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Introduction (Social Context)

Religion was and is still, to a large extent an integral part of the lifestyle of the African in the traditional environment. Every activity was a religious exercise and the individual was left to relate to his or her maker according to how it satisfied the spiritual and material life. Traditional African societies respected religious liberty as a personal choice of the individual.

The fact of the intrusion of judeo-christian colonialists into the territories that became Ghana had very far reaching influence on the impact of Christianity into social and public life as well as governmental activity. The British colonial administrators being predominantly Christian and the activities of the Christian missionaries in a large portion of Ghana have resulted into the development of a dominant influence of Christian perspectives in social and public life. Such was the case that for instance only Christian religious holidays were accorded national character while Islamic holidays were limited to only the adherents of the Islamic faith. That was the case until Islamic holidays were eventually legislated into national holidays. Even now the traditional African religions and other minority sects do not have any special occasions accorded the status of even sectarian holidays.

Nevertheless, Ghana is constitutionally a secular state. Religious liberty is guaranteed and all citizens are free to believe and manifest any religious faith. The national census figures place Christianity as the dominant faith at 68.8% of the population with Islam taking up 15.9%, traditional religion was put at 8.5% and 6.1% was recorded as having no religious affiliations. There are other smaller religious denominations which make up the remaining 0.7% of the population. The other religious denominations constituting the 0.7% includes groups such as Eckankar, Buddhism etc.

In the words of Rev. K. A. Dickson, Professor Emeritus and former President of the All African Conference of Churches, "...generally speaking, freedom of religion is a reality in Ghana, as it is elsewhere in Africa, and that this has led to unprecedented growth; attempts to restrict the Church's freedom have usually been resisted."¹

Drawing upon the fundamental fact that religious beliefs and practices permeate all aspects of life of the Ghanaian, Pobee felt able to argue that "... homo ghaniensis (a Ghanaian) is a homo radicaliter religiosus (a radically religious man – religious at the core of his being)."²

Theoretical and scholarly context

¹ Rev. K.A Dickson, Freedom of Religion and the Church, Accra, Ghana Universities Press, 2003, p. 5.

² John S. Pobee, Accra, Ghana Universities Press, 1992, p.2.

Ghanaian Scholars and men and women of the Church have advocated the churches participation in the political direction of the country.³ According to Kudaje and Aboagye – Mensah,

“We are clear in our minds, that the church has a valid case to be involved in the affairs of the State in all aspects including national politics.”⁴

Research⁵ indicates that the church as an established institution has the responsibility to serve as the conscience of the society. This follows from the realization that as a body the church has greater protection and immunity from political aggression than the individual person. This was particularly so during the periods of unconstitutional rule.

There has existed complementary developmental relationship between the state and the religious organizations in the provision of education and health care facilities for the citizenry.⁶

Constitutional context

The Constitution depicts Ghana as a secular but not an atheistic state. The very first words of the preamble bear this out; it is recited that

“In the name of the Almighty God, We the people of Ghana in the exercise of our inalienable rights...”

The clear indication is therefore that, Ghana is a religious nation but at the same time secular in the sense that, the same Constitution prohibits the elevation of any religious organization into a State religion. (see article 56 of the 1992 Constitution.)

The Constitution, while still remaining secular in context nevertheless recognizes the existence of religious organizations as relevant civic society organizations that would need representation in certain matters. The Constitution for instance makes provision for the inclusion of representation of religious groups on specific constitutional bodies. The Constitution for example provides in Article 166(1) for the representation of religious organizations on the National Media Commission.⁷

The obvious observation however, is that, it is only the Muslim and Christian religious organizations that are accorded recognition for membership of the relevant constitutional bodies. The traditional African religious groups and the other smaller religious groups such as Eckankar, Buddhist, Hare Krishna and others are not accorded the same recognition.

Perhaps the rationale for the recognition of the Moslem and Christian organizations could stem from the fact of their large following in the country and therefore their obvious influence among the generality of the citizenry.

