

The Journal of International and Comparative Law

Vol. 7

June

2013

ARTICLES

- The Ideological Foundations of 'Globalisation' and 'Human Rights': Imperatives for Third World Activism by S. N. Okogbule..... 1 - 30
- The Administration of Criminal Justice Bill vis-a-vis The Criminal Justice (Mandatory Procedure Bill and The Need for the Enactment of both) by Mohammed Enesi Etudaie..... 31 - 59
- OPEC and the Politics of Global Oil Supply: Factors Affecting Realisation of the Objectives under Article 2 of OPEC Statute by Hadiza Hamma..... 60 - 64
- A Critique of the Nigerian Legal Framework for the Protection of Cultural Goods from Exportation Abuse by Adewumi A.A. 65 - 101
- Domicile and the Determination of Personal Law: A Critique by Ayinla L.A., Ahmad B.A., & Olusola G.H..... 102 - 124
- Convention on Biological Diversity: Obligations Imposed on Coastal States to Prevent the Introduction of Alien Marine Species by Bose Lawal..... 125 - 140
- The Role of the Judiciary in National Development by Maiyaki T.B. 141 - 159
- Harmonisation of Laws through the Interaction of Inter-governmental and Non-governmental Actors in a Globalised World: A Welcome Development for International Commercial Arbitration by Etejere E..... 160 - 176
- Law and Religion in the 21st Century Nigerian Society: An Interdisciplinary Approach by Nwosu P.U..... 177 - 195
- Untying the Predictive Factors of Juvenile Delinquency: A Global Analysis by Abdulraheem-Mustapha M.A..... 196 - 222
- The International Covenant and The Committee on Economic, Social and Cultural Rights: A Marriage of Convenience? by Amoloye-Adebayo Azizat Omotoyosi. 223 - 238
- Religion and the Rule of Law in Nigeria by Alamu A.G..... 239 - 261
- Death Penalty: A Violation of the Fundamental Right to Life in Nigeria? by Onuora-Oguno A & Ushie N..... 262 - 278
- Speedy Determination of Election Proceedings in Nigeria and the Imperatives of Substantial Justice by Unachukwu S.C..... 279 - 340

**THE JOURNAL OF INTERNATIONAL AND
COMPARATIVE LAW**

To be cited as: (2013) J.I.C.L Vol. 4

**A Publication of the Department of Jurisprudence and
International Law, Faculty of Law, University of Ilorin.**

EDITORIAL BOARD

<i>Prof. M.T. Abdulrazaq</i>	<i>Editor-in-Chief</i>
<i>Prof. W.O. Egbewole</i>	<i>Member</i>
<i>Prof. E.A. Taiwo</i>	<i>Member</i>
<i>Dr S.N. Okogbule</i>	<i>Member</i>
<i>Dr M.A. Etudaiye</i>	<i>Member</i>
<i>Mr O.A. Olatunji</i>	<i>Secretary</i>

The Journal of International and Comparative Law provides a forum for discussion of legal issues and problems in the field of International and Comparative Law. The Journal is published by the Department of Jurisprudence and International Law, University of Ilorin.

The Editorial Board welcomes the submission of contributions for publication in the Journal. Any material for publication must be in *triplicate* typed with double spacing on A4 size paper and must not normally exceed 20 pages in length.

Contributions, subscriptions and other enquiries should be directed to:

The Editor
The Journal of International and Comparative Law
Department of International Law
Faculty of Law
University of Ilorin
P.M.B. 1515
Ilorin

Contributions to the Journal express the views of their authors and not necessarily the views of the Editorial Board or of the Department of Jurisprudence and International Law, University of Ilorin.

RELIGION AND THE RULE OF LAW IN NIGERIA

ALAMU, AKITI GLORY*

Introduction

Religion and the Rule of Law in structural setting are social institutions. These social facts are incontrovertible because society is the soul of religion while the beliefs, values and norms emanating from religion are ethical codes which find relevance in legal codes. No doubt, religion and rule of law have flair for developmental tonality. The symbiotic relationship of the duo has the preponderance for advancement, orderliness and peaceful coexistence of the people. Undeniably, religion which is embedded in beliefs, values, norms and practices enables the rule of law to effectively interpret, implement and domesticate these beliefs, norms and values; and if need be, punish the violator(s) of these norms. Truly speaking, man is at the centre of religion and law; therefore, they play a similar role in the holistic development, cohesion and continuity of any society. However, this religio-legal structure in the Nigerian nation is rapidly collapsing. Currently, Nigeria is experiencing religio-legal somersault bearing in mind the corresponding implication of disintegration, lawlessness, senseless killings and structural collapse of the existing laws.¹ Therefore, it is worth mentioning that internalizing and domesticating these norms and values effectively for proper networking would be appropriate in this contemporary Nigerian society where religious interference, religious violence or crises and absence of the rule of law is just a few mouse clicks away. Therefore, it is the thrust of this paper to examine the concept of

* PhD, Lecturer, Department of Religions, Faculty of Arts, University of Ilorin, Ilorin, Nigeria; E-mail: agalamufreelance2004@yahoo.com; TEL: +2348033736985

¹ A.G Alamu, "Christianity and Human Rights in Contemporary Nigeria: A Look at Holman Submission," Benue Valley Journal of Humanities, Vol. 9, Nos 1&2, (2010) 68

religion vis-a-vis the rule of law. The work will also examine the synthesis of religion and the rule of law in Nigeria.

