

A Legal Perspective on Religious Freedom in PNG

Hon. Chief Justice Arnold Amet

I am indeed very honoured to have been invited to participate in this very important subject of “religious freedom”. It is a subject of much interest in our nation in recent years. It has caused much debate, tension, dissension, and open conflict between members, followers, and adherents of different religious denominations, and religions of the world. It is, therefore, also a subject of much sensitivity, for it has the potential to arouse much emotional reaction.

I have, of course, been extended the privilege of addressing the subject from a legal perspective, principally because I am legally trained, and am a judge, but, more importantly, I trust, because I am a Christian judge, not simply a judge, who is a Christian, but a Christian judge, or at least one, who desires to be more of a Christian judge, because there is a marked difference, though some would suggest it is mere semantics. And so, I am going to address the subject from a Christian legal perspective as well, for which I make no apologies.

We declare in the Preamble to our National Constitution that:

“We, the People of Papua New Guinea – pledge ourselves to guard, and pass on to those who come after us, our noble traditions, and the Christian principles that are ours now. . . .

“We, the People, do now establish this sovereign nation, and declare ourselves, under the guiding hand of God, to be the independent state of Papua New Guinea.”

Section 45(1) then provides that:

“every person has the right to freedom of conscience, thought, and religion, and the practice of his religion and beliefs, including freedom to manifest, and propagate, his religion and beliefs in such a

way as not to interfere with the freedom of others, except to the extent that the exercise of that right is regulated or restricted by a law that complies with Section 38.”

A reference, in section (5), to religion, includes a reference “to the traditional religious beliefs and customs of the peoples of Papua New Guinea”.

And so, whilst, in the Preamble, we declare and assert ourselves to be a Christian nation, by adoption of Christian principles, the specific provisions of Section 45(1) and (5) permit the practice of religions, other than Christianity, as well.

Religion is not defined in the Constitution to mean simply the Christian religion. A simple definition from the dictionary means “belief in a superhuman power, or powers, to be worshipped, expressed in conduct and ritual, often involving a code of ethics”.

Because it is declared in the preamble that we adopt Christianity and Christian principles as our national faith or religion, it is thought that the specific provisions for the freedom of religion should mean the Christian religion, and its denominations, only. I think, however, that subsection (5) makes it clear that the expression “religion” is used generically, as the definition I quoted, and includes traditional religious beliefs, and religions other than Christianity, as well.

Section 45 provides, generally, for the freedom to practice one’s religion and beliefs, and to be free to demonstrate, and spread, that religion and belief in any way, as long as it does not interfere with the freedoms of other people.

This is, however, NOT an absolute right. It can be regulated, or restricted, by the state, by law, pursuant to Section 38, which allows the state to qualify certain rights, including freedom of religion and its practices, if necessary for the public interest in defence, public safety, public order, public welfare, public health, and so on, to the extent that the state, through Parliament, considers that such qualification is reasonably justifiable in a

democratic society, having a proper respect for the rights and dignity of mankind.

This simply means that Parliament can qualify this freedom, by regulating, or restricting, how a religion, and its practice, can be exercised by its members.

The effect, then, of this right to freedom of religion, and its practice, manifestation, and propagation, is that individuals, members, and followers of any religion have the freedom to exercise these rights in “such a way as not to interfere with the freedom of others”.

The state, however, has the sovereign responsibility, and right, to qualify the exercise of this right, by regulating, or restricting, its practice or exercise, in the public interest, in the areas of public defence, public safety, public order, public welfare, public health, the protection of children, and persons under disability, the development of under-privileged, or less advanced groups or areas, or in order to protect the exercise of the rights of others.

The state, meaning Parliament and government, exists for the benefit of its people. The institution of government, in whatever form is ordained of God for the good government, peace, and welfare of the people, HAS the RIGHT, such as prescribed by section 38, to qualify basic rights and freedoms, by regulating and restricting their exercise.

