

# Compulsory Vaccination against Covid-19 and the Constitution of the Federal Republic of Nigeria, 1999: A Human Right Issue

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## Abstract

*Whereas the need for individuals to be vaccinated against the scourge of the dreaded corona virus disease (COVID-19) is arguably to boost immunity and prevent further infection as well as guarantee public health and public safety, it is worrisome to constrain citizens against the exercise of their human freedoms same which are guaranteed by, and enjoy the recognition of, international human rights law as well as the Constitution of the Federal Republic of Nigeria, 1999 (as amended), being the fundamental law of the land. Following the proclamation by the federal government of Nigeria and replicated by governments of States of the federation on the issue of mandatory vaccination of all employees of the government as a condition for their continued access to their work environment, this paper holds the view that the said directive seeks to place social interests over and above the individual's fundamental rights and therefore in utter violation of the inalienable rights of citizens under the Constitution. The paper calls for the said directive to be struck down for being inconsistent with Chapter 4 of the CFRN 1999 as amended. It is argued that the right to accept any kind of medical exertion upon a person is subject to the discretion of the individual. Forced or compulsory vaccination offends the fundamental rights to privacy of individuals as well as their freedom of thought, conscience and religion pursuant to the provisions of section 38 of the Constitution.*

**Key Words:** Compulsory Vaccination, Covid-19, Public Policy, 1999 CFRN, Fundamental Rights.

## 1. Introduction

The global health crises occasioned by the emergence and near untamable upsurge of the corona virus disease (code named COVID-

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19) between 2019 and 2020 has left a global new normal in all spheres of life, especially economic and social. This global new normal has brought about such trends as putting on of face and nose masks, reduced gathering of populations of people in a single location per time, social distancing and virtual indulgence in educational, social and religious environments amongst others. The essence of these is to curtail and forestall the continuum of the spread of COVID-19. Whereas the spread of the disease has reportedly resulted in over 225 million infections<sup>1</sup> and over 4 million fatalities globally,<sup>2</sup> governments of nations across different continents have designed and devised measures<sup>3</sup> to deal with and nip the rising profile of the disease. The protection of lives and safety of health of citizens has therefore become inevitable as a responsibility of governments at all levels.<sup>4</sup>

In Nigeria, it is part of the fundamental objectives of government to ensure the welfare of its citizens.<sup>5</sup> Welfare includes health and security of lives and property. In furtherance of that objective, various efforts have been made to prevent the continued spread of the disease as well as safeguard citizens from infection and death emanating therefrom. These measures have also culminated in the procurement of several million doses of the *Oxford AstraZeneca* and *Moderna Covid-19* vaccines for the use of Nigerians in Nigeria against Covid-19.<sup>6</sup> At the end of the first round of vaccination, it was reported that a total of 6 million Nigerians had been vaccinated with the vaccine across the 36 states and the Federal Capital Territory (FCT), Abuja.<sup>7</sup> However, there are also reports of cases of

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<sup>1</sup> According to the World Health Organization (WHO), there are a total of 231,703,120 confirmed cases of corona virus infections globally as at 27 September, 2021. <<https://Covid19.who.int/>> accessed 27 September 2021.

<sup>2</sup> Data obtained from WHO indicates that a total of 4,746,620 persons globally have died of complications from the corona virus disease as at 27 September, 2021 <<https://Covid19.who.int/>> accessed 27 September 2021.

<sup>3</sup> Facial coverings and/or mask wearing, restrictions on domestic movement, public transport and stay at home orders, limits and restrictions on public and private gatherings, adaptation or closure of schools, adaptation or closure of businesses as well as international travel restrictions (entry restrictions, quarantining and testing). <<https://Covid19.who.int/measures>> accessed 15 September 2021.

<sup>4</sup> The security and welfare of the people is the primary responsibility of government. See section 14 (b), Constitution of the Federal Republic of Nigeria 1999 as amended.

<sup>5</sup> Ibid

<sup>6</sup> A WHO data shows that as at 27 September 2021, a total of 6,552,979 vaccine doses had been administered in Nigeria. <<https://Covid19.who.int/region/afro/country/ng>> accessed 28 September 2021

<sup>7</sup> Agency Report, 'Covid-19: 4.6 Million Nigerians vaccinated so far - NPHCDA' *Premium Times* (Lagos, 25 September 2021) <<https://www.premiumtimesng.com/news/top->

deliberate refusal by some individuals to accept the vaccine.<sup>8</sup> This refusal, it has been viewed<sup>9</sup>, is not in the interest of the government of the federation as well as the federating units.<sup>10</sup> In response to the avowed policy of the federal government, with support from the States, to stamp out Covid-19 from Nigeria, governments have resorted to making policies<sup>11</sup>on, and thereby seeking to enforce, compulsory vaccination thus imposing a mandatory responsibility upon all citizens to either get vaccinated or be denied and deprived of certain basic and fundamental guarantees.<sup>12</sup> These proposed deprivations have, in the opinion of the writers, been extended beyond the realms of unquestionable duty of care on the part of government, as the same is sailing onto the inviolable streams of fundamental rights with intent to suspend or exterminate such rights. It is to this extent that this article holds the view and vehemently submits that the same is tantamount to an infraction on the provisions of Chapter 4 of the Constitution of the Federal Republic of Nigeria 1999 (hereafter 1999 CFRN) as amended.<sup>13</sup>

In the following part of this paper, an attempt would be made at exposing the effect of compulsory vaccination on the fundamental right to freedom of thought, conscience and religion. The paper queries the compulsion of citizens to accept vaccination, apparently

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news/486709-covid-19-4-6-million-nigerians-vaccinated-so-far-nphcda.html> accessed 28 September 2021.

<sup>8</sup> Mary Ugboadaga, 'SBM Poll: 60% of Nigerians unsure, unwilling to take COVID-19 Vaccine' *The Cable* (Nigeria 20 January 2021) <<https://www.thecable.ng/report-60-of-nigerians-unsure-not-willing-to-take-covid-19-vaccine>> accessed 28 September 2021.

<sup>9</sup> Chukwuma Muanya and Others, 'FG set to sanction Nigerians refusing COVID-19 Vaccination' *The Guardian* (Nigeria 01 September 2021) <<https://guardian.ng/news/fg-set-to-sanction-nigerians-refusing-covid-19-vaccination/>> accessed 28 September 2021.

<sup>10</sup> Nigeria is a federation comprised of 36 States and a Federal Capital Territory, with semi-autonomous governments possessing the powers both to make and implement policies as well of administration.

<sup>11</sup> Nike Adebawale, 'Covid-19: Nigerian Government makes Vaccination compulsory for Civil Servants' *Premium Times* (Lagos, 13 October 2021) <<https://www.premiumtimesng.com/news/headlines/489749-just-in-covid-19-nigerian-govt-makes-vaccination-mandatory-for-civil-servants.html>> accessed 13 October 2021; News Agency of Nigeria 'Edo Residents kick against Compulsory COVID-19 Vaccination by Obaseki's Government.' *Pulse Nigeria* (Lagos, 22 September 2021) <<https://www.pulse.ng/news/local/edo-residents-kick-against-compulsory-covid-19-vaccination-by-obasekis-govt/fhq3p24>> accessed 28 September 2021.

<sup>12</sup> For example, denial of entry into place of worship and work place without evidence of vaccination, etc.

<sup>13</sup> Chapter 4 of CFRN 1999 provides for the fundamental rights of citizens.

with a vaccine whose efficacy is without any guarantee as evidenced by the certificate of indemnity issued in favour of the producer by the federal government of Nigeria, and concludes by advocating the need for respect of individual freedoms. The paper demands that all directives and policies on compulsory vaccination be struck down for being inconsistent with the provisions of Chapter 4 of the 1999 CFRN.

## **2. Conceptual Framework**

This paper is woven around the practical implementation of a policy of compulsory vaccination and the effect such compulsory vaccination would bear upon the fundamental rights of the victims of compulsion and *a fortiori* the sanctity of the provisions of Chapter 4 of the 1999 CFRN. However, for a clearer appreciation of the discourse, it would be needful to take a tour of the meaning of the fundamental terms used herein.