Religion: An Overview

In all ages, religion has come to grips with the existence of all human endeavours. Religion at all times plays pivotal role in shaping the thought, perception, approach, feeling and history of humankind. Thus, religion embraces all aspects of life and it represents wholeness of all existence and as well is life itself. Apparently, religion is the keystone or cornerstone of the people's lives and cultures. Religion is far more than a believing way of life in the Nigerian context, where a distinction or separation is not made between religion and other areas of human existence. It serves the aim of building and maintaining human society. No doubt, with its consciousness and sensitivity, there is no known society that exists without religion. Dopamu is apposite when he states that there is no known society without the existence of religion.² In line with the above position of Dopamu, Abe argues that religion is the provenance and consummation of all things. According to him, "in the beginning, it was religion; and in the end it shall be religion."³ In fact, religion has explained the world and human understanding of it. Without equivocation, religion has been explained by gamut of scholars such as Idowu⁴ and Emile Durkheim.⁵ However, the explanation seems to defy the satisfactory quest for a universally acceptable definition. Yet, new definition is not offered either. It is most appreciative to examine their relevance hereunder. Kenny aptly describes Religion "as any system which relates men to ultimate values, whether God or something else and which embodies

a creed, a code and a cult."⁶ In another development, Keqley distinguishes three basic features of religion as belief, feeling and action.⁷ It is imperative to note that what is pivotal to religion is belief in God or gods, the nature and destiny of the meaning of history and the end. On the basis of this, we come to appreciate the fact that religion does not only command loyalty but also gives its adherents something they are glad to live for and if need be, die for...⁸ In the same vein, Ejiofor also attests to the fact that:

*Religion is the complex of beliefs and behaviour of men in the supernatural sphere and realities and in the dynamic linkage of supernatural with the natural... Religion is one major drives behind human behaviour. Religion has had an important disciplinary effect on the whole social order in any given civilization.*⁹

The above shows that religion is a very deep factor in the lives of men. In point of fact, religion identifies itself with the first instinct for self-preservation. "Men take off from religion, men march along with religion and they arrive at religion with a minute-to-minute phenomenon,"¹⁰ Ejiofor further buttresses that religion is:

*The pride of the mind, the strength of the will, the relish of human emotions, coveted object of delicate sentimentality...In short, it is the comprehensive resume of man's spiritual, rational and corporate existence.*¹¹

2 Ade P. Dopamu, "The History of the Relationship between Religion and Science" CORES: Journal of the Confluence of Religion and Science. LSI, University of Ilorin, Ilorin, VOL.1, No. 1, 2005. 1

3 G.O. Abe, "Yahwism Tradition Vis-a-vis African Culture: The Nigerian Milieu" The first Inaugural Lecture delivered at Adekunle Ajasin University, Akungba-Akoko, on the 17th March 2004. 3.

4 E. B. Idowu, African Traditional Religion: A Definition, (Lagos: Longman, 1996) 2

5 Emile Durkheim, Elementary Forms of the Religious Life, (New York: Macmillan, 1915), 34

6 I.A.B. Balogun, (ed), Religious Understanding and Co-operation in Nigeria, Cited in J.K. Ayantayo "Application of Dialogue to the Contemporary Nigerian Multi-religious Society" Mimeograph, University of Ibadan, 2002, 4.

7 For details, see also J.K. Ayantayo, .4

8 J.K. Ayantayo "Application of Dialogue to the Contemporary Nigerian Multi-religious Society" 5

9 L.U. Ejiofor "Religion and a Healthy Political System" Nigerian Dialogue, Vol. 1 No. 1 (July 1974) 63.

10 Ejiofor, 64

These above definitions reveal certain essential elements as relating to Religion in Nigeria. Thus, the concept of God, gods, relationship of man to ultimate values, a creed, a code, a cult, belief, action, feeling, super sensible world, law and social order, the relish of human emotions, and the pride of the mind are indispensable to religion in Nigeria. Perhaps, in all things, Nigerians are religious.¹²

As sensitive as religion is, it is worth living for, a pride of place for people as they subsequently derive satisfaction from it as well as sense of security. In Nigeria, there is the practice of triadic religions of African Religion (Afrel), Islam and Christianity. Thus, the history of African Religion or Indigenous Religion is as old as the people themselves. It is a religion handed down by our forebears from the yore, and it is orally transmitted from one generation to another. It does not possess sacred scriptures, yet, it is thus written in memory of the very world we live and transmit orally as the occasion demands. This is not proselytizing religion, nor does it have a drive for membership, yet it is tolerant, it accommodates and remains autochthonous. Therefore, we are born into it, live in it and die in it.¹³ Commenting on the overview of African Religion, Dopamu has this to say:

