

Law, Religion, Health and Healing in Africa



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5 THE COVID-19 PANDEMIC, AU AGENDA 2063 AND RELATIONSHIP BETWEEN LAW AND RELIGION IN NIGERIA

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INTRODUCTION

Religion has been useful, but also much misused, in Nigeria.³ Nigerian religion scholar Utensati Apyewen correctly notes that religious leaders and actors have employed religious language, historically and continually to encourage community engagement for “inter-religious peace and action for social justice”, religion, particularly Christianity and Islam, has been exploited as an “engine for spreading violence, deceit and encouraging the destruction of lives and properties”.⁴ Unfortunately, Nigerian media coverage of issues related to religion mostly misrepresents situations involving religion and cases of misuse and abuse of religion.⁵ This is

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3 For academic analysis on this twin perspective by Nigerian scholars of religions studies, see the following works: Apyewen UA. 2020. “The Use and Abuse of Religion”, *Ilorin Journal of Religious Studies* 10(1):65; Aluko OP. 2017. “Tolerance in Multi-religious Society for national Security: The Nigerian Experience”, *Ogirisí: A New Journal of African Studies* 13:291; Oloyede IO. 2014. “Theologising the Mundane, Politicising the Divine: The Cross-currents of Law, Religion and Politics in Nigeria”, *African Human Rights Law Journal* 14:178; Ajah M. 2015. “Religious Education and Nation-Building in Nigeria”, *Stellenbosch Theological Journal* 1(2):263; Nwauche ES. 2008. “Law, Religion and Human Rights in Nigeria”, *African Human Rights Law Journal* 8:568; Amoloye-Adebayo AO 2019. “The Nigerian Constitution and the *Shari’ah* question in Southwestern Nigeria”, in Opeloye MO, Bidmos MA, Oladosu AO and Musa Ismail (eds). *Islam in Yorubaland: History, Education and Culture*. Lagos: University of Lagos Press and Bookshop Ltd, 259; Amoloye-Adebayo AO. 2020. “‘Freedom of Religion’: Nigerian Constitutional Provision for Religious Peace and National Stability”, in Imam OY et al (eds). *Religion, Peace and Nation Building in Nigeria*. Ile-Ife: Department of Religious Studies, Faculty of Arts, Obafemi Awolowo University, Nigeria, 175; and Kukah MH. 1993. *Religion, Power, and Politics in Northern Nigeria*. Ibadan: Spectrum Books Ltd. For some non-Nigerian perspective, see Nolte I, Danjibo N and Oladeji A. 2009. “Religion, Politics and Governance in Nigeria”, University of Birmingham, Religions and Development Working Paper 39.

4 Apyewen, “The Use and Abuse of Religion”, 66.

5 For example, the effect of negative media reporting on religion and citizens’ religious rights in educational institutions in Nigeria is discernible from the somewhat lopsided 2021 report on Nigeria by the U.S. Office of International Religious Freedom. The report, which expressed its perspectives on the religious rights in educational institutions to be based on media accounts, incorrectly asserts that religion is employed in Nigeria to compel Christian-affiliated public schools to accommodate the wearing of *hijab* by Muslim

despite the availability of scholarly works that have demonstrated the positive effects and inroads that religion can make in areas such as legal development, social justice and nation-building in Nigeria.⁶

This chapter is a contribution to understanding the positive influence of religion to human flourishing through law. It argues that religion, for the most part, has contributed to health and healing, both during and in the aftermath of the Covid-19 pandemic.⁷ This is particularly the case where religious actors and rhetoric contributed to large-scale compliance with lockdown restrictions and non-congregation orders in most states in Nigeria.⁸ Cases of noncompliance occurred in few areas, such as in Kano, Yola and Ugheli,⁹ where religious clerics called for continued congregation that led to a spread of the contagion and high mortality rates in some affected areas were examples of the misuse and instrumentalisation of religion, and not for the sake of religious observance. Such instrumentalisation of religion has a long history in Nigeria, resulting in current mixed feelings as to the precise role of religion in public administration and legal development. In this

female students while allowing Muslim-affiliated public schools to compel all female students regardless of faith to wear the *hijab*. See United States Department of State, Office of International Religious Freedom. 2022. "International Religious Freedom Report 2021: Nigeria", 2 June. This assertion in the report is contrary to the unambiguous position of the law in Nigeria as contained in the following decision of the Nigerian Supreme Court that Muslim female students in all public educational institutions who freely chooses to appear in *hijab* may not be compelled to appear otherwise. See *Lagos State Government & 3 Ors v Miss Asiyat Abdul Kareem & 2 Ors* (SC.910/2016) delivered on 17 June 2022. It is important to note that even though the date of this decision of the Supreme Court came after the date of the report of the U.S. Department of State, the decision of the Supreme Court merely affirmed what had been the existing position of the law in the decision of the Court of Appeal in the following cases: *Abdulkareem v Lagos State Government* (2016) 13 NWLR (Pt 1535) 177; *Incorp. Trustees, CAN v Kwara State Govt* ((2020) 13 NWLR (Pt.1740) 99); *Provost Kwara State College of Education Ilorin & 2 Ors v Bashirat Saliu & 2 Ors* (Unreported) Appeal No. CA/IL/49/2006 decided on 18 June 2009).

