

RIGHT TO FREEDOM OF RELIGION AS A PENACEA TO PEACE IN NIGERIA

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Introduction

This paper critically reviewed the provisions of the 1999 Constitution of Nigeria on freedom of religion and its limitations as a result of violence and many deaths and some sorts of anxiety created all over the country.

The conclusion is that the constitutional provisions are adequate in themselves for arresting religious extremism as they are in tandem with the provisions of many international legal instruments and that it can serve as a mechanism for peace in any civilised society where they are conscientiously respected since Nigeria is a secular State as far as the Constitution is concerned.

What is peace?

- ▣ “Peace” is a state of tranquillity or quiet, freedom from civil disturbance, a state of security or order within a community provided for by law or custom. Peace is the Freedom from disquieting or oppressive thoughts, or emotions and harmony in personal relations

- ▣ E.G Sharpe rightly puts it that, “*He who knows one knows none*”. Therefore accommodating and respecting the values of other religion could enhance peace.

Religion

- ▣ Religion refers to the attribute of the human being to go beyond himself into relationship with the divine or the supreme being. Tylor sees religion as 'belief in spiritual beings'.
- ▣ This perception of religion is very minimal. If religion were to be simply a belief in spiritual beings, there is no way there could be extreme actions in the name of religion.
- ▣ It is not only the Nigerian Constitution that understands religion as an inherent attribute of the human person. Many international legal instruments do. They include the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR) etc.

The only difference amongst them is in the words used to convey the idea. Rather than use the words *every person* most of these legal instruments use the word *everyone*.

The freedom of religion guaranteed by the 1999 constitution is not a solitary right to hold a religion but rather is a compound right embracing other freedoms that define religion as involving rational process, and a social reality, which thrives in interpersonal dynamics and concrete civil presence. It is guaranteed alongside freedom of thought and conscience. This is not an anomaly because religion ordinarily involves thought and conscience even though thought and conscience can exist without necessarily leading up to having a religious belief.

- ▣ Section 38 (1) of the 1999 Constitution of the Federal Republic of Nigeria (as amended) provides as follows;
- ▣ 1. “Every person shall be entitled to freedom of thought, conscience and religion, including freedom to change his religion or belief, and freedom (either alone or in community with others, and in public or private) to manifest and propagate his religion or belief in worship, teaching, practice and observance.

2. No person attending any place of education shall be required to receive instruction or to take part in or attend any religious ceremony or observance if such instruction, ceremony or observance relates to a religion other than his own, or a religion not approved by his parents or guardian.
3. No religious community or denomination shall be prevented from providing religious instruction for pupils of that community nor denomination in any place of education maintained wholly by that community or denomination.

- ▣ Interestingly, the same or analogous provisions can be found in the previous Constitutional provisions since the first republican Constitution was enacted in 1963. See Section 24 1963 Constitution; Section 35 of the 1979 Constitution, respectively.
- ▣ By way of analogy, however, the American Constitution, in its first amendment promulgated as far back as 1791 projected similar rights of man when it states-“Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for redress of grievances.

As far as religion is implicated, the Nigerian Constitution differs slightly from the American Constitution on which it was modelled when we adopted presidential system of government in 1979. Whereas in the United States, the same first amendment prohibits adoption of preference of a religion for the State, in Nigeria by contrast, the provision which forbids the Nigerian Government or State Government from adopting any religion as a state religion is not entrenched as a fundamental right; although it is a Constitutional provision.

Interestingly, the same Constitution recognizes and enjoins the state to facilitate propagation of diverse religious beliefs. In the Constitution, under its Social Objectives, the Constitution prescribes that “The State shall direct its policy towards ensuring that –(b) Conditions of work are just and humane, and that there are adequate facilities for leisure and for social, religious and cultural life.”

The language of section 38 brings out the fact that religion is an attribute of a human being as an individual and not as a citizen. The right is guaranteed for 'every person'. This is different from other fundamental rights guaranteed by the Constitution for people as citizens, such as the right to private and family life (section 37), the right to freedom of movement (section 41), and right to freedom from discrimination (section 42). The Oxford Advanced Learners' Dictionary defines 'person' as "a human as an individual".

The same dictionary defines 'citizen' as 'a person who has the legal right to belong to a particular country'. A citizen is a party to the social contract on which a country is established. In a democracy like Nigeria, he is part of the people that constitute the *demos* on which the democracy is built. He is a subject of rights and obligations under the democratic contract fundamentally articulated in the constitution.