*This is clearly seen in African Religion (Afrel), which encompasses all aspects of life. Africans do not know how to live without religion. They celebrate life religiously and they never embark on anything without bringing in religion. Thus at birth, marriage, death, warfare, healing, the foundation of any project, planting, harvesting, enthronement of chiefs and kings and other areas of human endeavour, Afrel plays important roles.*¹⁴

12 E.B. Idowu, *Olodumare: God in Yoruba Belief*. (London: Longman Ltd, 1996.) 1

13 J. Omosade Awolalu and P. Ade. Dopamu, *West African Traditional Religion*, (Ibadan Macmillan, 2005) 6.

14 Ade P. Dopamu, 3

Islam and Christianity are the proselytizing religions, which had been imported into Nigeria. Thus, Islam was introduced into Nigeria in the 11th century by the Timbuktu traders who had contact or encounter with the Northerners. It was in the 16th century that Islam spread to the south-west. While Christianity penetrated into Nigeria in the 16th century. However, this attempt to Christianize Nigeria failed due to many factors. Be that as it may, Christianity came to be planted permanently in the 19th century.¹⁵ They have had disproportionate size. Interestingly therefore, Nigeria is a multi-religious and pluralistic state without any particular religion being a state religion. There is no gainsaying the fact that Nigeria is a country of diverse cultures, traditions and beliefs. But of the entire diverse elements, religion has proved to be most sensitive agent of legality in the society. It is this fact about religion that has made it an instrument of legality, unifying factor as well as social mechanism for national development. However, in recent times, religion has been used to mar nations; it has been turned into horrible weapon of war and as well has drenched human blood and destroyed human civilization. Of a truth, the tenets of religion provide individuals with shared values, roles and incumbents, altruism and responsibilities. Religion as a way of life is aimed at transformation of individual life. This individual life is a means of microcosmic structure in the overall macrocosmic structure of the society. Apart from this, "each of the patterns of life and practice presupposes a structure of shared beliefs. When the credibility of central religious beliefs is questioned other aspects of religion are also challenged."¹⁶ Tersely therefore, religion is recognised as a channel for human and national development as well as legal instrument. Idowu becomes apposite when he states that religion is the keynote of the people's lives:

Religion forms the foundation and all-governing principle of life for them. As far as

15 E. O. Babalola, *Christianity in West Africa*, (Ado-Ekiti: Hamzah Books Ltd, 1998) 98

16 Ade P. Dopamu, "The History of the Relationship between Religion and Science" 5

*they are concerned, the full responsibility of all the affairs of life belongs to the Deity; their own part in the matter is to do as they are ordered through the priests and diviners whom they believe to be interpreters of the will of the deity. Through all the circumstances of life, through all its changing scenes, its joys and troubles, it is the Deity who is in control.*¹⁷

Without fuss, Religion has all-governing principles of life and infuses discipline and social order. Thus, religion is a cord that binds people together in order to promote social cohesion and communal well-being. As the rule of law is machinery set in place to guide the conduct of the people likewise religion is both social and legal mechanism for harmonious living and co-existence. Besides, religion is a divine law or mechanism that regulates human conduct and as well institutionalises social norms in human society. Religion has the knack of bringing people together where they can experience presently what it means to live the full human life. It is also a major instrument of transforming any human society into a community that acts justly. To this end, Religion becomes the law of life, pathway to God-realization, absolute value truth, living power, justice, and morality.

A Conceptual Meaning and an Account of the Rule of Law

It is axiomatic to examine the rule of law in the context of pluralistic society like Nigeria. Thus, it is a unanimous statement that any concept is void of universal acceptance because such concept may mean many or different things to many or different minds at the same time. However, for the sake of clarity, the rule of law has been defined by some scholars. A.V Dicey, a celebrated scholar and expert in the

rule of law states that everybody is equal before law. He further ascribes triadic meanings to it. Thus, they are equality of all men before the law; the supremacy of the law or the predominance of the regular law and the fundamental human rights.¹⁸ Umejiesi expatiating on Dicey's triadic meanings of the rule of law said that in the first place it means supremacy or predominance of the regular law of the land as opposed to influence of arbitrary power, which exempts the existence of arbitrariness or even of wide discretionary power on the part of the executive. Secondly, the rule of law according to Dicey is that every person, no matter his status in society is not above the law but subject to the law of the land.¹⁹ Put differently, everybody is equal before the law, which means irrespective of gender, race, occupation, language, ethnicity, religion. Thus, the rule of law surpasses everybody and it does not discriminate among people.²⁰ Lastly, in England fundamental human rights which usually are part of the written constitutions in other countries are the consequences of the rights of individuals which are defined and implemented by the courts.²¹ Aibe also sees the rule of law as law and order without which life and property would be unsecured in any society.¹⁷ McCormack uses an ambiguous phrase "legal system" to describe rule of law. In this sense, it is indistinguishable from the term "law." He painstakingly implies it as the existence of rules of law and possession by the rules of a quality which permits it to be collectively described as a system.²²

