RE-EMERGENCE OF SHARI'AH PENAL LAW IN NORTHERN NIGERIA: ISSUES AND OPTIONS

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Abstract: It was in quest of political legitimacy as well as religious purity that former governor of Zamfara state, Senator Sani Ahmed Yerima, started a crusade in 1999 to re-establish Shari'ah. That initiative immediately found spacious reverberation with many Muslims. For the clerics, it was an opportunity to restore a religious and moral heritage that had been suppressed after colonial conquest. Many people saw Shari'ah as an instrument for achieving a just, safe, compassionate and less corrupt society. Thus, the Zamfara government's actions were soon taken up by other states, whose governors followed with varying degrees of enthusiasm. The federal government, however, declared Shari'ah to be incompatible with the constitutional guarantee of freedom of religion. The northern governors responded by highlighting that the same constitution vested in states concurrent powers to establish their own court systems. The writers develop this narrative and look into the constitutional provisions that guarantee freedom of religion and international and national judicial decisions where the right of religion has been vindicated.

Keywords: Islamic Law, Shar'iah, Multi-religious State, Secularism, Freedom of Religion

Introduction

Religion in Nigeria plays a prominent role in the life of the people. Some people believe that it is their cradle of light, wisdom and knowledge. Faith is increased through the study of scripture and prayer. Religious leaders in northern Nigeria are feared, respected and loved. They mediate situations that have defied several remedies. Initially, everybody worshipped whatever they wished until the introduction of Islam in the northern part of the country¹ in the early seventeenth century. As of today, Islam has become well-established in the northern states, with central mosques in almost all the state capitals.²

Before the advent of the British, Shari'ah and local customary law applied across the territories that would become Nigeria. After colonisation, the British introduced English Law. This did not, however, completely abrogate the existing legal systems; Shari'ah remained the dominant legal system under the Sokoto Caliphate, which operated in the northern region subject to trifling limitations

imposed by the British.³ On the eve of Nigerian independence, however, the British sought to limit the scope of Shari'ah. Finally, in 1967, it was formally excluded all together from the legal system of independent Nigeria when the Islamic Court of Appeal was abolished. However, some aspects of Shari'ah continue to be used at village level as part of Area or Customary Law.⁴

In 1978, the issue of Shari'ah resurfaced in the context of drafting a new civilian constitution. Heated debates focused on using the word 'secular' to describe the state and on the proposed creation of a federal-level Shari'ah Court of Appeal. Eventually, the matter was resolved through concession: the court was not created and the new constitution prohibited the adoption of any single religion by the state, but with the word 'secular' being dropped.⁵ Then in 1999, in quest for political legitimacy as much as for religious purity, the former governor of Zamfara state, Senator Sani Ahmed Yerima, started a campaign to restore Shari'ah. His initiative instantly found wide resonance with many Muslims.⁶ For the clerics, it was an opportunity to restore a religious and moral heritage that had been suppressed after colonial conquest,⁷ while many other people saw Shari'ah as an instrument for achieving a just, safe, compassionate and less corrupt society.⁸ Thus, the Zamfara government's initiative was quickly taken up by other states, whose governors followed with varying degrees of enthusiasm.⁹ Nevertheless, the federal government declared Shari'ah to be incompatible with the constitutional guarantee of freedom of religion. The far northern governors responded that the same constitution vested in the states concurrent powers to establish their own court systems.

International debate on Shari'ah in northern Nigeria has been distorted by such headline-grabbing events as the stoning of Amina Lawal Kurmi¹⁰ for adultery (*zina*) in 2002, despite Lawal's conviction being ultimately overturned on the basis of an argument made within Islamic law. Likewise, in the case of Saffiyatu Hussain T/Tudu v. A.G Sokoto State,¹¹ the appellant was found guilty and convicted of adultery by the Upper Shari'ah Court, Gwadabawa, Sokoto State, contrary to sections 128 and 129 of the Shari'ah Penal Code 2000 of Sokoto State. Thus, although she was sentenced to the *hadd* punishment of *rajm* (stoning to death), the Shari'ah Court of Appeal set aside the conviction of the lower court and discharged the appellant.