- 6 See again cited works in note 3 above.
- 7 The index case of Covid-19 in Nigeria was reported on 27 February 2020. See World Health Organization (WHO). 2020. "Listings of WHO's response to Covid-19", *WHO News*, 29 June (updated 29 January 2021).
- 8 Ayeni T. 2020. "Religion in Nigeria despite coronavirus measures", *The Africa Report*, 3 April. In this article, part of the series "Corona Chronicles: 30 March–3 April 2020", Ayeni reports, "Around Nigeria, religious and social gatherings have been restricted to 20 people, in an effort to stop the spread of the coronavirus. This is having a big impact on the country's churches and mosques." There is also a further description in this article of specific measures adopted by various places of worship ranging from following the number restriction strictly or moving from in person to virtual religious meetings. For other editorials in the online version of the national dailies. See Alabi CT and Ramoni R. 2020. "Covid-19: How Worshippers Are Coping With 'New Normal' In Lagos", *The Daily Trust*, 16 August; "Eld-Fitri: Pray In Your Homes – Sultan Tells Muslims", *Africa Daily News*, 20 May 2020; Adeshida A. "Sallah: Adhere strictly to health, safety regulations during celebration, Oyeyemi urges Nigerians", *Vanguard*, 30 July.
- 9 Yusuf U, Brisibe P and Bello B. 2020. "Covid-19: Muslim faithful ignore social distancing in Kano, Yola, Ughelli, observe Jum'at prayers", *Vanguard*, 4 April.

chapter, we contend that the present complex situation of ambivalence towards religion is aided by an unclear constitutional direction of the utility of religion in the construction of the Nigerian identity and the emergence of Nigeria itself as a body politic.

It is in this context that the continent-wide developmental and aspirational document, the African Union's "Agenda 2063: The Africa We Want",¹⁰ appears to be highly instructive and relevant in its positive and hopeful perspective on the use of religion. What follows in the sections below is an analysis of the Nigerian situation through an Agenda 2063 perspective with a view to demonstrating that even though some of the history of law and religion co-development in Nigeria may be problematic and result in present conflict situations, religion continues to be useful in coping with unforeseeable challenges, such as the Covid-19 pandemic. In that regard, the Constitution of the Federal Republic of Nigeria, 1999 requires revision in relation to the utility of religion and the aspirations and objectives of Agenda 2063.

THE EFFECT OF THE COVID-19 PANDEMIC ON THE LAW AND RELIGION RELATIONSHIP IN NIGERIA

The role of religion and religious actors in the responses to the pandemic in Nigeria cannot be overemphasised. One of the major ways in which religion and religious actors helped in public administration was in ensuring compliance with the government's implementation of social restrictions and lockdown orders.¹¹ As one observer correctly notes, "lack of trust in the political class means that many people are more likely to listen to and believe the words of their religious and traditional rulers".¹² The closure of places of worship was essential to achieve compliance with non-aggregation requirements for social events. Another way that religious institutions and religious actors also proved extremely useful was in the provision of food and other necessities and where governmental provisions were either non-existent or highly insufficient.¹³ Thus, during the pandemic, religion constituted, to a considerable extent, an informal measure of maintaining a stable, peaceful and responsive citizenry, which is a core objective of the law. The period of the pandemic witnessed two important religious festivals – the Easter celebrations at the end of the Christian Lent and the Eid-al Fitr festival to mark the end of Muslim fasting in Ramadan.¹⁴ During these periods and at other times when religious

10 African Union. 2015. "Agenda 2063: The Africa We Want". Addis Ababa: African Union Commission. Tagged "The Africa We Want", Agenda 2063 is a 50-year "blueprint and master plan for transforming Africa into the global powerhouse of the future", and it was adopted by the African Union in 2013.

11 See again Ayeni, "Religion in Nigeria despite coronavirus measures", and accompanying texts.

12 Ayeni, "Religion in Nigeria despite coronavirus measures".

13 For some accounts of this, see Ayandele O, Okafor CT and Oyedele O. 2021. "The role of Nigeria's faith-based organisations in tackling health crises like Covid-19", *Africa Portal*, 27 January.