³ See Kwasi Yirenkyi, The role of Christian Churches in National Politics: Reflections from Laity and Clergy in Ghana (Manuscript on file.)

⁴ J.N. Kudajie, and R.K. Aboagye-Mensah, The Christian and National Politics, Vol. 1, Accra, Assempra Publishers, 1991, p.33, quoted in Yirenkyi, *ibid*.

⁵ See Yirenkyi, *ibid*.

⁶ See Asempra, 1990, p. 6.

⁷ The National Media Commission is responsible for ensuring the independence of the media in Ghana.

Article 21(1)(c) of the Constitution guarantees the right to religious belief and practice., while the right to believe is virtually absolute, the practice of the belief is subject to controls in the interest of public health, morality, etc. This is as guaranteed in Article 18 of the ICCPR .The restraint on the mode of manifestation could be implied from Article 26 of the Constitution which permits the practice of customary practices subject however to the caveat that any customary practice that infringes on the rights of any individual shall be prohibited. It is in that direction that the Trokosi practice, a religious practice that subjects young girls to a form of servitude came to be proscribed by the enactment of various amendments to the Criminal Code.

Legal context

i. Legislation

The main legislative basis for religious liberty is article 21(1)(c) of the 1992 Constitution which, like article 18 of the International Covenant on Civil and political Rights (ICCPR) guarantees the right of belief and the right to manifest.

Prior to the 1992 Constitution the then military government passed the Religious Bodies (Registration) Law, 1989, PNDCL 221.

This piece of legislation failed in its appeal to the generality of the people and was ignored with ignominy by the major religious bodies. No efforts were made by the government to enforce it and it therefore died a natural death upon the coming into force of the 1992 Constitution.

In the long standing Trust Bill one finds an invidious attempt at the reintroducing, though in a less audacious manner the attempted control that was rebuffed in the case of PNDCL 221. Under the draft bill, religious organizations are lumped together with NGO's and civil society organizations to be subjected to the control of the Trust Commissioner responsible for the registration of Trusts.

The functions of the Trust Commission which are to be carried out through its Board are listed as follows :(clause 17):

- (a) register religious bodies, trusts and non-governmental organizations
- (b) maintain a register of religious bodies, trusts and non-governmental organizations
- (c) oversee the activities of trusts, religious bodies and non-governmental organizations and investigate the activities of a trust, a religious body or a non-governmental organization where it is considered expedient in the public interest to do so,
- (d) Provide procedure for the resolution of disputes among religious bodies, trusts and non-governmental organizations
- (e) Advise the minister on policy matters regarding religious bodies, trusts and non-governmental organizations and review policy where necessary
- (f) Issue guidelines for the proper management and organization of the activities of religious bodies, trusts and non-governmental organizations.

These are extensive powers to be conferred on the Commissioner and these can derogate from religious liberty. In substance this Bill seems to be a rehash of the discredited Religious Bodies (Registration) Law 1989, PNDC Law 221. For now the bill has remained dormant for several years but of late the NGO community has started to raise it out of its dormancy in their protest against those aspects that relate to the NGOs; the religious organizations are yet to become conscious of its implications and when they do one can be sure that the same fate that befell PNDC LAW 221 will affect it also.

ii. Case Law

There is not any case law that directly asserts the right to religious freedom, nevertheless there are some cases that indirectly uphold the right to religious liberty.

The law courts have used the strict interpretation of the Criminal law to support religious liberty in a way. In the case of *Nyameneba v. The State*⁸ the accused persons belonged to a religious group that cultivates a certain plant that they called “herb of life”. The group uses this herb publicly as incense and medicine. Upon chemical analysis, the herb was found to be Indian hemp, from which a narcotic drug could be extracted. The accused were accordingly charged with unlawful possession of narcotic drugs contrary to section 49 of the Pharmacy Act, Act 64. They were found guilty and convicted by the court of first instance, but acquitted and discharged on appeal on the grounds that the prosecution failed to prove knowledge on the part of the applicants that the plants were Indian hemp.