Overall, such extreme punitive measures are very rare, with most serious crimes continuing to be dealt with by normal secular law courts. In many areas, minority Christian populations still consider imposition of Shari'ah to be a restriction of their rights, for example to public music and alcohol consumption. It also raises fears amongst Christians that they may be subjected to the principles of Shari'ah against their will. However, over the years, critics have been reassured by the restraint shown by northern governors in their application

of harsher punishments (*hudud*). Although the exact effect of Shari'ah on non-Muslims varies across the region (chiefly because it has not been widely applied in some states), Christians tend to be free both to drink alcohol (if they do so in private) and use secular courts. In many cases, the authorities have made efforts to underline the common benefits that may derive from Shari'ah, especially given that many people, including Christians, have little faith in the state's justice system and its ability to build bridges with Christian communities.¹²

Why has the introduction of the Shari'ah generated so much heat? What does the introduction of Shar'iah mean to those who oppose it and what implications are there for non-Muslims?¹³ It is important to visit the past in order to make sense of the current situation – and, indeed, if it is to be hoped that any plans can be made for the future of Nigeria. There is a maxim: those who do not learn from their past mistakes are condemned to repeat them.

Freedom Of Religion And Limitations

Nigeria has a long history of state-imposed religion. Kingdoms based on indigenous beliefs often fused religion with temporal leadership, imposing the state's religion on its subjects. Following this tradition, at the beginning of the nineteenth century, a Fulani Muslim scholar, Usman dan Fodio, conquered the Hausa states, taking over much of northern Nigeria. He imposed Shari'ah and exercised loose control over a surrounding emirate commonly called the Sokoto caliphate. This kingdom remained intact until the British imposed colonial control after 1900. Under the British practice of indirect rule, however, Shari'ah and other local customs and institutions continued to function; colonial officials only prohibited severe Shari'ah penalties like death by stoning and amputations.¹⁴

At the outset of independence, the Nigerian Constitution incorporated the principle of the separation of religion and state while also upholding the religious freedoms of both individuals and communities. In practice, however, freedom of religion was often violated during the early independence years, with widespread discrimination based on religion in state employment and investment.

The 1999 constitution, like the charters that preceded it, was adopted only after debate on the issue of religion. Some Muslim leaders sought a prominent position for Shari'ah, while other Nigerians argued for a purely secular state. The result was a compromise that essentially left the existing arrangement intact, the new constitution stating: "The Government of the Federation or of a State shall not adopt any religion as State religion."¹⁵ But under Nigeria's federal system, the constitution does allow individual states to establish their own courts for matters not covered by federal law. It also allows states to establish their own Shari'ah Court of Appeal for civil matters.¹⁶ Another provision which has been subject to differing interpretations states that "every person shall be entitled

to freedom of thought, conscience, religion...and freedom...to manifest and propagate his religion or belief in worship, teaching, practice and observance.”¹⁷ Advocates of a more robust Shari’ah approach in Nigeria claim that practicing Shari’ah is integral to Islamic “worship, teaching, practice, and observance” and therefore should be allowed under this clause. Many Christians and secularists argue that official and institutionalised Shari’ah violates both their freedom of religion and the separation of religion and state.

After the restoration of civilian rule in 1999, advocates of Shari’ah began to assert themselves at the state level. In 2000, Ahmed Sani, governor of Zamfara state in the northwest, oversaw the implementation of a new law that extended Shari’ah to criminal matters. President Obasanjo did not challenge the move, prompting 11 other northern states to follow suit by adopting some form of Shari’ah criminal code. Although these codes only applied to Muslims, they exacerbated friction between religious groups, friction that in some cases broke into communal violence, killing hundreds of people.