- ▣ This is different with the status of a person. A person is a human being in his status as an individual without necessarily being a citizen of a country. That the right to freedom of religion is granted to every person in Nigeria means that it is not only for Nigerian citizens but all human beings in the country including non-citizens. The only justification for this is that religion is an attribute of a human person in his nature as such. It is not created by the state

- ▣ From the language of the Constitution respecting this right of a person is a legal duty on all others. The section uses the operative word *shall* which when used in the second and third persons means obligation. Every other person, physical or legal, has the duty to accord this right to a person.
- ▣ The freedom of religion guaranteed by the 1999 constitution is not a solitary right to hold a religion but rather is a compound right embracing other freedoms that define religion as involving rational process, and a social reality, which thrives in interpersonal dynamics and concrete civil presence.

- ▣ It is guaranteed alongside freedom of thought and conscience. This is not an anomaly because religion ordinarily involves thought and conscience even though thought and conscience can exist without necessarily leading up to having a religious belief

- ▣ The Oxford Advanced Learner's Dictionary defines 'thought' as "something that you think of or remember; a person's mind and all the ideas that they have in it when they are thinking; the power or process of thinking; the act of thinking seriously and carefully about something, power or process of thinking; a feeling of care or worry; an intention or a hope of doing something". One idea central to these nuances of thought is that it deals with the mind and its operations. The same dictionary defines 'conscience' as "the part of your mind that tells you whether your actions are right or wrong".

- ▣ Conscience also is connected with the mind but it is that part that performs the role of a judge. It is in this context that we find expressions like 'I leave you to your conscience' or 'let your conscience be your judge'. We thus find a link between 'thought' and 'conscience'. At the thought level, the mind critically examines an experience from the point of view of its being beneficial to him or proper to be done.

- ▣ After a decision is reached at this level, the decision taken becomes a standard that guides future actions. This is the conscience level of the mind. Actions are judged right or wrong depending on whether or not they agree with the standard already set by the mind. As noted shortly, 'thought' and 'conscience' are not religion in themselves but they lead up to it. They are actually the antecedents to religion. Relationship with the divine begins from 'thought' and 'conscience'

- ▣ At the same time, a religion that is majorly irrational would not be worth the name since that would be contrary to the nature of the religious object, understood as the “author and epitome of rationality”, and whom the religious individual worships in conscience as the Wholly Other. In spite of religion embracing thought and conscience, they have independent existence outside of religion. This explains why the Constitution, like other legal instruments, lists them separately.

- ▣ By so doing the Constitution guarantees their being enjoyed outside of religion. This is the basis of the right to not have a religion. To give fuller effects to the right to freedom of religion, the Constitution guarantees ancillary rights. These are: freedom to change religion or belief, freedom to manifest religion, freedom to propagate religion, and freedom to not have a religion. Given that the Constitution introduces these ancillary freedoms with 'include', it means that the list is not exhaustive.

- ▣ Court can, on case by case basis, determine other freedoms that can be added to the list.
- ▣ In *Watson v. Jones* the U.S. Supreme Court stated that “The law knows no heresy, and is committed to the support of no dogma, the establishment of no sect”.³⁴ The same mindset is seen in the Nigerian judiciary. In *Medical and Dental Practitioners Disciplinary tribunal v. Okonkwo* (2001) 10 WRN 1 SC at 41 Ayoola JSC stated:

- ▣ The right to freedom of thought, conscience and religion implies a right not to be prevented, without lawful justification, from choosing the course of one's life, fashioned on what one believes in, and a right not be coerced into acting contrary to one's religious belief. The limits of these freedoms, as in all cases, are when they impinge on the rights of others or where they put the welfare of society or public health in jeopardy.

In other words, the state cannot prescribe any religion as state religion or proscribe any by virtue of section 10 of the Constitution.

Limitations to Right to Freedom of Religion

Section 45(1) of the 1999 Constitution which provides:

Nothing in sections 37, 38, 39, 40 and 41 of this Constitution shall invalidate any law that is reasonable justifiable in 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.

- ▣ Apart from the freedom of thought, conscience and religion contained in section 38(1), section 45(1) limits the exercise of the rights in sections 37, 39, 40 and 41 of the Constitution. By including section 38 amongst the sections of the Constitution to be limited under section 45(1), it means that every right granted under section 38 is liable for restriction including freedom of thought and conscience.

But most international legal instruments restrict only the manifestation of religion or belief in social actions without including thought and conscience. Such instruments include the UDHR, ICCPR, UN Declaration on the Elimination of All Forms of Intolerance and of Discrimination based on Religion or Belief, the African (Banjul) Charter on Human and Peoples' Rights, and the European Convention on Human Rights, 2010.

