

**PRESENTATION AT THE FIFTEENTH ANNUAL INTERNATIONAL LAW
AND RELIGION SYMPOSIUM – “INTERNATIONAL PROTECTION OF
RELIGIOUS FREEDOM: NATIONAL IMPLEMENTATION”.**

THE NIGERIAN PERSPECTIVE

1. **Introduction**

Nigeria is in West Africa with a population of approximately 140 million according to the National Census conducted by the National Population Commission in 2006. Nigeria is made up of over 250 ethnic groups. The three dominant ones are the Hausa-Fulani in the North, the Igbo in the East and the Yoruba in the West. As Nigeria is multi-ethnic, so it is also multi-religious. About 5.6% of the people practice tribal or traditional religion; 45% are Moslems while 49% are Christians. Christianity and Islam are the two dominant religions. Islam is practiced predominantly in the Northern part of the Country while Christianity is predominant in the South.

2. **Legal Framework of Protection of Religious Freedom**

The dictionary definition of religion is belief in the existence of a god or gods especially the belief that they created the universe and gave human beings a spiritual nature which continues to exist after the death of the body. Sigmund Freud described religion as the “opium of the society”. In 1993, the Human Rights Committee which is an independent body of 18 experts who were selected through a United Nations (UN) process, described religion or belief as “theistic, non-theistic and atheistic beliefs as well as the right not to profess any religion or belief”. Whatever the definition anybody could offer, there is no doubt that religion plays a significant role in character molding, societal coherence and also has a great weapon for peace and reconciliation.

The International Legal Framework of Protection of Religious Freedom is Article 18 of the United Nations 1948 Universal Declaration of Human Rights (Universal Declaration) which states that:

j

“Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have a religion or whatever Belief of his/her choice”.

In line with this Declaration as well as the plurality of religion in Nigeria, she has adopted the right to freedom of religion in all her Constitutions as reflected in Chapter IV of the Constitution of the Federal Republic of Nigeria, 1979. Section 38 contains the provision on the right to freedom of thought, conscience and religion. It states inter alia:

- i) 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.
- ii) 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.
- iii) No religious community or denomination shall be prevented from providing religious instruction for pupils of that community or denomination in any place of education maintained wholly by that community or denomination.
- iv) Nothing in this Section shall entitle any person to form, take part in the activity or be a member of a secret society.

Examples abound to show that Nigeria respects the Universal Declaration on the Right to Freedom of Religion. *Ojiegbe & Ors V Ubani & Ors* was a case decided under the 1963 Constitution. The appellants alleged that the election into the House of Representatives which were held on a Saturday discriminated

against them because as members of the Seventh Day Adventist Church, they were obliged not to partake in any activities on Saturdays. The Court acknowledged their right to religion but also stated that the elections which were held on Saturday did not in any way negate their right to practice their religion, and that they failed to prove that had the requisite 6,000 – 7,000 votes that would have affected the electoral positions of their candidate.

Similarly, in *Jenubu Oyonye v. Adegbudu* arose under Section 35 of the 1979 Constitution which is similar to section 38 of the 1999 Constitution. There, the appellant refused to buy a goat for the burial sacrifice of her deceased husband according to the Adoka native law and custom on the grounds that it was against her Christian faith. The court of Appeal held that the appellant was guaranteed her right to freedom of religion under Section 35 of the Constitution and that the Adoka Custom in as much as it compels her to do what is against her religion violates Section 35 of the Constitution and as such is void by virtue of Section 1(3) of the Constitution which declares the Constitution to be the supreme law of the land.

3. Identity

Closely related to National Identity is religious identity of the practitioners of the two main religions in Nigeria. In most cases, you can identify the adherence of a particular religion simply from the appearance in terms of dressing. The Moslim men from the Northern part of the Country wear flowing gown called "Babariga" and "Kaftan" while the women mostly cover themselves with veil or Hijjab. On the other hand, Christian males or females from the Southern part of the Country wear mainly English dresses especially as official dresses. Even among the Christian faithful, some denominations have adopted a particular norm that you could easily link them with a particular denomination. For example, some Churches frown at their female members wearing trousers or earrings.

In line with Article 18 of the Universal Declaration which provides for freedom whether alone or with others in public or private and to manifest one's religion or belief in teaching, practice, worship and observance, Section 38 of the 1999 Constitution of Nigeria, Sub-section 1 referred to earlier, guarantees freedom to change one's religion or belief as well as freedom to manifest it either in dressing, practice or in teaching. For illustration, the Guardian Newspaper of March 7, 2002 reported a matter in the High Court of Ile-Ife, Osun State in the South West of Nigeria about an alleged harassment over Islamic dressing. The Plaintiff, an undergraduate of Obafemi Awolowo University accused her parents of having beaten her because of her insistence on wearing her black veil. She also joined the Vice-Chancellor, the Registrar and the Governing Council of the University in the suits claiming that she had been intimidated and insulted by two of her lecturers who wanted to prevent her from entering their classes dressed in her veil. She claimed that wearing her Islamic purdah dress whether in school, public or private is her legitimate, lawful and valid fundamental religious right as guaranteed by the Constitution of the Federal Republic of Nigeria, 1999.

4. Stereotypes and Discrimination

Discrimination includes any distinction, exclusion, limitation or preference based on religion. The 1981 UN Declaration on the Elimination of all Forms of Intolerance and of Discrimination Based on Religion or Belief contains eight articles, three of which advocate for tolerance and to prevent discrimination based on religion or belief. Section 10 of the 1999 Constitution of the Federal Republic of Nigerian States: "The Government of the Federation or of a State shall not adopt any religion as State Religion".