- a. **Covid-19:** According to the World Health Organization (WHO), COVID-19 is an infectious disease caused by the SARS-CoV-2 virus.<sup>14</sup> The virus can spread from an infected person's mouth or nose in small liquid particles when they cough, sneeze, speak, sing or breathe. These particles range from larger respiratory droplets to smaller aerosols.<sup>15</sup> It is on record that the disease has had a global spread of infection cutting across all ages and without exemption of colour, race or nationality.<sup>16</sup> By virtue of WHO regional data on infection, Africa had a total of 5,842,070 confirmed cases of Covid-19 as at 15 September, 2021, with an enviable record of being the least impacted region globally.<sup>17</sup> Other regions with staggering data of confirmed cases include the Americas,<sup>18</sup> Europe,<sup>19</sup> South-East Asia,<sup>20</sup> Eastern

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<sup>14</sup> World Health Organization, 'Coronavirus Disease (COVID-19)', <[https://www.who.int/health-topics/coronavirus#tab=tab\\_1](https://www.who.int/health-topics/coronavirus#tab=tab_1)> accessed 15 September 2021.

<sup>15</sup> Ibid

<sup>16</sup> There are confirmed cases of Covid-19 infection and mortalities in all continents of the world administratively delineated as Regions by the WHO. <<https://Covid19.who.int/>> accessed 15 September 2021.

<sup>17</sup> WHO reports that out of that number, Nigeria and Cameroon recorded 200,057 and 85,414 confirmed cases, respectively <<https://Covid19.who.int/>> accessed 15 September 2021.

<sup>18</sup> The Americas have total confirmed cases of 86,988,671 with the United States of America and Brazil recording 41,066,110 and 21,006,424 confirmed cases, respectively. <<https://Covid19.who.int/>> accessed 15 September 2021.

<sup>19</sup> Europe recorded a total of 67,630,168 confirmed cases out of which the United Kingdom had 7,282,814. <<https://Covid19.who.int/>> accessed 15 September 2021.

Mediterranean,<sup>21</sup> and the West Pacific.<sup>22</sup> It is also on record that as at 27 September, 2021, about 5, 924, 819, 985 vaccine doses had been administered globally<sup>23</sup>.

- b. **Vaccination:** The Oxford dictionary defines vaccination as treatment with a vaccine to produce immunity against a disease;<sup>24</sup> to inoculate with vaccine to provide immunity.<sup>25</sup> It has also been defined as simply to administer a vaccine usually by injection.<sup>26</sup> Vaccination is done both for adults and children.<sup>27</sup> The WHO update as of September 2021 disclosed that a total of 5,534,977,637 vaccine doses had been administered globally.<sup>28</sup> Compared to global population figures, the gains of vaccination by country leaves much to be desired. For instance, Nigeria<sup>29</sup> with an estimated population of over 200 million people had a record of total administered dosage of 6,552,979.<sup>30</sup>
- c. **Fundamental Right:** In almost all continents of the world,<sup>31</sup> rights are recognized and placed on a premium of inviolability.

<sup>20</sup> South-East Asia had 42,261,127 with India recording 33,316,755 of confirmed cases. <<https://Covid19.who.int/>> accessed 15 September 2021.

<sup>21</sup> Eastern Mediterranean recorded 15,317,719 out of which Turkey had a total of 6710666 confirmed cases. <<https://Covid19.who.int/>> accessed 15 September 2021.

<sup>22</sup> Western Pacific recorded a total of 7, 639,838 with Cambodia alone accounting for 100,790 confirmed cases. <<https://Covid19.who.int/region/wpro/country/kh>> accessed 15 September 2021.

<sup>23</sup> WHO Coronavirus (Covid-19) Dashboard with Vaccination Data. <<https://Covid19.who.int/>> accessed 27 September 2021.

<sup>24</sup> Oxford Dictionary (Online edition) <<https://www.google.com/search?q=define+right&oq=define+right&aqs=chrome..69i57j0i67j0i512l8.132058j1j7&sourceid=chrome&ie=UTF-8>> accessed 16 September 2021.

<sup>25</sup> The New Webster's Dictionary of the English Language, International ed., (Lexicon Publications Inc.: 2004) MD-66.

<sup>26</sup> Merriam-Webster Dictionary. (Online edition) <<https://www.merriam-webster.com/dictionary/vaccinate>> accessed 15 September 2021.

<sup>27</sup> Centers for Disease Control and Prevention, Covid-19 Vaccines for Children and Teens <<https://www.cdc.gov/coronavirus/2019-ncov/vaccines/recommendations/adolescents.html>> accessed 15 September 2021.

<sup>28</sup> WHO global update on Covid-19 as at 27 September 2021 <<https://Covid19.who.int/>> accessed 27 September 2021.

<sup>29</sup> Nigeria's current population stands at 219,463,862 (July 2021 estimate). World Fact Book: Nigeria <<https://www.cia.gov/the-world-factbook/countries/nigeria/>> accessed 16 September 2021.

<sup>30</sup> WHO Coronavirus (COVID-19) Dashboard <WHO Coronavirus (COVID-19) Dashboard | WHO Coronavirus (COVID-19) Dashboard With Vaccination Data> accessed 27 September 2021

<sup>31</sup> It is arguable that the issue of rights and therefore protection and respect for human rights has yet to gain due recognition and the desired prominence in the entire continent of Asia. This is evident in the abundance of cases of manifest human rights abuse by the governments of states within that continent. For example, Asia-Pacific, North Korea, China, Cambodia, among others. Amnesty International, 'Amnesty

They are the basic foundation for an egalitarian society where entitlements and equality are enshrined and enforced regardless of status, race, colour, sex, or nationality. All humans are entitled by nature to enjoy certain freedoms. The consequence is that, they form an integral component of man's essence and without which life and living would be without form or worth. The protection of same is therefore non-negotiable just as the breath of air is crucial to the survival and sustenance of life itself. But what is a right?

Right has been severally defined which suggests its imprecise and therefore complex nature. In *American Bank & Trust Co. v Federal Reserve Bank of Atlanta*,<sup>32</sup> the word 'right' was described as one of the most deceptive of pitfalls; it is so easy to slip from a qualified meaning in the premise to an unqualified one in the conclusion.<sup>33</sup> The Oxford dictionary defines right as a moral or legal entitlement to have or do something.<sup>34</sup> Black's Law Dictionary<sup>35</sup> defines right as something that is due to a person by just claim, legal guarantee, or moral principle; a power, privilege, or immunity secured to a person by law; a legally enforceable claim that another will do or will not do a given act; a recognized and protected interest the violation of which is a wrong.<sup>36</sup> Since the proclamation of the Universal Declaration of Human Rights (UDHR)<sup>37</sup> and the subsequent global acceptance and resolve<sup>38</sup>

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International Report 2020/21: The State of the World's Human Rights' <<https://www.amnesty.org/en/location/asia-and-the-pacific/report-asia-pacific/>> accessed 16 September 2021.

<sup>32</sup> [1923] 256 U.S. 350, 41 Sup. Ct. 499

<sup>33</sup> Ibid. per Holmes J.

<sup>34</sup> Oxford Dictionary (Online edition) <<https://www.google.com/search?q=define+right&oq=define+right&aqs=chrome..69i57j0i67j0i512l8.132058j1j7&sourceid=chrome&ie=UTF-8>> accessed 16 September 2021.

<sup>35</sup> Black's Law Dictionary, 8th edn, s.v. "right".

