

CHAPTER FOURTEEN

'FREEDOM OF RELIGION': NIGERIAN CONSTITUTIONAL PROVISION FOR RELIGIOUS PEACE AND NATIONAL STABILITY

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Introduction

Unarguably, the question of religion is simultaneously both a unifying and divisive factor in Nigeria. The plurality of ethnic groups and tribal affiliations makes the notion of a common religion appealing for its potentiality to blur the lines of tribalism and racism even if in theoretical terms. At the same time, that there is a plurality of religious beliefs often reifies existing divisions based on some other factors such as ethnicity, particularly where religion is expressed in terms of a way of life and culture of an area or region. This has continued to make the discussion of the precise manner to handle the issue of religion in the public space in Nigeria very problematic. Thus, as regards the question of whether Nigeria may be described as a secular body-politic or not, opinions continually vary. Historically and at present, politicians/national leaders and religious leaders have differed and continue to differ in their approach to the matter. To cite few examples: after the collapse of the first republic on 15 January 1966, Chief Obafemi Awolowo (1966:150-151) wrote the following words from the Calabar prison where he was incarcerated:

Nigeria should be a secular state. The existing association between the State and the Church should be completely severed. It is an old British custom which is apish, unreflecting and discriminatory for us to preserve....The whole thing is ludicrous. God is everywhere; and His ever-ready responsiveness to our supplications is not confined to any Church or place. To be sure, it is a very good thing indeed for the churches, the mosques, and other religious gatherings, to pray, from time to time, for the success of the Government of the day, if they are convinced that its plans and programmes are good and promote the welfare and happiness of the people. But it would be wrong, *and of course futile*, (sic) for them to pray, as they did in recent years for the success of a manifestly satanic administration. For the reformation of such a government, they certainly must pray. By participating in state ceremonies, and getting too much involved in official functions, some religious leaders find it difficult to speak out with freedom, forthrightness, and courage, in condemnation of what they know to be evil in the doings of the state.... as far

as possible, there should be separation of activities of the state on the one hand, and religious bodies on the other.

In like manner, the policy of the First Executive President of Nigeria, Alhaji Shehu Shagari on religion was described by his biographer, Ojigbo (1981:387-388) as that which promoted national unity by 'emphasising the *secular* (sic) nature of the nation, and not by preaching for the unity of all religious beliefs under the single banner of Islam.' The then president was quoted as saying that:

Though ours is a secular state with diverse religious creeds we do, in fact, live in harmony among ourselves, respect each other's religious beliefs and rise as one people [to strengthening] the moral fibre of our people which is about love and brotherhood, honesty, integrity, and respect for those traditions that make a nation.

Conversely, in 1993 the then Catholic Bishop of the Diocese of Abuja, John Olorunfemi Onaiyekan (now retired Archbishop of Abuja amongst many international papal roles and recognitions) in the Foreword to a book (Kukah, 1993) stated thus:

The strident call for a separation of politics from religion often becomes a slogan used according to the convenience of the moment. The reality is that both are tied together, by the very nature of things - and this for at least two reasons: First, there is something inherently sacred about political power. History has shown that it can only be properly exercised when handled with sacred attention. In religious jargon, we say, "all powers belong to God." Secondly, it is the same concrete human person who assumes both political and religious identity, and one necessarily affects the other. No wonder, even nations which make much of separation of religion and politics find many ways in practice to act against this principle. It seems to me that this is why our prolonged debate over the "secular" nature of the Nigerian state has remained inconclusive. "Secular state" means different things to different people. It is surely more useful to tackle concrete issues of interaction of politics and religion and from there evolve just and fair solutions to our problems of peaceful co-operation.

The next year, Gen Sani Abacha inaugurated in 1994 a National Constitutional Conference Commission after the tumultuous aftermath of the annulment of the June 12, 1993 elections. In his inaugural address (Aliyu, ed. 1994-5: xlviii), he remarked that:

Nigeria is a secular state. We have acknowledged this in all our previous constitutions, and it is not advisable that we deviate from this course. Religion is an instrument for building moral bricks in our society and it should remain within the realms of personal faith and group choice. It must never be allowed to interfere with our collective desire to build a unified and indivisible nation. The quest to combat indiscipline and corruption in our society is an ongoing struggle which draws its inspiration from several provisions in existing Constitutions. Our quest for accountability in public life should move away from emphasis on pious appeals to conscience to institutionalised legislation enforced within the context of respect for individual rights and lawful aspirations.

