

Law, Religion, Health and Healing in Africa



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4 COVID-19, CURTAILMENT OF RELIGIOUS LIBERTY AND RELIGION-STATE RELATIONS IN WEST AFRICA: NIGERIA AND GHANA IN FOCUS

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INTRODUCTION

The coronavirus known as Covid-19 is the largest public health crisis in contemporary times. At the outbreak of the pandemic, and in light of its threat and on the advice of health specialists, most states in West Africa, as in other regions of the world, adopted radical measures to contain the rate of transmission, impact and deaths resulting from the virus and to ensure effective contact tracing. Some of the measures were backed by legal regulations,² with fines and imprisonment as the attendant effect of their violation in some instances.³

The effect of the lockdown regulations was to restrict constitutionally guaranteed human rights, including the rights to freedom of movement, freedom of association, freedom of religion and the right to human dignity, among others. In light of the nature of African religiosity and religious practice,⁴ the aspects of the regulations that imposed restrictions on religious gatherings elicited much public debate and ultimately affected religion-state relations.⁵ While some members of the public welcomed the regulations and legal restrictions, others rejected and flouted the regulatory measures, particularly the provisions of the lockdown regulations that banned religious gatherings in an attempt to stem the spread and the numbers of death arising from the virus.

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- 2 In Liberia, for instance, see "Covid-19 Declaration of National Health Emergency" made pursuant to the Public Health Law of Title 33, Chapter 14 of the Liberian Code of Laws Revised. In Sierra Leone, see the Declaration of a State of Public Emergency by His Excellency, Dr Julius Maada Bio, President of the Republic of Sierra Leone in terms of Section 29(1) of the Constitution of Sierra Leone, 1991, Act 6 of 1991.
- 3 Sun N, Christie E, Cabal L and Amon JJ. 2022. "Human Rights in Pandemics: Criminal and Punitive Approaches to Covid-19", *BMJ Global Health* 7(2).
- 4 Quashigah K. 2010. "Religion and the Secular State in Ghana", in Martinez-Torrón J, Durham WC (Jr) and Thayer D (eds). *Religion and Secular State: National Reports*. Madrid: Servicio de Publicaciones de la Facultad de Derecho de la Universidad Complutense de Madrid, 331-338.
- 5 "Senegal: Covid-19 Response Violates Rights", Article19.org, 28 June 2021; Mat NFC, Edinur HA, Razab MKAA and Safuan S. 2020. "A single mass gathering resulted in massive transmission of Covid-19 infections in Malaysia with further international spread", *Journal of Travel Medicine* 27(3):taaa059; Singh DE. 2020 "Role of Religions in the Spread of Covid-19", *Journal of Ecumenical Studies* 55(2):289-310.

Against this backdrop, the goal of this chapter is to analyse and reflect upon the literature, statutes, electronic and media reports and case examples in order to evaluate the state regulatory response in containing the spread of coronavirus disease. The analysis proceeds in light of the constitutionally guaranteed right to freedom of religion in two West African nations – Nigeria and Ghana. It appraises the response of the religious constituents in the two countries in terms of how they rejected or became complicit in curtailing religious liberties through the lockdown regulations. It reflects on how these responses impact on religion-state relationship during the outbreak of the pandemic. It further reflects upon the nature and quality of judicial oversight, if any, of the government action in these restrictions. This analysis is relevant, given the tensions that often attend religion-state relations in African states, and it can help to understand and aid religion-state relationships in African contexts in navigating future pandemics.

Jurisprudentially, Nigeria and Ghana have a number of things in common. For instance, both are commonwealth countries, and their national constitutions were enacted in the same decade,⁶ providing for constitutional democracies that guarantee religious liberty⁷ and give recognition to state neutrality in religious matters.⁸ Christianity, Islam and African traditional religions are the main religions practised in both countries. A key difference between the countries is that Nigeria operates a federal system of government,⁹ while Ghana practices a unitary system with some features of federalism.¹⁰

This chapter, first, outlines the legal framework for the protection of the right to freedom of religion in Nigeria and Ghana. It then examines the provisions of the lockdown regulations and their impact on freedom of religion. The legal section is followed by an examination of the responses of religious groups to the regulations. In this section, I analyse the opinions of scholars and public commentators to determine the justification of the regulatory measures in light of the constitutional limitation to human rights. Thereafter, I reflect on how these responses impacted the religion-state relationship during the pandemic. Overall, the conclusion is that religious constituencies in both Nigeria and Ghana largely endorsed the lockdown regulations, partnering with the state to stem the spread of the virus. Although the parts of the regulations that provide for the total or partial ban on religious gatherings in the wake of the outbreak of Covid-19 may have increased the suffering and violated the rights of most religious adherents, they were justifiable and permissible limitations of religious freedom under the circumstances.

6 See Constitution of the Federal Republic of Nigeria, 1999 (hereinafter CFRN) and the Constitution of the Republic of Ghana, 1992 (hereinafter CRG).

7 CFRN, s 38 and CRG, art 21(1)(c).

8 See CFRN, s 10 and CRG, art 56; Quashigah EK. 1999. "Legislating Religious Liberty: The Ghanaian Experience", *BYU Law Review* 2:596.

9 Nigeria is a Federal Republic with 36 federating states and a Federal Capital Territory.

10 Penu DAK. 2022. "Explaining Defederalization in Ghana", *Publius: The Journal of Federalism* 52(1):26-54.

LEGAL FRAMEWORK FOR FREEDOM OF RELIGION IN NIGERIA AND GHANA

“Freedom of religion” is a recognised human right that means different things to different people. The scope of what it entails varies between states, religions, individuals and legal instruments.¹¹ What appears to gain a consensus, however, is that freedom of religion implies a state’s duty to refrain from interfering with an individual or community’s pursuit of a chosen religious belief. It includes the right to choose and change one’s religion without force and coercion, including the freedom to manifest and practise the religion individually or in fellowship with other believers. The importance of the protection of freedom of religion as a fundamental human right has been widely acknowledged as crucial for the development of an individual’s self-definition and the promotion of democratic pluralism within a society. In fact, it is regarded by some as “the most sacred of all freedoms”.¹²

This acknowledgment underscores the protection of the right in multiple international treaties and conventions, including the Universal Declaration of Human Rights (UDHR),¹³ the International Covenant on Civil and Political Rights (ICCPR),¹⁴ the African Charter on Human and Peoples’ Rights,¹⁵ the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief,¹⁶ and the European Convention for the Protection of Human Rights and Fundamental Freedoms.¹⁷ Although the wording of these international instruments varies, they convey fundamentally similar meanings. Nigeria and Ghana are signatories to these instruments.