14 See again Ayeni, "Religion in Nigeria despite coronavirus measures" above.

congregation might have occurred, media outlets overflowed with messages from religious leaders to obey lockdown measures and other restrictions as a matter of religious duty, not merely patriotic responsibility.¹⁵ Although there were situations of noncompliance based on religion or instrumentalisation of religion in some states, such cases constituted the exception rather than the norm.¹⁶

Furthermore, scholars of religious studies would readily agree that religion is an important source of mental stability, internal peace and emotional strength to cope with the complex and enigmatic nature of natural phenomena, such as a contagion or structural asymmetries in human relations.¹⁷ The added uncertainties of how to appropriately contain the Covid-19 pandemic, even for developed societies,¹⁸ increased the allure of religion in developing and transitioning societies, such as Nigeria, as an appropriate response protocol in the face of challenges of insufficient material resources for medical and alimentary needs.¹⁹ The utility of religion in this regard has been stated, correctly in our view, in the following words of international religious freedom advocate Thomas Farr that:

Religion is, first and foremost, the human search for a greater-than-human source of being and ultimate meaning. Religion is the effort of individuals and communities to understand, to express, and to seek harmony with a transcendent reality of such importance that they feel compelled to organize their lives around their understanding of it ... Most people by their nature seek answers to questions that seem to be in our DNA. For example, is there something or someone to which or to whom I owe my being? If so, how should I order my life in light of that discovery? Why is there suffering? Is there life after death? If so, does my behavior in this life affect my fate after death?²⁰

Thus, aside from obeying religious instructions not to congregate, the inner propensity of religion helped Nigerians to cope mentally with enforced isolation that occurred without much preparedness in terms of emotional and material resources.

15 Ayeni, "Religion in Nigeria despite coronavirus measures".

16 See Yusuf et al, "Covid-19: Muslim faithful ignore social distancing".

17 For instance, see Jordan J. 2016. "Religion and Inequality: The Lasting Impact of Religious Traditions and Institutions on Welfare State Development", *European Political Science Review* 8(1):25.

18 For examples of preliminary assessments as the world was battling with the pandemic, see Tisdell C.A. 2020. "Economic, Social and Political Issues Raised by the Covid-19 Pandemic", *Economic Analysis and Policy* 68:17-28; Belhassine O and Karamti C. 2021. "Contagion and Portfolio Management in Times of Covid-19", *Economic Analysis and Policy* 72:73-85; Padhan R and Prabheesh KP. 2021. "The Economics of Covid-19 Pandemic: A Survey", *Economic Analysis and Policy* 70:220-237.

19 As shall be discussed in the next section, it will be observed that in the case of Nigeria, religion has always been an important component of individual and collective responses to social challenges or legal and political development.

20 Farr T. 2019. "What in the World is Religious Freedom", *Religious Freedom Institute*, 1 November.

HISTORY OF LAW IN NIGERIA: THE ROLE OF RELIGION

Religion always been an important component of individual and collective responses to social challenges, as its use in the response to the pandemic indicates, but religion has also been part and parcel of legal development in Nigeria. Religion is connected to the development of law in Nigeria in a way that predates the emergence of Nigeria as a modern nation-state.²¹ This is because the indigenous societies that that were amalgamated in the colonial era into Nigeria had various systems of law connected to their belief systems.²² African traditional religion and customary law, as well as Islamic law, were in existence in Nigeria before the advent of British colonialism in Nigeria. Then, with colonialism, came the received English law, elements of which persist in Nigerian today. Thus, the discussion below of religion in terms of both Nigeria's historical heritage and the objectives of Agenda 2063 is highly relevant in the Nigerian context. To understand this heritage in Nigeria, it is helpful to know something about each component of Nigeria's tripartite legal system.²³ This discussion is important to demonstrate how religion contributed to health and healing during the Covid-19 pandemic.

Customary law

In most of the indigenous societies that constitute the territories of the South-South, South-East and South-West geopolitical zones of Nigeria, along with a few communities in northern Nigeria, the applicable law before the advent of colonial administration was "unwritten customary law".²⁴ This law was essentially based on traditional systems of belief and administered through indigenous courts invested with the traditional authority exercised by the kings. By the time of colonialism, the indigenous courts were replaced by the "native courts" through the Native Court Proclamations of 1900 and 1901, respectively. The former established the native courts while the latter provided that "the civil and criminal jurisdiction of a statutory native court in a district was to be exclusive of any jurisdiction by any traditional authority".²⁵ The implication of these proclamations was that even

21 See Sampson IT. 2014. "Religion and the Nigerian State: Situating the De facto and De Jure Frontiers of State-Religion Relations and Its Implications for National Security", *Oxford Journal of Law and Religion* 2(3):311-339, wherein the author presents a brilliant analysis of the paradoxical relationship that has historically existed between religion and politics, on the one hand, and between religion and law, on the other, which has continued influence over citizens' perceptions to date. However, the author's recommendation of a "moderate secular regime", which seemingly indicates to a reductionist attempt to legislate religion in the current authors' opinion, is a bit romantic and unrealistic as the analysis of Agenda 2063 seeks to demonstrate.