<sup>36</sup> Ibid

<sup>37</sup> The Universal Declaration of Human Rights (UDHR), according to the United Nations, is a milestone document in the history of human rights. Drafted by representatives with different legal and cultural backgrounds from all regions of the world, the Declaration was proclaimed by the United Nations General Assembly in Paris on 10 December 1948 (General Assembly resolution 217 A) as a common standard of achievements for all peoples and all nations. It sets out, for the first time, fundamental human rights to be universally protected and it has been translated into over 500 languages. The UDHR is widely recognized as having inspired, and paved the way for, the adoption of more than seventy human rights treaties, applied today on a permanent basis at global and regional levels (all containing references to it in

expressed through the instruments on human rights protection in the various continents of the globe,<sup>39</sup> the rights to life,<sup>40</sup> dignity,<sup>41</sup> privacy,<sup>42</sup> freedom of thought, conscience and religion,<sup>43</sup> expression,<sup>44</sup> have among others, assumed global recognition and protection. But what are fundamental rights?

Whereas the term fundamental has been defined as basic, essential, affecting the foundations of something.<sup>45</sup> Black's Law Dictionary<sup>46</sup> defines fundamental right as a right derived from natural or fundamental law. It further defines the concept as a significant component of liberty, encroachments of which are rigorously tested by courts to ascertain soundness of purported governmental justifications.<sup>47</sup> It is safe therefore, to add, that what is fundamental is sacrosanct and enforceable for purposes of protection and preservation in the interest of the person who would be affected by an encroachment. Of the litany of fundamental rights legally

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their preambles) <<https://www.un.org/en/about-us/universal-declaration-of-human-rights>> accessed 16 September 2021.

<sup>38</sup> This was expressed in the adoption of the International Covenant on Civil and Political Rights (ICCPR) 1967 and the International Covenant on Economic, Social and Cultural Rights (ICESCR) 1967. These two Covenants together with the UDHR form the International Bill of Human Rights <<https://www.ohchr.org/documents/publications/compilation1.1en.pdf>>; <<https://www.ohchr.org/documents/publications/factsheet2rev.1en.pdf>> accessed 28 September 2021.

<sup>39</sup> Europe has a number of formidable human rights instruments including the European Convention on Human Rights 1950, and its Protocols Nos. 1, 4, 6 and 7; the European Social Charter 1961, and its Protocols of 1988, 1991 and 1995 replaced by The European Social Charter (revised) 1996. America also has well entrenched human rights protection instruments including but not limited to the American Convention on Human Rights 1969, and its Protocols of 1988 and 1990; the African Charter on Human and Peoples' Rights 1981 and the African Charter on the Rights and Welfare of the Child 1990 are crucial to the guarantee of human rights in Africa. The International Covenant on Civil and Political Rights 1976 is also an instrument of universal guarantee of fundamental rights of a global character. Together, these and many more instruments provide for and deal with the sustenance of rights as they command regional and global recognition and adherence, albeit not in totality. <<https://www.ohchr.org/Documents/Publications/training9chapter3en.pdf>>; <<https://treaties.un.org/doc/publication/unts/volume%20999/volume-999-i-14668-english.pdf>> accessed 20 September 2021.

<sup>40</sup> See s. 33, CFRN 1999

<sup>41</sup> S. 34 CFRN 1999

<sup>42</sup> S. 37 CFRN 1999

<sup>43</sup> S. 38 CFRN 1999

<sup>44</sup> S. 36 CFRN 1999

<sup>45</sup> The New Webster's Dictionary of the English Language (International ed.) (Lexicon International-Guild Group Publishers: 2004) 384

<sup>46</sup> Black's Law Dictionary, 8<sup>th</sup> edn, s.v. "fundamental right"

<sup>47</sup> Ibid

enshrined and recognized globally, the paper would beam its torch on the right to freedom of thought, conscience and religion. Particular emphases would further be on the rights to freedom of thought and conscience.

The right to privacy denotes the recognition of individual choices of living and acting in a particular manner. Society is bound to respect such choice and not violate same regardless whether they are in tune with it or not, insomuch as they do not affect the public. The Icelandic Centre for Human Rights puts it that the right to privacy is the right to individual autonomy that is violated when states interfere with, penalize or prohibit actions which essentially only concern the individual.<sup>48</sup> The right to privacy encompasses the right to protection of a person's intimacy, identity, name, gender, honour, dignity, appearance, feelings and sexual orientation and extends to the home, the family and correspondence.<sup>49</sup> Freedom of thought, conscience and religion on the other hand, connotes the right of a person to hold an opinion and belief. This extends to the unfettered practice of their faith, and *a fortiori*, the exercise of the discretion to receive or grant indulgence to medical prescription. The right to freedom of thought and conscience, it is submitted, is an offshoot or extension of the right to privacy. This is hinged on the fact that what a man thinks in his heart, what the dictates of his conscience would be and how he should react are personal to the individual. There are however instances where rights run collision to public policy and *vice versa*. In that regard, an attempt shall be made to elucidate the confluence between both in the following part of the paper.

### 3. Public Policy versus Fundamental Right

The confluence between public policy and fundamental right, in the light of the provisions of the 1999 CFRN, shall form the crux of this part of the discourse. Flowing from the foregoing, it is apparent that the essence of the directive of government to enforce compulsory vaccination is for the public good or public interest. It is thus needful to have a fair understanding of the meaning and scope of what constitutes public policy. But before delving into public

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<sup>48</sup> Icelandic Human Rights Centre, 'What is private life?' <<https://www.humanrights.is/en/human-rights-education-project/comparative-analysis-of-selected-case-law-achpr-iachr-echr-hrc/the-right-to-respect-for-private-and-family-life/what-is-private-life>> accessed 27 September, 2021.

<sup>49</sup> Ibid



policy, it is pertinent to first determine what is a policy? Further, what is a public policy?

The term policy has been described by the writers to mean that which denotes a direction issued by an institution, organization or a body corporate with specific goals or objective set to be achieved, with or without a defined time frame, within a defined geographical location in respect of a subject matter of particular interest. Public policy has been defined to mean principles and standards regarded by the legislature or by the courts as being of fundamental concern to the state and the whole of society.<sup>50</sup> It therefore follows that a policy that is designed and implemented by a public authority for the general interest and wellbeing of the public is a public policy. Public policy bears the presumed character of general acceptability and therefore obedience. Arguably, it has at the background the preservation and furtherance of the public interest or public good.

Fundamental rights, as already stated above, are rights provided for and guaranteed in a written law which have the character of non-violability subject only to defined exceptional circumstances. The learned Kayode Eso, JSC in *Ransome-Kuti v AG Federation*<sup>51</sup> reinforced this character of a fundamental right when he opined that "... It is a right which stands above the ordinary laws of the land and which in fact is antecedent to the political society itself. It is a primary condition to a civilized existence."

But what does the law say in situations of conflict between a public policy and a fundamental right? As far back as 1951, the Indian Supreme Court had found occasion to set this controversy in proper perspective when it held in the case of *State of Madras v Champakam Dorairajan*<sup>52</sup> that what is not judicially enforceable cannot be preferred to what is justiciable. That, in the event of a direct clash between social interests and individual rights, the social good is preferable only if the individual's fundamental right is not affected. In a unanimous decision of a special bench, the Court held that:

The Directive Principles of the State Policy which by Article 37 are expressly made unenforceable by a court cannot override the provisions found in Part III which, notwithstanding other provisions, are expressly made enforceable by appropriate writs, orders or directions

<sup>50</sup> Black's Law Dictionary, 8<sup>th</sup> edn, s.v. "public policy"

<sup>51</sup> (1985) 2 NWLR (Pt. 6) 211

<sup>52</sup> (1951) A.I.R 226 SC

under Article 32. The Chapter of Fundamental Rights is sacrosanct and cannot be abridged by any legislative or executive act or order, except to the extent provided in the appropriate articles in Part III. The Directive Principles ... have to conform to and run as subsidiary to the Chapter of Fundamental Rights.<sup>53</sup>