Of course, this holding will not permit subsequent use of the prohibited herb, not even for religious purposes. The sect will thereafter have to practice their religion without the assistance of that herb.

5. The State and religious autonomy

Religious autonomy is guaranteed in Ghana. The state does not interfere in the internal governance of religious organizations. Where however parties to a religious dispute file cases with the court, the latter will exercise its jurisdiction in the resolution of the dispute. Example was the case of **Evangelical Presbyterian Church v. Evangelical Presbyterian Church of Ghana**. In this case the two religious groups that were locked up in a dispute over church governance approached the court which exercised its jurisdiction in the resolution of the dispute.

By the nature of things, religious liberty was an integral aspect of lifestyle in the traditional Africa; Religious belief is not imposed, the individual followed the particular religious belief and mode of worship that satisfied his/ her spiritual and material needs and aspirations.

This inherent attribute of the African was exhibited in 1989 when the then military government in Ghana sought to determine religious liberty by the promulgation of the Religious Bodies (Registration) Law 1989 PNDC Law 221. The rationale of the law was stated by some as intended “to check the activities of some religious bodies that in the

⁸ (1966) CC40.

view of the Government, constitute a nuisance to the general public, and militate against public order, public interest or morality, or acceptable standards of decency.”⁹

The Law was in reaction partly to public outcry against the activities of some churches that verged on fraud, debauchery and corruption of public morals. The Church leaders, while admitting the need to control these depravities within the religious community, nevertheless unwaveringly objected to what they described as “an infringement of the fundamental human rights of the freedom of worship.”¹⁰

The plinth of PNDC Law 221 was to force the registration of all religious organizations in Ghana. Section 3 of the PNDCL 221 requires that “Every religious body in Ghana shall be registered under this Law and no religious body in existence in Ghana shall after three months from the commencement of this Law operate as such unless it is registered under this law.”

Section 4 of the Law makes the situation even more ominous in the sense that it is not as if any organization can just apply directly for registration; Section 4 requires that “No religious body shall qualify for registration under this Law unless it has been issued with a certificate of approval by the commission upon recommendation of the Religious Affairs Committee.”

Moreover Section 9(1) permits the Commission to, “where the application is approved, issue a certificate of approval... under such conditions as the Commission may determine.”

This invidious provision has been rightly described as conferring powers on the Commission to “impose conditions on religious bodies before issuing the certificates of approval to them.”¹¹ Religious liberty guaranteed under international human rights instruments cannot definitely manifest under these conditions.

It was significant that the major religious bodies, acting in their firm belief in religious freedom, even under a military regime, rejected the obvious attempt at the control of religious liberty; the majority of the major religious bodies just simply refused to comply with the Law.

The unwavering attachment to certain religious practices that adversely affect the welfare of individuals often do bring some religious organizations into confrontations with the State.

It is the doctrinal practice of some churches not to accept medication for themselves and their dependents during ailment. Blood transfusion and immunization are particular medical interventions that some of the Christian denominations reject. This rejection is supported by alleged biblical injunctions.

⁹ A Message from the Christian Council of Ghana and the Ghana Catholic Bishops’ Conference to their Faithful and Congregation, 14 November, 1989.

¹⁰ Ibid.

¹¹ Ibid.

In 2000 for instance, members of the Christ Apostolic Faith Church in five communities in the Ho District were reported to have locked up their children to prevent access to them by medical staff who were engaged in a nation wide immunization exercise against poliomyelitis.¹²

Members of the Jehovah Witness are also known to have been up against blood transfusion.¹³

Article 30 of the 1992 Constitution seeks to strike a balance between adherence to religious beliefs and rejection of medical attention; the said article provides that “A person who for reason of sickness or any other cause is unable to give his consent shall not be deprived by any other person of medical treatment, education or any other social or economic benefit by reason only of religious or other belief.” A careful interpretation of the constitution indicates that an adult that is conscious and capable of making a decision can refuse to be administered with any medication by the health provider even if that would affect the chances of survival. However, in respect of children and others that are not capable of taking decisions of their own, the Constitution guarantees medical attention to these categories of individuals.