Nigeria has a longer constitutional history of the protection of the right to freedom of religion than Ghana. At the time of Nigeria’s independence in 1960, some minority ethnic and religious groups had expressed the fear of domination by the majority

11 Evans C. 2001. *Freedom of Religion under the European Convention on Human Rights*. Oxford: Oxford University Press, 18; See also Sullivan WF, Hurd ES, Mahmood S and Danchin P (eds). 2015. *Politics of Religious Freedom*. Chicago: University of Chicago Press, 5.

12 Robertson M (ed). 1991. *Human Rights for South Africans*. Oxford: Oxford University Press, 124; See also *Wisconsin v Yoder* 406 US 205 (1972).

13 Universal Declaration of Human Rights (hereinafter UDHR), G.A. res. 217A (III), U.N. Doc A/810 at 71 (1948).

14 International Covenant on Civil and Political Rights, G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force Mar. 23, 1976.

15 African [Banjul] Charter on Human and Peoples’ Rights, adopted June 27, 1981, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), entered into force Oct. 21, 1986.

16 Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, G.A. res. 36/55, 25 November 1981.

17 European] Convention for the Protection of Human Rights and Fundamental Freedoms, ETS 5, 213 U.N.T.S. 222, entered into force Sept. 3, 1953, as amended by Protocols Nos 3, 5, and 8 which entered into force on 21 September 1970, 20 December 1971 and 1 January 1990 respectively.

groups. This prompted the British colonial government of Nigeria to set up the Willink Commission to look into the agitation. The Willink Commission found that the fear was genuine and suggested that provisions on fundamental rights be entrenched in the Independence Constitution of Nigeria of 1960. This suggestion was accepted, and the provisions on fundamental rights, including the right to freedom of religion were included in the Constitution of the Federation of Nigeria, 1960.¹⁸ These provisions were later entrenched in the country's 1979 Constitution and are include in the Constitution of the Federal Republic of Nigeria, 1999 (hereinafter 1999 Constitution or CFRN). Section 38 of the 1999 Constitution guarantees the right to freedom of religion.

A vital point to make is that, in Nigeria, there is a double guarantee for freedom of religion by virtue of the provisions of both Nigerian Constitution and the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act.¹⁹ The latter was enacted in terms of Section 12(1) of the 1999 Constitution to domesticate the provisions of the African Charter.²⁰ Thus, in *Abacha v Fawehinmi*,²¹ the Nigerian Supreme Court held that the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act, being a statute with an international component, was superior to any other Nigerian statute except the Constitution. It follows, therefore, that no statute enacted by the Nigerian legislature can take away the rights guaranteed by the African Charter, which includes the right to freedom of religion for Nigerians, except as may be permitted in the 1999 Constitution.

In the current Nigerian Constitution, Section 38 protects the right to freedom of religion by adopting Article 18 of the Universal Declaration of Human Rights, which provides that: "Every person shall be entitled to freedom of thought, conscience, and religion, *including* freedom to change his religion or belief, and freedom (either alone or in community with others, and in public or in private) to manifest and propagate his religion or belief in worship, teaching, practice and observance."²² The use of the non-exclusive term "including" in the above provision, arguably, presupposes that the scope of the rights that are listed in the provision is not exclusive. Furthermore, the Nigerian Constitution contains a number of other secondary rights that reinforce the enjoyment of the freedom of religion to ensure that the entitlement to this right is meaningful. These sections include Section 42, providing that no person shall be discriminated against on the basis of religion; Section 40, protecting freedom of association; and Section 39, protecting freedom of

18 Abuza AZ. 2017. "Derogation from Fundamental Rights in Nigeria: A Contemporary Discourse", *East African Journal of Science and Technology* 7(1):108.

19 African Charter on Human and Peoples' Rights (Ratification and Enforcement), Act 2 of 1983.

20 CFRN, s 12(1).

21 *Abacha v Fawehinmi* (2000) 6 (NWLR) (Part 660) 228. See also *Inspector General of Police v All Nigeria Peoples Party* (2007) LPELR-8217(CA) 1, 43.

22 UDHR, art 18 (emphasis added).

4. Covid-19, curtailment of religious liberty and religion-state relations in West Africa...

expression.²³ There are four basic aspects to the constitutional right to freedom of religion in terms of Section 38 that are worthy of examination. These are the rights to belong to any religion, the right to change one's religion, the right to *manifest and propagate* one's religion either in public or in private, and the right to *manifest one's belief* either alone or in community with others.

Ghana has also given constitutional effect to the protection of the right to freedom of religion. The Constitution of Ghana, ever since the 1969 Constitution, has protected freedom of religion.²⁴ Within the Ghanaian context, Article 21(1)(c) of the Ghanaian Republican Constitution of 1992 also protects the right.²⁵ It states: "All persons shall have the right to freedom to practise any religion and to manifest such practice." Article 17(2) further prohibits discrimination on the grounds of religion, and Article 17(3) describes discrimination to include a situation where some are granted privileges or advantages which are not granted to persons of another description.²⁶

A detailed analysis of the legal frameworks for the protection of religious liberty in Nigeria and Ghana reveals the protection of individual and group religious autonomy, equality of all religions and nondiscrimination on the basis of religion. In Nigeria, the courts have on a few occasions been called to determine the efficacy of the right to freedom of religion.²⁷ This includes the recent case of *Lagos State Govt and Ors v Asiyat AbdulKareem*.²⁸ In that case, the Supreme Court affirmed the right of a Muslim pupil to wear *hijab* in public school. However, in Ghana, it seems that cases contesting religious liberty violations hardly ever come to court.²⁹ A handful of relevant cases have come before Ghana's Commission on Human Rights and Administrative Justice (CHRAJ), an administrative quasi-judicial body.³⁰ The case of *Tyron Iras Marhguy v Board of Governors Achimota Senior High School & Anor*,³¹ decided in 2021, is a very recent and novel court decision giving judicial approval to the constitutional protection of religious liberty in Ghana. The applicant in that case

23 CFRN, ss 42, 40 and 39.

24 Quashigah, "Legislating Religious Liberty: The Ghanaian Experience", 596.

25 CRG, art 21(1)(c).

26 CRG, art 17(2-3).

27 Thus, in *Medical and Dental Practitioners Disciplinary Tribunal v Okonkwo* (2001) 10 WRN 1 SC.; *Agbai v Okagbue* (1991) 7 NWLR (Pt 204) 391. See also, *Nkpa v Nkume* (2001) 6 NWLR (Pt 710) 543.