The implication of the above is that, the public interest, no matter how firmly entrenched, must be subservient to the fundamental rights of the individual and *a fortiori*, the individual's interest expressed in his fundamental rights must take preeminence over social interests that may only have been concretized by way of directive principles and fundamental objectives of State policy. This accords in all fours with the legal position now firmly entrenched in the *corpus juris* of Nigeria as expressed in the celebrated case of *Medical and Dental Practitioners Disciplinary Tribunal v Emewhulu*,<sup>54</sup> wherein the Court held that the patient had the right to private life as well as the right to freedom of thought, conscience and religion. The decision in effect invalidated the insistence by a medical doctor to administer blood transfusion and the actual transfusion of blood against the wish and firm objection of the patient who had warned against it, the same being against her conscience and religious inclination. The doctor was indicted for the death of the patient after the transfusion. The rationale for that decision was hinged, amongst others, on the fact that the doctor violated the right of the patient to think and exercise freely her conscience in line with her faith, and by extension, a deprivation of her right to family life by reason of her premature death. This position enjoys a long-standing approval over the ages.<sup>55</sup> Advancing the above reasoning, the learned scholar, Puri<sup>56</sup> opined "...that existence of public interest is derivative and dependent on an individual right, and public interest is actually borne out of the conflict with an individual right. It exists in contradistinction to individual right and may not exist independently."<sup>57</sup>

Puri further argued that rights evolve historically as a result of social inequities, and economic and political development and that

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<sup>53</sup> Ibid

<sup>54</sup> (2001) FWLR (Pt. 44) 542

<sup>55</sup> Anuj Puri, 'The meaning of rights', John Marshal Law Review, [2018] [51:503] <<https://repository.law.uic.edu/cgi/viewcontent.cgi?article=2758&context=lawreview>> accessed 15 September 2021.

<sup>56</sup> Ibid

<sup>57</sup> Ibid, 526.

rights come into existence when there is someone else who can potentially hamper our interests. From both conceptual and functional perspectives, therefore, rights come into existence only to safeguard the interests of the right holder. Thus, we can define the essence of rights as being the safeguard of the interests of the right holder *qua* others.<sup>58</sup> Closing the debate on this subject, he stated unequivocally thus:

Public interest is a fictitious legal device created to challenge individual rights and accordingly its meaning cannot be elevated to the status of a shared psychological state. Hence, when it comes to public interest there is never an identifiable class, which stands up to defend its rights. However, there is not and cannot be an identifiable class termed as public which can have a shared psychological state. ... As a corollary, it stands to reason that in a contest between public interest and individual rights, those rights which add meaning to the life of an individual prevail over collective interests.

The writers cannot agree less with the above impeccable postulations of Puri as they represent a true reflection of the disposition of the paper. And consequently, the foregoing forms a grand point for takeoff on the real issue being addressed in the paper. In dealing with the subject, however, it becomes pertinent to make the following inquiry: is it lawful to compel every citizen to accept the administration on them of the Covid-19 vaccine regardless of their thought, conscience or faith? Does compulsory vaccination pose any threat to the sanctity of the fundamental rights of individuals under the 1999 CFRN? The following segment shall be dedicated to answering these questions *seriatim*.

The scope of the right to a private life is not to be measured by the safety or health or other interest of the public. This is as much complex as the right of a man not to get married or have any kids. It is his choice to live without a wife or children and that decision must be respected by all. Similarly, the decision to not take any medication by a sick person would be their choice just as it would be a man's decision not to attend the hospital. There is no law in Nigeria that criminalizes or even punishes the refusal of a person to accept

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<sup>58</sup> Ibid, 521-2

medication upon being diagnosed with an ailment.<sup>59</sup> In the worst case, it would be condemned for being against medical standards or moral rectitude. This is in obeisance to the dictates of the 1999 CFRN which provides that no person shall be held liable for an offence unless the same is provided in a written law and the penalty therefor prescribed.<sup>60</sup> It is submitted that the right to privacy is constitutionally guaranteed to the effect that what a man does with his life cannot be subject to the social interest of the public so long as it does not offend a written law nor amounts to corrupting public morals. This is in tandem with the Wolfenden Report on Homosexuals and Prostitution.<sup>61</sup> The unimpeachable position is that no man is punished by law for taking his own life. It is not an offence under the laws of the federation of Nigeria. Thus, bearing in mind the flawed narrative of government, one question becomes pertinent: is refusal to accept vaccination tantamount to suicide? Curiously, the answer is in the affirmative. This is hinged on the fact that, by virtue of extant directives on mandatory vaccination,<sup>62</sup> it is the presumption of government, albeit questionable, that a person infected with Covid-19 is already under an automatic sentence of death and most likely to die; such person therefore bears the potential to carry with them everyone else who gets in contact with such infected persons. In their further grossly erroneous belief, it has been advanced that a person can only be free from being infected if they are vaccinated. And by necessary implication, no person can be immune to the virus unless and except they have been vaccinated. This, with all due respect, is false and ought not be propagated as absolute truth.<sup>63</sup>

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<sup>59</sup> Subject as otherwise provided by this Constitution, a person shall not be convicted of a criminal offence unless that offence is defined and the penalty therefor is prescribed in a written law, and in this subsection, a written law refers to an Act of the National Assembly or a Law of a State, any subsidiary legislation or instrument under the provisions of a law. See s. 36 (12), CFRN 1999 as amended.

<sup>60</sup> Ibid

<sup>61</sup> Report of the Committee on Homosexual Offences and Prostitution 1957. The Report was presented to Parliament by the Secretary of State for the Home Department and the Secretary of State for Scotland, etc. The Committee was under the Chairmanship of Sir John Wolfenden. Hence, the popular coinage: The Wolfenden Report 1957. <<https://www.bl.uk/collection-items/wolfenden-report-conclusion>> accessed 29 September 2021.

<sup>62</sup> Nike Adebawale, 'COVID-19: Nigeria to make Vaccination compulsory for Civil Servants' *Premium Times* (Nigeria 02 September 2021) <<https://www.premiumtimesng.com/coronavirus/482698-Covid-19-nigeria-to-make-vaccination-compulsory-for-civil-servants.html>> accessed 15 September 2021

<sup>63</sup> The Covid-19 daily report of the NCDC shows that there are cases of discharged victims of the virus. <<https://Covid19.ncdc.gov.ng/>; <https://Covid19.who.int/table>> accessed 28 September 2021.

Evidence abound that vaccination is no guarantee for immunity from death due to infection by the virus. There are instances where deaths have occurred notwithstanding that such persons had subscribed to being vaccinated, and in fact, taken the full double dose of the vaccine. This fact is eminent in the classical instance afforded by the death of Chief Oladipupo Rotimi Williams SAN due to complications from the disease.<sup>64</sup> This is in spite of the fact that he had received double dose of the *Oxford-AstraZeneca* vaccine with a projected 74% efficacy.<sup>65</sup>

The paper argues, and vehemently submits, that the global statistics of the Covid-19 as well as the Nigerian Centre for Disease Control (NCDC) data on Covid-19 suggests the indubitable truth that not everyone who contracts the disease is consigned to death just as much as not everyone who has been vaccinated (partially or in full) is sure to be delivered from infection, reinfection, hospitalization or death.<sup>66</sup>

Granted, that no single disease outbreak has had such great impact in deaths across the world since the HIV/AIDS pandemic,<sup>67</sup> yet, one must not lose sight of the respective country and regional figures and statistical differences in confirmed cases and deaths recorded since December 2019. Taking Nigeria as a case study, it

<sup>64</sup> Agency Report, 'Senior Advocate of Nigeria Ladi Williams dies of COVID-19 Complications -Son' *The Punch* (Nigeria, 03 October 2021) <<https://punchng.com/ladi-williams-dies-of-Covid-19-complications-son/>> accessed 3 October 2021; Innocent Anaba and Johnbosco Agbakwuru and Henry Ojelu 'Rotimi Williams' Son, Ladi, dies of COVID-19 at 74', *The Vanguard* (Nigeria 04 October 2021) <<https://www.vanguardngr.com/2021/10/rotimi-williams-son-ladi-dies-of-Covid-19-at-74/>> accessed 4 October 2021.