22 Sampson, "Religion and the Nigerian State", 320.

23 For more detailed discussion, see Elias TO. 1963. *The Nigerian Legal System*. Second Edition. London: Routledge and Paul; Obilade AO. 1979. *The Nigerian Legal System*. Ibadan: Spectrum Books Ltd.

24 Obilade, *The Nigerian Legal System*, 17.

25 Native Court Proclamation No. 25, 1901, s 12.

though the native courts that replaced indigenous courts were to apply customary law, the authority of the courts came not from the local custom or traditional authority but from “English-type law”.²⁶ This is the origin of the customary legal system that evolved over time into an appeal system as is now contained in the Constitution of the Federal Republic of Nigeria, 1999.²⁷ The current practice is that the native courts are now called customary courts, which are courts of first instance, and appeals from these courts are to the customary court of appeal, which has appellate and supervisory powers over application of customary law.²⁸

Islamic law

In most parts of the indigenous societies that constitute the territories of northern Nigeria, the applicable law was Islamic law.²⁹ This is also true of some communities in southern Nigeria, as the historical record shows.³⁰ During colonialism, the northern protectorate was administered through a regime of indirect rule and a complicated system of appeal was created to act as a watchdog on the workings of the existing Islamic legal system.³¹ Also, the jurisdiction of the existing Islamic law courts was curtailed in areas such as criminal law, commercial law, tort and other areas, and it was relegated to Muslim personal law to keep the very large Muslim population cooperative.³² Some scholars have described this as the “systematic abrogation of Islamic law in arears incompatible with the interest and agenda of the colonial authority”.³³ This process was made easy through the machinery of the repugnancy and incompatibility tests. For example, the Native Courts Proclamation of 1906 declared Islamic law to be part of native law and custom. Therefore, any aspect of native law and custom that was in the view of the colonialist repugnant to natural justice, equity and good conscience or that was incompatible with the colonial laws was deemed to be void to the extent of such repugnancy or incompatibility. This situation continued until 1960, when Nigeria became independent and its court system underwent further development up to its current state under the 1999 Constitution.³⁴ It is important to emphasise here

26 Obilade, *The Nigerian Legal System*, 23.

27 See CFRN, ss 265-269 and 280-284.

28 See CFRN, ss 265-269 and 280-284.

29 Obilade, *The Nigerian Legal System*, 17. See also Sodiq Y. 2017. *A History of the Application of Islamic Law in Nigeria*. Switzerland: Palgrave Macmillan, 27.

30 Gbadamosi TGO. 1978. *The Growth of Islam among the Yoruba 1841-1908*. London: Longman, 4

31 For a full description of the workings of this system and the types of courts established under it in the words of an officer of the colonial authority then in Nigeria, see Orr C. 1965, *The Making of Northern Nigeria*. Second Edition. London: Frank Cass & Co Ltd, 230-243.

32 Clarke PB. 1981. *West Africa and Islam*. London: Edward Arnold, 191.

33 See, for example, the observations of Coulson NJ. 1964. *A History of Islamic Law*. Edinburgh: Edinburgh University Press, 9-61.

34 For constitutional provisions on the Islamic court system, see CFRN, ss 260-264, 275-279.

that the constitutional status of the Islamic legal system continues to be a source of conflict and tension for the non-adherents of the Islamic faith in Nigeria.³⁵

Received English law

The term “received English law” is used in the Nigerian context to refer to the colonial legal heritage of the common law of England, the doctrines of equity and English statutes of general application. According to Section 45(1) of the Interpretation Act, 1964, laws that were enforced in England as of 1 January 1900 were made applicable in the colony of Lagos as the seat of the central authority of the colonial government. By the same provision, where any matter is connected to the exclusive legislative competence of the federal legislature, the legal sources were also made applicable throughout Nigeria. Some of the English statutes were eventually repealed and replaced by Nigerian legislation. In terms of religious influence on the law, the Christian origin of the common law and doctrines of equity made applicable throughout Nigeria is evident from the old decision of Lord Sumner that: “Ours is, and always has been, a Christian State. The English family is built on Christian ideas, and if the national religion is not Christian there is none. English law may well be called a Christian law.”³⁶ The Christian origin of the received English law was problematic in terms of application in the areas of Nigeria where there was little or no connection with the Christian faith, such as in Northern Nigeria and some areas in Southern Nigeria. From the time of colonialism up to the present date, this has continued to be a source of tension and conflict.³⁷

At this juncture, it is important to observe two points. In the first place, religion is clearly connected to the development of the law in Nigeria, regardless of the mix or nature of the citizenry’s religious adherence. To understand this, it is pertinent to consider the following remarks in 1909 by one colonial official, W.L. Grant, following his assessment of the demography of the areas that later came to be known as Nigeria, to the effect that “Every native tribe is bound together by laws and customs resting originally on a religious basis, i.e., resting on certain ideas as to man’s nature, his relations to his fellows, and to the other world. On the basis of these ideas different tribes have built up very complex systems of laws and observances, resting on, and bearing witness to, certain habits of mind.”³⁸

35 See, for example, the critical remarks of Ordu GE. 2015. “Sharia Law In Nigeria: Can A Selective Imposition of Islamic Law Work in The Nation?”, *Journal of Islamic Studies and Culture* 3(2):70, for the proposition that constitutional provisions on the Islamic law ought to be expunged from the 1999 Constitution.

