

RELIGION, HUMAN RIGHTS AND DEMOCRACY IN THE GHANAIAN CONTEXT

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INTRODUCTION

After a turbulent earlier history, the Republic of Ghana is now settling down as a thriving representative democracy. It has a Bill of Rights entrenched in its current 1992 Republican Constitution. The provisions in it are entrenched in the sense that they cannot be amended except through a special procedure including a national referendum. The Bill of Rights contains a provision on freedom of religion. Freedom of religion is thus a fundamental human right in the Ghanaian legal regime.

The specific provision on freedom of religion is Article 21(1)(c) of the 1992 Constitution which states that:

“21.

(1) All persons shall have the right to -

(a) ...

(b)...

(c) freedom to practise any religion and to manifest such practice;”

This entrenched provision in the Constitution has been part of the various Constitutions of Ghana since 1969. It is thus a settled fundamental human right which has in the main been respected by successive governments.

In January 2010, a Presidential Commission of Enquiry was established to consult with the Ghanaian people on the operation of the 1992 Constitution and on any changes that should be made to it. Some of the submissions received by this Constitutional Review Commission were on the religious freedom embodied in article 21.

PROPOSALS ON RELIGIOUS FREEDOM TO THE CONSTITUTIONAL REVIEW COMMISSION

The Constitutional Review Commission ('CRC') summarized the submissions it received as follows:

- a. "The Constitution must contain express provisions on the freedom of religion so that citizens will respect each other's religion.
- b. The part of the Constitution which states that there is the freedom of worship should be emphasised and elaborated.
- c. A total number of seven days must be made available for the celebration of Moslem festivals. Three days before the celebration begins and four days for the celebration.
- d. Article 21(c) on the freedom to practise any religion and to manifest any religion should be reviewed. Religion has been used as a tool to destroy a nation; not all religions should be allowed to exist because some religions are not religions at all.
- e. Regulation of religion should not be brought under state control; the *status quo* should be maintained.
- f. Religious bodies should be made to cater for their members rather than exploit them. Some people join churches only to realise that they have been making others rich.
- g. Religion should be sanitised; what is happening elsewhere must not happen in Ghana.
- h. There has to be a church formation regulatory body to grant permit to individuals who want to build churches. This is because churches have a great impact on society and must be carefully regulated.

- i. The law on the right to religion should be enforced to stop the infringement of the right to practice religion in schools or educational institutions.
- j. There should be a mosque in every second cycle school to ensure freedom of religion.
- k. The law should ensure that spiritualists are not licensed because they are behind all evil activities taking place in the country.
- l. Churches should be mandated by law to pay tax on the monies donated to them by their congregations so that their contributions can help in national development. This will also reduce the number of churches being established as well.
- m. The law should tax the collection/offertory and tithes of churches because they make a lot of revenue and taxing them will enable the government raise a lot of revenue.
- n. Government should set up a Ministry of Religious Affairs to govern churches because there are a lot of churches being set up. This ministry would regulate the activities of churches and allow the nation to benefit from the revenue of the churches.”¹

These submissions can be taken as reflecting contemporary issues relating to religious freedom that are of concern to the Ghanaian public. This short paper discusses a number of the policy issues arising from the submissions made to the Constitutional Review Commission, namely:

1. Is it legitimate to assert that “not all religions should be allowed to exist because some religions are not religions at all”?
2. Should a regulatory body or a dedicated Ministry of the Government be established to decide on the formation of churches and to regulate the activities of churches, thus allowing the nation to benefit from the revenue of the churches?
3. Should mosques be established in all secondary schools to facilitate the practice of freedom of religion? (The proponents probably assume that all secondary schools have Christian chapels).
4. Should the law ensure that spiritualists (by which is usually meant, in Ghana, practitioners of African traditional religion) are not licensed because they are behind all evil activities taking place in the country?

5. Should churches pay tax on the donations made to them?
6. Should the *status quo* on religious freedom be maintained?

The Constitutional Review Commission reached the following conclusions on these questions:²

“313. The Commission finds that to ensure national unity and cohesion the *status quo* regarding religious rights should be maintained.

314. The Commission observes that in Botswana, the law ensures that in every community where there is a church, the church funds the building of schools and other amenities for the use of the community.

315. The Commission finds the recent spate of inimical practices of the heads of some religious bodies is not in the public interest. While some of them are in jail for their nefarious activities, others are battling their cases in court or are being investigated by the law enforcement agencies on suspicion of having committed various crimes.

316. The Commission observes that the freedom to practice any religion and to manifest such practice is not absolute and that it is subject to the public interest.

317. The Commission endorses the current state of the law which allows the imposition of reasonable restrictions on fundamental freedoms but does not deny the citizen those freedoms to which he was entitled.

E. RECOMMENDATIONS

RECOMMENDATIONS FOR CONSTITUTIONAL CHANGE

318. The Commission recommends that Article 21(4) (c) should be amended to include in the list of criteria that may lead to restrictions in the exercise of rights, the words "public order" and "public morality.

RECOMMENDATIONS FOR ADMINISTRATIVE ACTION

319. The Commission recommends that the relevant regulatory authorities work with the various religious associations to abate, if not eliminate, the many inimical practices some religious groups and their officers engage in, and which were the subject of many submissions to the Commission.”