<sup>65</sup> According to the WHO Global Advisory Committee on Vaccine Safety on AstraZeneca COVID-19 vaccine, as of April 19, 2021, the vaccine's efficacy was reported to be safe and effective at protecting people from extreme impact of the risks of severity of the disease including death and hospitalization. World Health Organization: 'The Oxford/AstraZeneca COVID-19 vaccine: what you need to know', 2 September, 2021 <<https://www.who.int/news-room/feature-stories/detail/the-oxford-astrazeneca-covid-19-vaccine-what-you-need-to-know>> accessed 4 October 2021.

<sup>66</sup> Data made available by the Nigeria Centre for Disease Control shows that more victims of the virus are discharged than there are active cases <<https://Covid19.ncdc.gov.ng/>> accessed 29 September 2021.

<sup>67</sup> HIV/AIDS Pandemic was recorded in 1981 with approximately 32 million people estimated to have been killed. The disease is caused by the Human Immunodeficiency Virus (HIV) which is transmitted through contact with the blood, semen, or breast milk of an infected person. Its mortality rate has varied over time from being very high to manageable today, though there are stark differences between the developed and developing world. History's Worst Global Pandemics <<https://www.publichealthonline.org/worst-global-pandemics-in-history/>> accessed 3 October 2021.

must be acknowledged that certain national indices are fundamental for this discourse. As established earlier in the paper, Nigeria has a population of over 219 million people,<sup>68</sup> and out of this number, there is a reported death rate of 2,723 people from complications due to Covid-19 infection since its outbreak in December 2019.<sup>69</sup> This recorded death rate has thus formed the introduction and by extension the enforcement of the order and policy on compulsory vaccination by all employees of the public service of respective States<sup>70</sup> and the Federation, failure which sanctions have been attached.

The paper however queries the over emphasis on death rate due to Covid-19 as it does not by any means constitute the most lethal disease in existence within the Nigerian environment and general human ecosystem. In difference to the campaign for compulsory Covid-19 vaccination, the paper calls to remembrance the abiding scourge of Malaria which has caused innumerable deaths<sup>71</sup> for decades without end. The WHO defines malaria as a disease of poverty caused by poverty. It is accordingly submitted that there is no health emergency more crucial than it had always been in Nigeria to warrant the compulsion of citizens to get vaccinated. An examination of the following figures per disease would perhaps help to demystify the Covid-19 myth and therefore underscore the fact that there is actually no such compelling circumstance to justify a policy on compulsory vaccination in utter disregard for Human Rights of citizens guaranteed by the Constitution.

Study shows that 25 million people,<sup>72</sup> including pregnant women and children, have been infected by Malaria<sup>73</sup> in one year in sub-

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<sup>68</sup> World Fact Book, (n 29)

<sup>69</sup> Nigeria Centre for Disease Control, NCDC Covid-19 Tracking Dashboard for Nigeria <<https://Covid19.ncdc.gov.ng/gis/>> accessed 8 October 2021.

<sup>70</sup> Including Edo and Ondo States of the Federal Republic of Nigeria.

<sup>71</sup> Malaria is a life-threatening disease caused by parasites that are transmitted to people through the bites of infected female Anopheles mosquitoes. It is preventable and curable. In 2019, there were an estimated 229 million cases of malaria worldwide. The estimated number of malaria deaths stood at 409 000 in 2019. Children aged under 5 years are the most vulnerable group affected by malaria; in 2019, they accounted for 67% (274 000) of all malaria deaths worldwide. WHO data further showed that malaria infections rose from 52.5 million to 60.9 million between 2015 and 2019. However, deaths decreased from 112,874 to 95,802 within the same period translating to 16% increase in infections and 15% decrease in death rate. World Health Organization, Malaria, 1 April, 2021 <<https://www.who.int/news-room/fact-sheets/detail/malaria>> accessed 5 October 2021.

<sup>72</sup> Girma Bekele Gontie and Haileab Fekadu Wolde, and Adhanom Gebreegziabher Baraki, 'Prevalence and Associated factors of Malaria among Pregnant Women in

Saharan Africa. In 2019, a total of 274,000 deaths (representing 67% of malaria deaths globally) were recorded of children below 5 years of age.<sup>74</sup> In spite of such outrageous reality, it is submitted that there is no vaccine against Malaria infection in Nigeria. There is also no record, that Nigeria is deploying drastic measures to develop a vaccine to boost immunity against Malaria or the virus that causes same. However, research has it that, since the public official announcement of the emergence of Covid-19 in Nigeria, the Federal Government has budgeted none less than a whopping and mindboggling sum of 83.56 billion naira in the course of combating or containing the virus in less than 24 months.<sup>75</sup> More worrisome is the fact that vaccination does not guarantee exclusion from further infection by the virus.<sup>76</sup> As with Malaria, Covid-19 has no end in sight, albeit, the impact poses no actual threat to Public Health as heavily bandied and which all people are expected to believe and therefore accept the administration of the vaccine, irrespective of one's thought, conscience and religion.

#### 4. Consequences of Implementation of the Policy

It is submitted that the sustained pursuit of the policy on compulsory vaccination and the enforcement of the attendant punitive cum disciplinary measures are not without reciprocal challenges. Clearly, there is a brewing crisis of conflict of interests between individuals' quest to live free and practice the profession of

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Sherkole District, Benishangul Gumuz Regional State, West Ethiopia' (2020) 20(573) BMC Infectious Diseases <<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7405459/>> accessed 8 October 2021.

<sup>73</sup> Pregnant women infected with malaria usually have more severe symptoms and outcomes, with higher rates of miscarriage, intrauterine demise, premature delivery, low-birth-weight neonates, and neonatal death. They are also at a higher risk for severe anemia and maternal death. Julianna Schantz-Dunn and Nawal M Nour, 'Malaria and Pregnancy: A Global Health Perspective', (2009) 2(3) Rev Obstet Gynecol, 2009 <<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2760896/>> accessed 8 October 2021.

<sup>74</sup> World Health Organization, 'Malaria' <<https://www.who.int/news-room/fact-sheets/detail/malaria>> accessed 8 October 2021.

<sup>75</sup> Camillus Eboh, Reuters, 'Nigeria President asks Lawmakers for funds for COVID-19 Vaccines, Military', *Reuters* (Lagos, 22 June 2021) <<https://www.reuters.com/article/nigeria-budget-idUSL2N2O420B>> accessed 3 October 2021.

<sup>76</sup> World Health Organization, Coronavirus Disease (COVID-19): Vaccines, 28 October 2020 <[https://www.who.int/news-room/q-a-detail/coronavirus-disease-\(Covid-19\)/vaccines?topic=survey=v8kj13&gclid=CjwKCAjwhuCKBhADEiW1HegOQm92fYBbWpHMP0EpB137ukubG62eg1gG3aH0kQ8s38mWe2C0dT2aBoCPg8QAvD\\_BwE](https://www.who.int/news-room/q-a-detail/coronavirus-disease-(Covid-19)/vaccines?topic=survey=v8kj13&gclid=CjwKCAjwhuCKBhADEiW1HegOQm92fYBbWpHMP0EpB137ukubG62eg1gG3aH0kQ8s38mWe2C0dT2aBoCPg8QAvD_BwE)> accessed 6 October 2021.

their faith and religion on the one hand, and on the other hand, the determination of Government to compel obedience under the guise of Public Health and Public Safety. Whereas government insists that there is already in existence, a situation of Public Health emergency, it is here vehemently submitted that such emergency does not yet exist in reality.<sup>77</sup> The paper insists that Nigeria's drive for compulsory vaccination is not in fact necessitated by such grave demand in Nigeria, but a crave for global relevance among the community of Nations and more curiously, advancement of pecuniary urges of a few blocks at the helms of administration and appropriation of national resources. The justification is not farfetched.

Of the over 219 million population of Nigeria, a total of 3,090,114 tests have been conducted.<sup>78</sup> Of the 3million tested, only 207,210 cases of infection have been confirmed.<sup>79</sup> And of these confirmed cases, only 2,742 persons (representing approximately 1.4% of total confirmed cases) have died from complications.<sup>80</sup> Interestingly, a total of 194,796 infected persons (approximately 94%) have been treated, certified Covid-19 free and discharged.<sup>81</sup> Statistically, approximately 1.4 per cent only of the total population has been tested;<sup>82</sup> the total confirmed cases are only about 0.1 per cent of the Nigerian population.<sup>83</sup> Further, only about 1 per cent of confirmed cases have actually been recorded to have died. This, in addition to constitutional imperatives, grounds the curiosity of the paper and provides the impetus to query the public policy on compulsory vaccination in Nigeria. We would now make an incursion to the realms of the consequences of the implementation of the policy and further, the enforcement of penalty associated with default.