No doubt, religion has globally been identified as one of the most explosive ingredients of violent conflicts and civil strife that result in loss of lives and properties (Durham & Scharffs, 2019). This is because the appeal of its unifying factor is often tilted against its potentiality for violent divisions. In Nigeria, the situation is compounded by lack of coherence in the circumstances or likely situations that give rise to either of the two facets. Not only situations, even individuals continue to oscillate between support for its unifying element or contestations of its divisive constituents. This has always been largely dependent on the interest sought to be served, political or otherwise, and the perception of the utility of the language of religion in that respect. It is perhaps for this reason that political leaders adopt the 'secular' stance and religious leaders maintain the opposite. What follows is an examination of these two contesting theories from the constitutional perspective contained in the provisions on religion in the 1999 Constitution of the Federal Republic of Nigeria (hereinafter 'The 1999 Constitution' or 'the Constitution').

Religion in Nigeria: A Constitutional Analysis

The 1999 Constitution contains eleven (11) references to it. The first point of reference is Section 10 wherein it is provided that neither the Federal government nor any of its federating units as States 'shall adopt any religion as State Religion.' Section 15 (1) states the motto of the Nigerian Federation as 'Unity and Faith, Peace and Progress.' Arguably, the word 'faith' is another derivative for religion and perhaps constitutes the twelfth (12th) reference to religion in the Constitution. More particularly in subsection 2 of the same Section 15, it is stated that national integration should be actively encouraged. This is to be achieved by prohibiting discrimination on the 'grounds of place of origin, sex, religion, status, ethnic or linguistic association or ties....' Further, under Chapter IV of the Constitution on 'Fundamental Rights', Section 38 expresses the fundamental right of all Nigerians to 'freedom of thought, conscience and religion. This right includes the freedom to change one's religion or belief as well as the freedom '(either alone or in community with others, and in public or in private) to manifest and propagate' one's religion or belief in matters of 'worship, teaching, practice and observance.' On the one hand, Subsection 2 of this section protects all Nigerians in all avenues of education against religious instructions and observance contrary to those of the individual concerned. On the other hand, Subsection 3 gives the right to religious communities or denominations to give religious instruction to pupils 'in any place of education maintained wholly by that community or denomination.'

Additionally, religion is recognised in Section 42 as one of the grounds upon which a person may neither be subjected to 'disabilities or restrictions' [subsection 1(a)] nor become the recipient of 'any privilege or advantage' [subsection 1(b)] simply because they belong to such religion. This is regardless of whether the disability/restriction or the privilege/advantage is as a result of express or practical operation of any law in force in Nigeria as well as any executive or administrative action. The other grounds stated in this section alongside religion are particular community, ethnic group, place of origin, sex and political opinion. The final reference to religion in the Constitution is contained in Part III, which is the segment on Supplemental provisions. The provision concerned is Section 222 under segment (D) on Political Parties. The section provides in its subsection (a) and (b) that –

No association by whatever name called shall function as a party, unless –

- (a) the names and addresses of its national officers are registered with the Independent National Electoral Commission;
- (b) the membership of the association is open to every citizen of Nigeria irrespective of his/her place of origin, circumstance of birth, sex, religion or ethnic grouping.

These constitutional provisions are analysed in the next section for the ways they impact religious peace and national stability.

'Freedom of Religion' or 'Freedom from Religion': The Constitutional Position and Implications for Religious Peace and National Stability

It can be contended that the Constitution plays an all-important role in any religiously pluralistic and culturally divergent context such as Nigeria (which appears to be a common feature of all modern nation-states and democratic regimes). This is the role of a common ideology for all citizens supposedly neutral to all forms of sentiments that threaten national cohesion and peace. Taking account of the discussion in the introductory section of this chapter as well as the analysis of the constitutional provisions in the previous section, the question may be asked: what brand of religion-state relationship has the Nigerian state adopted thus far? As earlier said in the introductory section, there are two competing theories by religious and political leaders: the first affirms the multi-religious nature of Nigerian citizenry, which does not accommodate favouring any religion over others while the second carries the notion of secularism, which denotes essentially that religion is a private affair. Unfortunately, the Nigerian jurisprudence in terms of authoritative judicial pronouncement is not clear on the issue of theory which underpins Nigeria's notion of religious freedom as contained in the Constitution. What follows is the current author's individual perception on the meaning and implications of the constitutional provisions on the matter.

