

RELIGIOUS RIGHTS IN A PLURALISTIC WORLD
THE NIGERIAN EXPERIENCE BY S. D KAWU, CHIEF
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INTRODUCTION

Let me first appreciate the International Center for Law and Religion Studies, Brigham Young University, USA for inviting me to attend and participate at this symposium which will no doubt help in expanding knowledge and understanding on how people of diverse religions can coexist and conduct themselves in ways and manners prescribed by their respective chosen faiths peacefully.

Since man is the object of both right and religion it is necessary that religious rights are exercised in accordance with the laws of the land for a balanced development of man and society.

It is also necessary that in the promulgation of laws for the society, adequate account must be taken of religious interests and beliefs.

The violation and suppression of religious rights recognised and guaranteed by law and the exercise of religious rights in total disregard for law and the interests of people of other faiths in a pluralistic world can only lead to chaos, violence and disruption of society with mankind being the loser.

My contribution will centre principally on Nigeria where I hail from and which is a multi religious and cultural society.

Before the advent of colonialism, Nigeria consisted of several ethnic groups which operated as distinct and separate fiefdoms and kingdoms with peculiar sets of practices, rituals and beliefs.

In the 11th Century however, Islam with its culture and education was introduced into Nigeria through the northern empires of Kanem Bornu and the Sokoto Caliphate while Christianity with western culture and education came into Nigeria through the southern region around 1842. This was the situation until the British Colonial government decreed an amalgamation of the northern and southern protectorates in 1914 which gave birth to the political and geographical entity known as Nigeria.

Nigeria is therefore a product of diverse cultural, ethnic and religious beliefs.

The subsequent introduction of Islam and Christianity in Nigeria did not however totally wipe out or displace the traditional beliefs and practices of the people with the result that today Islam, Christianity and traditional beliefs are practised side by side.

As a matter of fact the cultures and traditions of the people have considerably influenced the way and manner both Islam and Christianity are practiced.

For example it is not uncommon in some parts of the country to see Muslims and Christians celebrating masquerade festivals and naming their children after some gods like "Sango" – god of thunder; "Oya" – goddess of the river.

In addition, it is common to see in the south western, north central, north eastern and north western geopolitical zones of Nigeria, members of the same family practicing different religions and celebrating cultural and religious festivals together in harmony.

The foregoing therefore is the genesis of religious pluralism in Nigeria.

CONSTITUTIONAL GUARANTEE OF RIGHT OF RELIGION

I shall now examine some Provisions of the 1999 Constitution of the Federal Republic of Nigeria on the relationship between State and Religion and the Scope of Freedom of Religion.

Section 10 of the 1999 CFRN which is the grundnorm of Nigeria provides that, "The Government of the Federation or of a state shall not adopt any religion as State Religion"

This provision like that contained in the American and some European Constitutions is aimed at keeping separate, religion and state. This is in consequence of the fact that the Nigerian state being a pluralistic one with diverse religious beliefs cannot logically or practically adopt any of the religions as state religion.

It is my view that although Section 10 of the Nigeria Constitution forbids the adoption of any religion as state religion, that provision does not qualify the country as a secular state. I say this because the Oxford Advanced Learner's Dictionary defines the word SECULAR as "not connected with spiritual or religious matters". Contrary to this definition however, the preamble to the constitution describes Nigeria as a sovereign Nation under God and the National Anthem talks of "God of Creation" while the National pledge ends with the words "So help me God". All these show that the Nigerian State is founded on the belief in the existence of God as the source of creation and disposer of affairs.

The provision of Section 10 of the Constitution of Nigeria which appears to separate the Nigerian State from the religions of its citizens raises the question for example, whether the state is prohibited from financing religious activities.

In Nigeria, there is a direct and open financial support for Muslims and Christians in aid of their religious activities, rituals, ceremonies and festivals.

An example is the establishment of Muslim and Christian Pilgrims Welfare Commissions and Boards at both National and State levels charged with the responsibility of organising and facilitating pilgrimages to and from Saudi Arabia and Jerusalem with members appointed and paid from the public purse.

It is a yearly practice for both the Federal and State governments to pay the pilgrimage expenses of both Muslims

and Christians until very recently when the downturn in the economy dictated otherwise. Also during religious festivals, foodstuffs, money, and livestock are distributed to the faithfuls of both Islam and Christianity for celebrations.

It is clear from the foregoing therefore that although the Constitution provides that no religion shall be adopted as State religion, the Nigerian State is deeply immersed in the active funding and sponsorship of several religious activities.

