NIGERIA AND INTERNATIONAL HUMAN RIGHTS OBLIGATIONS ON RELIGIOUS FREEDOM: A LEGAL APPRAISAL*

Abstract
This article shall appraise the obligations of Nigerian government under international law on freedom of religion. International human rights law standards as set out in various United Nations (UN)and regional instruments are presently the yardstick in assessing the level of human right promotion, enforcement and enjoyment by member states and their citizens. Most member states particularly in the developing nations; including Nigeria are in most cases, negligent in upholding these international law standards in the recognition, promotion and enforcement of this right thereby exposing their subjects to various denials and breaches of their right without adequate protection or remedies. It is therefore pertinent to embark on the critical appraisal of these obligations of Nigeria government under international human rights law on freedom of religion in Nigeria. To do this, the researcher adopted the doctrinal research methodology which includes, the consideration and examination of statutes and case law as primary sources and journal articles, textbooks and periodic as secondary sources. It is the findings of this work that, the recognition and enforcement of the right to religious freedom is low in Nigeria. And that, most minority religious groups are repressed by the denials of their rights to religious freedom by those in positions of authority and fellow citizens in the major religious groups among other findings. It is recommended that, legal and institutional framework on religious freedom be strengthened by amendment and enactment of laws and improvement on the functionality of existing institutions and the creation of new ones to enhance religious freedom in Nigeria.

Keywords: Nigeria, International, Human, Rights, Obligations

1. Introduction

Needless to state that, Nigerian is part of the global community and a member or signatory to many international and regional treaties, covenants, protocols and other laws.[1] Nigeria is under obligation to enforce some of these international instruments[2] that have mandatory provisions on human rights. They include, religious rights which bestow on Nigeria strict obligations to ensure that, there is optimal obedience to the provisions of these laws meant to enhance the right to religious freedom in Nigeria and for the government to ensure their effective enforcement[3]. This is in addition to the legal obligation Nigeria also bears as provided in its Constitution that requires or obligates the government to ensure that, human rights which include, the right to freedom of thought, conscience and religion are promoted, enhanced and enforced at all times and in all circumstances. Nigeria is said to be a secular state where religious freedom should be observed, respected and enforced by the government and those in positions of authority[4].

2. Appraisal of Nigeria's Obligations on Religious Freedom Under International Human Rights Law

Universal Declaration of Human Rights (UDHR) 1948

Under the Universal Declaration on Human Right, provisions on the right to freedom of thought conscience and religion are mandatorily and clearly spelt out. It included the freedom to change one's religion or belief, freedom to either alone or in company with others and in public or private, manifest his religious practices in worship and observance. Article 18 of the UDHR provides; 'Everyone has the right to freedom of thought, conscience and religion. This right includes freedom to change his religion or belief in teaching, practices, worship and observance.' This simply implies that, every human being shall have the right to freely demonstrate or express their personal thoughts and even beliefs, whether they are equally fancied or held by other persons or not. This right should be exercised without any unnecessary constraints or restrictions, derogation or limitations by whoever or by any means[5]. These right as universally declared, include the right not to belong or practice any religion or belief and not to be coerced or forced into belonging to any religion. It also includes the right for one to at will and at any time change or modify his religion.

Granted that in every right that exist, (except in a few fundamental rights such as, the right to freedom from torture, inhuman or degrading treatment) some provisions of the law on circumstances under which human rights including the right to freedom of movement etc can be limited, restricted, derogated from or restrain. This must be done in accordance

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[1]For instance, the International Covenant on Civil and Political Right (ICCPR), International Covenant on Economic and Social Rights (ICESPR), Declaration on the Elimination of all forms of Intolerance and Discrimination Based on Religion or Belief and African Charter on Humans and Peoples' Rights (ACHPR).

[2]The UDHR has mandatory provisions that gives everyone the right to religious freedom.

[3]Every government owes its citizens the duty to ensure that all laws; domestic, regional or international are obeyed by the government and its people especially the laws that are meant to enhance human rights.