28 *Lagos State Govt and Ors v Asiyat Abdul Kareem*, Suit Number SC/910/16 (2022).

29 See Quashigah, "Religion and the Secular State in Ghana", 333. Quashigah, a Ghanaian, says: "There is not any case law that directly asserts the right to religious freedom." See also Nyinevi CY and Amasah EN. 2015. "The Separation of Church and State under Ghana's Fourth Republic", *Journal of Politics and Law* 8(4):283, 286.

30 *Alhasuna Muslim Faith v Regional Police Commander, Bolgatanga* [1994-2000] CHRAJ 191.

31 *Tyron Iras Marhguy v Board of Governors Achimota Senior High School & Anor* (2021) JELR 107192 (HC).

successfully challenged the decision of the management of the Achimota Senior High School denying him admission on the ground that he keeps long hair. Long hair and dreadlock braids are a practice of members of the Rastafarian religion, a minority religious group in Ghana.

The right to manifest one's religion is, however, not absolute. Section 45 of the Nigerian Constitution and Articles 21(4)(c) and (e), and 12(2) of the Ghanaian Constitution allow a law to derogate from the right when it is in the public interest and benefit.³² Accordingly, a state may be obliged in certain cases to limit the right to freedom of religion. The aspect of the right to religious liberty that was violated by the lockdown regulations is the right to *manifest one's belief* in community with others – the right to a religious gathering. This right is at the heart of the freedom of religion, because it underscores the collective group or institutional right to freedom of religion. Israeli international law scholar Yoram Dinstein rightly argues, "Freedom of religion, as an individual right, may be nullified unless complemented by a collective human right of the religious group to construct the infrastructure making possible the full enjoyment of that freedom by individuals."³³ Relevant to the collective group right of freedom of religion, Asonzeh Ukah, a Nigerian scholar of religion, submits that "collective face-to-face ritual performances and mechanisms not only build, maintain, and sustain social dynamics and solidarity; they are also the foundations of religion, social systems, and community domains."³⁴

THE LOCKDOWN PROVISIONS AND FREEDOM OF RELIGION

Both Nigeria and Ghana enacted lockdown regulations that limited the right to freedom of religion. After Covid-19 hit the shores of Nigeria on 19 February 2020 and following the fear of its escalation and the number of deaths that it might cause, President Muhammadu Buhari on 20 March 2020 and under the terms of Sections 2, 3 and 4 of the Quarantine Act enacted Covid-19 Regulations of 2020 (hereinafter, the Nigerian Regulations).³⁵ The Nigerian Regulations were enacted through an executive order that did not pass through the usual legislative route, but was based on the advice of the Federal Ministry of Health and Nigeria Centre for Disease

32 Section 45(1) states: "Nothing in sections 37, 38, 39, 40 and 41 of this Constitution shall invalidate any law that is reasonably justifiable in a democratic society (a) in the interest of defence, public safety, public order, public morality or public health; or (b) for the purpose of protecting the rights and freedom or other persons."

33 Dinstein Y. 1992. "Freedom of Religion and Religious Minorities", in Dinstein Y (ed). *The Protection of Minorities and Human Rights*. Netherlands: Springer, 18; Govindjee A. 2016. "Freedom of Religion, Belief and Opinion", in Govindjee A (ed). *Introduction to Human Rights Law*. Second Edition. Durban: LexisNexis, 15. See also, the Nigerian case of *Ajayi v The Registered Trustees of Ona Iwa Mimo Cherubim and Seraphim* (1998) 7 NWLR (Pt. 556) 156.

34 Ukah A. 2020. "Prosperity, Prophecy and the Covid-19 Pandemic: The Healing Economy of African Pentecostalism", *Pneuma* 42:430, 431.

35 See Quarantine Act, Cap Q2, LFN, 2004; Covid-19 Regulations 2020 [hereinafter Nigerian Regulations].

4. Covid-19, curtailment of religious liberty and religion-state relations in West Africa...

Control (NCDC).³⁶ The NCDC is a government agency that promotes, coordinates and facilitates the prevention, detection and control of communicable diseases in the country.³⁷

Rule 1(1) of the Nigerian Regulations did not impose lockdown in all parts of the country; it only did so for two weeks in the first instance in the Federal Capital Territory, Abuja, and in the two federating states of Lagos and Ogun. The Nigerian Regulations restricted all movements and gatherings during the period.³⁸ As the rate of the virus spread was escalating, the lockdowns were later extended beyond the initial two weeks. Exceptions to the restrictions were allowed for those in essential and commercial services under the terms of Rule 1(5) and (6) of the regulations. Security agencies were directed to enforce and did enforce compliance with the regulations, and there is scanty evidence that security agents were selective in their enforcement approach.³⁹

As the rate of the virus spread increased, other federating states in Nigeria came up with their lockdown regulations to complement the Federal Government regulations.⁴⁰ There were, however, variations in the degree of strictness in the restrictions imposed by the regulations of the federating states. What was common to them was that they all imposed night curfews and restrictions on freedom of movement and assembly, including religious gatherings. Some states, such as Lagos, Osun and Kaduna, imposed total restrictions against religious gathering, while others, such as Oyo State, allowed religious gathering, but limit attendance to fifty or fewer people.⁴¹

In Ghana, the first two cases of Covid-19 were reported and confirmed on 13 March 2020. Ghana's Minister for Health, in exercise of the powers conferred on him by Sections 169 and 170 of the Public Health Act, 2012 (Act 851) declared a public health emergency, pursuant to the Declaration of Public Health Emergency (Coronavirus Covid-19 Pandemic) Instrument, 2020.⁴² Similarly, Ghanaian President Nana Akufo-Addo enacted the Imposition of Restrictions (Coronavirus Disease (Covid-19)

36 Nigerian Regulations, rule 1(1).

37 See the Nigeria Centre for Disease Control and Prevention Establishment Act, 2018.

38 Nigerian Regulations, rule 1(1) and (2).

39 Nigerian Regulations, rule 1(3). See also Abdulrauf L. 2020. "Nigeria's Emergency (Legal) Response to Covid-19: A Worthy Sacrifice for Public Health?", *Verfassungsblog on Matters Constitutional*, 18 May; Omogbolagun T. 2020. "From Worship Centres to Courtrooms: Tales of Pastors, Imams who Flouted Lockdowns", *Punch*, 23 May.