Shari’ah is not uniform across the Muslim world. Within Sunni Islam, there are four major schools of jurisprudence (Hanafi, Maliki, Shafi’i and Hanbali) all of which developed around the turn of the first millennium. In Nigeria, the Maliki School is dominant. It is considered a more flexible variant than the others. All four schools, however, adhere on some level to the punishments for major crimes (*hudud* offences) described in the Qur’an or the sayings of the Prophet Muhammad, including death by stoning for adultery, eighty strokes for false accusation and amputation for theft, etc. Flexibility arises from the standards of proof involved and the particular circumstances of a crime. In Nigeria, there is also variation between states and individual courts concerning how Shari’ah is interpreted and applied, partly because the new criminal system was erected so quickly. Furthermore, defendants retain their right to appeal to the federal courts. As mentioned, there have been at least two cases of women who have been sentenced to death by stoning for extra-marital sex, only to have their sentences overturned on appeal.

The laws of a nation should not impose religious tenets on every citizen while also using state infrastructure to compel compliance. Hence, international human right instruments and the constitutions of various African states all guarantee the right to freedom of thought, conscience and belief, in addition to freedom of religion.¹⁸ Obviously, this secular approach carries the danger of various religious groups challenging state legislation when it is deemed to run contrary to their ideals. For example, in the United States case of *Smith v. Board of School Commissioner of Mobile County*,¹⁹ the court refused to accede to a request that a number of school textbooks be withdrawn from the school system because they allegedly promoted secular values.²⁰ By contrast, in 2015 the United

States Supreme Court ruled in favour of a Muslim woman, Samantha Elauf, who filed a law suit after she was denied a job at an apparel company, Abercrombie and Fitch, because she wore *hijab* (headscarf) for religious reasons. The court handed victory to the US Equal Employment Opportunity Commission (EEOC), which sued the company on her behalf.

The judiciary in Nigeria has interpreted this right to freedom in a number of cases, with the tone being set by Ayoola JSC in *Medical and Dental Practitioners Disciplinary Tribunal v. Okonkwo*,²¹ where his lordship emphasised that law has the role of ensuring “fullness of liberty when there is no danger to public interest,” which the Nigerian courts interpreted as emphasising freedom of religion. The courts in Nigeria have generally tilted more towards a ‘free exercise clause’ than a ‘non-establishment clause.’ The limitation of a free exercise clause is enshrined in section 45 of the constitution, where freedom in the interest of public defense, public safety, public order, public morality or public health “for the purpose of protecting the rights and freedom of others” has always been cautiously allowed.²² In *Provost, Kwara State College of Education, Ilorin & Ors v. Bashirat Salu & Ors*,²³ the Court of Appeal held that denying female Muslim students of the college the right to wear *niqab/hijab* under the pretext of protection of public safety, public order and the right of others violated the free exercise clause in section 38. It was also established that the free exercise clause²⁴ can only be restricted by the constitution itself or by law(s) made in protection of section 45,²⁵ not mere policy.

Nevertheless, the High Court of Lagos State, in *Asiyat Abdulkareem & Ors v. Lagos State Government & Ors*,²⁶ held that female Muslim students who wear *hijab* infringe the rights of non-Muslim students who will feel inferior to those *hijab* wearing students. The Court of Appeal sitting in Lagos, however, set aside this judgment.²⁷ Similar to this, for security reasons the government of Chad banned people from wearing the full-face veil following two suicide bomb attacks in 2015. The Chad government accused Nigerian militant Islamist group Boko Haram of the bombings, which killed more than twenty people. The Chadian Prime Minister, Kalzeube Pahimi Deubet, stated that the veil was used as camouflage by the militants and said security forces would burn all full-face veils sold in markets.²⁸

It is hoped that these cases will guide African countries in their pursuit of a relatively neutral path of secularism, in conformity with the secularism that is required of the modern state.