To ensure that every person in Nigeria holds and practices any religion of his or her choice, the Constitution in Section 38 provides:

- (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 religious instruction or 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 parent or guardian.
- (3) No religious community or denomination shall be prevented from providing religious instructions for pupils

of that community or denomination in any place of education maintained wholly by that community or denomination.

- (4) Nothing in this Section shall entitle any person to form, take part in the activity or be a member of a secret society.

Section 38 of the Nigerian constitution which is essentially a copy of Article 18 of the Universal Declaration of Human Rights, allows freedom of thought, conscience and religion and the freedom to change religious belief.

There is no problem with the exercise of freedom to believe in a religion since belief resides in the mind of the believer. Where problems do arise however is in the following areas:

- (1) The right to propagate one's religion.

This is an area of conflict when followers of a particular religious belief in the exercise of their right do engage at different times and fora in propagating their religious belief sometimes in a manner considered offensive, insensitive or provocative to people of other religions. This apparent blanket right to propagate one's religion in Section 38 which may constitute a source of conflict has however been limited by Section 45 of the Constitution in the interest of public order.

It is submitted that the exercise of the freedom of religion in Section 38 and the limitation imposed on such exercise

by Section 45 must be considered alongside the right to freedom of expression under Section 39 of the Constitution of Nigeria.

- (2) The right to change one's religious faith although guaranteed by the constitution cannot easily be leveraged upon by the adherents of the Muslim faith without treading the road to Apostacy with very dire consequences in strict Sharia law, which is not applicable in Nigeria.

In practice there have been conversions from Islam to Christianity and vice-versa without any serious legal consequences for the converttees except may be denial of right of inheritance in Islam and of being ostracized by families and members of the religious belief to which the converttee formally belonged.

- (3) Right to manifest one's religious belief.

In the bid to manifest their religious belief adherents of Islamic faith particularly Muslim female students usually wear the headscarf, called hijab.

The exercise of this right has led to some unrest and tension and litigations in some parts of the country in recent times.

Here are few examples of court decisions on the issue.

(1)

This writer in the unreported case of **BASHIRAT SALIU; AMINAT MURITALA; SHAKIRAT OLORUNGBEBE VS. THE**

PROVOST KWARA STATE COLLEGE OF EDUCATION ILORIN & 2 ORS on the 8th May 2006, at the Kwara State High Court of Justice, Ilorin, Nigeria held that the ban on the use of headscarf by female students constituted an infringement of their right under Section 38 of the Constitution of the Federal Republic of Nigeria.

An appeal against that decision was dismissed by the Court of Appeal in the unreported appeal No. CA/IL/49/2006 on 18th day of June 2009. At pages 15 – 16 of their Judgment, the Court of Appeal held inter-alia:

“The use of veil by the respondents,..... qualifies as a fundamental right under Section 38 (1) of the constitution The emphasis is on the respondents’ right to manifest and even propagate their religion or belief in worship, teaching, practice and observance. The respondents practice and observance of drawing their veils covering and concealing their bosoms and womanhood finery is a religious injunction to which they are entitled as a matter of rights ex-debito justitie ...

The veiled dress is recommended for Muslim women, which the respondents undeniably are, and which also enhances the preservation of their honour and chastity. It is their fundamental right to practice and observe their religious injunctions in any part of Nigeria including the 3rd appellants’ premises”

(2)

In **MISS ASIYAT ABDULKAREEM (MINOR) & 20 ORS VS. LAGOS STATE GOVERNMENT & 3 ORS S/N: ID/151M/13**, two 12 year old girls who are students of Aturase Junior High School, Surulere Lagos under the aegis of the Muslim Students Society of Nigeria (MSSN) Lagos State Area Unit instituted an action against the Lagos State Government before an Ikeja High Court for banning the use of hijab not being part of the approved school uniform for pupils, asking for a declaration that the ban was a violation of their rights to freedom of thought, religion and education.

The trial court on 17th October, 2014, dismissed the suit of the pupils against the Lagos State Government on the ground that the ban did not violate Sections 38 and 42 of the Nigerian Constitution and that since Section 10 of the same constitution made Nigeria a secular state, the ban on the use of hijab by female muslim students was in maintenance of neutrality by the State Government in a public school maintained by it.

Dissatisfied with the dismissal of their suit the pupils appealed to the Court of Appeal, Lagos division for the setting aside of the decision of the trial court and protection of their constitutional rights.

The Lagos division of the Court of Appeal in a unanimous decision reversed the decision of the trial court and held that the ban on the use of hijab by the appellant was discriminatory against Muslim pupils in the State. In the judgment delivered by **A. B. GUNMI, JCA** the court held inter-alia "the use of

hijab is an Islamic injunction and also an act of worship hence it will constitute a violation of the appellants' right to stop them from wearing hijab in public schools"

(3)

In the case of **SHEIK SALAUDEEN ADE OLAYIWOLA & 3 ORS VS. THE GOVERNMENT OF OSUN STATE & 8 ORS UNREPORTED SUIT NO. HOS/M.17/2013**, the applicants submitted the followings as grounds for their action before Osogbo High Court, Osun State of Nigeria.