40 For instance, the Ekiti State Corona Diseases (Prevention of Infection) Regulations, 2020; Lagos State infectious Disease (Emergency Prevention) Regulations, 2020.

41 "Covid-19: Oyo Gov Imposes Curfew, Bans Inter-State Movement from Sunday", *Nigerian Tribune*, 28 March 2020.

42 Public Health Act, 2012 (Act 851), Sections 169 and 170; Declaration of Public Health Emergency (Coronavirus Covid-19 Pandemic) Instrument, 2020.

Pandemic) Instrument, 2020 (hereinafter Ghana Regulations) on 23 March 2020.⁴³ The Ghana Regulations “imposed restrictions on public gatherings, including religious activities in churches, mosques, shrines and at crusades, conventions, pilgrimages and other religious gatherings”.⁴⁴ They further suspended all public gatherings and also limited attendance in burial to a maximum of twenty-five people.⁴⁵ The Ghana Regulations provided exemptions to the above restrictive rules exempting a service, manufacturing or industrial workplace; a market, super-market, shopping mall, restaurant, hotel, or drinking spot; and security and other essential services.⁴⁶ These organisations that enjoyed exemptions were to maintain social distancing and comply with enhanced hygiene procedures.⁴⁷ Unlike Nigeria, the restrictions were made for an initial period of three weeks and applied to the entire territory of Ghana.⁴⁸ This was understandable because Ghana operates a unitary government.

The aspects of the provisions of these regulations banning movement and gathering in Nigeria and Ghana meant that worship places, such as churches, synagogues and mosques, were closed for worship during the day and at night. In other instances, religious bodies were forced to reduce attendance to as low as ten members per service. This further meant that in some locations individuals were not allowed to invite other people to their home for prayer, worship or cell group meetings or to anoint the sick with oil or pray for healing with them. This point is very critical to Nigeria and Ghana, given that they are home to worship centres with large physical structures that ordinarily seat thousands of congregants. Although some religious organisations with large congregations were savvy in information and communications technology and easily moved their services online, those without these resources had to close their places of worship for the entire period of the ban.

RELIGIOUS RESPONSES TO THE REGULATIONS

Immediately after the various regulations that introduced “lockdowns” were announced in Nigeria, religious organisations, mostly mainstream Christian churches and the Nigerian Supreme Council for Islamic Affairs (NSCIA), largely supported the regulations as a worthy move by the government to protect the inhabitants of the country against the virus.⁴⁹ Interestingly, but not unexpectedly,⁵⁰

43 Imposition of Restrictions (Coronavirus Disease (Covid-19) Pandemic) Instrument, 2020, 23 March 2020.

44 Ghana Regulations, rule 1(1)(a)(ix).

45 Ghana Regulations, sub-rule (2) and sub-rule (3).

46 Ghana Regulations, rule 4(1).

47 Ghanaian Regulations, rule 4(2).

48 Ghanaian Regulations, rules 2 and 3.

49 Okoye AC and Obulor I. 2021. “Religious Organisations and Fight against the Spread of Covid-19 in Nigeria”, *Journal of Sustainable Development in Africa* 23(1):65, 70.

50 Akinloye IA. “Human flourishing, church leadership and legal disputes in Nigerian churches”, in Green MC (ed). 2019. *Law, Religion and Human Flourishing in Africa*.

4. Covid-19, curtailment of religious liberty and religion-state relations in West Africa...

some religious organisations went to the extent of aiding the efforts of the government in containing the spread and caring for those infected with the virus.⁵¹ Some examples are worthy of mention. The Catholic Church donated 425 health facilities as isolation centres to fight coronavirus.⁵² Dunamis International Gospel Centre, a charismatic Pentecostal church located in Abuja, donated medical equipment worth millions of naira to the government to combat the pandemic outbreak.⁵³ Further, some faith-based organisations, including Islamic organisations, assisted in mobilising and conveying health precautionary notices needed to safeguard spreading the virus⁵⁴ and even vaccination campaigns to their adherents.⁵⁵

A few religious organisations and religious leaders reportedly rejected the ban on social and religious gatherings. The group of those who rejected or violated the regulations can be grouped into three categories. The first is those who publicly rejected the ban because they did not believe in the true existence of the virus. Accordingly, they tagged the lockdown as “satanic manoeuvre targeted at preventing people from worshipping God.”⁵⁶ An example is Chris Oyakhilome, the senior pastor of the Christ Embassy, who strongly argued in support of a “conspiracy theory” that associated the Covid-19 pandemic with the development and launching of 5G networks.⁵⁷ The second group accepted the existence of the virus, but claimed possession of spiritual powers to cure the virus; hence, there was no need to pronounce lockdowns. For instance, T.B. Joshua predicted that Covid-19 would disappear after heavy rainfall on 27 March 2020,⁵⁸ and Elijah Ayodele claimed he possessed holy water and oil that could cure the virus.⁵⁹ In addition, on 13 April, Goodheart Val Aloysius of Father’s House International Church in Calabar asked the government to gather all those who tested positive for Covid-19 in an isolation

Stellenbosch: African Sun Media, 25-41.

51 “How Faith Based Organizations Support the Containment of Covid-19 in Nigeria”, *Proshare* 4 April 2020.

52 Adebawale-Tambe N. 2020. “Covid-19: Catholic Church Donates 425 Health Facilities as Isolation Centres – Official”, 12 May.

53 Ewepu G. 2020. “Covid-19: Dunamis Church Donates Medical Equipment to FCTA”, *Vanguard*, 26 March.

54 “Covid-19: Enugu Religious Leaders Urge Residents to Obey NCDC’s Regulations”, *Vanguard* 6 May 2020.