The Re-Emergence of Shari'ah Penal Law in Northern Nigeria

Twelve states in northern Nigeria have adopted the new Shari'ah legal system.²⁹ The Shari'ah courts in these states have jurisdiction over several new offences beyond personal law, including theft, unlawful sexual intercourse, robbery, defamation, and drinking alcohol. The Shari'ah courts may impose punishments in accordance with the provisions of the Shari'ah Penal Code Law (SPCL), which include: death, forfeiture and destruction of property, imprisonment, detention in a reformatory, a fine, caning (flogging), amputation, retaliation, blood money, restitution, reprimand, public disclosure, boycott, exhortation, compensation, closure of premises, and warnings, amongst others.³⁰ The adoption of SPCL attracted international attention and generated controversy within Nigeria. One concern is that SPCL violates basic human rights and human dignity, especially regarding equality before the law, equal protection of the law, torture, and degrading and inhuman punishment. Within the Nigerian legal system, SPCL raises questions about certainty of law, supremacy of law, separation of state and religion and strict standards of evidence and proof.³¹

The introduction of SPCL in the Nigerian legal system has been attributed to the rising influence of fundamentalist groups.³² The awakening of stronger Islamist tendencies in northern Nigeria has been closely linked to the successful Iranian Revolution against the Pahlavi dynasty over two decades ago. The emergence of an Islamic government under the leadership of Ayatollah Khomeini inspired Muslims across the globe, particularly amongst the youth, who saw Islam as a viable alternative to the bi-polar system of capitalism and communism. In the heartlands of Sunni Islam, a new rhetoric soon emerged; aimed at counteracting the Shiite threat posed by Iran, it sought to create a new generation of Sunni fundamentalists determined to produce an Islamic revolution based on the Sunni tradition of keeping to the path of the pious forebears (*salaf as-salih*).³³ The Muslim Brothers in Nigeria, for example, were a Sunni Islamic sect that, inflamed by the success of the Iranian people, joined with Ibrahim El-Zakzaky, an economics student at a northern Nigeria university, in his struggle for an Islamic State in Nigeria. The Muslim Brothers' close association with Iran, and the fact that several of their members were given scholarships by the Iranian government to study at the city of Qom, led inevitably to greater influence from Shiite doctrines. El-Zakzaky was himself seen as a Shiite, a fact that led to the disintegration of his movement. Nevertheless, a splinter group was formed, led by some of El-Zakzaky's most loyal supporters, including Abubakar Mujahid (in Zaria), Aminu Aliyu Gusau (in Zamfara) and Ahmad Shuaibu (in Kano). This group maintained that its disagreement with Zakzaky was purely doctrinal because they rejected Shiite theology. They remained committed, however,

to the revolutionary process of Islamisation while remaining faithful to Sunni orthodoxy.³⁴

As suggested above, independence did not change Nigerian dependence on an imposed British legal system or the hostility directed towards anything Islamic, including the introduction of an Islamic Banking system. Even today, Islam, its adherents and institutions have become daily objects of ridicule in the mass media and the focus of surveillance by security agencies. What we have is not a great nation at harmony with itself, but groups of people of diverse worldviews and cultures lacking any serious cohesion: a conceited Christian minority on one hand, an alienated, discontented but unyielding Muslim majority on the other, all living in a country whose economy is wholly controlled by Western imperialism.³⁵

In this context, the struggle for SPCL was reflective of a need for “independence to live according to our convictions, values and culture, the independence to operate, the socio-economic, legal educational and political systems we believe in, understand and respect, the independence to associate with who we wish, how we wish and when we wish.”³⁶ It was further postulated that section 38 of the 1999 Constitution guarantees freedom of religion.³⁷ A Muslim firmly believes that submission to the Will of Allah is inchoate if he chooses or is made to follow some part of His injunctions (i.e. personal law) while abandoning others (the penal system). Professor Yadudu argues that sections 4, 6, 277, and the Second Schedule to the 1999 Constitution establish both the right to new Shari’ah Courts, the expansion of their jurisdictions and the right to enact laws that draw inspiration from religious and non-religious norms. In consonance with these provisions, the SPCL represents an Islamic penal system, enacted in a written law and with specific punishments prescribed. Yadudu further argues that the Nigerian Constitution did not declare Nigeria to be a secular state, meaning that any state initiatives implementing the Shari’ah cannot be said to have violated Section 10 of the constitution prohibiting any state from adopting any religion as a state religion.³⁸ He also contends that any suggestion that the Shari’ah should be reviewed or reformed will attract a severe rebuke from Muslims, who will see the effort as, at best, revisionist in character or, at worst, an attempt to meddle with Allah’s injunctions.