36 *Bowman v Secular Societies* (1917) A.C. 465.

37 For an academic presentation of one such view, see Oloyede IO. 2014. “Theologising the Mundane, Politicising the Divine: The Cross-currents of Law, Religion and Politics in Nigeria”, *African Human Rights Law Journal* 14:178.

38 Grant WL 1909. *Revue Economique Internationale* (cited in Orr C. 1965, *The Making of Northern Nigeria*. Second Edition. London: Frank Cass & Co Ltd, 230).

This colonial commentary demonstrates the age-old connection of law and religion in Nigeria and leads to a second point to be observed. This second observation has to do with the great diversity and complexity of Nigerian religious adherence and observance. It is this complexity that sometimes result in conflicts and misuse of religion – so much so that there are calls in some quarters for reducing the religious normative space.³⁹ Misrepresentations and misuses of religion continue to abound for purposes other than religious. It is understandable that when such instrumentalisation and misrepresentations result in the breakdown of law and order or loss of lives and properties, such reductionist calls may appear persuasive. However, we contend that the experience of the authority exercised by religion in the response to the pandemic, in the face of a citizen's lack of trust of governmental and public administration directives, was strengthened in most cases and ignored only a few, demonstrating clearly that the era of "carpet sweeping" on matters of religion is over. Put another way, there is a need to engage with religion instead of simply consigning religious matters to the realm of private observance. Unfortunately, however, despite the long association of law and religion, when it comes to religious responses to challenges such as Covid-19 pandemic, there is no clear legal or constitutional directive regarding the relationship between law and religion or what normative role should be accorded religion in the public space.

THE THEORY OF LAW AND RELIGION RELATIONSHIP IN NIGERIA: A CONSTITUTIONAL ANALYSIS

The Constitution of the Federal Republic of Nigeria, 1999, contains eleven references to religion. The first is Section 10, wherein it is provided that neither the Federal government nor any of its federation units as States "shall adopt any religion as State Religion". Section 15(1) states the motto of the Nigerian Federation as "Unity and Faith, Peace and Progress." Arguably, the word "faith" is another derivative for religion and perhaps constitutes the twelfth reference to religion in the Constitution. More particularly in Subsection 2 of the same Section 15, it is stated that national integration should be actively encouraged. This is to be achieved by prohibiting discrimination on the "grounds of place of origin, sex, religion, status, ethnic or linguistic association or ties". Further, under Chapter IV of the Constitution on "Fundamental Rights", expresses in Section 38 the fundamental right of all Nigerians to "freedom of thought, conscience, and religion". This right includes the freedom to change one's religion or belief as well as the freedom "(either alone or in community with others, and in public or in private) to manifest and propagate' one's religion or belief in matters of 'worship, teaching, practice and observance". On the one hand, Subsection 2 of Section 38 protects all Nigerians at all levels of education against religious instructions and observance contrary to those of the individual concerned. Further, Subsection 3 gives the right to religious communities or denominations to give religious instruction to pupils "in any place of education maintained wholly by that community or denomination".

39 See again Ordu, "Sharia Law In Nigeria", 70; Sampson, "Religion and the Nigerian State".

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Religion is recognised in Section 42 as one of the grounds upon which a person may neither be subjected to “disabilities or restrictions” (Subsection 1(a)) nor become the recipient of “any privilege or advantage” (Subsection 1(b)) simply because they belong to such religion. This is regardless of whether the disability or restriction or the privilege or advantage is as a result of express or practical operation of any law in force in Nigeria or any executive or administrative action. The other grounds stated in this section, alongside religion, are connection to a particular community, ethnic group, place of origin, sex or political opinion. The final reference to religion in the Constitution is contained in Part III, which is the segment on Supplemental Provisions. The provision concerned is Section 222 under Segment (D) on Political Parties. The section provides in its Subsections (a) and (b) that:

No association by whatever name called shall function as a party, unless –

- (a) the names and addresses of its national officers are registered with the Independent National Electoral Commission;
- (b) the membership of the association is open to every citizen of Nigeria irrespective of his (sic) place of origin, circumstance of birth, sex, religion or ethnic grouping.

The above constitutional analysis does not disclose clearly any theory of law and religion relationship. In light of this uncertainty, both historically and at present, politicians, national and religious leaders as well as ordinary citizens have differed and continue to differ in their approach to the question as to whether Nigeria is a secular country.