55 Okafor C. 2021. “Covid-19: Pastor Adeboye Joins Vaccination Campaign”, *Premium Times*, 3 October.

56 Okoye and Obulor, “Religious Organisations and Fight against the Spread of Covid-19 in Nigeria”, 70.

57 Ibrahim J. 2020. “Covid-19 in Nigeria: Once Again, Religion Stands in the Way”, Friedrich-Ebert Stiftung, 29 June.

58 Dube C. 2020. “TB Joshua Covid-19 Prophecy: It Will Disappear on 27 March”, *Savanna News*, 29 July.

59 Ashaolu O. 2020. “My Anointing Oil, Holy Water Can Cure Covid-19 – Primate Ayodele”, *News Break*, n.d.

centre for him to heal.⁶⁰ The third group did not publicly reject the regulations but nevertheless defied government policies regarding public health safety measures meant to curb the spread of the virus. This group of religious leaders continued to hold religious activities without adhering to the precautionary rules. Some of these people were arrested and prosecuted.⁶¹ A handful of Pentecostal churches and radical Islamic clerics dominated this group. It can be argued that the public utterances of the first and second groups catalysed those in the third category.

In the same vein, Ghanaian religious actors largely accommodated the regulations restricting religious assembly and public gathering. Only a very few religious organisations reportedly flouted the lockdown regulations.⁶² Religious institutions in Ghana could best be described as visible symbols of communities to stem the tide against the virus. Besides providing support services and making donations,⁶³ they effectively participated and cooperated with the government to fight the virus. On 19 March 2020, the president of the country, a professed Christian who said he believed in the healing powers of Jesus Christ against Covid-19,⁶⁴ invited Christian leaders to government house to invoke prayers against the virus. The following day, on 20 March 2020, the vice president of the country, Dr Mahamadu Bawumiah, a Muslim, also invited Islamic leaders and clerics to government house in Accra to offer prayers against the spread of the virus. African traditional religions were also not left out to intervene in stopping the spread of the virus.⁶⁵ Currently, religious leaders are still effectively involved in educating, sensitising, mobilising and creating awareness to encourage people to get vaccinated against the virus.⁶⁶

Surprisingly, in both Nigeria and Ghana, none of the critics of the regulations or those who flouted the regulations and were later prosecuted ever predicated their criticism or basis of their violation on illegality or unconstitutionality of the regulations. Also, unlike some other countries on the continent, mostly from countries

60 Asuquo B. 2020. "Gather all Covid-19 Patients in Nigeria Let me Heal Them – Pastor Tells FG", *The Paradise*, 10 April.

61 "From Worship Centres to Courtrooms: Tales of Pastors, Imams who Flouted Lockdowns".

62 2021. "Covid-19: Ghana Police Arrest Christ Embassy Youth Pastor, Church Members for Flouting Safety Protocols", *Sahara Reporters*, 3 May.

63 Dapatem DA. 2020. "Covid-19: Methodist Church Ghana Supports Govt with Cash, Other Items", *Graphic Online*, 1 April; "Covid-19: Pentecost Church Donates PPES Worth GHS45,000 to Ministry of Health", *SEND West Africa*, 3 April 2020.

64 "Ghana's President Says He Believes in Healing Powers of Christ against Covid-19", *Vanguard*, 20 March 2020.

65 Ntewusu SA and Nkumbaan SN. 2020. "Fighting Covid-19: Interventions from Ghana's Traditional Priests", *Religious Matters*, 13 May.

66 Ajiambo D, Avevor D and Silimina D. 2022. "Sisters in Africa Debunk Myths and Educate People to get the Covid-19 Vaccine", *Global Sister Report*, 17 February.

4. Covid-19, curtailment of religious liberty and religion-state relations in West Africa...

in Eastern and Southern Africa, such as Kenya,⁶⁷ Namibia,⁶⁸ Malawi⁶⁹ and South Africa,⁷⁰ which contested the constitutionality and legitimacy of the lockdown regulations banning religious gatherings via lawsuits, I am not aware of any reported lawsuit challenging the government action restricting religious gatherings at the outbreak of the virus in Nigeria and Ghana. This makes it not so easy to assess the judicial perspective on the constitutionality of the restriction of religious liberty in the region. I consider the basis for not challenging the restriction from three perspectives. First, it can be argued that, as already observed, challenging violations of religious liberty in law court is not very common in West Africa, particularly in Ghana. Secondly, most of the courts that should adjudicate on the cases were also shut down during this period.⁷¹ The courts were attending to only urgent cases, and of limitation of religious liberty during the pandemic and likely did not fall within the urgent and important cases from the view of judicial officials. Thirdly, the members of the judiciary, possibly not sure of how severe the spread of the virus could be, were themselves cautious of contracting the virus and therefore refrained from attending to litigants. Meanwhile, most of the African courts were not technologically advanced and prepared to easily migrate to online court proceedings at the inception of the outbreak of the virus.

The above responses of the religious actors suggest that most religious organisations substantially tolerated and endorsed the restrictions at the outset of the outbreak of the pandemic. They did this for both principled and pragmatic reasons. On the principled side, the religious actors acknowledged the restrictive measures as steps in the right direction since they know that the medical structures, facilities and personnel of virtually every African state were inadequate, fragile and poor.⁷² It is widely known that most of the trained medical personnel in Africa migrate in deluge to other continents for greener pastures,⁷³ leaving limited numbers of

67 *Law Society of Kenya v Mutiyambai* Petition 120 of 2020 (Covid 025).

68 *NEF & Ors v President of the Republic of Namibia & Ors.* (HC-MD-CIV-MOT-GEN-2020/00136) [2020] NAHCMD 198 (23 July 2020).

69 *HRDC and Others v President of Malawi and Others* (Judicial Review Case Number 33 of 2020) [2020] MWHC 26 (27 August 2020). See also *Kathumba v President of Malawi* [2020] MWHC 29 (3 September 2020); *The State and the President of the Republic of Malawi and others v Steven Mponda and others* (Judicial Review No. 13 of 2020).

70 See *Mohamed v The President of the Republic of South Africa* (Case No: 2140/20) (30 April 2020); *Khosa v Minister of Defence and Military Veterans and of Police* (Case No. 21512/2020) [2020] ZAGPPHC 147 (15 May 2020); *De Beer N.O. and Others v Minister of Cooperative Governance and Traditional Affairs* (21542/2020) [2021] ZAGPPHC 67 (19 February 2021).

