

HUMAN RIGHTS

Covid-19 protocols, traditional religious beliefs and constitutional rights in the context of Nigeria and its people

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Introduction

The traditional African belief is woven around supernatural being and deities such as belief in Islam and Christianity, belief in the African myths and deities such as *Ifa* (god of divination), *Sango* (god of thunder), *Ogun* (god of iron), *Oya* (god of river), *Obatala* (god of purity), and *Osayin* (god of divination or efficacious medicine). They also believe in the healing powers of these supernatural beings on all ailments and pandemics. The covid-19 pandemic has attracted rigorous requirements of social distancing and lockdown. The health challenges brought about by its sudden appearance have impacted negatively on the communal life of Africans and the requirements of congregational prayers. The policy requirements of social distancing does not sit well with most Nigerians against the backdrop of their fundamental rights to freedom of thought, conscience and religion; peaceful assembly and association; and freedom of movement under sections 38, 40 and 41 of the Constitution of the Federal Republic of Nigerian 1999. The key objective of this article, therefore, is to interrogate the impacts of the covid-19 policies on social distancing and religious congregation and movement, and to find out whether there have been infringements of any or all of the constitutional rights, and whether any or all of the infringements are excused by any principle of law.

The concept of rights

Right is the totality of the conditions under which a person's choice can unite with the choice of another without negating the universal law of freedom.¹ It follows therefore that if the action of a person can co-exist with the freedom of everyone, in accordance with a universal law whoever obstructs the performance of that action is said to have harmed the right of that person.² According to Kant, freedom is the only innate and original right that belongs to every man or woman by virtue of their humanity, so long as such freedom can co-exist with the freedom of every other person in accordance with a universal law.³ Kant's 'freedom' refers to that area of action that is totally left to a person by reason of their humanity after excluding what they are either required to do or prohibited from doing by the Doctrine of Right.⁴

Justification for human rights has given rise to debates between cultural relativism and universalism. The principle of cultural or ethical relativism is to the effect that all ethical judgments are relative to a framework, which then posits that human rights are equally relative to a framework.⁵ The cultural relativists' arguments against human rights universalism is thought to express two ideas that have widespread appeal: (1) everyone is equally entitled to respect; (2) to respect a person entails respect for that person's culture,

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¹ Immanuel Kant, *The Metaphysics of Morals* (Cambridge University Press, 1996) 24.

² Ibid.

³ Ibid 30.

⁴ James Griffin, *On Human Rights* (OUP, 2008) 61.

⁵ Ibid 130.

because culture constitutes, at least in part, a person's identity.⁶ Cultural relativism is particularly problematic when it presents culture as static, homogeneous, coherent and consensual.⁷ The major argument advanced against this concept is that there cannot be a universal framework for human rights, as the framework may differ from one society to another or from one circumstance to another.⁸

Universalism of human rights signifies that human rights transcend national, historical and cultural boundaries. The universality of human rights presupposes that the same rights are guaranteed to all within and between the state signatories in an international arena.⁹ Universality of human rights is justified by Donnelly on three legal grounds:

- (1) Virtually all states consider internationally recognised human rights to be a firmly established part of international law and politics (international legal universality);
- (2) Virtually all cultures, religions, and leading worldviews participate in an overlapping consensus on these internationally recognised human rights (overlapping consensus universality); and
- (3) This consensus rests on the contemporary universality of standard threats to human dignity posed by modern markets and modern states (functional universality).¹⁰

Hence, Donnelly believes that human rights rest on the normative consensus of the international community on the list of rights as explained by his three legal grounds. This justification is however considered weak, in the sense that there is no consensus on the rights of women, or the morality of abortion or on a host of other issues.¹¹ In contrast, Griffin premises his concept of universalism of human rights on normative agency that involves living a worthwhile life.¹² Griffin's conception is grounded in concrete reality, in human beings rather than in abstract conceptions. He justifies human rights based on human dignity through his notion of 'personhood' or 'normative agency'.¹³ According to him, human dignity lies in this capacity.¹⁴ Accordingly, human rights in this sense protect this capacity because whatever threatens the capacity threatens our 'personhood' or 'normative agency' and the very existence of human dignity.¹⁵

However, Griffin's justification of human rights because of the link between human dignity and the capacity to act as autonomous agents has the unappealing implication that children, the severely mentally disabled, and individuals suffering from advanced dementia cannot

⁶ Michael Freeman, *Human Rights: An Interdisciplinary Approach* (2nd edn Polity Press, 2012) 126.

⁷ Jack Donnelly, *Universal Human Rights in Theory and Practice* (3rd edn Cornell University Press, 2013) 108.

⁸ Griffin (n 4) 130.

⁹ Jennifer Corrin, 'Cultural Relativism vs Universalism: The South Pacific Reality' in Rainer Arnold (ed), *The Universalism of Human Rights* (Springer, 2013) 104.

¹⁰ Donnelly (n 7) 94.

¹¹ Freeman (n 6) 69.

¹² Griffin (n 4) 45.

¹³ Normative agency is understood to mean 'active autonomy combined with the concept of a meaningful life. See David N Stamos, *The Myth of Universal Human Rights: Its Origin, History, and Explanation, Along with a More Human Way* (Paradigm Publishers, 2014) 81.

¹⁴ Griffin (n 4) 32.