Several examples illustrate the point. One of the foremost Nigerian nationalists in the struggle for independence from colonialism, Chief Obafemi Awolowo, commented in 1966, “Nigeria should be a secular state. The existing association between the State and the Church should be completely severed. It is an old British custom which is apish, unreflecting, and discriminatory for us to preserve. ... as far as possible, there should be separation of activities of the state on the one hand, and religious bodies on the other.”⁴⁰ In the same vein, Alhaji Shehu Shagari, the first executive president of Nigeria, was quoted in 1981 as saying that “though ours is a secular state with diverse religious creeds we do, in fact, live in harmony among ourselves, respect each other’s religious beliefs”.⁴¹ As a final example, after the tumultuous aftermath of the annulment of the 12 June 1993 elections in Nigeria,⁴² then-military President, General Sani Abacha, inaugurated a National Constitutional Conference Commission in 1994 by remarking, “Nigeria is a secular state. We have acknowledged this in all our previous constitutions, and it is not advisable that we deviate from this course. Religion is an instrument for building

40 Awolowo O. 1966. *Thoughts on Nigerian Constitution* Ibadan: Oxford University Press, 150-151.

41 Ojigbo AO. 1981. *Shehu Shagari: The Biography of Nigeria’s First Executive President*. Yugoslavia: Mladinska knjiga, 387-388.

42 Now celebrated as “Democracy Day” in Nigeria as an official public holiday.

moral bricks in our society and it should remain within the realms of personal faith and group choice. It must never be allowed to interfere with our collective desire to build a unified and indivisible nation.”⁴³

Upon a dispassionate consideration of the commentaries just cited, it is evident that even though the national leaders employ the word “secular” in reference to the nature of the Nigerian polity, they do not intend that the issue of religion is generally irrelevant. For Awolowo, it appears that there was concern to keep the integrity of religion intact and ensuring its insulation from political instrumentalisation. On Shagari’s and Abacha’s part, their concerns were seemingly for the respect and protection of various forms of religious beliefs under one nation. To the current authors, they all appear to intend the same consequences in their various contentions for “secularism”, namely, that religion should exist solely for the sake of religion and politics for the sake of politics. That this stance may be unrealistic and ludicrous is evident in the following opposition to the theory of secularism supported by the quoted political leaders. In the foreword to a book published in 1993, John Olorunfemi Onaiyekan, now the retired Archbishop of the Diocese of Abuja, stated:

The strident call for a separation of politics from religion often becomes a slogan used according to the convenience of the moment. The reality is that both are tied together, by the very nature of things- and this for at least two reasons: First, there is something inherently sacred about political power. History has shown that it can only be properly exercised when handled with sacred attention. In religious jargon, we say, “all powers belong to God.” Secondly, it is the same concrete human person who assumes both political and religious identity, and one necessarily affects the other. No wonder, even nations which make much of separation of religion and politics find many ways in practice to act against this principle. It seems to me that this is why our prolonged debate over the “secular” nature of the Nigerian state has remained inconclusive. “Secular state” means different things to different people. It is surely more useful to tackle concrete issues of interaction of politics and religion and from there evolve just and fair solutions to our problems of peaceful co-operation.⁴⁴

Onaiyekan is certainly correct that there are different conceptions of secularism and that even though in the ordinary conception secularism incorporates the notion of separating the spiritual and religious realms from the temporal or political, the reality is often the opposite. It is important to be clear what the goals of defining Nigeria one way or the other should be in relation to the law-religion relationship. This is where consideration of the Agenda 2063 objectives can be instructive.

43 Umar AM (ed). 1995. *Constitutional Conference 1994/95 Official Handbook and WHO IS WHO*. Abuja: Heritage Press, 48.

44 Kukah MH. 1993. *Religion, Politics and Power in Northern Nigeria*. Ibadan: Spectrum Books Ltd.

AGENDA 2063 AND THE “USE” OF RELIGION

“Agenda 2063: The Africa We Want” is a document that was adopted by the African Union (AU) in 2013 to serve as “masterplan” and “blueprint” for the overall transformation and development of Africa.⁴⁵ The main objective of the document was to refocus the activities of the AU and its member states from away from the initial focus of its precursor organisation, the Organisation of African Unity (OAU).⁴⁶ The initial agenda of the OAU was struggle against the apartheid regime in South Africa and the attainment of political independence from all forms of colonialism for all societies on the African continent. Agenda 2063 is a long-term 50-year development plan from 2013 with seven aspirations ranging from inclusive social and economic development, continental and regional integration to peace, security and good governance. Key activities are delineated to be undertaken in 10-year development plans across the 50-year period from 2013-2063.⁴⁷ Two reports of the implementation plans have been published to date. The first continental implementation report was published in February 2020,⁴⁸ while the second continental report was published in February 2022.⁴⁹ The first report assessed progress made across the continent on all seven aspirations, with the highest percentage score of 48% recorded for Aspiration 4 (a peaceful and secure Africa) and the lowest percentage score of 12% for Aspiration 5 (Africa with a strong cultural identity, common heritage, value and beliefs).⁵⁰ There is no mention of the pandemic and the attendant socio-economic effects on African societies, since the report was published just as the pandemic was spreading to the African continent.