[4]Section 38 (1) of Constitution of the Federal Republic of Nigeria (CFRN) 1999 (as amended) provides for the right to freedom of thought, conscience and religion, while Section 10 of the same constitution provides that, Nigeria is a secular state and no government shall adopt any religion as state religion

[5]The UDHR is the law which for the first time actually prescribe the right to these freedoms.

with the law and international best practices, and as it is or can be obtainable in democratic societies.[6] Though the UDHR has no enforcement mechanism, Nigerian has the obligation to uphold and enforce its provisions, because it contains a series of principles and human rights standards enshrined in other legally binding municipal laws and international instruments such as the Constitution of Nigeria, ICCPR. Its expressions are of fundamental values which are shared by all member countries of the international community. It also as well, has a very important influence on the development of human rights laws globally[7]. The UDHR[8] made provisions for thirty basic human rights that every human being should bear and cannot successfully and conveniently live his life without and which nobody including government should deny any of its citizens. These rights continue to remain inalienable and form the foundation upon which international human rights law exists and develops. It remains an indispensable document and forms the basis for all democratic societies and their government existence, policies and programs including those on religion and religious rights. Nigerian cannot be an exception. The UDHR set out for the first time, fundamental rights to be universally protected[9].

International Covenant on Civil and Political Rights (ICCPR) 1966

The ICCPR contains more specific, clearer and elaborates provisions than those that were provided in the UDHR on civil and political rights and freedoms. The Covenant has legally binding provisions.[10] It provided for and established the Human Rights Committee that has the duty to monitor the implementation of these provisions by member countries and to increase access to seeking redress under the Covenant. An Optional Protocol was also established as well on individual complaints mechanize[11] Unlike the UDHR, the ICCPR contains a specific and legally binding provision on the right to freedom of religion for minorities. It provided in its Article 27 as follows: 'The right for members of religious, ethnic or linguistic minorities to enjoy their cultural, practice their religion and use their language'. In the same direction, the covenant also has further clear and legally enforceable provisions, prohibiting any form of propaganda advocating war or national racial or religious hatred. It provides; Article 20 'Prohibition of propaganda advocating war or national racial or religious hatred'.

The Covenant also provided for the right to peaceful assembly, right to freedom of association and the right to participate in the conduct of public affairs. The right to vote and to be elected and to access public services no matter your religious affiliation or preferences and the right to freedom of opinion and expression. It as well, contains, the right to equality before the law and equal protection[12]. These rights are conscientiously provided to promote, protect and enhance religions equality for citizens, globally and particularly by State parties. Each state party is expected to respect and to ensure that all individuals within its territory and subject to their respective jurisdictions, enjoy the rights recognised in the covenant without discrimination of any sort, or on grounds such as colour, sex, language, religion, political or other opinion[13]Party States are also under obligation to take necessary steps in accordance with their constitutional provisions and the covenant, to adopt such laws or other measures as may be necessary to give effect to the rights recognized in the covenant[14].

Party State also undertook to ensure that, any person within their territories whose rights or freedoms as contained in the Covenant are violated, shall have an effective remedy notwithstanding that, the violation has been committed by persons acting in an official capacity, and to ensure that the competent authorities shall enforce such remedies when granted[15]. Nigeria is a party to the ICCPR and assented to these obligations when it ratified the CEDAW, ICCPR, ICESCR and the Covenant Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.[16] This without saying, has expressly put Nigeria under obligation to ensure that, these rights as provided in the covenant, are recognized by it and implemented or enforced as well. Granted that the right to freedom of religion can be limited or derogated from, it has to be done based on the provisions of the law and as necessary to protect public safety, order, health or morals or the

[6]Derogation from fundamental rights is often justified on grounds of national security concerns, public order and safety or on an act of the National Assembly during times of emergency. See Section 45 (1) & (2) of the CFRN 1999 (as amended). This is of course restricted to Sections 37, 38, 39, 40 & 41 of the Constitution, which are on rights to private and family life, peaceful assembly etc.
[7]*ibid*. Universally the UDHR laid down the ground work for no fewer than nine core United Nations human rights treaties.
[8]*ibid*. This declaration was made in 1948 after the first and second World War that effected human rights globally in the most devastating manner and there came the need for urgent and comprehensive redress.
[9]*ibid*.
[10]See, The International Covenant on Civil and Political Rights, in Manual for Human Rights Education with Young People Council of Europe Portal at https://www.coe.int.> accessed 6th August, 2024.
[11]*ibid*. The committee was established under Article 28 of the Covenant and a first optional protocol for individual complaint for the ICCP was established and by May 2012 the protocol was ratified by 144 States and the second optional protocol came into force in 1991 meant to abolish death penalty.
[12]Articles 21, 22 and 25
[13]Article 2 (1)
[14]*ibid* (2)
[15]Article 1(a-c).
[16]University of Minnesota, Human Rights Library, Ratification of International Human Rights Treaties-Nigeria.