¹⁵ *Ibid* 33.

be said to have human rights due to their lack of capacity.¹⁶ A more plausible justification for the universality of human rights, according to Renzo, would use the ideal of basic human needs. This justification has the advantage of accommodating children, the severely mentally disabled, including individuals suffering from advanced dementia, because, even though they do not have the capacity for Griffin's 'normative agency' or 'personhood', they certainly have basic human needs.¹⁷

This seems to find support in an earlier position held by Freeman who states that a common argument that human rights are justified on ground of human dignity is vague in the sense that human dignity could be relative and as well provide basis for moral theory.¹⁸ Some cultures such as the West affirm the dignity of women while other cultures such as some parts of Africa consider women's dignity as affront to men's superiority.¹⁹ To Freeman, the plausible justification for human rights is that advanced by the modern natural law theorists who argue that there are objective goods that cannot naturally be rejected, whether or not they are endorsed by consensus or by positive law.²⁰ Such objective goods include life, society and knowledge. They are an objectively necessary condition for human flourishing, and consequently serve as the ground for moral obligation.²¹ This theory seeks to reconcile common good with individual rights, since it holds that 'the common good enhances individual freedom by providing it with stable social conditions, while individual freedom enhances the common good by promoting the flourishing of all. Human rights are, on this account, not subject to, but components of, the common good.'²²

This article supports universalism of human rights as opposed to cultural relativism. It rejects cultural relativism for its rigidity, which ties human rights to consensual cultural frameworks. Such approach cannot work in the case of Nigeria where there is cultural diversity. Besides, it is difficult to strike a balance between Western and African cultures. Hence, the article finds such generalisation of cultural concepts quite problematic. The article supports the universality of human rights based on needs, as canvassed by Renzo, and rejects tying universality of human rights to human dignity as canvassed by Griffin because the latter is relative in the context of diverse cultural beliefs as in the case of the highly heterogeneous Nigeria. It upholds the 'need' theory because basic needs transcend national, international and cultural boundaries. An example of such needs in the context of this article is the right to freedom of thought, freedom and religion, which is the fulcrum of this article and, most importantly, germane to the essence of the tradition and religious beliefs in the healing power of the supernatural being over all ailments, including covid-19.

This article, therefore, focuses on the traditional religious beliefs and practices of the Nigerian people, which are rooted in their basic rights as constitutionally guaranteed, and how these rights were altered significantly by the effects of the covid-19 protocols introduced by the Federal and State governments in the bid to curtail the spread of COVID-19 pandemic. In this regard, the three dominant religions in Nigeria are identified, that is to say, Islam, Christianity and the traditional religion. Whereas Islam and Christianity are scriptural and have dominated the lives, beliefs and practices of many households,

¹⁶ Massimo Renzo, 'Human Needs, Human Rights' in Rowan Cruft, S Matthew Liao and Massimo Renzo (eds), *Philosophical Foundations of Human Rights* (OUP, 2015) 574.

¹⁷ Ibid 577.

¹⁸ Freeman (n6) 69.

¹⁹ Ibid.

²⁰ Ibid.

²¹ Ibid.

²² Ibid 69-70.

traditional religion is founded on the ancient beliefs and practices of another large group as well. Hence, in this article, the effects of these various beliefs on the compliance with covid-19 protocols in Nigeria will be discussed immediately following a brief history of the pandemic and its protocol's effect on the rights of the people. In a more purposeful attempt, the various human rights of Nigerians affected by the protocols are set out and discussed in section 4. The question whether infringement of the various rights occasioned by the protocols were actionable in the face of the various exemptions provided by the various laws in the land is answered in section 5. The article then finishes with conclusions and recommendations in section 6 of the paper.

A brief history of the Covid-19 pandemic and its protocols in Nigeria

On February 27, 2020, the Federal Ministry of Health confirmed the first COVID-19²³ case in Ogun State, Nigeria, making the country the third country in Africa to record an imported case after Egypt and Algeria.²⁴ The index case occurred in an Italian citizen who flew from Milan, Italy to Lagos, Nigeria on February 24, 2020, and travelled in a private vehicle on to his company site in Ogun State the same day. On February 26, 2020, he presented at the company clinic with symptoms consistent with COVID-19 and was referred to the Infectious Disease Hospital (IDH) in Lagos where a COVID-19 diagnosis was confirmed on February 27, 2020.²⁵ Upon the detection of the index case, the Nigeria Centre for Disease Control (NCDC) activated a multi-sectorial National Emergency Operations Centre (EOC) to oversee the national response to COVID-19.²⁶ Subsequently, the Presidential Task Force (PTF) for coronavirus control was inaugurated on March 9, 2020. The PTF announced that travellers from 13 covid-19 high-risk countries had been restricted from entering the country.²⁷ Between February 27, 2020 when the first index case was reported and May 31, 2020, 63,882 persons have been tested for covid-19 in Nigeria, of which 10,162 (15.9 per cent) were confirmed as being infected with severe acute respiratory syndrome virus 2 (SARS-CoV-2 by RT-PCR).²⁸

As of March 22, 2020, the initial 30 confirmed cases in Nigeria were travellers from abroad or their immediate contacts. In order to minimise rising imported cases in the country, the Nigerian government introduced the initial international travel ban for passengers coming from countries with ongoing high transmission (initially China, Italy and Germany; subsequently extended to eight high-burden countries).²⁹ Ultimately, land borders were

²³ This is the abbreviation of Coronal Virus Disease, 2019. The disease, which was a novel type of virus, was discovered in 2019 and is accordingly referred to as COVID-19. COVID-19 is caused by severe acute respiratory syndrome virus 2 (SARS-CoV-2) and it was first reported in December 2019 by Chinese Health Authorities following an outbreak of pneumonia of unknown origin in Wuhan, Hubei Province. World Health Organization. Naming the coronavirus disease (COVID-19) and the virus that causes it. 2020. [https://www.who.int/emergencies/diseases/novel-coronavirus-2019/technical-guidance/naming-the-coronavirus-disease-\(covid-2019\)-and-the-virus-that-causes-it](https://www.who.int/emergencies/diseases/novel-coronavirus-2019/technical-guidance/naming-the-coronavirus-disease-(covid-2019)-and-the-virus-that-causes-it). Available 30 May 2020.

²⁴ C Dan-Nwafor, C L Ochu, K Elimia, J Oladejo, E Ilori, 'Nigeria's public health response to the COVID-19 pandemic: January to May 2020' (2020) 10(2) *Journal of Global Health* <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7696244/> accessed 10 April 2022

²⁵ Ibid.

²⁶ J Amzata, K Aminu, V I Kolo, A Akinyele, J A Ogundairo, M C Danjibo, 'Coronavirus outbreak in Nigeria: Burden and socio-medical response during the first 100 days' (2020) 98 *International Journal of Infectious Diseases*, 219 <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7307993/pdf/main.pdf>, accessed 10 April 2022

²⁷ Ibid.