Unsurprisingly, the second report, published in February 2022, contain copious references to the pandemic and its attendant effect on African countries. In fact, in the foreword section of the report, the effect of the pandemic in terms of fiscal deficit and setbacks on developmental gains in relation to Agenda 2063 was underscored as a front-burner issue. However, the issue of religion or religious actors was not mentioned in the report in connection to the pandemic in terms of “use” or “misuse”. This is surprising given the nature of reference that the issue of religion receives generally in Agenda 2063.

45 See African Union, “Agenda 2063: The Africa We Want”. For academic analysis by non-Africans of the implication of the contents of Agenda 2063 for the aspiration of transformation of Africa by the African Union, see Ziebell de Oliveira G and Otavio A. 2021. “Strategies of Development and International Insertion: The Hybridity of Agenda 2063”, *Contexto Internacional* 43(2):331. For African perspective on the aspirational nature of Agenda 2063, see Ndizera V and Muzee H. 2018. “A Critical Review of Agenda 2063: Business as Usual?”, *African Journal of Political Science and International Relations* 12(8):142.

46 Ziebell de Oliveira and Otavio, “Strategies of Development and International Insertion”.

47 Ziebell de Oliveira and Otavio, “Strategies of Development and International Insertion”.

48 African Union. 2020. “First Continental Report on the Implementation of Agenda 2063”, *AU.intl*, 8 February.

49 AU, “First Continental Report on the Implementation of Agenda 2063”.

50 AU, “First Continental Report on the Implementation of Agenda 2063”, 7.

In fact, the word “religion” occurs eleven times in the popular version of Agenda 2063. The first mention underscores the need for “transformative leadership” in all fields – notably including religion – in order to entrench such ideals as good governance, democratic values, gender equality, respect for human rights, justice and the rule of law.⁵¹ The second mention notes the need to eschew all forms of terrorism and religious extremism in the process of attaining “a peaceful and secure Africa”.⁵² A third mention emphasises the need for respect for religious diversity among other pan-African ideals to be entrenched by 2063.⁵³ Such diversity on the basis of religion and other stated factors should constitute “a source of strength”,⁵⁴ and by 2063 pan-Africanism should be fully embedded in school curricula in such a manner that cultural assets, such as religion and spirituality, will be enhanced.⁵⁵ In addition, while the agenda recognises that “religious and spiritual beliefs” play significant role in the “construction of the African identity and social interaction”, the agenda nevertheless aspires that the continent will “continue to vehemently oppose all forms of politicisation of religion and religious extremism”.⁵⁶ Finally, Agenda 2063 aspires to a people-driven development, which necessitates the inclusivity of all citizens in all aspects of decision-making with no consideration for their affiliations on any basis, including religion.⁵⁷

From the above discussion, it is clear that Agenda 2063 is very cognisant that in most African societies, including Nigeria, religion is a vital component of African heritage and of the definition of the citizen’s identity. It is tightly knitted into the fibre of the social web and relations. The fact that such an important document on the African continent as Agenda 2063 contains unequivocal references to religion signifies its perception that rather than pushing religion to the background, it is better to engage it fruitfully in the public domain. Put differently, Agenda 2063 acknowledges the fact that there must be conversations about religion in the public space, mediated appropriately by government, to avoid degeneration to conflict, while not stifling fringe opinions. Otherwise, as entrenched as religion is in the community life of most African societies, religion will continue to be instrumentalised for less desirable purposes if religious conversations are consigned only to private spheres. While the exploration and acknowledgment of the role of religion underscored by Agenda 2063 is vital, one must also not lose sight of the possible exploitation of religion, with its attendant negative effect, if conversation about religion is not appropriately mediated. Appropriate mediation of religion in the Nigerian case is a dire necessity given existing narratives and historical facts concerning the relationship of law and religion.

51 African Union. 2020 “Aspirations for the Africa We Want:”, *AU.intl*, Aspiration 3, para 31.

52 AU, “Aspirations”, Aspiration 4, para 38.

53 AU, “Aspirations”, Aspiration 5, para 40.

54 AU, “Aspirations”, Aspiration 5, para 41.

55 AU, “Aspirations”, Aspiration 5, para 42.

56 AU, “Aspirations”, Aspiration 5, para 46.

57 AU, “Aspirations”, Aspiration 6, para 47.

MISCONCEPTIONS ON THE ROLE OF RELIGIOUSLY INSPIRED LAW AND LEGAL SYSTEM IN NIGERIA

As can be surmised from the discussion so far, the development and application of law in Nigeria has been inexorably linked to religion. Not only does Agenda 2063 make copious references to religion, but the 1999 Constitution also contains provisions on religion. However, the issue of religion continues to occasion much competition, complexity and conflict among adherents of Nigeria's different religions. This chapter argues that erroneous perceptions that lack a historical basis are a major source of these challenges. The influence of religion in the emergence of the customary law, Islamic law and the received English law is a historical fact. However, it is also a historical fact that none of these legal systems emerged and developed in the post-colonial Nigeria according to the aspirations of religious adherents. Put another way, it is historically incorrect to argue, as some observers do, that the system of law derived from these three sources protects religious rights.