And so, quite simply put, if the socio-political, and other circumstances, of the country, at any given point in time are such that the government and Parliament, in its collective wisdom, considers it necessary, and for the specific reasons prescribed, that it is reasonably justifiable in a democratic society, having proper respect for the rights and dignity of mankind, to regulate and restrict freedom of religion, it has the responsibility to do so.

Many Christians, Christian leaders, as well as community leaders, ask the question, if this is a Christian country, do we not have the right to preclude other religions of the world from starting their religion, and its practice, in our country?

I think the answer to that must be NO. The Constitution recognises a universal fact that there are other religions in the world other than Christianity. We are a part of the world community of nations, and, given the fact that we have chosen to adopt the democratic form of constitutional government, we must also respect the rights of other people to their beliefs.

It is not necessarily inconsistent that, while we declare our nation to be a Christian one, we acknowledge the right to freedom of other religions. Rather, the acknowledgment demonstrates some of the qualities that are necessary in Christianity, such as tolerance, love, and peaceful coexistence.

Many Christians today focus much energy and attention on the conflicts, dissections, and emotional reactions between members of different denominations of the Christian faith, and between different religions, including Christianity. And, unfortunately, this causes much imbalance of our perspective. We begin to perceive issues of freedom of religion, and personal faith, from these perspectives, which are often emotionally charged, and not from that, which should be positive.

I believe that, if we Christians, and the church, do not become overly preoccupied with seeming differences and dissensions, and see these circumstances as opportunities to exhibit and propagate the positive values of our religion and faith, then the issues, or questions of freedom of religion, do not need to arise, or be debated.

You might well ask, what do I mean by that. I mean that, if we, the Christian church, would begin to focus on the values and the gifts of the Spirit that unite US, and all mankind, together, and begin to manifest them, and outline them, in our personal and corporate lives, such as love, which is patient and kind, which is not jealous, or conceited, or proud, not ill-mannered, or selfish, or irritable, or which does not keep a record of wrongs, then, really, the issue does not arise. We will learn to love those of other religious persuasions, in spite of our differences. We will learn to be tolerant, and begin to understand our difference.

And, friends, does that not provide an excellent opportunity to propagate our faith, by our actions and conduct, in obedience to the Great Commission of our Lord Jesus.

In conclusion, my humble submission and invitation to Christians, and to you, the leaders, is that we heed the command of our Lord Jesus, who said:

“I demand that you love each other, as much as I love you” (John 15:12), and

“I have given you an example to follow; do as I have done to you” (John 13:15).

This, I would exhort you all, is our call to action – LOVE IN ACTION.

FOR FURTHER READING

The Universal Declaration of Human Rights and its Predecessors (1679-1948), *Textus Minores*, vol X, F. M. Van Asbeck, ed.,. Leiden: Brill, 1949, 99 pp.

The Constitution of the Independent State of Papua New Guinea, Port Moresby PNG: Government Printer, 1975, 123 pp.

“Declaration on Religious Freedom” (*Dignitatis Humanae*), in *The Documents of Vatican II, with Notes and Comments by Catholic, Protestant, and Orthodox Authorities*, Walter M. Abbott, and Joseph Gallagher, eds, London UK: Geoffrey Chapman, 1965, pp. 675-700.

Carillo de Albornoz, A. F., *Religious Liberty*, New York NY: Sheed & Ward, 1967, 209 pp.

The Attitude of the Church towards the Followers of Other Religions, Secretariate for Non-Christians, ed., Vatican, 1984, 22 pp.

Brunton, Brian, and Colquhoun-Kerr, Duncan, *The Annotated Constitution of Papua New Guinea*, Port Moresby PNG: University of PNG Press, 1984, 596 pp.

Freedom of Religion: Basis for Peace and National Development (Proceedings of the South Pacific Congress of the International Religious Liberty Association (IRLA), Suva Fiji, June 7-10, 1993), 158 pp. [Available from IRLA Association, South Pacific Division, 148 Fox Valley Road, Wahroonga NSW 2076.]