In some northern states, implementation of Shari’ah has been driven by an Islamic law enforcement agency popularly called *hisbah*. These enforcement organisations are composed mainly of locally-recruited young men. They have been most active in Kano and Zamfara states, rather than the other states. Their role is to ensure observance of Shari’ah and report breaches to the police. In some respects, their introduction followed a similar logic to the emergence of vigilante groups or non-official security providers in other parts of the country

– namely, a deep public distrust of the federal police and a desire to seek other means of justice. *Hisbah* apprehends offenders, hands them over to the police, but does not prosecute them because it is not constitutionally empowered to do so.³⁹ These organisations operate with the consent and support of state governments, although the strict nature of that support, as well as mechanisms for accountability, vary from one state to another.⁴⁰ In some, the government pays a small salary and provides uniforms, vehicles and offices at both the state capital and local government secretariats. In others, they are less organised and unpaid. Kano has the most developed organisation due to the activities of former governor Shekarau. Its *hisbah* has 9,000 members who receive stipends. It also has an active censorship board and committees to look at public morality issues. In some states, new *hisbah* members undergo a training programme with a brief outline of their duties and the limits of their powers. Introduction of the *hisbah* has raised controversies. In February 2006, the federal government accused the Kano state government of seeking foreign funding to turn it into a parallel police force. Kano *hisbah* officials denied this accusation and maintained that there is a difference between *hisbah* and the police.

In the early years of its operation, there were reports of *hisbah* violence. Operatives would sometimes assault women they judged to be indecently dressed, destroy alcohol merchants' shops and deal severe punishment to anyone alleged to have insulted Islam. However, there were no reports of extrajudicial killings⁴¹ and, with time, both the enthusiasm and human rights abuses associated with the early years declined. More recent controversies have centred on more prosaic issues, such as whether men and women can mix on public transport. The Kano *hisbah* tried to stop this, following a state proclamation banning women from riding motorbikes and travelling in taxis, but failed to consider that people are forced to share transport due to cost. The state government has since introduced rickshaw motorbikes so that male drivers can legally transport female passengers, but in reality the Shari'ah restrictions have been quietly dropped.⁴² *Hisbah* operatives are now most likely to describe their work in terms of social mediation. They encourage (or impose) out-of-court settlements regarding land, marriage and inheritance disputes, while also facilitating reconciliation of family issues. In this way, they have reduced the need for local people to resort to the police and the courts to settle disputes. They encourage forgiveness and reconciliation based on Islamic principles and as assisted by the Nigerian Police Force. They even serve as traffic wardens, help regulate markets and aid in the Hajj exercise. Although they have the authority to make arrests, they generally relinquish suspects to the police, who have the power to prosecute suspects before a Shari'ah court. *Hisbah* officials consider the flexibility of this approach and Shari'ah openness to forgiveness and financial restitution to victims to be advantages. While some

locals and other observers may object to such moral policing, it has undoubtedly achieved some success at this level.

However, there are several Muslim voices critical of Shari'ah and the *hisbah*. Contrary to the initial expectations that Shari'ah would curb corruption in government, enhance socio-economic welfare, reduce crime and ensure more efficient dispensation of justice, it has actually done little to remedy these problems.⁴³ Although crime statistics in Nigeria are very unreliable, there is little evidence that Shari'ah has reduced overall criminality in the twelve Shari'ah states. The Federation of Muslim Women's Associations in Nigeria expressed early concern that, although the criminal aspects of Shari'ah were being carried out, the injunctions to create a more just society were being ignored.⁴⁴ However, despite these shortcomings, many see these very discussions as part of what Shari'ah has brought about – a debate over the rule of law and equality.⁴⁵ Shari'ah can therefore be understood as an extension of other less prominent forms of civilian protest, such as the Islamic anti-corruption organisation and the Muslim League for Accountability.⁴⁶ The introduction of Shari'ah and the activities of the *hisbah* have raised the question of women's rights in the region, too.⁴⁷