In the first place, what is problematic is the fact that both the secular and multi-religious arguments in terms of the religion-state relationship brand of Nigeria are sustainable based on Section 10 of the Constitution as examined above. This fact notwithstanding, it is here conceived that it is better to hold to the multi-religious theory rather than the secular theory in the particular context of Nigeria. In the current author's opinion, the notion of secularism is merely a political instrument to foist alien religious ideologies on non-adherents through craftily constructed *supposedly religiously neutral* strategies. To give a contemporary example, the Constitution of the United States of America is perhaps the most illustrious instance of secularism as a model of religion-state relationship.

Thus, the First Amendment's Establishment Clause to the Constitution of the United States proscribes any action at all levels of government 'respecting an establishment of religion'. Yet, in the recent case of *American Legion V American Humanist Association* 139 S. Ct. 2067 (2019), the United States Supreme Court on a vote of 8 for and 2 against the 10 Justices that heard the case held that the display of a 32-foot tall cross of the Christian faith on a public land and its ownership and maintenance through public funds by the Maryland National Capital Park and Planning Commission did not violate the Establishment Clause. The perspective of the court is that the religion clauses of the Constitution 'aim to foster a society in which people of all beliefs can live together harmoniously' and that the cross 'had

acquired additional layers of historical meaning' wherein 'its removal or radical alteration would be seen by many, not as a neutral act, but as the manifestation of a hostility toward religion.' (West Headnote, 5)

Interestingly, this American case is reminiscent of the Nigerian situation. For the proponents of secularism, the question may be asked as to the presence of a religious law (Islamic Law) supported by a constitutionally recognised legal system and court structure in Nigeria. This question has been taken up elsewhere by this author that the recognition of Islamic law as a legal source in Nigeria is not favouritism to Islam and its adherents but a historical component of the emergence of Nigeria itself as a body-politic (Amoloye-Adebayo, 2019). For present purposes, it is also clear from the cited American case that the historical argument of state connection with a particular religion in a multi-religious context is not only tenable but unassailable. The contention of this chapter is therefore that both for the American and Nigerian context, the secularism theory is fallacious. For Nigeria as the context of concern, it is better that Section 10 is read as aiming to 'foster a society in which people of all beliefs can live together harmoniously' as held in *American Legion V American Humanist Association* (*supra*). Thus, the presence of the Islamic Legal System in the Nigerian Constitution is understood in its correct historical sense and will not be the basis of unnecessary off base remarks (such as Ordu, 2015) by non-adherent Nigerians in ways that can trigger violence and instability. It can then be said that the import of section 10 of the Nigerian Constitution encapsulates the notion of 'freedom of religion' and not 'freedom from religion'.

There is also strong and credible basis as to the most constructive import of Section 10 for religious peace and stability in Nigeria if one considers the conclusion to be drawn from the other constitutional provisions on religion as discussed in the previous section, namely Sections 15, 38, 42 and 222. To start with a combined reading of Sections 38, 42 and 222, the appreciation of the fact that if not properly managed, the issue of religion can constitute a basis of discrimination in a way that threatens national cohesion. Thus, expressions of religious beliefs and observance in private and public spheres are protected. Not only that, there is also protection against proselytization in educational institutions even though, public propagation is permissible. There is also the recognition of the fact that religion is one of the pillars of communitarian existence of most Nigerian societies, which can bring about private and public consequences to non-adherent minority or individuals. In particular, the subsections of Sections 38, 42 and 222 attempt to regulate these consequences to a positive end while not limiting religious freedom. Undoubtedly, this careful balance is necessary for peace, stability and national cohesion.

In the current author's opinion, Section 15 has a serious negative implication for religious peace and stability especially as it is contained in the Fundamental Objectives and Directive Principles of State Policy. This argument has been presented more fully elsewhere by the current author (Amoloye-Adebayo, 2016). Out of all the cited constitutional provisions, only Section 15 is about interpersonal relationships amongst citizens with reference to religion amongst other considerations such as ethnic and tribal affiliations. The other sections are more concerned with the role of religion and its regulation in the public sphere. For ease of consideration, the relevant portion of the provisions of the section is reproduced as follows:

15(1) The motto of the Federal Republic of Nigeria shall be Unity and Faith, Peace and Progress...

(3) For the purpose of promoting national integration, it shall be the duty of the State to: ...