71 Nigerian Regulations, rule 1(1); See also Chief Justice of Nigeria's Circular No. NJC/CIR/HOC/11631 of 23 March 2020.

72 Ntewusu and Nkumbaan, "Fighting Covid-19: Interventions from Ghana's Traditional Priests"; Oleribe OO et al. 2019. "Identifying Key Challenges Facing Healthcare Systems in Africa and Potential Solutions", *International Journal of General Medicine* 12:395-403.

73 Poppe A et al. 2014. "Why Sub-Saharan African Health Workers Migrate to European Countries That Do Not Actively Recruit: A Qualitative Study Post-migration", *Global Health Action* 7.

personnel on the continent. For instance, the General Medical Council of Britain recently revealed that 805 Nigerian medical doctors were licensed in the United Kingdom between July and December 2021. The body further revealed that 15 049 Nigeria-trained nurses obtained licences to practise in the United Kingdom between March 2017 and March 2021.⁷⁴ The ban on religious gatherings was thus to allow the states to build up an extensive public health response for the anticipated surge of infections. They were convinced that every state has the constitutional duty to protect the life and health of citizens, and every citizen and religious institution has a duty to support the government to achieve this.

On the more pragmatic side, the religious leaders accepted that the restrictions were short-term and finite, not permanent. They were temporary measures meant to achieve a greater good of saving lives. Accordingly, some of the religious institutions quickly extended their frontiers, framed new means of religious participation, and embraced modern virtual technology as a temporary means of conducting worship.⁷⁵ Moreover, since some of the federating states in Nigeria allowed limited attendance in religious gatherings during the pandemic, some religious organisations devised meeting several times for their corporate worship. The religious leaders also accepted that their religious liberty is not absolute; hence, the states were acting within their constitutional powers in limiting religious liberty for public benefit.

Furthermore, some religious leaders complied with the government directives and explained away the restrictions because they could easily deploy scriptural passages to back the need for compliance with the lockdown regulations. For instance, Eric Kwabena Nyamekye, the chairman of the Church of the Pentecost in Ghana enjoined his church members to obey the directive of the government to stay at home. He emphasised that during biblical times, when there were tough plagues, what people did was to stay in lockdown. Nyamekye referenced the narrative about Noah and the Ark. He said God locked Noah and the people in the Ark to prevent them from being drowned. He further gave an instance about the lockdown of the Israelites when the angel of death struck in Egypt. He concluded by quoting from the book of Isaiah 26:20-21, which reads in part: "Go, my people, enter your room and shut the doors behind you; hide yourselves for a little while until his wrath has passed by."⁷⁶ In the same vein, the president-general of the Nigerian Supreme Council for Islamic Affairs (NSCIA), Sultan of Sokoto Muhammad Sa'ad Abubakar, reminded the Muslim community in Nigeria that Prophet Mohammed himself called for social distancing in times of disease, thus "leaving the town and hiding on mountains and in caves, [suspending] congregational prayers and Jumu'ah (Friday) prayers, temporarily." Further, the Sultan noted that Muslims have a religious duty to

74 Deji-Folutile O. 2021. "Feasting on Nigeria's Stupidity", *The Cable*, 31 December.

75 Nwaka JC. 2020. "Between Religious Freedom and the Public Good: Reactions to Religious Restrictions to Prevent the Spread of Covid-19 in Nigeria", *Kujenga Amani*, 20 May.

76 Adu V. 2020. "Comply with Lockdown Directive – Apostle Eric Nyamekye to Ghanaians", *Atinka Online*, March 30.

4. Covid-19, curtailment of religious liberty and religion-state relations in West Africa...

prevent the spread of the virus.⁷⁷ Akin to this is the interpretation that the pandemic was a way of God in punishing human for disobedience to divine directives.⁷⁸

However, as the trajectory of the pandemic became clearer but restrictions persisted beyond the time anticipated, more religious actors, even ones who originally endorsed the ban on religious gathering, became more suspicious of the government restrictions. They began to express their displeasure in the media – though not through lawsuits – against the prolonged ban on religious gatherings.⁷⁹ Their grounds were mainly premised on the fact that people would become depressed without the opportunity to manifest their religiosity in gatherings with others and that religion is an avenue to give succour in a time of pandemic. Further, some felt that religious institutions were treated less favourably than similar institutions, such as retail stores, markets and workplaces which were allowed to engage in minimal operations under certain precautions.⁸⁰ Some religious actors also felt threatened and had a sense of distrust, perceiving that the prolonged ban on gatherings was an attempt by secular powers to regulate their religion.⁸¹

Another interesting and ironic situation played out during this pandemic, particularly in Nigeria. There were instances where some political actors, such as the elected governors of federating states, seeking and clamouring for the reopening of worship places during the peak of the pandemic,⁸² attempted to make offers that religious leaders rejected.⁸³ The only possible formulation for this religious overture by the political leaders is what I describe as “the politicization of religion and the religionisation of politics” in Africa.⁸⁴ Some African political actors, like the aforementioned, get entangled in religious affairs and try to use religion as a tool to score political points and to woo religious adherents to legitimise their political advances.

77 Nigeria Working Group on Peace Building and Governance. 2020. “Nigeria: The Response to Coronavirus is an Opportunity for Reform”, 12 May.

78 Ukpabio H. 2020. “Corona Virus Plague Reveals God’s Anger”, *Facebook*, 23 February. Online at: <https://www.facebook.com/ladyapostlehelenukpabio/videos/533021300734044>; Ukah A. 2020. “Prosperity, Prophecy and the Covid-19 Pandemic: The Healing Economy of African Pentecostalism”, *Pneuma* 42:453.

79 “Covid-19: Reopen Churches, Mosques Now, CAN Tells Nigerian Government”, *Sahara Reporters*, 20 May 2020; Krippahl C. 2020. “Nigerian Religious Leaders Demand Lifting of Covid-19 Lockdown”, *Deutsche Welle*, 19 May.

80 “Covid-19: Reopen Churches, Mosques Now, CAN Tells Nigerian Government”, *Sahara Reporters*, 20 May 2020.

81 Krippahl, “Nigerian Religious Leaders Demand Lifting of Covid-19 Lockdown”.

82 Sabiu M. 2020. “Despite Hike In Covid-19 Cases, Six Northern Govs Open Mosques, Churches”, *Nigerian Tribune*, 16 May.