6. Religion and the autonomy of the State

Ghana as a secular state maintains a careful balance between cooperation with religious organizations and the separation between it and religious organizations.

7. Legal regulation of religion as a social phenomenon

Religious affiliation has virtually no relevance in the scheme of things in Ghana. The individual is at liberty to join and to dissociate from any religious organization at will and without any social or political consequence.

Religious organizations are registered with the Registrar General’s office just like any other company. Registration confers legal personality on the organization but not any political advantage.

The dilemma of the government to avoid being perceived as giving undue advantage to one religious organization against others came to the fore during the reign of the National Democratic Congress when the government made known its disapproval of the teaching of Christian Scriptures in second cycle educational institutions (High Schools).¹⁴ The dominant trend in public first and second cycle schools has been the teaching of Christian religious tenets and principles.

This position of the government followed from its expectation to provide an equal playing field for all religious organizations and not to be seen to be providing an undue advantage to the Christian Churches. Interestingly, the Christian community rather felt “disadvantaged” by this position of the government and piled up pressure leading to the

¹² Graphic, Saturday, January 1, 2000.

¹³ Graphic, Tuesday, February 18, 1964.

¹⁴ Dicson, op.cit., p. 4

government's backing out and allowing the formulation of a syllabus for the teaching of Christian scriptures.¹⁵

8. State financial support for religion

Just like all other duly registered non-governmental organizations religious organizations enjoy a status of tax exemption on their income provided that such is not generated out of a commercial activity.

9. Civil legal effects of religious acts

The state laws accord legality and therefore sanctity to marriages performed according to religious norms. The law recognizes Christian, Mohammedan and Customary modes of marriage.

10. Religious education of the youth

Although religious organizations can establish educational institutions the curricula at the primary and secondary levels must conform to the accepted standards as set by the Ghana Education Service. Universities and other tertiary institutions are, however, at liberty to work out curricula that suits their purpose.

The issue of the extent to which educational institutions can infuse religious activities into their daily educational programmes has come up from time to time. This issue becomes contentious where the educational institution is faith-based. Many schools started as religion based institutions but were subsequently taken over and absorbed by the government into its school system. The schools nevertheless still retained some degree of connection to the religious organization that first established it and the basic tenets of the particular religious group became the guiding principles according to which much of academic work is based.

A tragic incident at Adisadel College, an Anglican denominational based Christian educational institution that had been fully taken over by government threw the issue into clear perspective. By the schools regulations all students were expected to attend the school's church service in the morning. While the church service was in progress a school master who suspected that some students could be hiding in the classrooms went round at about 7 am to lock up the classroom. Upon seeing the school master a number of students that were in some of the classrooms ran helter skelter. In the course of the confusion one of the students who belonged to the Islamic faith fell to his death from the fourth floor of the classroom building.¹⁶

This incidence came to be interpreted by some as an attempt by the school authorities to force students to adhere to certain religious beliefs.¹⁷ In reaction, the Director General of the Ghana Education Service (GES) explained that "as far as the GES was concerned, no religion was forced on any student in any educational institution and that even faith-based

¹⁵ Ibid.

¹⁶ Daily Graphic, Monday, March 17, 2008, p.3.

¹⁷ Daily Graphic, Tuesday, March 18, 2008.

schools were not allowed to impose their religions on students who did not believe in the teachings or doctrines of those religions.”¹⁸

In principle therefore, no educational institution has the right to impose its teachings and practices on students not belonging to the particular religious faith. Nevertheless, evidence abounds that individuals could become captive adherents because they do not have the immediate capacity to resist acts of religious cohesion.

11. Religious symbols in public places

The use of religious symbols is a private matter. The state does not encourage or impose their use in public.

