path to peace and to justice. The current disorders of society begin with the disorders of the human heart, from which flow destructive choices that unravel relationships. At the same time, the heart is the source from which flows the greatest values and aspirations of human life. Every generation faces the challenge of identifying which principles will ultimately lead to better relationships within society and among neighbours, and reject those that will divide us as a human family.'<sup>41</sup>

The importance of the above is to the extent that it suggests a circumstance where the law and policy in every sovereign state considers always what is fair and just without elements of discrimination or inequality. Religion offers one of the fragile challenges of the world today especially as it relates to human rights and the enforcement of same. It is however very important that in imposition of policies that may hamper religious freedom, government should take note where certain scared practices or spirituality are being forcefully restrained thereby causing a violation of the rights to religious freedom.

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<sup>40</sup> Constitution of the Federal Republic of Nigeria 1999, § 260, §275 (As Amended)

<sup>41</sup> SIR DENNIS BYRON, *The Role of Spirituality in the Judicial and Legal Systems The Inter Religious Organization of Trinidad and Tobago Inc. & Brahma Kumaris Raja Yoga Centre of Trinidad and Tobago Inc.*, International Conference, pg. 6 (2014).