83 Odunsi W. 2020. “Covid-19: ‘Thank You Gov Wike, We’ll Stay at Home’ – Catholic Church Rejects Lockdown Ease in Rivers”, *Daily Post*, 10 April; Opejobi S. 2020. “Church Opening in Nigeria: Primate Ayodele Blasts TB Joshua, Pastor Sam Adeyemi”, *Daily Post*, 3 June.

84 Akinloye IA. 2021. “The Right to Freedom of Religion or Belief: African Perspectives”, in Ferrari S, Hill M, Jamal AA and Bottoni (eds). *Routledge Handbook of Freedom of Religion or Belief*. Abingdon and New York: Routledge, 200.

RELIGION-STATE RELATIONS DURING THE PANDEMIC

The extant constitutions of Nigeria and Ghana both exemplify a secular state approach in which there is strict separation between all religious activities and the state.⁸⁵ Their constitutions expressly give a commitment to religious neutrality. For instance, Section 10 of the Nigerian Constitution *prima facie* adopts the approach of an absolute separation of the state from religion. The provision states: "The Government of the Federation or of a State shall not adopt any religion as State Religion." Generally, this presupposes a state of secularism or neutrality between religion and the state.⁸⁶ Accordingly, some scholars and public commentators argue that Section 10 makes Nigeria a secular state in which there is no interference from the state in any religious affairs. Commenting on this view, one legal scholar posits, "In the absence of the adoption of a state religion, a nation is most accurately described as secular. Thus, Nigeria's prohibition of a national or state religion automatically qualifies the country as a secular nation."⁸⁷ In the same vein, Article 56 of Ghanaian Constitution states: "Parliament shall have no power to enact a law to establish or authorise the establishment of a body or movement with the right or power to impose on the people of Ghana a common programme or a set of objectives of a religious or political nature."; commenting on this constitutional provision, Kofi Quashigah, a Ghanaian professor of law and religion affirms that "Ghana is constitutionally a secular state" ... "The Constitution depicts Ghana as a secular state ..."⁸⁸ Quashigah further observes that "religious autonomy is guaranteed in Ghana".⁸⁹

However, it must be noted that although the constitutions of Nigeria and Ghana claim to operate under religious neutrality, there is evidence that their governments do not in fact practice a strict separation approach. Rather, they have both adopted in practice a religious pluralism approach that requires the state to maintain a fair and nondiscriminatory relationship with all religions or worldviews.⁹⁰ This point

85 See, for instance, Devenish GE. 2005. *The South African Constitution*. Durban: Lexisnexis Butterworths, 88; Nsereko DD. 1986. "Religion, the State and the Law in Africa", *Journal of Church and State* 28(2):269. Both Nigeria and Ghana fall into the second of three religion-state approaches that Devenish identifies.

86 For different perspectives to secularism, see Ben-Yunusa M. 1995. "Secularism and Religion", in Mitri T (ed). 1995. *Religion, Law and Society: A Christian-Muslim Discussion*. Geneva: World Council of Churches, 81-82. See, further, Ansari AM. 2000. *Iran, Islam and Democracy: The Politics of Managing Change*, 15.

87 Tyus J. 2004. "Note: Going Too Far, Extending Shari'a Law from Personal to Public Law", *Washington University Global Studies Law Review* 3(1):205 See also Nwabueze BO. 1992. *Military Rule and Constitutionalism* Ibadan: Spectrum Books, 282; Iwobi AU. 2004. "Tiptoeing through a Constitutional Minefield: The Great Shari'a Controversy in Nigeria", *Journal of African Law* 48:133-135.

88 Quashigah, "Religion and the Secular State in Ghana", 331-332.; Quashigah, "Legislating Religious Liberty: The Ghanaian Experience", 596.

89 Quashigah, "Religion and the Secular State in Ghana", 333.

90 Quashigah, "Religion and the Secular State in Ghana", 333; See also Nyinevi CY and Amasah EN. 2015. "The Separation of Church and State under Ghana's Fourth Republic",

4. Covid-19, curtailment of religious liberty and religion-state relations in West Africa...

may underlie the observations of Rosalind Hackett and W. Cole Durham that Africa may be closer to Europe and Scandinavia than to the United States in its approach to religion–state relationships.⁹¹ In this approach, there is a “far greater acceptance of state involvement with religious affairs as long as this is done in a fair and transparent way”.⁹²

Notwithstanding the close cooperation between the state and religions in Nigeria and Ghana, what is clear is that religious organisations have always had the history of vehement rejection of any attempt by the state to interfere in their doctrinal and internal affairs. In the Nigerian context, two recent experiences come to mind. In October 2016, the religious community rejected the attempt by the Financial Reporting Council of Nigeria, a body charged with the responsibility of ensuring good corporate governance practices in the public and private sectors of the economy to regulate the tenure of religious leaders.⁹³ The Council issued a Code of Governance for Not-for-Profit Entities, including religious organisations, in 2016. Section 9 of the Code touched on leadership tenure in nonprofit organisations, including that of religious leaders. The religious community rejected the Code. Musa Asake, the General Secretary of the Christian Association of Nigeria, said that “the code was ill machinery targeted at the church. Government has no business interfering in a church’s affairs because it is a no-go-area”.⁹⁴ The heated public outcry prompted President Muhammadu Buhari’s government to sack Jim Obazee, the Council’s boss and also to suspend the implementation of the Code “until after further reviews”.⁹⁵

In the same vein, in 2016, the democratically elected governor of Kaduna State, Nasir El-Rufai, sought to repeal the existing Kaduna State Regulation of Preaching Law of Kaduna State⁹⁶ through an executive bill for the Kaduna State Religious Preaching (Regulation) Law, 2016.⁹⁷ The Bill sought to establish regulatory committees of the two predominant religious bodies in the state, that is, the Committee of Jama’atu Nasir Islam (CJNI) for the Muslims and the Committee of Christian Association of Nigeria (CCAN) for the Christians,⁹⁸ as well as a third body referred to as “the Inter-faith Ministerial Council”, to be appointed by the governor which

Journal of Politics and Law 8(4):283, 286-287.