²⁸ This has been reported to be the active cause of COVID-19. Dan-Nwafor *et al* (n 24) 2 & 3.

²⁹ Dan-Nwafor *et al* (n 24) 5.

closed, all international flights were banned, and mandatory institutional quarantine and testing for international returnees to Nigeria was instituted on March 23, 2020 to reduce further importation of the disease from high-risk countries.³⁰ Another vital response was a lockdown to prevent community transmission. There was a lockdown in two states (Lagos and Ogun) and the FCT for four weeks effective from March 30, 2020, with restrictions on inter-state travels throughout the country.³¹ Specifically, on March 30, 2020, the President of Nigeria issued a series of stringent non-pharmaceutical interventions, including stay-at-home orders and cessation of non-essential movements and activities in Lagos and Ogun States and FCT for an initial period of 14 days, extended for an additional 21 days in the same three states and adding Kano State.³² The states were selected based on a combination of the burden of disease and their risk:³³ The lockdown included closure of schools and workplaces, bans on religious and social gatherings, cancellation of public events, curfews, restrictions on movement, and cessation of interstate and international travel. In practical terms, the various rights enjoyed by Nigeria residents began to suffer setbacks due to these restrictions. I will return to this in section four.

Alongside the federal lockdown in Lagos, and Ogun States and the FCT, many states adopted other measures, including school closure, movement restrictions, and curfews.³⁴ Though the lockdown slowed down transmission, it had undesired collateral effects on social protection, security, and daily subsistence for many. The consideration of a further lockdown had both intended and unintended consequences.³⁵ The lockdown and stay-at-home directive caused adverse effects on peoples' livelihood—with disproportionate effects on the vulnerable population, most of whom are daily income earners.³⁶ Therefore, the drastic lockdown measures came with significant economic and social costs. Crime and domestic violence reportedly increased during the period and many people were unable to engage in their usual income-generating activities.³⁷ The consequential effects of the lockdown exacerbated already difficult situations for many, rendering prolonged enforcement of preventive interventions such as lockdown and physical distancing unsustainable.³⁸ According to a UNDP report on the impacts of lockdown on Nigerians, it was observed that the vulnerable population mostly works in the informal sector, which requires close person-to-person interactions for cash transactions and patronage.

Administration of justice in Nigeria was also not spared the effects of the lockdown. In an attempt to enforce social distancing in the Nigerian Courts, the Chief Justice of Nigeria (CJN), Justice Tanko Ibrahim Muhammad, CFR, as Chairman of the National Judicial Council, issued a circular directing the suspension of Court sittings in Nigeria for an initial period of two weeks, from 24 March 2020. However, a day before the expiration of the two-week period, CJN through a letter dated 6^t April, 2020, directed all heads of Courts in Nigeria to suspend court sittings till further notice, with the exception of matters that are urgent, essential or time-bound according to extant laws. CJN reiterated that the suspension of Court sittings was in line with the Presidential Order made pursuant to the covid-19 Regulation 2020, which directed the lockdown of the Federal Capital Territory (FCT) as

³⁰ Ibid.

³¹ Amzata *et al* (n 26) 221.

³² Dan-Nwafor *et al* (n 24) 5.

³³ Ibid.

³⁴ Ibid.

³⁵ Ibid, 7.

³⁶ Amzata *et al* (n 26) 221.

³⁷ Dan-Nwafor *et al* (n 24) 5.

³⁸ Ibid, 7.

well as Lagos and Ogun States in order to prevent the spread of the pandemic.³⁹ The effect of this was denial of access to justice to the people. Suspects who were in remand custody pending their trials felt the delay and suspension of court activities more than litigants who were outside.

Then, a relaxed lockdown began on May 4, 2020, replacing the total lockdown with a curfew from 8 pm to 6 am while the interstate travel ban was still in place.⁴⁰ Hence, while the lockdown was critical for disease containment, it undermined the religious, economic and social foundations for survival and the resilience structures of Nigeria's most vulnerable population.⁴¹

Traditional religious beliefs and covid-19 protocols in Nigeria

Modern Science, used in relation to modern medical practice, utilises orthodox medicine in the treatment of sickness, while the traditional faith on the other hand, relying on traditional belief, adopts the use of traditional medicine in dealing with sickness. Although, the goal of both science and faith is health-care delivery to the people, the approach, method and processes adopted by science and faith in their health-care delivery to the people differ despite their common goal. This is due to the difference in their recognition of the causes of sickness. Whereas, in Yoruba traditional faith, most sickness that afflict man are natural i.e. they are always considered to be the product of supernatural forces; modern science on the other hand, believes that any sickness is a function of disorderliness or derangement in the body's bio-chemical system. We will return to this after examining the religious beliefs of a few ethnic nationalities as well as those of the adherents of the Muslim and Christian faiths that were impacted negatively by the effective implementation of the protocols in Nigeria

In the traditional Nigerian societies, there emerged several modes of worship depending on the beliefs of each society. Modes of worship comprise all modes of giving expression to the various feelings toward the divine power, feelings of awe, reverence, obligation, depreciation, gratitude, hope, etc. The traditional African people may not worship in the same way the Christians, Muslims, Hondnists or Buddhists would, but they get the message of the personality that manifests Himself to them in their peculiar situations.⁴² Revelation is an act of God and to the understanding of African peoples, divine message can be obtained through the situation of things in their environment. The works of nature - rivers, hills, rocks, forests - instil the awareness in man that there is a superior force greater than himself.⁴³ From their various experiences of life, people form their religious concepts of deities and over a period of time, these concepts become established.⁴⁴

Whereas the stopping points in reaching God in Christianity and Islam could be considered few, traditional religion has numerous steps (deities) that are duly respected and approached. In addition, when something went wrong in the welfare of the individual or his family, he

³⁹ V. A. Oluwajobi and K. Omojajowo, 'Covid-19: A Case for Online Courtrooms in Nigeria and the Admissibility of Electronic Evidence in Nigeria's Online Courtrooms,' (2020) *Regulatory Framework and Policy on Financial Technology Company in Nigeria*, (2020) <https://www.researchgate.net/publication/343344219_COVID> accessed 28 Jan. 2022.