12. Freedom of expression and offences against religion

In the case of Alhasuna Muslim Faith vs. Regional Police Commander, Bolgatanga¹⁹ the petitioners were members of the Alhasuna Muslim Faith who use loud speakers to call their members to prayer and also for the recital of prayers. The police received a complaint from the members of the Orthodox Muslim Faith that members of the Alhasuna Faith indeed used the opportunity to insult members of the Orthodox Muslim Faith.

The situation was viewed by the police as a possible case of open conflict if allowed to continue. The police therefore asked the members of the Alhasuna Muslim Faith not to disturb the peace. It was against the police order that the Alhasuna Muslim Faith filed petition with the Commission on Human Rights and Administrative Justice alleging infringement on their right to practice their religion.

The Commission found that the petitioners indeed used loudspeakers to disturb people in the vicinity and also insult members of the Orthodox Muslim Faith. The Commission took into account reported incidents of violent clashes between the two groups in which some deaths occurred in another part of the country and therefore held that the order of the police was proper. In order to create a balance between the rights of the petitioners to worship and the need to maintain public order, the Commission held that: “(I) the petitioners have the right to worship given to them under the 1992 Constitution, but the enjoyment of this right should not infringe upon other persons rights and freedoms, as in this case, freedom from excessive noise(for instance);(ii) the petitioners could use loud speakers in the propagation of their faith and in their worship but the Commission seriously cautions that it should not occasion any breach of the peace; (iii) the respondent has been given the constitutional duty equally to take appropriate steps to remedy any breach of the peace.”

The laws of Ghana permit any individual or organization to establish an educational institution of any level, primary, second cycle and tertiary. The Ministry of Education has however, specified standards that must be met.

¹⁸ Daily Graphic, Tuesday, March 18, 2008, Editorial.

¹⁹ [1994-2000] CHRAJ 191.

Thus even though the Constitution of Ghana prohibits the formation of political parties along religious lines the establishment of educational institutions by religious groups is indeed very much encouraged because government has come to accept the position that it alone cannot satisfy the educational needs of the citizenry.

The constitution nevertheless expects all, including educational institutions owned by religious organizations to respect the right to religious liberty as is enshrined in Article 21(1)(c). From time to time one comes across insipient attempts by religion based educational institutions to compel adherence to their specific religious tenets by all students including those of different religious beliefs. The All Nations University College, for instance prescribes a code which includes the following that “skirts must be long enough to cover knees, including slits, transparent, sleeves, sleeveless, bare-back or tight-fitting blouses and sweaters are not allowed”. Also tight-fitting skirts and pants (slacks) are not permitted, “dresses with low neckline or dresses that do not fully cover the breasts, the belly and armpits are not permitted, jeans and trousers are strictly prohibited, and men are not to wear earrings”.

“Gentlemen’s” hair must be cut flat close to the scalp (as a general rule, hair must not be longer than 1mm).”²⁰ Non compliance with the dress code carries a penalty of suspension for up to one semester.

Another Christian faith-based tertiary institution, the Valley View University, prohibits the wearing of ornaments by both male and female students. In addition all students, irrespective of religious inclination are expected to attend church service on Saturdays; and the food served in the campus restaurant is vegetarian.

The National Accreditation Board which sets and enforces standards in all tertiary educational institutions had on occasion questioned the constitutionality of these standards.

13. Respect for the rights of others by other citizens

Lack of tolerance from fellow citizens is often more visible than official persecution or interference in religious liberty.

The daily newspapers reported the case of an individual who allegedly destroyed two giant community idols that he described as “spiritual nuisance” because he perceived them as “enemies of development”. As expected his action provoked angry reactions from the community whose members arrested and handled him over to the police.²¹

In the case of *Achene v Raji*²² The Commission on Human Rights and Administrative Justice successfully mediated a dispute between husband and wife relating to the liberty of the wife to follow the religious faith of her own conviction. The husband, a Moslem was insisting that his wife, a Christian, should convert to the Islamic religion.

²⁰ All Nations University College, Student Handbook, 2008 – 2009, p.59.