OBSERVATIONS

These conclusions of the Commission reflect the fact that Ghanaians are probably quite satisfied with the *status quo* on religious freedom which confers a large degree of freedom on individuals and groups to practise whatever religion they choose, but which imposes some limits on this freedom. The main restriction is that provided for in relation to all the fundamental human rights and freedoms contained in Ghana’s Bill of Rights. Article 12(2) of Ghana’s 1992 Constitution provides that:

“(2) Every person in Ghana, whatever his race, place of origin, political opinion, colour, religion, creed or gender shall be entitled to the fundamental human rights and freedoms of the individual contained in this Chapter but subject to respect for the rights and freedoms of others and for the public interest.”

To my mind, the principle of freedom of religion embodied in article 21 of the Constitution and the exception to it in Article 12(2) (*supra*) are sufficient conceptual tools for tackling issues relating to religious freedom in Ghana. They provide the doctrinal means of tackling, for instance, the issues arising from the submissions made to the Constitutional Review Commission. The doctrine that a person exercising his or her religious freedom has to respect the rights and freedoms of others and the public interest is a considerable limitation and can be deployed to suppress the perceived ill consequences of religious freedom that some of those who made submissions to the Commission complained of.

Thus, using the doctrinal tools identified above, it would be illegitimate for the State to assert that “not all religions should be allowed to exist because some religions are not religions at all”. That would constitute a central attack on religious freedom. Individuals and groups should be free to practise what they consider to be a religion, even if others think that they are wrong-headed to pursue that particular religion. However, if in the course of practising their religion, these individuals break the criminal or other law, law enforcers should be free to apply the law to them. Religion should not provide an escape route from compliance with the law.

Secondly, I see no need for a dedicated Ministry to deal with only the formation of churches and their activities. The range of Government Ministries dealing with the relevant subject matters should apply law and policy to religious bodies in the same way as they do in relation to other persons. I do not think that the State should exercise a right to control entry into the religious “market”. In other words, it is not for the State to decide who should or should not form a church or other religious body or be a spiritualist. The submissions to the CRC seeking such control are unacceptable and in conflict with the right to practise religion freely, contained in article 21(1) of the 1992 Constitution. They are thus in conflict with the simple but clear doctrinal basis for action in this area, contained in the Constitution, namely: persons within the Ghanaian jurisdiction are free to practise any religion and to manifest it, so long as they respect the rights and freedoms of others and the public interest.

As to whether churches or other religious bodies should pay tax on donations made to them, that is a policy issue for determination by the Government of the day. The Government, however, clearly has the authority to levy such tax through appropriate legislation, if it so decided. This is achievable within the existing constitutional arrangements in Ghana.

Finally, a few comments about the practise of religion in State-owned secondary schools. It is demonstrable that the practice of religion is encouraged in Ghanaian State schools. In some other jurisdiction, it might be plausibly argued that this is not a sufficient separation of the State from religion. However, the Ghanaian Constitution has to be interpreted in its social context. Ghanaians are a very religious people. Indeed the Preamble to the country’s

Constitution of 1992 invokes the name of the Almighty God as the ultimate source of its authority. It proclaims as follows:

“IN THE NAME OF THE ALMIGHTY GOD

We the People of Ghana,

IN EXERCISE of our natural and inalienable right to establish a framework of government which shall secure for ourselves and posterity the blessings of liberty, equality of opportunity and prosperity;

IN A SPIRIT of friendship and peace with all peoples of the world;

AND IN SOLEMN declaration and affirmation of our commitment to;

Freedom, Justice, Probity and Accountability;

The Principle that all powers of Government spring from the Sovereign Will of the People;

The Principle of Universal Adult Suffrage;

The Rule of Law;

The protection and preservation of Fundamental Human Rights and Freedoms, Unity and Stability for our Nation;

DO HEREBY ADOPT, ENACT AND GIVE TO OURSELVES THIS CONSTITUTION”.

The God who is invoked is, however, not linked to any particular religion. He can thus be viewed equally as the God of the Christians, Muslims and adherents of traditional African religion, the three main faiths followed in Ghana.

It is probably correct, therefore, to assert that the practice of religion in State secondary schools is in consonance with the *volksgeist* of Ghana, if it is possible to determine this. There is, however, a complication arising from this proposition, which is pointed out in some of the submissions to the CRC, namely: logically, equal facilities and opportunities should be accorded for the practice of all faiths. Historically, it cannot be said that this has happened in Ghana. The Christian faith has probably been favoured in most State schools and, accordingly, the

educational authorities need to work towards achieving more equality in opportunity for other faiths.

CONCLUSION

The basic legal architecture for the practice of religious freedom in Ghana is in place. However, there has been hardly any litigation on this theme and therefore the case law in the area is underdeveloped. Nevertheless, the conclusion reached by the Constitutional Review Commission is right that the constitutional *status quo* provides an adequate basis for reconciling freedom of religion with the needs of the public interest. The proposal made by the Commission for a minor constitutional amendment is probably unnecessary, in the light of my view of article 12(2) of the 1992 Constitution. In short, freedom of religion is alive and well in Ghana. This is good well for the democratic health of the country, since freedom of religion is an important index of the extent of general toleration of different views in a society. Tolerance is, undoubtedly, an essential element in a democratic culture.

¹ Report of the Constitutional Review Commission: From a Political to a Developmental Constitution (Accra, 20th December, 2011) 697-8.

² *Ibid.* pp. 698-9