- (1) The use of Hijab or head cover is compulsory in Islam on every Muslim female student.
- (2) By virtue of Section 38 of 1999 constitution of Federal Republic of Nigeria, everybody is entitled to the right to freedom of religion, conscience and thought.
- (3) The 1st – 3rd Respondents issued what it calls "Guidelines on Administration and Discipline in Public Schools in Osun State".

Article 8.2(V) forbids the use of Hijab in some public schools.

- (4) Pursuant to the said "Guidelines on Administration and Discipline in Public Schools in Osun State". The 4th and 5th Respondents deny the Muslim female students the use of Hijab in the public schools in Osun State and the Muslim female students who use Hijab in some public schools are

beaten, embarrassed and tortured by the agents of the Respondents.

The applicants thereafter prayed the court to among others, enforce and secure the enforcement of the fundamental rights of Muslim female students in public secondary schools in Osun State under Sections 38 and 42 of the Constitution and declare the ban on the use of Hijab by the Respondents to be discriminatory against Muslim female students and inconsistent with the Provision of Section 38 of the Constitution.

The court in the judgement delivered on Friday 3rd June 2016, at pages 42 – 43 held:

“Article 8.2 (v) of Guidelines on Administration and Discipline in Osun State public schools issued by Ministry of Education, Osogbo in 2004 is in direct conflict with Sections 38 (1) and 42 Constitution of Federal Republic of Nigeria 1999. To that extent, it is void and is accordingly struck out. Female Muslim students have constitutional right to put on Hijab in all public primary and secondary schools in Osun State as enjoined by Chapter 24 verses 30 – 31 of the Glorious Qur’an and in exercise of their constitutional right under Section 38 (1) and 42 of the Constitution.”

It is my view from the foregoing that the Nigerian Constitution provides enough space for her citizens to choose, practice, change and propagate their faiths without let or hindrance.

What has always been the source of worry and complaint by both Muslims and Christians alike is the way and manner in which government positions and offices are shared especially at the federal level. At any point in the life of any regime in Nigeria, the usual complaint is that members of a particular religion are given preferential treatment and patronage. Some of the complaints are real and well founded while others are imagined.

To ensure equitable composition of governments, Section 14 (3) of the Constitution provides that: "The composition of the Government of Federation or any of its agencies and the conduct of its affairs shall be carried out in such a manner as to reflect the Federal Character of Nigeria and the need to promote national unity and also to command national loyalty, thereby ensuring that there shall be no predominance of persons from a few states or from a few ethnic or other sectional groups in that government or in any of its agencies"

To ensure that the Provision of Section 14 of the Constitution is given effect to, a body known as the Federal Character Commission is created by the Constitution in the Third Schedule, Part I (c) to work out an equitable formula for the distribution of posts in the public service of the Federation and the States and promote proportional sharing of all bureaucratic, economic, media and political posts at all levels of government. The Commission is empowered to take necessary legal action to ensure compliance with the provisions of Section 14 of the

Constitution on proportional and equitable distribution of government offices.

In order to ensure peace and unity in Nigeria, these laudable provisions of the Constitution should be strictly enforced and in addition amended to take cognisance of religious diversity in the country in making appointments into government offices.

RELIGIOUS EXTREMISM

Conflicts will always arise in any human society be it at the family, national or international levels. The conflict may occur between people of the same or different ethnic, religious or cultural backgrounds. This is mainly because it is in the nature of man to differ and manifest their differences in words or wars. I do not therefore on my part agree with those who hold the view that conflicts in Nigeria and indeed in the world today is the result of religious pluralism.

I am of the view that conflict is in the nature of man and that people have always exploited differences in religion which is an emotive issue to carry out aggression and war. The nature and extent of the conflicts largely depends on the level of tolerance of the people and the sometimes nonchalant attitude of government and security apparatus charged with the responsibility of maintaining law and order and the performance of the justice sector with respect to the breach or threatened breach of peace.

The wide space created by the Nigerian Constitution for citizens to choose, practice and propagate their faiths and the failure of government, particularly the security organs to be vigilant and alert to their responsibilities and sometimes the irresponsible attitude of politicians have given birth to the emergence of charlatans who know next to nothing about their faiths and who unleash violence, murder and mayhem on innocent and law abiding citizens under the guise of religion.