18 A. V. Dicey, *The Law of the Constitution*, 10th ed, 202 in I. O. Umejiesi, "Rule of Law As a Panacea to Religious Crises in Contemporary Nigeria" in Adam Chepkwony and Peter Hess (eds.) *Human views on God: Variety, not Monotony*, (Eldoret: Moi University Press, 2010), 239

19 I. O. Umejiesi, "Rule of Law As a Panacea to Religious Crises in Contemporary Nigeria" in Adam Chepkwony and Peter Hess (eds.) *Human views on God: Variety, not Monotony* 239

20 A. G. Alamu, "God and Governance: A Christian Appraisal of Nigerian Political situation" in Ade P. Dopamu et al (eds.), *God: The contemporary Discussion*, (Ago-Iwoye: NASR, 2005) 250

21 I. O. Umejiesi, 239

22 G. McCormack, "law and legal system" In *Modern Law Review* 1968, 285

According to H.L.A. Hart, who uses legal system and rule of law interchangeably, rule of law 'is a collection of rules identified in accordance with criteria specified by a rule of recognition.'²³ In fact, the rules of law constitute a system in the sense that each rule complies with criteria of identification established by the rule of recognition.²⁴

L. Meyers sees it as a legal system that encompasses 'the rules of law in force in a country together with the machinery and personnel by which those rules are applied.'²⁵ In a strict sense, the definition of Meyers is apposite and relevant to the instrument of implementing the rule of law in a civilized society where the rule of law is effective. In Nigeria, for example, Meyers' submission is extant to an extent. By this, it means the application and implementation of the rule of law is not holistic.

Kelsen's theory of the rule of law is that of a hierarchy of norms.²⁶ This implies that each norm is derived from another norm with the chain of derivation ending in grund norm, which is the foundation of all legal norms. Kelsen's definition seems to capture the basis of this work. Here, it must be emphasized that norm connotes standard, pattern, convention, truth-value, social behaviour among others acceptable or otherwise in social relations. Thus, the grundnorm of each of all the norms including legal norm as I argued somewhere is God. God is the foundation of all norms both religious and legal.²⁷

Interestingly, religious norm involves beliefs derived from powers above one and the observance of such beliefs in social relations. As a

23 Hart, *The Concept of Law*, (London; Butterworths, 1961) 92

24 I. Ayua, "wanted: A new Legal System for Nigeria" in E. Ikenga-Metuh and O. Ojoade (eds) *Nigerian Cultural Heritage* (Jos: Imico Publishing Co. 1990) 212

25 as cited by I. Ayua,

26 T. Kelsen, *General Theory of Law and State*, (Wedberg: Ramonths Unwin 1961) 110

27 A. G. Alamu, 237

matter of fact, the society is invariably tied to religion or is the soul of religion. Isokun opines that "the purpose of law within this context is to ensure that rules or legal norms pertaining to a particular social organization are adhered to even as a function of the particular social organization."²⁸ To this end, both religious and legal norms are social institutions created by the grundnorm – God for regulatory pattern upon the conduct of the people and their society.

Having explored the conceptual meaning of the rule of law, it is pertinent to state the origin of the legal system in Nigeria in a brief. It is true that human instrumentality in the enactment of the existing law cannot be under-estimated. Human instrumentality was employed based on the existing divine laws established by God to legislate and control individual conduct in the human society. In Nigeria, the rule of law came into full implementation when she gained her independence. The mainstream of her legal system was borrowed from the erstwhile colonizers and their conservative legal machinery. Thus, the colonial leaders introduced the English law which had been in place before 1900. Thus, this English law is not difficult to amend by National Assembly. The National Assembly has the power to amend any law including the almighty constitution. Today, Nigeria operates the following legal systems;

1. The received English law
2. Local Nigeria legislation
3. Customary law
4. A fused judicial system with a hierarchy of courts with the resultant Nigerian case law.²⁹ The above three are sources of Nigerian law, while the fourth source is known as judicial precedent or case law or judge-made law. Here, it must be emphasized that the Nigerian Judicial system cum the

28 M. I. Isokun, "Religion and Justice: An Enquiry into the Place of Religion in the Nigerian System of Justice" *EPHA: Ekpoma Journal of Religious Studies*, vol. 2, No. 1 (June 1998) 154

29 I. Ayua, 213

Constitution still accommodates Sharia Legal system. Today, these several inclusions find context in the ambiguities and paradoxes expressed by constitution experts.