⁴⁰ Amzata *et al* (n 26) 221

⁴¹ This report was not available at the time of this research; it is however referenced by Amzata *et al* in their article. Amzata *et al* (n 26) 221

⁴² J. O. Kayode, *Understanding African Traditional Religion* (University of Ife Press, 1984)1

⁴³ *Ibid*, 2.

⁴⁴ *Ibid*.

immediately wondered who had caused it to happen. In most cases, the individual would suspect that someone had used evil magic, sorcery, or witchcraft against him or his household, animals, or fields.⁴⁵ The Igbo religion is one of the traditional African religions.⁴⁶ The Igbo tradition was rooted in their culture. Received orally by authorities, this tradition was transmitted from generation to generation through the same oral process. The Igbo religion fully embodies all characteristics of a traditional world religion, including its beliefs, sacred myths, oral qualities, strong appeal to the hearts of its followers, a high degree of ritualisation, and possession of numerous participatory parsonages such as officiating elders, kings, priests and diviners. They believe in a supreme being, believed to be the controller of the world and all its inhabitants.⁴⁷ Yoruba traditional religion is another form of worship in Nigeria.⁴⁸ In Ile-Ife alone,⁴⁹ there are over thirty-five shrines and these attract one religious worship or another in every day of the year except one.⁵⁰

According to Kayode:

An appreciation of the African Indigenous concept of God must involve an understanding of the pride of place given to ancestors. To the African peoples, life has no value at all if the presence and power of ancestral spirits are excluded. Ancestral spirits are the most intimate gods of the Bantu in South Africa - they are part of the family tribe and are consulted frequently. In Zambia, the consulted divinities are the ghosts of one's grandparents, parents, uncles, brothers etc. The Igbo and the Yoruba in Nigeria believe that their lives are profoundly influenced by their ancestors. In the everyday life of the Ga in Southern Ghana, the dead are believed to be present. Many have the regular habit of pouring libations of drinks whenever they are about to commence drinking (wine especially). They even go as far as throw a small morsel of food outside for their ancestors before starting to eat. In Sierra-Leone, Prayers are normally offered through succession of ancestors.⁵¹

Before the advent of Christianity, the medicine men in the Igbo nation acted as counsellors. Some acted not only as doctors but also as listeners to people's multifarious problems. They also acted as priests and prayed for their communities.⁵² The Igbo people, who profess traditional religion, worship the Supreme Being through many minor gods or divinities. There are shrines erected for the worship of the lesser gods by the traditionalists⁵³.

The concept of divinities as intermediaries between the Supreme Being and mortals is central to Nigerian traditional beliefs. Every locality has its own local divinities. It is difficult to determine the number of these divinities, but over 400 lesser divinities and spirits are recognised by the Yoruba; most of whom have their own priests and followers.⁵⁴ The most significant of the divinities to this work is the god of efficacious medicine. It is called

⁴⁵ C O. Okeke, C N Ibenwa, and G Okeke, 'Conflicts Between African Traditional Religion and Christianity in Eastern Nigeria: The Igbo Example' SAGE Open April-June 2017: 1-10 © The Author(s) 2017 DOI: 10.1177/2158244017709322, 3.

⁴⁶ Igbo is one of the major ethnic group in Nigeria.

⁴⁷ About Imbiti's work https://en.wikipedia.org/wiki/John_Mbiti accessed 3 April 2022

⁴⁸ This is another major ethnic group in Nigeria.

⁴⁹ Ile-Ife is a town in Osun State which is one of the six predominantly Yoruba speaking states in Nigeria.

⁵⁰ Kayode (n 45) 2.

⁵¹ Ibid, 4.

⁵² Okeke *et al* (n 45) 3.

⁵³ Ibid.

⁵⁴ Kayode (n 42) 32.

Osu among the Edo, while the Yoruba call him *Osanyin*.⁵⁵ There are also oracular divinities who serve the purpose of giving guidance on the right course of action to take and finding solutions to problems. These are the mouthpiece of the Supreme Being⁵⁶. The oracular divinity is called *Ibnokpabi* and *Efa* (or *Ebu*) among the Igbo; *Idiong* among the Ekoi; *Akgbara* at Awka; *Ifa* among the Yoruba etc.⁵⁷

Another traditional belief in Igbo land is their belief in Ancestor worship. The Igbo religious life is connected to their ancestors and to those not yet born creating a mystic continuum.⁵⁸ The Igbo society believes in character and has very strong belief in life after death. They believe that when a person dies, his soul or spirit wanders around the bush, until his relations perform the necessary and befitting burial rites. The Igbo religion considers that when an individual dies, their soul or spirit wanders until the body is given a proper burial. This waiting period is called the transitional period of the deceased.⁵⁹ The Igbo believe that ancestors wield tremendous powers of blessings and power of curse. After the interment of a fulfilled elder and after the obsequies must have been completed i.e. after the deceased interment into the world of the dead, the family usually the *okpala* (the first male child in the family), erects a shrine and creates an *okposi* (*ofof* like sticks) for venerating the spirit of the dead through prayers and sacrifices.⁶⁰

As stated in the opening paragraph of this section, the approach of Modern and traditional medicine depends largely on their opposable views of the cause of sickness. These opposable views inform the differences in their methods of curing sickness.⁶¹ The two phenomena attend to sickness using three layers of processes or methods i.e. diagnoses, causes, and treatments. With respect to diagnosis, the methods of diagnosis are not the same. This is because, the concept of sickness in traditional faith does not rely on the physical aspect of man and disease alone but also sees man as a combination of body, mind and spirit. These three are regarded as significant to what can cause sickness in man⁶². In this tradomedical diagnosis, the Yoruba Medicine man or native doctor may resort to consultation of *Ifa* oracle, ritual sacrifices and incantations. He may also seek the service of deity of divination called *Osanyin* in order to consult ‘the unseen hand’ to unravel the misery behind the problem of the patient. On the other hand, the medical science concentrate essentially on the body of the patient as anything spiritual in sickness is not known to science.⁶³ Hence, traditional worshippers do not believe there is a disease without cure, which informed why they did not believe there was anything novel about the outbreak and the incurability of covid-19 that would warrant the various protocols unleashed on them by the government.