This implies that any Government, either Federal or State should not adopt a particular religion as the State religion but it must also treat all religions equally, not promoting or protecting any, nor showing favoritism to any.

However, there have been some instances of some State Governors in the Northern part of the country introducing Sharia Laws in their States. The

implementation of the Sharia Laws in these States were met with complains from Christian bodies that they were being denied land on which to build Churches as well as being denied access to the use of State-owned media. Specifically, in Zamfara State, the Bishop of Gusua Diocese in the State claimed that the radio station in the state discriminated against Christians and that commercials and paid advertisements containing Christian literature were rejected. Christians also complained that a lot of tax payers' money was spent on building new mosques and propagating Islam while Christianity was being ignored.

The Sharia fever began to spread in the Northern States and resulted in riots and demonstrations by people who were for and against. This development led to the protest against Sharia implementation and the Northern Christians called on the then President to call Sharia States to order. In order to douse the tension created by the implementation of the Sharia Laws, the then Attorney General of the Federation and Minister of Justice, Chief Godwin Kanu Agabi (SAN) made a declaration on the issue in a letter entitled "Prohibition of Discriminatory Punishments" circulated to the States practicing Sharia Law. It states as follows:

"It is my solemn duty to bring to your notice the hundreds of letters which I receive daily from all over the world protesting the discriminatory punishment now imposed by some Sharia Courts for certain offences..... The fact that Sharia Laws apply to only Moslems or to those who elect to be bound by it makes it imperative that the rights of such persons to equality with other citizens under the Constitution be not infringed. A Moslem should not be subjected to a punishment more severe than would be imposed on other Nigerians for the same offence. Equality against Individuals and States must comply with the Constitution. A court which imposes discriminatory punishment is deliberately flouting the Constitution. The stability, unity and integrity of the Nation are threatened by such action. In order to implement policies or Constitution, we must first secure its amendment. Until that is done, we have to abide

by it. To proceed on the basis either that the Constitution does not exist or that it is irrelevant is to deny the existence of the Nation itself. We cannot deny the rule of law and hope to have peace and stability”.

5. Religious Difference

The Christian and Islamic religions, the two main religions in Nigeria have their peculiar differences in terms of the mode of worship, practice, belief, etc. But in spite of the differences, Nigerians are still seen to tolerate one another, accommodate and associate with one another. Despite the differences in our religious beliefs, we work together in offices, mix in gatherings and Associations and respect one another’s belief to a very large extent. In most official gatherings, recognition is accorded to the adherents of the two religions by calling representatives of each to offer opening and closing prayers.

The 1999 Constitution of Nigeria demonstrates promotion of understanding between different religions, by marriages as well as by the formation of associations. In Chapter two that contains fundamental objectives and directive principles of State policy, Section 15 States:

“For the purpose of promoting national integration, it shall be the duty of the State to:

(a) encourage inter-marriage among persons from different places of origin, or of different religious, ethnic or linguistic association to ties; and

(b) Promote or encourage the formation of associations that cut across ethnic, linguistic, religious and or other sectional barriers”.

Promotion of national integration through inter-marriage among persons from different places of origin or different religions has played significant role towards the elimination of religious discrimination and differences more in the Southern part of the Country than in the North. There is hardly a family in the South, particularly in the South West without the adherents of the two religions. As a result of this, the South has less religious violence or clashes that could

result in killing, burning of Churches or Mosques when compared to the Northern part of the Country.

6. National Legal Instrument

The National Legal Instrument for the protection of religious freedom lies in the 1999 Constitution of the Federal Republic of Nigeria which in turn was based on the 1948 Universal Declaration of Human Rights (Universal Declaration) in which Article 18 is the foundation on which others were built. Various relevant Sections of the Nigeria Constitution 1999 have been mentioned in the course of this presentation. These are summarized as follows:

- i) Section 10: Prohibits State Religion.
- ii) Section 15, Sub-Section 2: Prohibits discrimination on the grounds of religion.
- iii) Section 15, Sub-Section 3 (c) and (d) ... encourages inter-marriages and association among persons from different religious background.
- iv) Section 23: Indicates that Religious Tolerance is one of the National ethnics.
- v) Section 38: Promotes Right to freedom of thought, conscience and religion.
- vi) Sections 42 sub-section 1 (a) and (b): Promotes Right to freedom from discrimination.
- vii) Section 260 of the Constitution enumerates the courts that shall exist in the Judicial System of which
 - the Sharia Court of Appeal of the Federal Capital Territory, Abuja; and
 - a Sharia Court of Appeal of the State are among.

As regards the Sharia Law on the other hand, it is a legal system applicable to some Moslem dominated States. It is seen by the Moslems as a divine law established through Eternal Order, through the Prophet Mohammed.

Its guiding principles are contained in the Holy Quran and the Hadith or Sunnah, which is a way or conduct of life approved by the Prophet Mohammed.

CONCLUSION

To conclude, Religion should not be seen as a divisive factor in a society. What is needed is mutual respect for one another's faith. There is need for a co-ordinate enlightenment campaign by both government and the Islamic leaders in the Sharia States in order to avoid pitfalls in the implementation of the Sharia laws. It should be understood that the enforcement of extreme Sharia laws violates all human rights. Especially the Religious Freedom, and could also destabilize any society.