fundamental rights and freedom of others. This must also be done bearing in mind practices and standards or international democratic standards[17]

International Covenant on Economic, Social and Cultural Rights (ICESCR) 1966

The ICESCR is one of the international instruments Nigeria is a party state. It also has the obligation to ensure that, all provisions therein are recognized, promoted, obeyed and enforced for the enhancement of human rights in these states. It is also one of the international laws that have legally binding provisions on its party states and which was extensively inspired and influenced by the Universal Declaration on Human Rights provisions and became effective on 3rd January, 1976 after its adoption in 1966. However, the ICESCR has no specific provision on religious freedoms but it has provisions that are directly related to this fundamental right and which are also meant to enhance the enjoyment and enforcement of the rights to freedom of thought, conscience and religion[18] For instance, the Covenant provided that, state parties to the covenant undertook to ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights set out in the covenant[19]. This implies that, social rights such as right to freedom of peaceful assembly and association which included right to freedom to choose religion or belief, to join or associate with others and cultural rights such as, right to freedom to practice any type of religion including native or traditional or African religious beliefs or practices[20] should be recognized and enforced by party states. The enhancement, promotion and enforcement of cultural rights which includes traditional beliefs of the people would also enhance and promote the Africa Traditional Religion and other native and minorities religious beliefs.

Declaration on the Elimination of all Forms of Intolerance and Discrimination Based on Religion or Belief 1981.

This Treaty made copious provisions to enhance religious freedom globally. It was promulgated by the United Nations General Assembly Resolution 36/55 of 25 November, 1981 to eliminate all forms of religious and beliefs intolerance and discriminations. The declaration was necessitated by the rising level of religious intolerance and discriminations globally by both state and non-state actors[21]. Being a United Nations instrument, it is binding on Nigeria and should be so recognised, promoted and enforced. Article 1 of the Declaration provided;

1. Everyone shall have the right to freedom of through, conscience and religion. This right shall include freedom to have a religion or whatever belief of his choice and freedom either individually or in community with others and in public or private to manifest his religion or belief in worship, observance, practice and teaching
2. No one shall be subjected to conversion which would impair his freedom to have a religion or belief of his choice.
3. Freedom to manifest one's religion or belief may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order and fundamental rights and freedoms of others.

The above provisions of the law are very similar with the provisions of the Constitution of Nigeria on religious freedoms which ordinarily should add more impetus to government obligations to ensure the enforcement of the declaration and for the citizens to insist on the enjoyment of this right.[22] Article 2 of the Declaration provides;

1. No one shall be subjected to discrimination by any state institution, group of persons or person on ground or religion or other beliefs.
2. For the purpose of the present declaration the expression intolerance and discrimination based on religion or belief means any distinction, exclusion, restriction or preference based on religion or belief, and having as its purpose or as its effect nullification or impairment of the recognition enjoyment or exercise of human rights and fundamental freedoms on equal basis

Nigeria as a member of the United Nations is under legal obligation to recognise and enforce every declaration made by the United Nations General Assembly. United Nations declarations do not require the signing or ratification or adoption by member states for them to be legally binding or enforced in the states. The declarations have automatic application upon being adopted and its legal bindingness is strengthened by conscience[23]

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[17]ICCPR, Article 18 (3) recently, the Enugu State Government ordered Churches and Mosques to remove outdoor loudspeakers mounted in their premises within 90 days. Some public commentators view this action by the government as right and meant to protect the right of others to peaceful living and public order. See R Eze, 'Enugu Orders Churches and Mosques to Remove Outdoors Loudspeakers in 90 Days', *Punch Newspaper*, (Lagos, 15th August, 2024) 9.

[18]For instance, Article 3 of the Covenant.

[19]*ibid*

[20]It is generally believed that, African Traditional Religion is based on ethnic and traditional values and of course cultures, passed from generation to generation through folk tales, songs and festivals.

[21]See the Title and the Preamble of the law.

[22]CFRN 1999 (as amended) s.83 (1) & 45.

[23]A Friedman, 'Compliance without Ratification: Using International Law in Non-Binding Scenarios' [2021] (Special Issue) *Quebec Journal of International Law,* 137-157.