In retrospect, the received English law which comprised English common law, doctrines of equity and statutes of general application came into force on January 1st, 1900. Essentially, this date only applies to the statutes of General Application. Mention must be made here that the received English law has been applied by both English judges and Nigerian judges. Despite the Nigerian independence from the English colonizers, the received English law is still invoked in the Nigerian courts. However, Nwabueze reacts to the common law as follows:

*The common law our courts have been enjoined to apply is not the common law of England but the legal system and habits of legal thoughts that Englishmen have evolved...the stark reality of the situation is that our courts apply the common law of England.*³⁰

In line with the thought of Nwabueze, Park argues that

*Time was ripe, indeed long overdue, to free Nigerian law from the development of English law regarding the formula of England as a retrograde step for it effectively prevents the development of a uniquely Nigerian common law.*³¹

In like manner, the local Nigerian legislations that is, Nigerian customary laws are home grown law. Honestly, all these laws follow the pattern and application of the common law. In fact, the local Nigerian legislation is deemed to be promulgated by central or

federal legislature from 1960 to January 16, 1966 and since October 1, 1979 as Acts.³² While enactments made by the regional or state legislatures during the period under review are called "laws".³³

Indubitably, this local Nigerian legislation is important source of law. Thus, one of the characteristics of this law is that it is the only one rules *prima facie* apply to all issues within the jurisdiction and to all persons regardless of their community, race and nationality.³⁴ Through this legislation, many acts and law Ayua opines still follow the pattern of the received law. According to him:

*Nigerian legislature has displayed such unforgivable ineptitude and inertia that very little, if any thin at all, has been done since independence to modify and reshape our inherited legal system to suit our circumstances.*³⁵

In another development, customary law emanated from the rules of human action established by usage and referred to as legally binding on those to whom the rules are applicable. Although in the northern and western states, local legislation permits the local government authorities to make declarations of what are customary rules in their jurisdiction.³⁶ Customary or native law stems from the ethics, beliefs and economic or social life of the Nigerians. Today, it is germane to state without equivocation that customary law remains a vigorous and efficient instrument for the adjudication of disputes, particularly between the indigenes. In spite of its efficiency and vigour, those applying the customary law are trained alongside the common law and subsequently apply English law principles in adjudicating disputes. Ultimately, this process is replaced by English legal thoughts.

30 I. O. Nwabueze, *The Machinery of Justice*, (London: Butterworth, 1963) 21

31 Park, *The Sources of Nigerian Law* (London: Butterworths, 1963) 6

32 Ayua, 214

33 Ayua, 215

34 Ayua, 217

35 Ayua, 219

36 Ayua, 220

The judicial system is thus the judicial power of the state, 'the guardianship of entrenched fundamental human rights and freedoms, the interpretation of the constitution and of all the other laws of the country as well as the power where necessary to strike down as unconstitutional enactments of the legislature or actions of the executive.'³⁷ This arm of the government interprets and implements the law as enshrined in the constitution.

Thus, the rule of law is enshrined in the constitution of 1979, 1989 or 1999 and it is interpreted and implemented by the judicial process which is saddled with the responsibility. Human rights and freedoms are well spelt out in the constitution and they are all parts of the UNO charter and the universal declaration of human rights (UDHR) of 1948. The judiciary, up to the Supreme Court interprets and promotes the value-oriented policy of the constitution on the rule of law to the individuals without fear or favour through a liberal approach in independent Nigerian nation.

Religion and the Rule of Law: A Symbiosis

Religion and the Rule of Law as social institutions are inter-related because they are both centred on humankind. Isokun posits 'that by dint of their regulatory nature they are able to demand of the individuals of a given social collectivism a degree of conformity in conduct or behaviour thus ensuring an equally desirable degree of control or orderliness.'³⁸ By implication, the concept and virtue of a person in a particular place either born or lived in such place, such a person constitutes part of the people of such a place who are governed by norm and convention. This is therefore the regulatory norm or a sort of ontological participation that goes beyond every other category.

³⁷ Ayua, .221-222

³⁸ Isokun, 153

Religio-legal norms are the social structure on which any given society is based. Thus, this social structure is predicated on values, concepts, beliefs and observance of mores, legal norms which help to keep the people living accordingly and relating meaningfully.³⁹ Religion as a social factor is strong, sensitive, intricate and pervasive enough to make people especially believers to die for its tenets. As earlier noted, the society is inseparably tied to religion. In other words, the society is the soul of religion. Therefore, both religious and legal norms are social structure or social institutions created by the grundnorm- God for the regulatory measure upon which the conduct of the people hinges. Apart from the above, the individual person becomes conscious of the fact that he is a responsible citizen in the society. Nwodo strongly avers that

*The limitation of the notion of the people here to responsible citizen is still in connection with those governed; those under the rule of law, those for whom the constitution of a country is made.*⁴⁰