In the circumstances of the implementation of the policy on compulsory vaccination, however, the following questions would be

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<sup>77</sup> This accords with citizens' public opinion on the imperative of compulsory vaccination. See the outburst and public protest by way of rallies and civil demonstrations in various cities, including Benin City, Edo State.

<sup>78</sup> Nigeria Centre for Disease Control, 'Covid-19 Nigeria' <<https://Covid19.ncdc.gov.ng/>> accessed 8 October 2021.

<sup>79</sup> Ibid

<sup>80</sup> Ibid

<sup>81</sup> Nigeria Centre for Disease Control, (n 81)

<sup>82</sup> Total population tested of Covid-19 in Nigeria stood at 3,043,321 as at October 1, 2021 <<https://ncdc.gov.ng>> accessed 1 October 2021.

<sup>83</sup> Total number of confirmed cases of Covid-19 in Nigeria stood at 205,779 as at October 1, 2021 <<https://ncdc.gov.ng>> accessed 1 October 2021.



compelling. Are there any imminent challenges? What attendant consequences are bound to follow? In response, the paper identifies that, one direct consequence of the implementation of the directive would be that public institutions and therefore the public service will suffer acute administrative lag. Another consequence is that there shall be loss of jobs and employment by employees. There shall also be a multiplicity of labour related litigations by employees and against the government as employer; and above all, there shall be gross violation of fundamental rights to privacy, thought, conscience and religion guaranteed by and under the 1999 CFRN.

First, there is a directive to restrict every worker without evidence of vaccination access to government establishments which premises are public places. Public place has been described as a place that is generally an indoor or outdoor area, whether privately or publicly owned, to which the public have access by right or by invitation, expressed or implied, whether by payment of money or not, but not a place when used exclusively by one or more individuals for a private gathering or other personal purpose.<sup>84</sup> A public place, under the Nigerian Criminal Code, means any public way, and any building, place, or conveyance, to which for the time being the public are entitled or permitted to have access, either without any conditions or upon condition of making any payment, and any building or place which is for the time being used for any public or religious meeting or assembly, or as an open court.<sup>85</sup> Black's Law Dictionary defines a public place as any location that the local, state, or national government maintains for the use of the public, such as highway, park, or public building.<sup>86</sup> This means that, those who have need for access may not necessarily all be employees of government. There may be contractors, consultants, litigants, and patriots with passion for contributing to the development of public infrastructure and institutions. Sadly, they are subject to rejection, damning whatever their intentions might be.

Next, is the crème of employees of government who would be denied access to their offices by reason of absence of evidence of vaccination. Literally, they cannot discharge their official duties as a result of denial of access. Expectedly, it is most likely to continue for

<sup>84</sup> USLEGAL: Public Place Law and Legal Definition  
<<https://definitions.uslegal.com/p/public-place/>> accessed 2 October 2021.

<sup>85</sup> Criminal Code Act (Cap C38) LFN 2010, s.1. See further, *Oyeyipo v. Oyinloye* (1987) 1 NWLR (Part 50) 356; and *N.A.B. v Barri Engineering* (Nig.) Ltd (1995) 8 N.W.L.R. (Part 413) 257 at 273

<sup>86</sup> Black's Law Dictionary, 8<sup>th</sup> edn, s.v. "public place"

an indeterminable length of days which conversely would result in queries for abandonment or dereliction of duty, and apparently, end in suspension or dismissal in the extreme. Then, there is bound to follow litigious proceedings that would inundate the Courts whose cause lists are already overwhelming to the presiding officers in the midst of insufficient numbers of judicial officers.<sup>87</sup> But these proceedings also carry with them the inevitable result of further waste of scarce economic resources in the prosecution of matters arising from the actions of suspension and dismissal. The cycle continues and the public wealth is yet deployed but not for the public interest.

Fundamentally, it snowballs into the realm of violation of fundamental rights guaranteed by the Constitution. It is submitted that the validity of any action or policy of Government can only be determined when tested against Chapter 4 of the 1999 CFRN. So that, when such action or policy goes through the heat of the Constitutional furnace and comes forth without encroaching upon or violating a right, then alone can its validity be ascertained with approval. In the circumstances of the policy under review, can it survive the constitutional test? Bearing in mind the potential for trespass on the right to privacy as well as the right to freedom of thought, conscience and religion, it is submitted that the answer to the above question is in the negative.

A brief appraisal of the meaning and scope of the right to freedom of thought, conscience and religion had already been furnished earlier in this paper. The case of *Medical and Dental Practitioners Disciplinary Tribunal v Emewhulu*<sup>88</sup> provides a formidable example for illustration. The right to privacy presupposes that everyone has the capacity and therefore entitled to decide their fate and course of life. It is submitted that government can only encourage citizens to accept vaccination. Government lacks the *raison d'être* to forcefully make anyone to receive medication against the individual's ultimate will. In any case, there is no evidence that government has procured vaccines sufficient for all citizens, assuming that they all agree and decide to go out to be

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<sup>87</sup> One of the predominant factors identified by stakeholders of Nigeria's justice sector has been lack or inadequacy of judicial officers by reference to the volume of suits pending before the Courts for determination. This evidently accounts for delay in justice delivery.

<sup>88</sup> *Medical and Dental Practitioners*, (n 54)

vaccinated. So, why compel everyone to go for a vaccine which availability is not guaranteed to cater for all Nigerians? <sup>89</sup>

According to data provided by NPHCDA, as at 28 September 2021, whereas 4,790,943 of eligible population targeted for Covid-19 vaccination has been reached with the 1<sup>st</sup> dose, only 1,943,821 of total eligible targeted population for Covid-19 vaccination had been reached with the 2<sup>nd</sup> dose and therefore fully vaccinated.<sup>90</sup> In which case, the data suggests that only 1,943,821 persons have been fully vaccinated out of the total Nigerian population of over 219 million people. A further statistical representation suggests that the total number of fully vaccinated persons represents 0.9 per cent of Nigeria's total population of 219,463,862 as at 28 September, 2021.

By a comparative analogy, it is beyond doubt that Malaria is transmitted all over Nigeria; 76 % of the population live in high transmission areas. While 24 % of the population live in low transmission areas.<sup>91</sup> The primary vector across most of the country is Anopheles. According to the 2020 World Malaria Report, Nigeria had the highest number of global malaria cases in 2019<sup>92</sup> and accounted for 94,070 out of 409,000 deaths representing the highest number of deaths globally.<sup>93</sup>

WHO reports that, globally, there were an estimated 229 million malaria cases in 2019 recorded in 87 malaria endemic countries. Of this figure, twenty-nine countries accounted for 95% of malaria cases globally with Nigeria alone accounting for 27%. Whereas the Democratic Republic of the Congo (DRC) recorded 12%, Uganda 5%, Mozambique 4% while Niger had 3%, thus accounting for 51% of all cases globally. The foregoing data clearly puts Nigeria as the most endemic country. As at 2019, case incidence indicated that 225 cases per 1000 population were at risk of malaria in WHO African

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<sup>89</sup> Anaba and others (n 64)

<sup>90</sup> NPHCDA <<https://nphcda.gov.ng/>> accessed 1 October 2021.

<sup>91</sup> The high transmission area comprises the states of the northern part of Nigeria. While the low transmission area comprises states of the South and South eastern Nigeria. See, World Health Organization, World Malaria Report 2020: "20 Years of Global Progress and Challenges" <<https://www.who.int/publications/i/item/9789240015791>> accessed 1 October 2021

<sup>92</sup> Ibid, Nigeria accounting for 27% of the global malaria cases in 2019.