91 Hackett RIJ. 2011. “Regulating Religious Freedom in Africa”, *Emory International Law Review* 25:853 (quoting Durham WC. 1996. “Perspectives on Religious Liberty: A Comparative Framework”, in Van der Vyver JD and Witte J (Jr) (eds). *Religious Human Rights in Global Perspective: Legal Perspectives*. Leiden: Martinus Nijhoff Publishers, 1).

92 Hackett, “Regulating Religious Freedom in Africa”, 860.

93 Federal Reporting Council of Nigeria Act, No. 6 of 2011, ss 7 and 8.

94 Asake M. 2017. “Government has no Business Deciding who Runs a Church”, *Punch*, 14 January.

95 Oguntola S. 2017. “Churches Challenge Nigeria Forcing Pastors to Retire”, *Christianity Today* 13 January. See Adebulu A. 2021. “CAN sues FG over CAMA”, *The Cable*, 15 March.

96 Kaduna State Regulation of Preaching Law, 1984.

97 A Bill for the Kaduna State Religious Preaching (Regulation) Law, 2016 [Religious Preaching Regulation Bill]. Online at: <https://kdsg.gov.ng/documents-library/>.

98 Religious Preaching Regulation Bill, s 6.

shall execute oversight control over the CJNI and CCAN.⁹⁹ According to the Bill, CJNI and CCAN are empowered to screen preachers and applications for preaching licences, and making recommendations to the Local Government Inter-Faith Regulatory Committee¹⁰⁰ to issue licences to accredited preachers,¹⁰¹ which licences shall be valid for a period of two years.¹⁰² A preacher who is not based in the state, but who is visiting the state would be issued a permit for the period of the event that brings the preacher to the state. The Inter-faith Regulatory Committee is further to regulate the activities of religious preachers.¹⁰³ More recently, on 19 June 2019 in a lawsuit instituted by the Pentecostal Fellowship of Nigeria challenging regulation of its activities by Kaduna State, a Kaduna High Court held that the state government can regulate religious activities, but that it has no right to license religious preachers and that licensing religious preachers by the state would violate the constitutional right of religious organisations.¹⁰⁴

In Ghana, religious organisations have always resisted state's attempts to interfere in the internal affairs of religious organisations. For instance, before the Constitution of Ghana of 1992 was enacted, the then military government passed the Religious Bodies (Registration) Law, 1989. The rationale of the law was "to check the activities of some religious bodies that in the view of the government, constitute a nuisance to the general public, and militate against public order, public interest or morality, or acceptable standards of decency."¹⁰⁵ The law was in reaction partly to public outcry against the activities of some churches that verged on fraud, debauchery and corruption of public morals. The effect of the law was therefore to force the registration of all religious organisations in Ghana.

It is, however, surprising that in the wake of coronavirus and despite the blanket ban on religious activities, most religious organisations endorsed the ban. Most of them willingly accepted for their religious liberty to be restricted. This is an illustration of separationist approach of religion-state relations for which Nigeria and Ghana are known. This thus suggests that religion and state relation is fluid and relative phenomenon. It has the capacity to metamorphose, depending on the demands of time. In the present circumstance, the Covid-19 pandemic is a common enemy facing both religious organisations and the state. Both institutions

99 Religious Preaching Regulation Bill, s 4.

100 The Local Government Inter-Faith Regulatory Committee is to be established by Section 7 of the Bill.

101 Religious Preaching Regulation Bill, ss 6(2)(a) and 8(1)(a).

102 Religious Preaching Regulation Bill, 2016, s 6(2)(a) and 8(1)(b).

103 Religious Preaching Regulation Bill, s 6(2)(a).

104 *Pentecostal Fellowship of Nigeria v Governor Kaduna State* (Unreported, Suit No. KDA/HC/2016). Isenyo G. 2019. "You Have No Right to License Preachers, Court Tells Kaduna Govt", *Punch*, 20 June.

105 A Message from the Christian Council of Ghana and the Ghana Catholic Bishops' Conference to their Faithful and Congregation, 14 November 1989.

4. Covid-19, curtailment of religious liberty and religion-state relations in West Africa...

are collaborating to fight their common enemy without consideration of interfering with or controlling each other's affairs.

CONCLUSION

Like other continents, Africa was not immune to coronavirus, and Nigeria and Ghana were no exception. The responses of the government, religious organisations and citizens to the outbreak of the pandemic in Nigeria and Ghana were largely similar. To reduce the spread of the virus, Nigerian and Ghanaian governments came up with measures and regulations that imposed lockdowns and bans on large gatherings and movements and closure of religious places, with attendant consequences for their infractions. A common feature of the regulations is that they were enacted in haste. Accordingly, many of them did not meet the minimum normative standards of legitimate legislation, since they did not have input of parliament. Further, some of the measures infringed on rights, such as the freedom to assemble and to worship in public. This is of particular importance to Africans, who are widely known to be very religious.

There was evidence that political actors were cajoling the religious communities to play a role to invoke their spiritual abilities to stem the tide of the virus both in prayers and to support the lockdown regulations. And indeed, religious organisations largely supported and mobilised their constituencies to support the regulations. This is illustrative of collaborative and cordial relations between religious and state actors in fighting a common enemy. In this wise, no institution sees the other as superior, but as collaborators and partners in achieving a common goal. This is suggestive of a possible cordial model of state-religion relationship in a time of pandemic. This further reveals that religious actors are well positioned to help the state governments to popularise and communicate their advances to their religious constituents. It further reinforces the view that religious institutions are forces to reckon with in state governance in most African countries.¹⁰⁶

The complicity of religious leaders in the restriction of religious liberty appears to limit lawsuits challenging the legality, legitimacy and constitutionality of the restriction of religious liberty. Arguably, the restriction placed on religious gathering may be deemed to be legitimate and constitutionally permissible given the circumstances of the pandemic and the imminent risk large gatherings may pose. The pandemic presented a "deep and uncertain health crisis", and the efforts to curtail it were legitimate. Although some of the governments' approaches in dealing with the pandemic might have been at the expense of the livelihood of the people, arguably, they were based on saving lives and preserving livelihoods.

¹⁰⁶ See Agbiji OM and Swart I. 2015. "Religion and Social Transformation in Africa: A Critical and Appreciative Perspective", *Scriptura* 114(1); Mbiti JS. 1990. *African Religious and Philosophy*. Heinemann, 1.