²¹ Daily Graphic

²² Casebook on the Rights of Women in Ghana (1959-2005), p.289.

The accusation of noise pollution has been a persistent complaint against the new generation charismatic churches and some Moslem mosques. The proliferation of places of worship of both churches and mosques, within residential areas and their zeal to evangelize and call their adherents to prayers has created situations of constant complaints from irate residents, often degenerating into conflicts.

The Local authorities do have in place regulations on zoning and level of permitted noise. However, since the zoning regulations are not enforced, places of worship have proliferated in almost all residential communities, even homes are used as places of worship. Due to the propensity of the new generation churches and some of the Moslem sects to outstrip their rivals, so much noise is generated through the use of powerful public address systems that project the music, preaching and prayers beyond the confines of these prayer houses to engulf the whole community and even far beyond.

The activities of these churches and mosques are not limited to particular periods, they do carry their activities deep into the night thereby making it impossible for community residents to enjoy peaceful night rests.

The Local authorities do have regulations prescribing acceptable noise levels. The courts have often come to the aid of distraught residents who are harassed by noisy religious groups particularly, churches. In the case of Republic v. The Pastor in Charge, Power Miracle Chapel International²³ The court ordered the enforcement of a recommendation by Environmental Protection Authority's recommended that the respondent church should abate its noise by the installation of noise proof materials in the building within 14 months, failure to do so, the Metropolitan Authority should close down the church. Upon the failure of the church to take steps to reduce the noise level, the court ordered a closure of the church.

The incidence of the lack of respect for the rights of others manifested in a 1994 case that went before the Commission on Human Rights Administrative Justice. The facts of the case were that the petitioners and the respondents who were Christians and Moslems respectively reside in the same village in the northern part of Ghana. The village was experiencing an incidence of drought and an order to appease the gods for the rains to come, the respondents requested that each person including the respondent Christians should pay a fixed amount of money into a fund which was intended to be used for the purchase of sacrificial animals to pacify the gods. The petitioner refused on the ground that the intended use of the funds was against their Christian religious beliefs. Instead they undertook to pray as intercession.

The respondents, however, insisted that the petitioners must pay. The matter went before the village chief who upheld the position of the Christians. The respondents refused to abide by the chief's decision and rather ordered the closure of all churches in the village. However, upon the advice of the leadership of another church, the Christians eventually paid up the levy. Yet, the respondents not only forced the closure of the churches but also

²³ Case no. B12/23/08 District Magistrates Court La, Accra.

ripped off the roofing from the church and seized the church drums and threatened members with death. Many of the Christians fled the village.

When the matter eventually went before the Commission on Human Rights and Administrative Justice, the police were notified of the threat of death and damage to property. However, in order to ensure harmonious co-existence in the village, the Commission together with the police, the village chief and other opinion leaders initiated a mediation process that resulted in the peaceful resolution of the dispute; and the Christians therefore had their right to worship restored.

The issue of intra religious conflicts is not limited to only the Christian denominations. Islamic religious groups also experience the incidence of intra-sectarian conflict. The resolution of a long standing conflict among the Muslim communities in Koforidua was recently reported.²⁴ The dispute was alleged to have divided the Muslim community at Koforidua into two factions and it became impossible for them to pray together at the Central Mosque for the two year period that the dispute raged.

In all these, the government being very much conscious of the extensive damage that can be caused to the government in the next elections should it be seen to be favouring any religious group, always endeavours to remain neutral.

Conclusion

Religious liberty is guaranteed in Ghana and the state recognizes the need for a mutual respect between it and the religious organizations. State interference in religious affairs of citizens is now therefore very minimal. It is rather with respect to the relations between various individuals that the issue of religious intolerance is often manifested and it is in that direction that both the state and civil society organizations including the churches themselves must do much to guarantee the respect for religious liberty that is the natural and constitutional right of every individual.

²⁴ Daily Graphic, Wednesday, September 2, 2009, p. 21.