An example that readily comes to mind is the BOKO HARAM sect of Nigeria which is opposed to western education and culture.

The activities of these marauding criminals have led to the death and displacement of thousands of people of all faiths particularly in the North Eastern geographical zone of Nigeria leaving both the social, economic and religious life of the people of the zone comatose.

It is important to note that the sect has taken up arms not only against Muslims and Christians, by bombing and destroying mosques and churches but also against the Federal Government of Nigeria.

President Muhammadu Buhari of Nigeria at the sidelines of the 71st United Nations General Assembly in New York recently said, and I quite agree with him, that the teachings of BOKO HARAM were not Islamic as no religion will advocate the hurting of the weak and innocent. According to the President, "The fact that they kill men, women, children and other people

and shout Allahu Akbar (God is great) shows that they do not know that Allah at all. If they did, they would not shed innocent blood”.

The decimation of the BOKO HARAM SECT to its present level is due largely to the political will of the present administration to confront the monster head-on with the support of both Christians and Muslims.

It is necessary therefore not to perceive the activities of BOKO HARAM as manifestation of conflict between Muslims and Christians in Nigeria per se because in their cruel and twisted minds they kill people of all faiths and attack Churches and Mosques with equal venom.

I must not forget to mention that there are several cases of conflicts in the northern part of Nigeria between Muslims and Christians and reprisal attacks in the south. These conflicts have led to mutual distrust and suspicion between Muslims, Christians and adherents of African traditional religion in Nigeria with attendant loss of lives and properties.

In the month of September, 2016 one Pastor Wale Fagbenro attempted to destroy a traditional shrine in Ketu area, Ogun State of Nigeria. He was arrested and charged to court for malicious damage and conduct likely to cause breach of peace. The Public Relation Officer of the State was quoted to have said on the issue:

“Everyone has a right to worship whatever deity one chooses without fear.” See **NIGERIAN TRIBUNE NEWSPAPER of Tuesday, 27th September, 2016 at Page 7.**

Reference may also be made to two other incidents which are indicative of religious intolerance.

The first one occurred in Anambra State of Nigeria where the Shrine of the traditional worshippers was set ablaze by a particular Christian faction while the second took place in Offa, Kwara State of Nigeria where the attempt to destroy Moremi Shrine cited near the Mosque by a group of Muslims led to a big uproar and conflict in the town.

The dangers posed by religious extremism was observed by the Supreme Court of Nigeria in the case of one **DR REV. KING reported in (2016) 6 NWLR (PT. 1509) 529 at 590–591 per NGWUTA JSC** as follows:

“Extremism in politics or religion results in disaster Here is a mere mortal being who has arrogated to himself the power and function of his maker.

.....
The appellant, Chukwuemeka Ezenko, alias Dr Rev. King, in his turn would not hesitate to roast his perceived sinner in petrol fire while sparing the sin..... Human life, even that of a sinner, is sacred to God. Religious freedom, freedom of association do not in any way derogate from the sanctity of life. Activities of these “Religious” bodies should be scrutinized

before their crazy leaders embark on mass murder of their followers or lead them to mass suicide."

I cannot agree more with the court that the activities of religious bodies and leaders who preach divisive and strange doctrines and commit heinous crimes in the name of religion must be scrutinised closely and dealt with decisively.

CONCLUSION

The emergence of several strange sects in both Islam and Christianity in Nigeria with self-serving leaders who preach hatred and intolerance is creating a widening gulf between the followers of the two major religions contrary to the resolve of the people as reflected in the preamble to the constitution "To live in unity and harmony as one indivisible and indissoluble sovereign Nation....."

Religious pluralism in Nigeria is a reality and for it to have a beneficial rather than a detrimental effect on the country as it is at the moment, then the following recommendations are made:

- 1 Setting up of an interreligious regulatory body consisting of the leadership of various religions charged with the responsibility to, among others, educate members particularly religious preachers on the integrative nature of religion, and the core values of tolerance and peaceful coexistence. Religious preachers should emphasize the relationship between physical acts of worship and moral

values of peace, honesty, brotherhood and love. Their preachings should always center on fear and love of God and love for one another and the country.

2. Deployment of state security apparatus to monitor and check the activities of religious organisations. The government must be bold, honest and unbiased in the handling of those found to have breached the laws of the land in the exercise of their right to freedom of religion. In other words the rule of law must be upheld and promoted by the government. Nobody or group should be treated as being above the law. Those found to have breached the law under the pretence of religion must be strictly dealt with to serve as deterrence to others. Rising impunity by deviants must be stopped.
3. The government must encourage Nigerians through seminars, conferences, dialogue etc to rise together against religious extremism as it constitutes a stumbling block to peace and unity.