African Charter on Human and Peoples Right 1981

This is a regional legal instrument promulgated by the Organization of African Unity (OAU) now known as the African Union (AU)[24] It contains clear provisions on the right to freedom of religion. Nigeria as a member nation was part of the making of the Charter and was formally ratified and made part of Nigeria laws on 21 October, 1986 through the promulgation of an Act of the National Assembly; the African Charter on Human and Peoples Right (Ratification and Enforcement) Act.[25] This Charter do not only have provisions outlining various human rights, but also establishes a legal mechanism for the promotion and protection of various human rights in African including the rights to freedom of religion and it is binding on Nigerians and its government as a member State. Nigeria operates a dual system of law. That is to say, no treaty signed by Nigeria and other country can operate in Nigeria except such treaty is domesticated as part of Nigeria Laws[26] More importantly is the fact that, it is only the African Charter on Human and Peoples Right that has been domesticated in Nigeria as a treaty.[27] The obligation or the enforceability of the African Chamber on Human and Peoples' Rights in Nigeria, is no longer in any doubt as various courts in Nigeria have given effect to the fact that, it has become part of Nigerian laws and it is enforceable in Nigeria[28]. The African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act[29] provides:

> As from the commencement of this Act the Provisions of the African Charter on Human and Peoples' Rights which are set out in the schedule to this Act shall subject as hereunder provided, have force or law in Nigeria and shall be given full recognition and effect and be applied by all authorities and persons exercising legislative, executive or judicial powers in Nigeria.

In line with the above provision, the Supreme Court of Nigeria in the case of A*bacha v. Fawehinmi*[30] held:

> Where however, the treaty is enacted into law by the National Assembly as was the case with the African Charter on Human and Peoples' Rights, which was incorporated into Nigerian municipal (ie domestic) law by the African Charter on Human and Peoples Ratification and Enforcement Act[31], it becomes binding and our courts must give effect to it like all other laws falling within the judicial power of the courts.

Again, the Fundamental Rights (Enforcement Procedure) Rules, 2009 included the ACHPR provisions as part of the rights that can be enforced through the rules when it provided thus:

> Any person who alleges that any of the Fundamental Rights provided for in the constitution or African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act and which he is entitled has been, is being or is likely to be infringed, may apply to Court in the state where the infringement occurred or likely to occur for redress[32].

The government of Nigeria, its people and the Courts are therefore under legal obligation to ensure that, all the rights provided in the charter are enforced and implementation at all times.

3. Conclusion and Recommendations

Issues on human rights have grown in relevance and interest beyond national boundaries. They are issues of priority at regional and international forum whereby certain standards are set for nations for the enforcement and enjoyment of human rights. It has been shown that one of the rights that are highly neglected by various government is the right to freedom of religion especially as it concerns minority religious groups. Most of the breaches on the right to freedom of religion are perpetrated by those in positions of authority who ordinarily have the duties to protect this right. There is therefore every need for the revitalisations of the laws and institutions on religious freedoms and the availability and access to remedies in cases of abuses.

The work hereby recommends that; i) International laws and institutions on religious freedom be strengthened and their enforcement mechanism improve to guarantee and ensure the enjoyment of this right by citizens in the various nations. ii) Improvement in international monitoring of the compliance of nations to these laws put in place for the enjoyment of the right to freedom of religion. iii) Curtailment of international interference and sponsorship of religious violence and arm struggles particularly in developing nations. iv) Adequate sanctions and punishments be provided against those infringing on the right to freedom of religion internationally.

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[24]*ibid*

[25]African Charter on Human and Peoples Right (Ratification and Enforcement Act), Article 31

[26]CFRN 1999 (as amended) s 12(1).

[27]EO Ekhalor and C Odinaka 'The Impact of Economic and Social Right in Nigeria: An Assessment of the Legal Framework for Implementing Education and Health as Human Rights' in V Gauri. And D Brinks, (eds) *Counting Social Justice: Judicial Enforcement of Social and Economic Right in Developing World*, (Cambridge: Cambridge University Press 2008) pp1-2.

[28]For instance, provisions of the Charter were given enforcement interpretation by Nigerian Courts in cases such as *Gbemre v Shell* (unreported) Suit No: FHC/B/CS/153/05. On the right to environment safety; *Odefe & Ors v Attorney General of the Federation* (2004) AHRLR 205 at 211; *Ahamefule v Imperial Med*ical *Center* (Unreported) Suit No: D/1627/2000 delivered on 27/09/2012 cited by E O Ekhalor *et a, op cit*, 10-14.

[29]Cap A9, LFN, 2004.

[30]*Abacha & Ors v Fawehinmi* (2000) 6 NWLR (Pt 660) 228, or (2002) 3 LRC 296.

[31] Cap A9, LFN, 2004.

[32] See FREP Rules, Oder II Rule1.