Besides, the beliefs of the people as well as the ethical code make them 'a people' ideal society because these beliefs are employed to explain orderliness, togetherness, oneness, co-existence and continuity as well as constituting or forming the ethical code that is encapsulated in legal norms. It is worth-asserting that in the society, an individual is not only a 'political animal' as enunciated by Aristotle, but also religious and legal animal who has the sense of existence, purpose, virtue, vision, rights, duty, obligation and judgment. Durkheim attests to the fact that religion is 'a unified system of beliefs and practices which unite into one single community all those who adhere to them.'⁴¹

³⁹ Isokun, 154

⁴⁰ C. Nwodo, "The Concept of the People in Democracy" in E. Ikenga-Metuh and O. Ojoade (eds), 181

⁴¹ Emile Durkheim, *Elementary Forms of the Religious Life*, (New York: Macmillan 1915) 47 see also, M. I. Isokun, 154

Apart from the foregoing, religion is a unified system in the community inhabited by moral and legal beings. Put differently, religion and law are social facts. Isokun states as a prelude that

Religion and justice to the extent to which they affect the beliefs, values or norms and the practices of members of a social organization can be said to be inseparable because their legal system is an expression of their faith and belief in God who is 'our judge' and our law giver' (Ps 33:22).⁴²

Perhaps, in a structural and functional society, legal system is a set pattern of beliefs, values and practices of the people, and the more they understand these beliefs, values and practices and form part of them, the more functional and cohesive the system of justice in the community.

Religion and the Rule of Law in Nigeria

In the annals of Nigerian political history, religion has always had a place in the constitution of Nigeria. In other words, the Nigerian legal system recognizes the religious tripod made up of African Religion, the western variant of the Christian Religion and the Islamic Religion.⁴³ This observation is crucial because of the conspicuous absence of reference made to religion in the administration of the rule of law. So far, a synergy of both religion and people's moral codes as well as the socio-legal codes of the people is imperative for the judicious implementation and development of the rule of law.

Thus, the Nigerian constitutions of all times recognize the sovereignty of God as the ground norm upon which the constitution is hinged. The constitution of the Federal Republic of Nigeria possesses

⁴² Isokun, 155

⁴³ Isokun, 151

this spirit when it says in its preamble:

We the people of the Federal Republic of Nigeria have firmly and solemnly resolved to live in unity and harmony as one indivisible and indissoluble sovereign nation under God.⁴⁴

In the light of the above, I argued somewhere that the constitution is made only for a moral and religious people under God. Hence Nigerians as a people are uncompromisingly religious. Their religious allegiances are identifiably distinguishable in African Religion, Islam and Christianity in the history of Nigeria.⁴⁵ Besides, the nation has from her inception been pluralistic, not only in its religious but also in the philosophies that have informed her life.⁴⁶

In order to respect this plurality or multi-religiosity in Nigeria, the constitution provides a middle path for religious matters. In section 10 of 1999 constitution it prohibits the adoption of a state religion, both at the federal and state levels. *The government of the federation or of a state shall not adopt any religion as state religion.*⁴⁷ The above section of the 1999 constitution seriously informs while government of the federation cannot adopt or support any particular religion at the expense of the others. Even, the right of the agnostics and the acclaimed atheists must be protected in line with the above constitutional declaration.

In furtherance to this, the constitution of 1999 in section 38 also guarantees the individuals the right to practice their religions and freedom to change their religion or belief.⁴⁸ Umejesi posits that the constitution presents religious tolerance, liberty and co-existence, as

⁴⁴ Constitution of the Federal Republic of Nigeria, 1999,

⁴⁵ Alamu, 245-246

⁴⁶ Alamu, 246

⁴⁷ Constitution of the Federal Republic of Nigeria

⁴⁸ Constitution of the Federal Republic of Nigeria

the constitutional requirement and fundamental rights of every citizen, respectively. In addition, the Criminal codes prescribe punishment for those who indulge in religious violence.⁴⁹

An Appraisal

The interpretation and application of the rule of law in a pluralistic or multi-religious state like Nigeria is more subtle and complex. Thus, the interpretation is vague because the legal system is not only established on the beliefs and practices of our erstwhile colonizers but has also thrived at the peril of the values and socio-legal norms of the people.⁵⁰ The implication of this is the fact that the Nigerian legal system cum rule of law is derived from the English common law which itself was a product of the traditions as preserved by the Christian church. This law is incompatible with the Nigerian society yet some of the received English laws have since been modified. This seriously informed while the English common law is relatively simple in its implementation in the South, while in most part of the North, there was highly systematized and sophisticated Muslim law of crime that emanated from the 'Maliki law' and subsequently flowered to 'Sharia law'. Isokun again argues that in the North, the English legal system was to be modified along the line of penal code which was meant initially to incorporate 'local legislation and regulation' essentially of Islamic values and principles of justice.⁵¹ Against this background, English common law and local legislation overlap and serve a bi-polar strength. This is a great challenge today in Nigeria legal system whereby the threat of Sharia lawful implementation is sending jittery to the spine of western Nigerians. This fact is predicated on the premise that some Governors from the North introduced Sharia Law to intimidate and coerce the people especially the non-Muslims. The implementation of Sharia brought about clashes and protests. Obasanjo may have been informed by