Controversy of Nigeria as a Secular or Non-Secular State

As discussed, there is no unanimity about the secular or non-secular nature of Nigeria. Although many have maintained that Nigeria is secular, others prefer to affirm it as multi-religious. Even though each side attempts to support their argument with constitutional provisions, to date no Nigerian constitution has expressly referred to Nigeria as either secular or multi-religious. The two expressions are mere interpretations. However, because it could be argued that secularism denotes un-belief in Allah, for Muslims the only available option would be to consider Nigeria as multi-religious.⁴⁸

Statutorily, the Preamble of the 1999 Constitution states that Nigeria is under God.⁴⁹ The Nigerian National Anthem contains a prayer to “God of Creation” to “direct our noble cause.” The religious demography of Nigeria, however, makes it impracticable for either Islam or Christianity to be made the religion of the state; unlike in most other countries, where an overwhelming majority professes a single religion, no religion predominates in Nigeria:⁵⁰ 50.5% of Nigerians are Muslim, 48.2% Christian and the remaining 1.4% animalists.⁵¹ Consequently, religious pluralism is more suitable than secularism.

As cited above, section 10 of the Constitution of the Federal Republic of Nigeria provides: “The Government of the federation or of a state shall not adopt any religion as a state Religion.”⁵² Based on this constitutional provision, some people say Nigeria is secular. Nevertheless, the phrase ‘secular state’ is not used anywhere in the constitution. Moreover, there is no reported Nigerian case where

secularism has been given judicial interpretation. Rather, the above provision represents what is regarded as the 'primary rights on the freedom of religion template'. The other appendage rights which aid in the protection of religion are freedom of association,⁵³ right to private and family life,⁵⁴ right to freedom of press and expression,⁵⁵ and right to freedom of movement.⁵⁶ All accumulatively protect the rights of Nigerians to practice their faith. These provisions are complemented with or by International Legal Instruments.⁵⁷

Secularism is commonly regarded as an ideology holding that religion should not constitute the basis of politics or, in the extreme, that religion has no place in public life. Essentially, secularism seeks to preserve the religious neutrality of government and culture.⁵⁸ Wikipedia defines a 'secular state' as:

a state or country that purports to be officially neutral in matters of religion supporting neither religion nor irreligion. A state also claims to treat all its citizens equally regardless of religion; and claim to avoid preferential treatment for a citizen from a particular religion/non religion over other religion/non religion. Secular state does not have a state religion or equivalent, although, the absence of a state religion does not guarantee that a state is secular.⁵⁹

The question is, does section 10 of the 1999 Constitution fulfil this picture of a secular state?⁶⁰ Apart from the clear wording of section 10, the margin note to the section reads, "Prohibition of State Religion." It can therefore be inferred that the intention of the drafters of the constitution was indeed to separate state from religion. The state must not allow any religion to influence its official decisions or be promoted with state funds.⁶¹

It should be noted that the recognition of freedom of religion⁶² and freedom from discrimination⁶³ on account of a person's religion are further efforts to make Nigeria secular. The drafters of the 1999 Constitution submitted on the same section 10 as follows:

It may be argued in the light of this provision that religious symbols (Indigenous or received) have no place on public lands, national edifices, currency, flag, coat of arms, anthem, pledge and other national symbols. By this section, Nigeria is declared to be a secular state and therefore cannot join any organisation that has a religion-based Constitution.⁶⁴

On this basis, Nigeria appears to be secular. Certainly, its constitution has not adopted any religion as the country's official creed. Nevertheless, a non-secular state can be defined as one where religion is experienced on an everyday level in civil life, although without necessarily forming part of the government.⁶⁵ On a superficial reading of this definition, Nigeria does appear to be non-secular –

although it cannot be considered a religion-based state in the fashion of countries like Afghanistan, Saudi Arabia or the Vatican City.