<sup>93</sup> Ibid, xv. It is recorded that Nigeria accounted for 23% of malaria deaths globally and puts the country in the lead within the WHO African Region as well as globally; See also, Severe Malaria Observatory, 'Nigeria: Malaria Facts' <<https://www.severemalaria.org/countries/nigeria>> accessed 1 October 2021.

Region.<sup>94</sup> The region, with an estimated 215 million cases in 2019, accounted for about 94% of cases globally. Nigeria alone recorded a mindboggling 27% thereof.<sup>95</sup> The value of this data would be measured against Covid-19 indices later in the paper.

The right to think freely, entertain ideas and hold opinions based on their conscience, and religious or other beliefs is inherent in persons by virtue of their humanity.<sup>96</sup> They also have the right to profess, demonstrate, observe, manifest or practice such belief or opinion, religious or conscientious.<sup>97</sup> It is a right that must be respected by all persons and authorities, including governments of States parties to the relevant international human rights instruments. The right to freedom of thought, conscience and religion finds its roots in different international human rights instruments, including but not limited to the International Covenant on Civil and Political Rights (ICCPR),<sup>98</sup> Convention on the Rights of the Child (CsrC),<sup>99</sup> and the African Charter on Human and Peoples' Rights (ACHPR).<sup>100</sup>

For instance, the right to free thinking which encompasses the right to entertain ideas and to hold opinion based on one's conscience or belief or religion is guaranteed by virtue of the provisions of the ICCPR,<sup>101</sup> with the underlying implication that no one must be brainwashed, indoctrinated, compelled or coerced into

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<sup>94</sup> Ibid, xiv. The population living in the WHO African Region is currently put at 1.1 billion in 2019, rising from about 665 million in 2000.

<sup>95</sup> Ibid

<sup>96</sup> By virtue of the provisions of the International Covenant on Civil and Political Rights (ICCPR), Art 19 (1), everyone shall have the right to hold opinions without interference.

<sup>97</sup> ICCPR art 18.

<sup>98</sup> Art 18(1) provides that everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.

<sup>99</sup> Art 14 provides that: (1) States Parties shall respect the right of the child to freedom of thought, conscience and religion. (2) States Parties shall respect the rights and duties of the parents and, when applicable, legal guardians, to provide direction to the child in the exercise of his or her right in a manner consistent with the evolving capacities of the child. (3) Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health or morals, or the fundamental rights and freedoms of others.

<sup>100</sup> Art 8 provides that Freedom of conscience, the profession and free practice of religion shall be guaranteed. No one may, subject to law and order, be submitted to measures restricting the exercise of these freedoms.

<sup>101</sup> ICCPR art 18(1) - (4)

denouncing or abandoning their belief, faith, conscience or religion by reason merely of a government's insistence on implementation of a policy.<sup>102</sup> In any case, policies of government must have regard for, and be subject to, constitutional safeguards so that they do not suffer the consequence of being struck down for being unconstitutional by reason of an infraction on individual rights. It is submitted that the right to freedom of thought, conscience and religion includes and extends to the right to not profess any faith, religion, or belief as well as to adopt a religion or belief of one's choice, and to leave a religion and convert to another.<sup>103</sup> In which case, Government, it is submitted, lacks the *vires* to impose restrictions on the right to hold an opinion based on religious or other belief as much as it cannot impose any religion or other belief upon citizens, whether individually or in community with others.<sup>104</sup>

But what is religion?

The term religion as used in the 1999 CFRN is not defined.<sup>105</sup> However, the UN Human Rights Committee (UNHRC)<sup>106</sup> has painstakingly given interpretation of the term religion to mean and include theistic, non-theistic and atheistic beliefs.<sup>107</sup> In its espousal of the true meaning and scope of the right to freedom of thought, conscience and religion, the Committee stated the following:

The right to freedom of thought, conscience and religion  
(which includes the freedom to hold beliefs) in article 18  
(1) is far-reaching and profound; it encompasses

<sup>102</sup> ICCPR art 18(2) provides that no one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.

<sup>103</sup> Human Rights Committee, 'General Comment Adopted by the Human Rights Committee Under Article 40, Paragraph 4, of The International Covenant on Civil and Political Rights, General Comment No. 22 (48) (art. 18)', 2 para 5 (CCPR/C/21/Rev.1/Add.4), (27 September 1993) <<https://undocs.org/CCPR/C/21/Rev.1/Add.4>> accessed 2 October 2021.

<sup>104</sup> ICCPR art 18(1).

<sup>105</sup> S. 38(1): Every person shall be entitled to freedom of thought, conscience and religion, including freedom to change his religion or belief, and freedom (either alone or in community with others, and in public or in private) to manifest and propagate his religion or belief in worship, teaching, practice and observance.

<sup>106</sup> United Nations Human Rights Office of the High Commissioner: Who We Are <<https://www.ohchr.org/EN/AboutUs/Pages/WhoWeAre.aspx>> accessed 2 October 2021.

<sup>107</sup> Human Rights Committee, General Comment Adopted by the Human Rights Committee Under Article 40, Paragraph 4, of The International Covenant on Civil and Political Rights, General Comment No. 22 (48) (art. 18) (CCPR/C/21/Rev.1/Add.4), 27 September 1993 <<https://undocs.org/CCPR/C/21/Rev.1/Add.4>> accessed 2 October 2021.

freedom of thoughts on all matters, personal conviction and the commitment to religion or belief, whether manifested individually or in community with others. The Committee draws the attention of States parties to the fact that the freedom of thought and the freedom of conscience are protected equally with the freedom of religion and belief. The fundamental character of these freedoms is also reflected in the fact that this provision cannot be derogated from, even in time of public emergency, as stated in article 4 (2) of the Covenant.<sup>108</sup>

The Committee further emphasized that the terms belief and religion are to be broadly construed:

Article 18 protects theistic, non-theistic and atheistic beliefs, as well as the right not to profess any religion or belief. The terms belief and religion are to be broadly construed. Article 18 is not limited in its application to traditional religions or to religions and beliefs with institutional characteristics or practices analogous to those of traditional religions. The Committee therefore views with concern any tendency to discriminate against any religion or belief for any reasons, including the fact that they are newly established, or represent religious minorities that may be the subject of hostility by a predominant religious community.<sup>109</sup>

Further, on the right to manifest religion or belief and its scope, the Committee opined thus:

The freedom to manifest religion or belief may be exercised "either individually or in community with others and in public or private". The freedom to manifest religion or belief in worship, observance, practice and teaching encompasses a broad range of acts. The concept of worship extends to ritual and ceremonial acts giving direct expression to belief, as well as various practices integral to such acts, including the building of places of worship, the use of ritual formulae and objects, the display of symbols, and the observance of holidays and days of rest. The observance and practice of religion or

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<sup>108</sup> Ibid, 1 para 1.

<sup>109</sup> Ibid, para 2.

belief may include not only ceremonial acts but also such customs as the observance of dietary regulations, the wearing of distinctive clothing or head coverings, participation in rituals associated with certain stages of life, and the use of a particular language customarily spoken by a group. In addition, the practice and teaching of religion or belief includes acts integral to the conduct by religious groups of their basic affairs, such as, *inter alia*, the freedom to choose their religious leaders, priests and teachers, the freedom to establish seminaries or religious schools and the freedom to prepare and distribute religious texts or publications.<sup>110</sup>

In view of the clear, unambiguous expressions of the UNHRC on the right under review, it is pertinent to draw the very important line of distinction between the scope and sanctity of the rights to freedom of thought and conscience on the one hand, and the right to manifest one's belief or religion. This distinction has become necessary by virtue of the permissibility of limitations to one, but not to the other. So that, one is inviolable no matter the circumstances. It is accordingly submitted that the rights to freedom of thought and conscience are inviolable and no limitations or derogations can be allowed to restrict the unfettered exercise of same, including times of public emergency.<sup>111</sup> However, the Convention permits restrictions on the freedom to manifest religion or belief albeit subject only to limitations that are duly prescribed by law. In which case, the right to manifest or practice one's belief or religion may be subject to restrictions such as are necessary to protect public safety, order, health or morals, or the fundamental rights and freedoms of others.<sup>112</sup> It does appear however, that the freedom to manifest one's belief pursuant to article 18 is to be strictly interpreted. The Committee holds the firm opinion that restrictions are not allowed on grounds not specified there, even if they would be allowed as restrictions to other rights protected in the Covenant, such as national security.<sup>113</sup>

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<sup>110</sup> Ibid, 2 para 4.