49 Umejesi, 240

50 Isokun, 155

51 Isokun, 156

this when he expressed with chagrin political sharia in contemporary Nigeria. He avers that "what we have is essentially a political sharia. That is why it worries me. It does not augur well for this country...we must do something about the legal practice."⁵²

In its local legislation along its different parameters, the system of law can be said to be three-way: the criminal code, the penal code and the traditional (customary) code of justice with each giving credence to the values, norms and beliefs of Christianity, Islam and African Religion respectively. But under criminal and the penal codes, there are some exceptions to religious rules and conventions, except some parts of customary law. No doubt, there is the danger of having various kinds and standards of values for a people that aspire to be one of natural values, goals and aspirations.⁵³ The problem is further compounded by the constitutional provision that permits and even encourages the rise and growth of religions. This guarantee given to all religions in section 10 of the 1999 constitution has had to put up with many religions with the knocking-on implications on our values, norms, beliefs and practices as a nation.

In the study of patterns of sentencing in Nigerian courts, Milner discovered marked differences in the judicial process as practiced in the North and in the South.⁵⁴ Such differences he traced to the various religions and their beliefs, practices and traditions. This might not completely be true, but other factors such as tribalism and favouritism cannot be ignored totally. It is also a common knowledge that lack of sincerity in the pursuit of a constitutional framework for governance has been a major problem in Nigeria.

Kukah argues that the issues of constitutionalism should be left to the experts rather than turning constitution-making into a theatre for political mobilization.⁵⁵

52 Sunday Punch, 2nd December, 2001, 1

53 Isokun,

54 A. Milner, (eds) *African Penal Systems*, (London: Routledge and Kegan Paul 1969), 264

55 M. Kukah, "Human Rights in Nigeria: Hopes and Hindrances" Mission pontifical mission society, Arachen, (2003) 39-40

In fact, it is the realization of this that today's experiences have shown the suspension of the constitution, manipulation and invention of false identities of those who use political space to cause religious violence, Sharia crises among others. This will persist, according to Kukah, except we find a legal framework for conducting the business of politics.⁵⁶

Based on the constitutional framework of Nigeria, it is correct to state that religions and their leaders are in a position of ecclesiastical authority to show very clearly how religion has always been a force for change, development, reconciliation and continuity. But today, the religious leaders and their religions especially Islam and Christianity foment the various crises all in the defence of God. Thousands of lives have gone to their early grave and this violence is dangerously taking different dimension every time. Despite the fact that Obasanjo's administration set up Nigeria Inter-Religious Council (NIREC) to dialogue, reconcile and provide a blue print for religious harmony, this group is yet to set a breakthrough during times of national crises. Perhaps, the public really has no contact with what the council is doing. More so, the government is still funding and patronizing the council. As a result of the above limitations, Kukah submits that

*It is difficult to say how long the council will last for and whether there are any plans in the future for it to become independent and more assertive in addressing national issues. Its role need not be that of a fire extinguisher in times of crises although it has so far failed to fulfil even that role.*⁵⁷

⁵⁶ Kukah, 40
⁵⁷ Kukah, 41

Also, there are internal difficulties emanating from the religious backgrounds of the different groups of leaders. "Whereas the Christian leaders have independence and no links with government; the Muslim leaders are all appointed and funded by the government. It is hard to get them to criticize the government policies."⁵⁸ However, this statement in some cases is not the obvious, sometime Christian leaders of thought are also appointed by the government or serve as agents fronting for the government.

Generally speaking, in Nigeria, the law is interpreted differently so also its application. Justice is tampered with by the rich, while the law is straightforwardly interpreted and subsequently applied to the poor. More often, the Nigerian legal system is the law of the poor, for the poor and by the poor even against the poor. But to the affluence, the law does not exist and it is silent, except now the rule of law is emphasized by this administration. To this end, the rule of law is deficient as a result of its target along the parameter of one sidedness and partiality.

Recommendations

Despite the bearing religion shares with the rule of law, it would be puerile at this level to allow the peculiarities of the various religious faiths interfere with the function of religion and law. This appraisal notwithstanding, the paper recommends that the law should be simplified, modified and unified. Thus, the conservative *status quo* maintained by the English government, does not in all cases correspond to our ambitions, plurality, religious affiliations as a developing nation. Except now that constitution experts have clamoured and are clamouring for constitutional developments in the country through their annual conferences, we are seeing differences. Also, the customary law which is the embodiment of

⁵⁸ Kukah, 42

our beliefs, values, norms, conventions and practices of the people should be consciously raised to the level of the customary law which must assessed before being applied.⁵⁹

As for the English common law and the doctrine of equity, only those rules that are suitable to current situations in Nigeria should be retained and in any case Nigerian law should not be tied to the development of alien law. Equally, premium should be given to Labour, social and customary laws. To this end, the customary courts should be upgraded and retained and thus presided over by legally qualified persons in whom there should be a right of audience to lawyers as is the case in western and southern state.⁶⁰ The above will enhance legal delivery, performance and respectability of human person. The essence of the constitutional provisions with regard to customary court of Appeal in Nigeria should be equally enhanced for better performance.