As analysis has shown, the development Nigerian law, including religious and customary law sources, was a result of colonial policies for ease of administration and for the convenient exploitation of Nigeria's human and material resources. As British historian of religion Peter Clarke rightly notes, local laws were not interfered with where they served the interest of the colonial masters in keeping the citizen cooperative, as was the case in the indirect rule of the then northern Nigeria where Islamic personal law was left alone.⁵⁸ However, existing modes of legal administration were modified in commercial transactions and land transactions and other areas to facilitate the interests of the colonial authority. Thus, the constitutional references to religion and religiously inspired legal systems are, in the perspective of this chapter, no more than "colonial relics". The time is ripe for Nigerians to be responsive enough to this rather than engaging in unnecessary and unhealthy competition and mutual rivalry. Nigerians must appreciate the fact that religion has a place in terms of definition of the African identity and communal coexistence, a fact recognised in Agenda 2063. The hypocrisy in the use to which religion is put in our laws cannot justifiably be blamed on any religion or any of its adherents. It is better to have a conversation about what religious worldviews and resources contribute to development and human flourishing, particularly in the context of health and healing and the particular challenges brought about by the Covid-19 pandemic.⁵⁹

58 Clarke, *West Africa and Islam*, 17.

59 This kind of conversation is ongoing in the Western context with the publication of a 2018 report. See International Panel on Social Progress (IPSP). 2018. *Rethinking Society for the 21st Century: Report of the International Panel on Social Progress*. Cambridge: Cambridge University Press, 1 and 4. Chapter 16 of this report is titled "Religion and Social Progress", wherein it is acknowledged in the introduction that "religion is in itself a cultural good" and that "economic wellbeing, education, and healthcare are goals shared by religious groups and are often woven into religious worldviews".

OBSERVATIONS AND PROGNOSIS FOR FUTURE DEVELOPMENT

References in Agenda 2063 to religion are responsive to the dual and ambivalent nature of religion as a unifying factor in the process of identity formation and as well as an index for divisiveness when instrumentalised for political, self-serving or extremist purposes. Aspirations towards transformational leadership and inculcating the spirit of service to fellow citizens in public administration require readjustment and realignment in the African value system. Religion can constitute an important tool in the realisation of these aspirations in Africa, particularly in Nigeria, because it teaches the value of living beyond self-interest, among other values. This positivity is certainly required in Nigeria to overcome vices such as corruption, greed and nepotism that are the product of a single world outlook: self-interest. A sense of service, however, encourages patriotism and religion is a powerful tool in inculcating this value. In this connection, the positive religious responses to the Covid-19 pandemic were a significant indication to the appropriate use of religion and this possibility should be further fruitfully engaged.

An informal colloquial expression in Nigeria is that Nigerians are probably the “most religious people on earth”, with places of worship perhaps outnumbering schools and educational institutions. This perspective may seemingly underscore a counterargument that religion has little to offer in terms of human and material development in Nigeria. However, the experience of the Covid-19 pandemic has proven to some extent that what is required is a reorientation of the appropriate use of religion. However, due to the long history of mutual fear and distrust among the adherents of the various religions because of the complex past, much negativity has been erroneously attached to religion. The brief history of the emergence of the religiously inspired laws has demonstrated that there is need for correct assessment of the role of religion in terms of development of laws that are “homegrown” and in tune with the values of the citizenry as expressed by their religious followership.

CONCLUSION

Religion is part and parcel of the history and heritage of the African people. This is why Agenda 2063, with its inspiring and rightly ambitious aspirations, references religion and its capacity for positive engagement. Such bold references in an era when people in other Western societies are engaged in “secularism” debates, as regards whether there can be too much, too little or no religion at all, is, a pan-African way of standing for the future. Religion is a constitutive element of individual identities that adds up to a collective national identity. Rather than avoiding the issue of religion in Nigeria, even though religion has too often been a negative force, it is better to face head-on the factors that prevent religion from playing a positive role. Because religion is embedded deeply in the fibre of the existence of the nation’s people, the engagement of religions in combatting the Covid-19 pandemic in Nigeria shows the powerful role it can play. Facing both the negative and positive dimensions of religion in relation to law and governance would entail creating robust atmosphere for exchange of ideas and histories across the different religions to uncover a common a homegrown “Nigerian” response to the relationship between law and religion.