The couching of the provision differs but the same idea runs through them. The UDHR for instance provides in article 29(2):

In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.

- ▣ Derogation from freedom of religion is limited to the external manifestation of it for the obvious reason that it is hardly possible to regulate what is locked up in a person's mind. There is hardly any police for thoughts, conscience, beliefs or ideas that are not put into actions. In the English case of *Williamson v Secretary of State for Education and Skills* [2005] 2 AC 246, the House of Lord stated that while “[e]veryone is entitled to hold whatever beliefs he wishes, when questions of “manifestation” arise ... a belief must satisfy some modest, objective minimum requirements.

- ▣ In effect, though section 45(1) provides for the restriction of freedom of thought, conscience and religion or belief in all ramifications, what is possible is the limitation of the manifestation of religion.

Challenges to right to freedom of religion

It is worthy of note that freedom of religion shares the social, civil and political space with the legal rights and freedoms of other persons. This means that all these freedoms and rights, including freedom of religion, are equal and mutually limiting. Thus, none is ordinarily superior and so should not unjustifiably displace any other. This idea is represented in the dictum - one's freedom or right begins where those of others end.

Thus, to ensure that freedom of religion of one person does not inhibit others from exercising their other rights and freedoms, government can make a law limiting the exercise of freedom of religion. Section 45(1) (b) takes the 'rights and freedom of others' as ground for restricting the freedom of religion of any person. Being in the plural, 'rights' refers to all the legal rights of the other person, such as his property, intellectual, civil, economic and political rights

“Freedom” being in the singular could be taken to refer, in the context of section 38, to freedom of religion or belief of the other person. As with public interests, the restriction of a person’s freedom of religion in order to protect the rights and freedoms of others must be strictly construed. This ground seeks to establish a balance in the exercise of all rights and freedoms including freedom of religion.

This is where the presenter sees some serious challenges as one set believes that his religion is superior to the other and as such must be embraced by all other persons. This ought not to be if one has a very good understanding of the foregoing.

Religion as a panacea to peace in Nigeria

If a state of tranquillity or quiet, freedom from civil disturbance, a state of security or order within a community provided for by law or custom; or freedom from disquieting or oppressive thoughts, or emotions and harmony in personal relations must be achieved, then we must strictly follow the Constitution, however, the truth is that the mere letters of the Constitution cannot achieve anything without constitutionalism, which is the disposition and commitment across the citizenry to actualize the letters of a constitution

It is like the spiritual constitution while letters of the constitution constitute the physical constitution. The intimate relationship between these two concepts - constitution and constitutionalism - is like that of non-separately Siamese twins that must be left the way they are born in order to make them survive and accomplish things. Constitutionalism is the commitment of all the parties to the social contract embodied in the constitution to bringing into fruition the desires and rights guaranteed in the constitution.

Without this, every word in the constitution would be sterile. This commitment to accomplish peace through religion can come if the values enshrined in the constitution are shared values. Otherwise, the commitment to the constitution as the supreme law of the land would be wanting.

This is the problem with freedom of religion and its limitations as guaranteed in the 1999 Constitution. It is not only that freedom of religion guaranteed in the constitution is not a shared value but also the idea of the constitution as the supreme law of the land is not shared by some folks.

In the final analysis, the words of the Constitution on freedom of religion and its limitation will remain largely ineffective when the constitution is not wholeheartedly accepted as the supreme law of the land across the board.

More so, religion can be a great tool for social harmony and human development when properly instituted. Unfortunately, instead of being an agent of unity, religion has become an agent of division.

- ▣ Through its crises it has placed a myriad of nations into agony, despair, disarray and destroyed human civilization. Nigeria in particular has experienced series of religious crises which have destabilized the government and the economy. To that extent, religious dialogue is germane to curb the incessant religious conflicts that are being experienced. Religious dialogue in this context involves the actions of government, civil organizations and religious associations coming together for the purpose of tackling ethno-religious disputes or conflicts.

However, the absence of dialogue is monologue which avertedly means long romance with evil which can burst at any moment, and according to Wole Soyinka, Monologue is a leeway to Armageddon.

Furthermore, all religious leaders should try to give their followers the right orientation on the significance of peace and the place of peace in their belief system.

In conclusion, the provisions for freedom of religion and its limitations as enshrined in the Constitution must be taken as supreme in order to ensure peace and harmonious co-existence in a multi-religious country like Nigeria.