<sup>111</sup> Ibid, 1 para 1 – 'The Committee draws the attention of States parties to the fact that the freedom of thought and the freedom of conscience are protected equally with the freedom of religion and belief. The fundamental character of these freedoms is also reflected in the fact that this provision cannot be derogated from, even in time of public emergency.'

<sup>112</sup> ICCPR art 18(3)

<sup>113</sup> Human Right Committee (n 107) 3 para 8.

In light of the foregoing, therefore, it is submitted that government has an obligation, in furtherance of constitutional safeguards, to take steps positive and appropriate to protect the right to freedom of thought (free thinking) and conscience and religion in appropriate circumstances where failure to so do has propensity to result in gagging the expression of the right. This point has also been affirmed by the UNHRC when it held in its comment on article 18 of the ICCPR that conscientious objections to national policies are permissible and should be protected without a necessity for discriminatory reprisals on ground of disobedience. In this regard, the Committee states that refusal by a person to join or participate in compulsory military service on conscientious grounds would be valid in furtherance of the right to freedom of thought and conscience:

Many individuals have claimed the right to refuse to perform military service (conscientious objection) on the basis that such right derives from their freedoms under article 18. In response to such claims, a growing number of States have in their laws exempted from compulsory military service citizens who genuinely hold religious or other beliefs that forbid the performance of military service and replaced it with alternative national service. The Covenant does not explicitly refer to a right of conscientious objection, but the Committee believes that such a right can be derived from article 18, inasmuch as the obligation to use lethal force may seriously conflict with the freedom of conscience and the right to manifest one's religion or belief. When this right is recognized by law or practice, there shall be no differentiation among conscientious objectors on the basis of the nature of their particular beliefs; likewise, there shall be no discrimination against conscientious objectors because they have failed to perform military service.<sup>114</sup>

What is more? The paper insists on the strength of the above, that an objection on conscientious ground and therefore refusal by a person to accept vaccination for any disease, including Covid-19, ought to be exempt in furtherance of the rights to freedom of thought and of conscience.

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<sup>114</sup> Ibid, 3 para 8



It is settled law that human rights may be subject to derogation or limitations in deserving exceptional circumstances. This much has received the recognition of international human rights law.<sup>115</sup> A classic example is to be found in the provisions of article 4 of the ICCPR which gives room for States to take measures derogating from certain of their obligations under the Covenant. However, such derogation may only have effect in time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed.<sup>116</sup> Section 45 of the 1999 CFRN<sup>117</sup> provides for derogation from the fundamental rights contained in Chapter 4, with particular reference to section 38 thereof. It is however the observation of the paper and so worthy of note that, the right to freedom of thought and conscience was not in any manner exempted from the derogation in defiance of the clear provisions of the ICCPR and the UNHRC's expository comments. It is here submitted that the extant provisions of section 45 and subsection (1) of the CFRN be amended by excluding section 38 from the list of sections mentioned as affected by the claw back clause as presently contained.

The paper will not draw the curtain on this discourse without making it abundantly clear that the need to protect public safety, health, order, or morality must be real and not a mere cosmetic and overhyped deliberate orchestration to serve a predetermined disposition of government in furtherance of its policy objectives. In this wise, it calls to question and therefore has become apposite to probe the extant directive and or policy on compulsory vaccination by reference to whether it meets the requirement of the presence of a real public emergency? The answer shall become evident in the following paragraph.

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<sup>115</sup> ICCPR, art 4.

<sup>116</sup> ICCPR, art 4(1) - In time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the States Parties to the present Covenant may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin.

<sup>117</sup> S. 45(1): 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 of other persons. (3) In this section, a "period of emergency" means any period during which there is in force a Proclamation of a state of emergency declared by the President in exercise of the powers conferred on him under section 305 of this Constitution.

Given the statistical data and indubitable facts represented by the WHO bordering on the impact of Covid-19 and Malaria respectively in Nigeria, can the question above be answered in the affirmative? We do not think so. Whereas the endemic scourge of Malaria with a staggering infection record of over 409,000 persons in one year causing the deaths of over 94,000 persons within the same period of one year has not compelled a policy demanding compulsory vaccination; further, bearing in mind its characteristic recurrent disposition in both high and low transmission areas of Nigeria, with abatement yet in far sight, it is curious and worrisome at the same time that coronavirus disease with a far less lethal impact should be the basis for a public emergency. Granting this line of thought is further strengthened by the fact that too much of fundamental rights encroachment is intrinsic in the extant policy. Hence, the call for its suspension or outright strike down on ground of unconstitutionality. It is submitted, arguably, that actions and policies of government if not checked timeously, are capable of metamorphosing so fast into hydra headed monsters that hound down the constitutional safeguards of citizens. Governmental policy is not finite insofar as a fundamental right is affected, being affected or likely to be affected.

## **5. Recommendations and Conclusion**

The following recommendations, it is thought, would be needful for dealing with the issue of mandatory vaccination vis-à-vis the protection of constitutional rights to privacy as well as freedom of thought, conscience and religion.

First, it is recommended that the freedom of thought and the freedom of conscience be accorded equal protection with the freedom of religion and belief in accordance with the intention and ideological foundation of the establishment of the right. This is in accord with the spirit of the ICCPR and the UN Human Rights Committee's commentary which expressly states that the right to freedom of thought and conscience are not subject to any derogation or limitation even in time of emergency. This must be distinguished from the right to manifest one's religion or belief. Hence, the discretion of citizens, in exercise of the rights to freedom of thought and conscience, is absolute whether or not to accept vaccination for any disease, including Covid-19.

Lastly, but most importantly, it is proposed that the extant provisions of section 45 and subsection (1) of the 1999 CFRN be amended by excluding section 38 from the list of sections mentioned

as affected by the claw back clause as presently contained. This is to give to give effect and full expression to the non-derogable character of the right to freedom of thought and conscience.

The crux of this discourse is the non-desirability of a directive or policy (in whatever guise) in Nigeria on compulsory vaccination against the Covid-19 which ultimate purpose, it is argued, is to contain the spread of the disease and also to prevent further deaths. In justification of the non-desirability of the directive or policy, the paper has put forward uncontroverted data and statistics available at global and national levels showing that there are more survivors than all persons who have died from the virus infection and associated complications. The paper has shown by infallible proofs that mere vaccination is no shield from further contracting the disease as much as vaccination provides no guarantee of immunity against death nor is there any proof on record that everyone who is not vaccinated must contract the virus and thereby die from its complications. On the contrary, evidence abound that the directive bears greater potential of creating a chaotic society and inevitable, albeit avoidable, litigious consequences, should implementation be given the full effect contemplated. Regrettably, the fundamental rights to freedom of thought and conscience as well as the right to religion are most likely to be breached. Citizens are bound to be shown the way out of their sources of livelihood on account of restriction of access to places of work due either to non-vaccination or inability to produce evidence of vaccination. Interestingly, public policy and fundamental rights are on a head-on collision. The paper has argued, however, and firmly submitted that fundamental rights to freedom of thought and conscience as well the right to practice one's religion should prevail. Relying on extant data on Covid-19 infection, treatment and mortalities, the paper holds the view that there is no real public health emergency to justify a derogation from, and *a fortiori*, a breach of citizens' fundamental rights in Nigeria on account merely of government's decision in measures to contain further spread of Covid-19. The paper has proposed and vigorously advocated that the extant provisions of section 45 and subsection (1) of the 1999 CFRN be amended by excluding section 38 from the list of sections mentioned as affected by the claw back clause as presently contained.