In regard to causes, the causes of sickness differ between the two phenomena due to the difference in their approach to diagnosis. Because traditional religion rely on indigenous processes, the causes of sickness or any adversary are not in any way ordinary. Hence, the

⁵⁵ Ibid, 33.

⁵⁶ Ibid.

⁵⁷ Ibid.

⁵⁸ About Imbiti's work (n 47).

⁵⁹ Ibid.

⁶⁰ Okeke *et al* (n 45), 3.

⁶¹ R.A Olaoye, ‘An analytical study of the concept of sickness in Modern Science and Traditional Faith of the Yoruba in Nigeria’ in A.P. Dopemu, O. Obafemi, F.A. Oladele, O.B. Oloyede, S.O. Maloma, R.W. Omoloye and R.A. Olaoye, *Science & Religion in the service of Humanity* 153-163 (Local Society Initiative (LSI) and the Nigerian Association for the study and Teaching of Religion and Natural Sciences (NASTRENS) 2006) 153.

⁶² Ibid, 154.

⁶³ Ibid.

belief of Yoruba traditional medicine is that sickness may be caused by so many reasons, ranging from witchcraft, sorcery, and wizardry.⁶⁴ Sin and enemy are also regarded as part of those occurrences that can bring sickness to man within the Yoruba traditional faith.⁶⁵ Medical Science on the other hand does not believe in suppositions but rather on empirical data derived from its search for the cause of sickness⁶⁶. The Urhobo⁶⁷ perception of the aetiology of disease is of tripartite dimensions i.e., natural/physical causation, mystical/preter-natural causation and supernatural causation.⁶⁸ With respect to natural diseases, it is believed that the causes of natural diseases depend on cause-and-effect theory and as such, the remedy can be subjected to laboratory tests/analyses that gives rise to the discovery of active principles. Since no ritual is involved for this type of study of diseases, the treatment is considered rational.⁶⁹ Supernatural diseases are believed in Urboho tradition to be caused by witches, sorcerers and evil eyes of enemies while the divinities and ancestors are responsible for mystical diseases.⁷⁰ It is believed that mystical diseases arise mainly from breakdown in the filial relationship consequence on the failure of a victim to perform his obligation to the ancestors and/or the infringement of family moral code.⁷¹

In regard to treatment, Yoruba tradition based its treatment generally on traditional medicine, which is an embodiment of intricately interwoven processes. These processes are well rooted and efficacious having been tested over time⁷². This is often supported with an age-long adage often stated as follows:

Ewe gbogbo kiki ogun
Ogun ti aba sa ti oje
Ewe re loku kan
 (All leaves are medicinal
 The medicine which is not efficacious
 Must have lacked one type of herb or the other).⁷³

Hence, the use of herbal medicine occupies central position in the treatment of the sick by the Yoruba.⁷⁴ Yoruba also use occultism in the treatment of the sick. This belongs to the realm of mystery in which the traditional healer deals with the unseen but powerful metaphysical forces in exercise of which incantations or invocations are mostly employed.⁷⁵ Medical Science has nothing to do with metaphysics and its off shoots such as occultism or sacrifice. Several methods of treatment are adopted in Urboho traditional therapeutic process. These are: herbalism i.e., treatment through the use of herbs;⁷⁶ massage, which is adopted in the treatment of ailment of the nervous, muscular, osseous systems and especially for the treatment of gynaecological problems and man's temporary impotency;⁷⁷ hydro

⁶⁴ *ibid* 155.

⁶⁵ *ibid* 156.

⁶⁶ *ibid* 155.

⁶⁷ This is one of the major ethnic nationalities in the Niger-Delta Region of Nigeria. They are predominantly in Delta State of Nigeria.

⁶⁸ J.O. Ubrurhe, 'Life and Healing Process in Urhobo Traditional Medicine' in Dopemu *et al* eds (n 61) 245.

⁶⁹ *Ibid*.

⁷⁰ *Ibid*.

⁷¹ *Ibid*.

⁷² Olaoye (n 61) 157.

⁷³ Culled from Olaoye (n 61) 158.

⁷⁴ *Ibid*.

⁷⁵ *Ibid* 158.

⁷⁶ Ubrurhe (n 68) 246.

⁷⁷ *Ibid* 247.

therapy i.e. application of water of different forms and temperature for the treatment of ailments;⁷⁸ fasting to cure ailments such as obesity, indigestion, mental and chronic diseases,⁷⁹ and faith healing, which is associated with medico-religious practice.⁸⁰ However, an aspect of medical science that perhaps has a semblance of occultism, which is an aspect of Trado- medical science, is X-ray. However, X-ray has its limitations. X-ray can only disclose natural ailment rather than spiritual ailment. This is why it is believed among the Yoruba that X-ray cannot disclose the cause of a spiritual ailment in a person who has been so afflicted. The result of such X-ray will be negative.⁸¹

In Christian perspectives' four types of illness, each requiring different approach in seeking for a cure have been identified. These are: sickness of the spirit usually caused by the person's own sin; emotional sickness and problems usually caused by the emotional hurts of a person's past resulting in anxiety and fear; physical sickness of the body usually caused by disease; and Demonic oppression which usually consists of emotional problems or physical sickness and it can be due to demonic oppression.⁸² It is believed that these illnesses can be spiritually healed. Accordingly, prayer for repentance is required for the healing of personal sin; prayer for inner healing (healing of memories) is required for the cure of emotional problems; prayer for physical healing is needed to the cure physical sickness; and for demonic oppression, prayer for deliverance is required for its cure.⁸³ Finally, the conditions for spiritual healing are faith, fasting and prayer; and forgiveness of sin.⁸⁴

God said in the Holy Bible:

37. When famine or plague comes to the land, or blight or mildew, locusts or grasshoppers, or when an enemy besieges them in any of their cities, whatever disaster or disease may come, 38 and when a prayer or plea is made by anyone among your people Israel – being aware of the affliction of their own hearts, and spreading out their hands towards this temple – 39 then hear from heaven, your dwelling place. Forgive and act; deal with everyone according to all they do, since you know their hearts (for you alone know every human heart).⁸⁵

The adherents of Muslim faith who are of larger population in Nigeria believe that there is no disease without a cure. This belief is drawn from the verses of the holy Qur'ān and the *Hadiths* of the holy Prophet Muhammad (PBOH) some of which are quoted hereunder. Allah says in the Qur'an, 'Say: 'To the believers it [the Qur'ān] is a guidance, and a healing.'⁸⁶ Similarly, in Qur'an 10 verse 57, Allah says, 'O men, now there has come to us an admonition [Qur'anic revelation] from your Lord, and a healing for what is in the breast, and a guidance, and a mercy to the believers.'⁸⁷ The *ḥadīth*, or sayings and doings of the Prophet collected and compiled after Muḥammad's death, offer extensive commentary on disease and medicine. One of such *ḥadīth* is where Prophet Muḥammad (PBOH) was quoted to have said,

⁷⁸ Ibid.

⁷⁹ Ibid 248.

⁸⁰ ibid 249.

⁸¹ Olaoye (n 61) 159

⁸² B.A Ogunbodede 'Spiritual Healing and Science: A Christian perspective' in Dopemu *et al* eds (n 61) 285.

⁸³ Ibid 286.

⁸⁴ Ibid 287.

⁸⁵ 1 Kings 8:37-39.

⁸⁶ Q 41:44.

⁸⁷ See also Q26:80.

'God has not sent down a disease without sending down a remedy for it'- transmitted by Bukhari; and that reported by Jabir that Prophet Muhammad (PBOH) said, 'There is a medicine for every disease and when the medicine is applied to the disease it is cured by God's permission.' Muslim transmitted it.'⁸⁸

Hence, contrary, to the belief of the modern medicine that covid-19 is not a curable disease, the belief of the traditional worshippers and followers of Christianity and Islam is that there is no disease without cure and that all the COVID 19 protocols including the stay-at-home order were unnecessary and infringement of their basic rights

Human rights issues and Covid-19 protocols

Nigeria has a dualist system in which an international treaty law is not binding on the country until it is enacted into law by the National Assembly.⁸⁹ However, the Constitution of Nigeria contains a Bill of Rights in Chapter IV, as well as the mechanism for the enforcement of those rights.⁹⁰ The provisions in Chapter IV include: the right to life; right to dignity of human person; right to personal liberty; right to fair hearing; right to private and family life; right to freedom of thought, conscience and religion; right to freedom of expression and the press; right to peaceful assembly and association; right to freedom of movement; right to freedom from discrimination.⁹¹ In order for the government of Nigeria to curtail the spread of COVID-19 like other sovereign nations, it introduced a number of non-pharmaceutical measures as noted earlier.⁹² These measures, particularly, the sit-at-home, no doubt affected some of the basic and constitutionally guaranteed rights of Nigerians. It exposed the level of poverty in the country as it became obvious that the majority feed from their daily earnings. The basic rights affected by the protocols in Nigeria are the right to personal liberty; freedom of thought, conscience and religion; peaceful assembly and association; and freedom of movement. These rights will now be discussed in turn with respect to what the national and the regional laws state and how they were infringed upon by means of covid-19 non-pharmaceutical measures.

Right to personal liberty

Section 35 (1) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) provides that every person in Nigeria is entitled to his/her personal liberty and no one is to be deprived of this right without due process of law. Likewise, the African Charter on Human and Peoples Rights states:

Every individual shall have the right to liberty and to the security of his person. No one may be deprived of his freedom except for reasons and conditions previously laid down by law. In particular, no one may be arbitrarily arrested or detained.⁹³

Personal liberty means the right to freedom from wrongful or false imprisonment, arrest or any form of physical restraint whether in any common prison, or even in the open street without legal justification.⁹⁴ According to Lord Denning, the right to personal liberty means,

⁸⁸ *Mishkāt al-maṣābīh*, Vol. III, 945.

⁸⁹ CFRN s 12 (1).

⁹⁰ CFRN s 46.

⁹¹ CFRN ss. 33-42. Other rights in this category are right to acquire and own immovable property anywhere in Nigeria; and right to freedom against compulsory acquisition of movable and immovable property. CFRN ss43-44.

⁹² See nn 30, 32, 35, 37 & 42.

⁹³ Art 6 African Charter on Human and Peoples Rights (ACHPR)

⁹⁴ K M Mowoe, *Constitutional Law in Nigeria* (Malthouse, 2008) 320

‘the freedom of every law abiding citizen to think what he will, to say what he will on his lawful occasions without let or hindrance from any other person.’⁹⁵ It is however to be noted that liberty does not consist of the freedom to do any acts, but the freedom to do acts that do not impede with other persons.⁹⁶ Equality before the law is synonymous to liberty meaning that liberty implies freedom⁹⁷.

Stay-at-home orders and cessation of non-essential movements and activities in Lagos and Ogun States and FCT following the order of the President of the Federal Republic of Nigeria on 30 March 2022 were implemented. Other States governments then began to introduce similar measures as they witnessed the rise in the number of cases within their states. It is important to mention here that the lockdown measures included closure of schools and workplaces, bans on religious and social gatherings, cancellation of public events, curfews, restrictions on movement, and cessation of interstate and international travels. The net effects of the foregoing is that the constitutional right to liberty of the people was greatly impaired. This also affected the income of the larger populace as they were prevented from pursuing their daily sources of income. People like artisan such as vulcanisers, bricklayers, roadside automobile repairers, and petty traders etc. who live on what they earn daily from their trade were the most vulnerable. Feeding became difficult for this category of Nigerians and their families.