(c) Encourage inter-marriage among persons from different places of origin of different religion, ethnic or linguistic association or ties; (Emphasis added)

The current author is not in agreement with the use of the terminology of 'national integration' in the cited provision. National cohesion appears to be a better construction in the ordinary dictionary sense of the terms 'integration' and 'cohesion', integration carries the sense of mixing with and joining a 'society or a group of people, often changing to suit the ways of life, habits and customs' while cohesion is all about the idea of 'being in agreement and working well together.' It is realistic to work towards cohesion in marriage involving deeply held convictions such as religious beliefs rather than working towards integration through norms that may be at variance with the religious identities of some persons. An instance of such possible conflict is part of the provision cited above which seeks to promote national integration through marriage. This is clearly at variance with the position of one of the religions in Nigeria - Islam. The Islamic position on marriage is very clearly detailed on who can marry whom and most Muslims would consider themselves bound by the relevant textual provisions on the matter. According to the dictates of Qur'an 5:5, interfaith marriages is strictly regulated such that a Muslim man may marry from the Jewish or Christian faiths but not a follower of traditional religion. However, a Muslim woman may marry only a Muslim man. This example comes very conveniently to the current author as an adherent of the Islamic faith. However, this is not to suggest that strategies for promoting national cohesion not integration should be 'Islam-centric'. Far from this, the purpose of the example is to underscore one fact. The fact is that dissonance between a central/core value of any religion and what is supposed to be common aspirations and values underpinning constitutional provisions for all citizens are likely to create sustained tensions and conflicts between adherents of that religious faith and others.

Put differently, where it is manifestly impossible to respect a constitutional value and a religious dictate on the same point, what happens is the creation of multiple identities to serve different purposes for the adherents. This shift between these two identities will doubt detract from the level of commitment to patriotic values for nation 'integration' and lead to lack of inner spiritual peace contentment. There are also broader ripple effects from the perspective of other citizens who are non-adherents of the religious faith concerned. Where the identity presented is one of adherence to the religious value at the expense of constitutional dictates, such individual is viewed by the non-adherents as unreasonable component in the process of nation-building and nationhood, thus shrinking their spirit of accommodation. The resolution of the internal conflict by the adherents is then tagged 'fundamentalism', 'extremism' or a downright commitment to destroy what is perceived as a common objective or value. The person is viewed as being non-tolerant and non-patriotic. To illustrate this point is the following observation of Bishop Matthew Hassan Kukah (2015):

We still continue to see ourselves only as Christians and Muslims. Rather than focusing on our common citizenship, we behave as if our Islam and Christianity

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identities dropped from heaven.... These identities have now become markers that seem to determine where we shall be and how far we can grow in our society.... Some parts of the country as in other parts of the world, families comprising Christians and Muslims live together, marry and intermarry and so on. In the North, this is anathema. Every time such issues come up; people say that this is what Islam teaches, that the religion allows Muslim men to marry Christian girls (and hopefully make them Muslims) while Christian men cannot marry Muslim women. How do we progress with this given that marriage is such a key institution for national integration? We must sift the chaff from the grain.

This non-Muslim perspective on the position of Muslims on interfaith marriages demonstrates the understandable confusion of a non-adherent in the face of what is perceived as a laudable constitutional value. Under Islamic family law, however, there are basic assumptions regarding roles and responsibilities that are matters of religious observance. One of such is that the burden of all material and economic provisions for the family rests squarely on the husband (Q4:34). Thus, non-maintenance and ill treatment is a ground for the dissolution of marriage in Islam (Q4:128) enforceable in Islamic law courts as well as constituting a religious sin. In the event of marriage between Muslim man and a Jewish or Christian woman, she is entitled to the same rights of dower (Q5:5) and maintenance as well as the protection of the Islamic court. But how will Islamic law compel a non-Muslim man married to a Muslim woman in the same circumstance? As a religious law, Islamic law is understandably only enforceable on adherents and non-adherents who willingly submit to its jurisdiction. The Muslim woman in that circumstance is thus outside the ambit of protection of Islamic law and this appears to be the wisdom behind the prohibition. In view of this, Section 15 may justifiably be viewed by Muslims as a clear opposition to their religious tenets which stance is not amenable to religious peace and stability.

Conclusion: Suggestions for Future Development

There is the need for the government to continually engage with the citizenry to foster a common understanding of what constitute religious freedom in Nigeria, given its historical and political context as well as the demography of its citizenry. This will reduce contestations amongst persons of diverse religious faiths and affiliations and ensure an appreciation of the core values of the various religions that cannot be departed from. It is expected that the process of such dialogue and public engagements will drive constitutional revision of such provisions as Section 15 in both semantic and substantive content as discussed. As the Constitution is the grand norm which binds all Nigerians together regardless of all other indices of division, no Nigerian should feel alienated by any of its provisions for sustained peace and national stability.

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