There should be a fundamental change in spirit of the judges and lawyers so that they can become more conscious of social interests and subsequently adapt a liberal approach to statutory interpretation by putting on Nigerian bird-eye view laws in context of Nigerian complexion.⁶¹ In line with the above, the recent decisions on *Amechi V INEC* and *Ugwu V Ararume* would suffice in this regard.

There should be liberal, ideological and unbiased will in interpreting and implementing the rule of law. The constitution is explicit in guaranteeing individuals of their freedom of exercising their religion and to change same at will without molestation and disturbance. In which case, the essence of the rule of law is to ensure that everybody is subject to the law and so be treated. The parameter used in judging or adjudicating the law must be applied to all regardless of their

59 Ayua, 228

60 Ayua, 229

61 Ayua, 229

status, gender, class, nation, ethnicity and religion.

A legal framework for controlling the business of religious uprisings is a must. This will checkmate religious mobilization, balkanization and ethnicity, which are centrifugal forces that have been wrecking the nation by punishing legally the culprits without looking along religious and ethnic lines. This has the propensity for national integration that would help channel energies towards centripetal forces of peace, oneness, togetherness and unity.

For the Nigeria inter-religious council, (NIREC), it should serve as an independent body, devoid of government funding and interference. Without the latter, it will not only play the role of a fire extinguisher in time of crises, but also bridge the gap, instruct religious leaders, followers and serve as a moral compass for the nation. Besides, religions recognize all people as equal before God and so created. People were not made with different social classes or castes, as aristocrats or commoners, as superiors or inferiors. It follows that equality, should be a foundation stone of God's society. It should be pursued vigorously with regard to relationships between human beings, in the distribution of opportunities and responsibilities, in the allocation of resources,⁶² and in the interpretation and application of the rule of law. The rigid and authoritarian way of interpreting Sharia and its immobilizing penalties and the flexible and liberal approach that favours more regular and consensual settlement of issues and its use of non-immobilizing penalties should be looked into seriously. This disparity of penal code in the Sharia prone areas and criminal code in the South/West should be treated with utmost care and sincerity so as to 'strike a balance'. This can be achieved by bringing the penal and criminal codes to a roundtable scrutiny and insulate grey areas that do not meet today's standard and societal requirements. In the Nigerian

62 Bob Holman, Towards Equality: A Christian Manifesto, (Great Britain: SPCK, 1997) 6

environment, people's way of life and their feeling cannot be separated from their religion. In other words, religion and culture cannot be divorced from each other.

Conclusively, the true functions of religion and rule of law can be achieved through a common vision shared by Christians, Muslims and Indigenous believers. This vision must respect the multi-cultural set-up of the Nigerian state where all ethnic groups have a fair hearing. If "God's will is to be done on earth as it is in heaven," we must all bear responsibilities for the kind of Nigerian community we want to build on earth. We have a moral responsibility to build a just and universal community that promotes the humanity of every citizen, and of all people. It is not enough to profess the sacred teachings of our religions. We are enjoined to practically live them out in daily lives.⁶³

Conclusion

The study has shown so far that religion and the rule of law are social facts in Nigeria. The mere acceptance of the triadic holy writs of the Bible, Qu'ran and 'Okpo' in our courts for swearing or declaration purposes only endorse rather than tackle the problem of religious discrimination, vices and judicial inequity. Since human legal instruments have abysmally failed to entrench the law in accordance with the beliefs, norms and practices of their faith, it is therefore expedient on the individual level to look toward the ground norm which is God – the foundation of all norms – high or low, ancient or modern. Thus, these norms are written in the heart of the individual - conscience.

If Nigeria has to remain as one indivisible and indissoluble sovereign nation under God as depicted in the prologue of her constitution, rule

of law must be re-emphasized and re-interpreted. So also the nexus between religion and justice has to be re-addressed to the exclusion of religious particularities from obstructing the structure and function of the Nigerian legal order. It is also in this corporate sense, that the welfare of the people, according to Cicero, should be the supreme law: "*salus populi suprema lex esto*"; a supreme law that incorporates the welfare of everybody including even those who cannot or do not recognize what those needs are.⁶⁴ With this religio-legal order, the general norms of peace, justice, we-feelings, live and let's live, collegueship promoted by God; Our judge and our law giver (Ps33:22), and "O you who believe, you upholders of justice, witnesses for God even if it be against yourselves" (Qu'ran 4:135) in indigenous spirit should be sufficient for a noble, just, peaceful and equitable vibrant society where things including the constitutions work.

⁶³ P.M. Gaiya, Religion and Justice: The Nigerian Predicament, (Kaduna: Espee Printing and Advertising, 2004) 102-106

⁶⁴ Nwodo, 183