Right to freedom of thought, conscience and religion

This right is provided for under section 38 (1) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) as follows:

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 private) to manifest or propagate his religion or belief in worship, teaching, practice or observance.

The African Charter on Human and Peoples Rights also provides:

Freedom of conscience, the profession and free practice of religion shall be guaranteed. No one may, subject to law and order, be subjected to measures restricting the exercise of these freedoms.⁹⁸

Freedom of religion enables every person individually or in community with others, whether in public or private to practice their belief in worship, practice or teaching.⁹⁹ This right rests on a tripod: freedom of thought, conscience and religion. Although, these rights are interrelated, they are distinct. The right to freedom of thought relates to the right to hold a view or idea that might be inconsistent with the view held by the majority or the mainstream ideals or beliefs. The right to freedom of conscience relates to moral judgment, the right to hold profound convictions on all matters. The right to freedom of religion relates to the right of a person to freely choose his/her belief or religion.¹⁰⁰

⁹⁵ Lord Denning, *Freedom under the Law* (Steven & Son, London 1948) 5.

⁹⁶ Y. Olomojobi, *Human Right and civil liberties in Nigeria: Discussions, Analyses, and Explanations* (2nd edn, Princeton 2018) 88

⁹⁷ Ibid

⁹⁸ Art 8 ACHPR.

⁹⁹ Olomojobi (n 96) 200.

¹⁰⁰ See the case of *Abdulkareem v. LASG* [2016] 15 NWLR (Pt. 1535) 177, where the full panel of the Court of Appeal held that the use of hijab (female Muslim headscarves) by female Muslims constituted an act of

As discussed in section three of this paper, Nigeria, as an African country, is an amalgamation of a highly heterogeneous communities whose religions are rooted in their diverse traditional beliefs. The people of Muslim faith are required to observe their obligatory prayers in congregation; those of Christian faith perform their acts of worship in congregation particularly through fellowships and Sunday worships, and the traditional religion worshippers commune with their deities in private and public as well as in association with fellow worshippers. All of the foregoing were put in abeyance with the implementation of the Stay-at-home order of the Federal and State governments to curtail the spread of COVID-19 pandemic. In particular, the annual *Eid Fitri*,¹⁰¹ and *Eid Adha*¹⁰² prayers that are enjoined on all Muslims to perform in congregation, were disallowed from taking place in 2020. Congregational *Salaat* is obligatory on all mature male Muslims. If one cannot hear the *Adhan* i.e. call to prayer but one is aware that a mosque is within, one is duty-bound to offer one's prayer at the mosque in congregation.¹⁰³

Allah said in the holy Qur'an:

O you who have attained faith! When the call to prayer is sounded on the day of congregation, hasten to the remembrance of God, and leave all the worldly commerce; this is for your own good, if you but knew it.¹⁰⁴

Abu Hurayrah (RA) narrated: Allah's messenger (SAW) said:

The reward of the prayer offered by a person in congregation is twenty-five times greater than that of the prayer offered in one's house or in the market (alone). And this is because if he performs ablution and did it perfectly and then proceeds to the mosque with the sole intention of praying, then for every step he takes towards the mosque, he is upgraded one degree in reward and his one sin is taken off (crossed out) from his account (of deeds). When he offered his *Salaat*, the angels keep on asking Allah's blessings and forgiveness for him as long as he is (staying) at his place and does not pass wind. They say O Allah! Bestow your blessings upon him; be merciful and kind to him.¹⁰⁵

In the same vein, Christians were denied the opportunity of congregational worship during the Easter and Christmas celebrations in 2020 because of the lockdown. As well as this, the traditional worshippers were barred from performing public rituals and congregational worship either totally or partially. An instance is the annual Osun-Osogbo festival when rituals or sacrifices used to be made to the Osun goddess by her worshippers. This event draws worshippers of the river goddess from around the world to partake in the ritual worship. It also draws tourists from around the world. However, the Osun-Osogbo festival of 2020 ended on a low note due to Covid-19 rules. The event was strongly hit by the

worship. Hence, the refusal to allow the appellants to wear it on their school uniform, is a clear infraction of their constitutionally guaranteed right.

¹⁰¹ This is to mark the end of the month of Ramadan when Muslims across the world are required to fast and to observe two *Rakaat* superogatory prayers in congregation at the end of the month.

¹⁰² This is period when Muslim faithful are required to sacrifice animal in the course of Allah and also observe two *Rakaat* superogatory prayers in congregation.

¹⁰³ R. Jamiu, *Common Mistakes in Salaat* (As-salafy Productions, 2009), 30.

¹⁰⁴ Q 62:9

¹⁰⁵ Bukhari 620, 628.

pandemic. Only worshippers were allowed to perform the ritual, but with strict adherence to Covid-19 protocols.¹⁰⁶

Right to peaceful assembly and association

Section 40 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) guarantees the civil rights of persons to assemble and associate with like minds, form and join political parties and trade unions for the protection of their common interest.

Article 10 of the African Charter on Human and Peoples Rights also provides:

Every individual shall have the right to free association provided that he abides by the law. Subject to the obligation of solidarity provided for in article 29, no one may be compelled to join an association.

Hence, a person may therefore form or belong to any political party, trade union, or any other association, be it political, social, or economic, in the pursuance of lawful interests. However, this right does not extend to any right to form or belong to an assembly for public unrest or other unlawful purposes. In addition, the guaranteed freedom of association and assembly is subject to limitation of any law that is reasonably justifiable in a democratic society in the interest of defence, public safety, public order, public morality or public health; or for the purpose of protecting the rights and freedom of other persons.¹⁰⁷

One of the essentials of the lockdown is the restriction on public gatherings. The communal life of typical Nigerians and the social gathering of age grade, club and associations meetings and events were negatively affected by this turn of events. People could not meet or move freely in company of others. Social interactions and communications were limited to social media rather than physical interaction. In consequence of this, people spent more money data to break even with their social life with their family and friends. However, the poor, who formed the larger percentage, and who could not afford the additional financial burden were subjected to severe boredom during the sit-at-home period of the pandemic.

Right to freedom of movement

Section 41(1) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) guarantees the freedom of movement of every citizen of Nigeria.

The components of this right under the Constitution are as follows:

1. Freedom to move freely throughout Nigeria
2. Freedom to reside in any part of Nigeria
3. The right not to be expelled from Nigeria
4. The right not to be refused entry into Nigeria, and
5. The right not to be refused exit from Nigeria.¹⁰⁸

At regional level, Article.12 of African Charter on Human and Peoples Rights also states:

¹⁰⁶OsunFestival2020:<https://www.google.com/search?q=osun+festival+2020&oq=osun+fest&aqs=chrome.7.69i57j0i512l9.18460j0j15&sourceid=chrome&ie=UTF-8> accessed 13 April 2022.

¹⁰⁷ *Governing Council of NTI Kaduna v. NASU* [2018] LPELR – 44557 (CA).

¹⁰⁸ See *Director of State Security Service & Anor v. Olisa Agbakoba* [1999] 3 NWLR (Pt. 599) 314.

1. Every individual shall have the right to freedom of movement and residence within the borders of a state provided he abide by the law.
2. Every individual shall have the right to leave any country including his own, and to return to his country. This right may only be subject to restrictions, provided for by law for the protection of national security, law and order, public health or morality.
3. Every individual shall have the right, when persecuted, to seek and obtain asylum in other countries in accordance with laws of those countries and international conventions.
4. A non-national legally admitted in a territory of a state party to the present charter, may only be expelled from it by virtue of a decision taken in accordance with the law.

The lockdown measure in response to the spread of covid-19 caused severe restrictions to the movement of the people, both within and outside the country. Interstate travels were suspended. This led to a high shortage in food supply in the country. The South and the Northern parts of the country are inter-dependent in supply of foodstuffs. Traders who maintain the food chains were restricted from moving around the country for the purchase, transportation and supply of these essential needs of the people across regions. In consequence of this deficit, those who had stocked the food items before the movement restrictions resulted to hiking the prices of those food items thereby adding more economic hardship to the already fragile source of livelihood of the poor masses occasioned by the restrictions placed on them from pursuing their daily businesses.

Restrictions on and derogation from fundamental rights

Notwithstanding the copious protection of rights of citizens by the Constitution of the Federal Republic of Nigeria, the same Constitution makes provisions for situations when those rights can be suspended without infringing on the right of any individual who may suffer the consequence of such suspension. Surprisingly the African Charter on Human and Peoples Rights does not contain provision on derogation from human rights as in other regional conventions/instruments on Human Rights. However, the two dominant religions in Nigeria that is, Islam and Christianity, allow derogation from fundamental rights in some extreme circumstances.

Section 45(1) of the Constitution allows restrictions on fundamental rights and stipulates the grounds on which the right to private and family life,¹⁰⁹ the right to freedom of thought, conscience and religion,¹¹⁰ the right to freedom of expression and press,¹¹¹ the right to peaceful assembly and association,¹¹² and the right to freedom of movement¹¹³ can be taken away, derogated, or limited. However, it is sacrosanct in the Constitution that such derogation must be provided for in the interests of the State by laws that are reasonably justifiable in a democratic society on grounds of defence, public safety, public order, public morality, public health, or for the purpose of protecting the rights and freedom of other

¹⁰⁹ CFRN '99 s 37.

¹¹⁰ CFRN '99 s 38.

¹¹¹ CFRN '99 s 39.

¹¹² CFRN '99 s 40.

¹¹³ CFRN '99 s 41.

persons.¹¹⁴ In addition, the Constitution permits restriction on the exercise of the fundamental right to liberty ‘in the case of persons suffering from infectious or contagious disease, persons of unsound mind, persons addicted to drugs or alcohol or vagrants, for the purpose of their care or treatment or the protection of the community’.¹¹⁵

Likewise, Islam allows for restriction on and derogation from fundamental rights of the adherents of the Muslim faith when there is an outbreak of pandemic in any place. The holy Prophet Muhammad (PBOH) was reported by Sa’d to have said:

If you hear of an outbreak of plague in a land, do not enter it; but if the plague breaks out in a place while you are in it, do not leave that place.¹¹⁶

It follows therefore that if a person hears of the outbreak of a plague or epidemic outside the place where the person currently is, that person is required not to enter that plagued land to safeguard his health. Likewise, if the outbreak of the epidemic occurs where the person is, such person is required not to leave the plagued land where he currently is in order to safeguard the health of others. The person whose land is plagued is not permitted to leave the land but should rather be patient and accept whatever Allah decrees for him.

Allah said in the Holy Qur’an:

Everyone is going to taste death, and we shall test you with evil and with good by way of trial. And to Us you will be returned.¹¹⁷

Conclusions

It is clear from the foregoing that no right is absolute. The various non-pharmaceutical measures put in place by governments were meant to safeguard the health of the people whose fundamental rights were affected. The Constitution envisages circumstances when the health of the masses could be endangered unless some extreme measures are taken to avert mortality of a high magnitude. The net effect of the foregoing is that the protocols cannot be said to have infringed any fundamental right unjustifiably.

However, it became obvious from this research that the Nigerian government at all levels must work harder to bring down the poverty rate in the country which was easily aggravated by the sit-at-home order in response to the rise in cases in the country. The government could address this by identifying the vulnerable members of the public and assist them with interest-free loans to engage in Small Scale businesses. A lower digit interest loan could also be given to engage in Medium Scale businesses. There is need to create different job opportunities for the unemployed youths just as it is necessary to create a conducive environment for businesses to survive.

Finally, there is need to intensify efforts in the area of education and awareness campaigns on public health as well as limitations to fundamental rights under the Constitution of the Federal Republic of Nigeria, 1999 (as amended).

¹¹⁴ See *Mbanefo v Molokwu* [2014] 1-2 SC (Pt. II) 137.

¹¹⁵ CFRN ’99 s 35 (1) (e).

¹¹⁶ M. M. Khan, *The Translation of the Meaning of Sahih Al-Bukhari: Arabic-English Vol 7* (Daussalam) 30:5728.

¹¹⁷ Q 21:35.