Issues And Options

i. Multi-religious

The principle of freedom of thought, conscience and religion is well established in international human rights law as a principal norm of a modern democratic and pluralistic society, with all international and regional human rights treaties including a provision on this fundamental right.⁶⁶ According to the Human Rights Committee (HRC), religious freedom maintains the rights of the individual to embrace and manifest any belief or religion without restriction, which includes the right to change religious affiliation.⁶⁷ Restrictions on religious freedom cannot be justified by the fact that the state recognises one religion as its official religion.⁶⁸ Baderin explains that “while the principle of religious freedom is theoretically recognized by Muslim states, the scope of its practical application is narrower than that of international human rights law.”⁶⁹

Oloyede has echoed this argument and cautioned that neither a state religion nor secularity should be imposed on Nigeria. He stated: “Nigeria is a multi-religious state and no attempt ought to be made to impose either a state religion or secularity on any part of Nigeria. We have called attention to the hypocrisy and futility of secularity or secularism even in countries generally regarded as secular.”⁷⁰

The three systems of law in the country – common, Islamic and customary – are provided for by the constitution and should be allowed to operate without any major conflict. It is our opinion that every Nigerian should be free to choose either customary or Islamic law, both of which should be applicable and enforceable in matrimonial matters in any part of Nigeria in order to promote national unity and integration.

ii. True or Pseudo-Federalism

The federal system is based on the principle of independence within interdependence. It is a system that enshrines a form of political integration based on a bond, at once voluntary and restrictive, between several regional territorial entities, a bond which ensures that, in spite of political diversity, the whole will remain unified as a super state. Federal principles are therefore concerned with self-rule as well as shared rule, with the constituting states exercising jurisdiction in matters within their territory and competence, so long as these matters do not adversely affect the rights of other constituting member states. In a broad

sense, federalism involves the vinculum of individuals, groups and politics in lasting but limited union, in such a way as to provide for the energetic pursuit of common ends while maintaining the respective integrates of all parties.⁷¹ A federal system is therefore made up of a general government (not a central government) called the federal government, to which are added regional or state governments. Political, legal and other derivative powers are divided such that the general and regional governments co-ordinate while being independent, such that each is sovereign in its own sphere, including in the right to adopt a religion as a state religion, contrary to the provision of the constitution.⁷²

A federal state, therefore, is not a sovereign state as a supreme omniscient political power is not established within it, only shared powers. The power relation between the federating units (federated states and the federal state) is therefore that of different and co-ordinated orders of government, not of multiple tiers with hierarchically subordinate powers. A federal government is merely a government charged with particular functions and defined by a specific relationship to individuals. It is, as such, equal in status to the regional or state governments to which it is linked constitutionally. These last are, in turn, local authorities and bearers within the federal state of the collective rights established in particular territories by the history, culture and peculiarities of the regions they represent.⁷³ Nevertheless, the states recognise and submit to the federal government's authority and the superior value functions which have been entrusted to it, thereby bringing the country into line with the international political order. Establishing an armed force, the national economy, immigration, postal service and external affairs, are functions delegated to the federal government so that the country can participate and gain from the world political order.

Nigeria was founded as a federal state by its founding fathers. Nevertheless, the Nigerian House of Commons, during a debate about the country's constitution, resolved that the latter should provide greater regional autonomy and remove the power of intervention from the federal government in matters that could, without detriment to the other regions, be placed entirely within regional competence. They also recommended that the regional legislatures become sovereign, so that no other body in Nigeria can have the authority to alter their decisions on subjects relevant only to themselves, including in matters of faith. The implications of this are that each region could develop its own constitution and laws, reflecting its own values, customs, history, and social mores, including religion.

Conclusions and Recommendations

The paper concludes with the following recommendations:

- There is a need to reform the newly-introduced Shari'ah Penal Code Law (SPCL) in order to address the issue of strict standards of proof and evidence in all offences, especially those that carry the death penalty.
- Offences and their punishments must be founded on written law and not be by judicial discretion, as suggested in some provisions of the SCPL.
- There should be a separation of powers between the executive and the judiciary so as to respect the independence of the judiciary and allow it to serve justice.
- The Nigerian legislature must strive to enact independent law on freedom of religion issues, instead of relying on the current vague principle of freedom of thought, conscience and association.
- The new Shari'ah legal system should be certain and respect the principles of fundamental human rights, including: right to a fair hearing; right to be represented by self or a counsel of one's choice; right to an interpreter when the accused does not understand the language of the court; and the principle of '*nulla poene sine lege*' (a person shall not be convicted of a criminal offence unless that offence is defined and a penalty prescribed in written law).
- The leadership of Nigeria's two dominant religions, under the aegis of the Christian's Association of Nigeria (CAN) and the Supreme Council for Islamic Affairs of Nigeria (SCIAN), must cultivate the habit of living harmoniously in order to ensure sustained peace in Nigeria.
- The new Islamic legal regime lacks the legal certainty and the facility to recruit judges capable of administering it. Judges, lawyers, court staff and the police need to be oriented and trained. There is a pervasive lack of public awareness as to the provisions of this new Islamic legal system.
- The law should not be contrary to natural justice, equity and good conscience.
- Nigerian citizens must make a concerted effort to develop genuine freedom of religion through a cross-root socio-cultural approach at the micro level, instead of expecting the government to ensure that freedom for them.

Islam is not a religion in the limited sense of the word, but a complete way of life, having within it a complete legal system, Shari'ah. It is only fitting that this be applied amongst Muslims.

The application within domestic laws of provisions derived from international conventions, such as the Universal Declaration of Human Rights, is a step towards recognising the inherent dignity and equality of all members of the human family as a foundation for freedom, justice and peace in the world. Violations of human rights often result in barbarous acts which outrage the conscience of humankind. Regardless of the customs, religion, tradition and unique history of a society, human standards and respect for human dignity and the worth of a person are universal aspirations.

The government should have the power and obligation to provide infrastructure for the well-being of individuals. An individual's spiritual well-being, however, should be left to that individual and his Creator, as long as doing so does not infringe upon the rights of others.

Notes

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1. The history of Nigeria's regions and states is complex and confusing. Nigerians frequently use the term "the North" to designate the old Northern Region, an entity inherited from colonial powers and in place until the creation of new states in 1967. This region covered over half of the country, going as far south as the current capital, Abuja. The term no longer has any official use.
 2. 'Total Facts about Nigeria: Religion in Nigeria and Worship'. Available at: <http://www.total-facts-about-nigeria.com/religion-in-nigeria.html> (Accessed on: 10 June 2015).
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 4. H. B. Yusuf, 'Managing Muslim-Christian Conflicts in Northern Nigeria: A Case Study of Kaduna State,' *Islam and Christian Muslim Relations* 18, no. 2 (2007): 237-256.
 5. Toyin Falola and Mathew Heaton, *A History of Nigeria* (Cambridge: Cambridge University Press, 2008), 77-93.
 6. For an early view, see Murray Last, 'La charia dans le Nord-Nigeria,' *Politique Africaine* 3, no. 3 (2000): 141-152. He pointed out that many ordinary people saw the 1999 extension of Shari'ah as an opportunity to regain the lost glory of the caliphate era.
 7. Crisis Group interview, Imam Mohammed Sani Isa, Kaduna, 12 June 2009.
 8. Crisis Group interview, Aminu Mohammed Dukku, lecturer, sociology department, Bayero University, Kano. 23 June 2009. Several Crisis Group interlocutors stressed that they saw Shari'ah as a response to social immorality

- and associated low-level criminality.
9. See Shekarau, 'The Implementation of Shari'ah in a Democracy: The Nigerian Experience,' keynote address, *International Conference on the Implementation of Shari'ah in Democracy: The Nigerian Experience*, Abuja, July 2004.
 10. *Amina Lawal v. The State* [2003] NNLR, 488.
 11. *Ibid.*, 439.
 12. Crisis Group interviews, Head of the Supreme Council of Shari'ah in Nigeria, Kaduna, June 2009; Christian Leader, Kaduna July 2009. One person pointed out that, in Kano, Christians tend to accept Shari'ah because they know they are a small minority, while this is not the case in Kaduna, for example. Crisis Group interview, community activist, Kano, October 2010.
 13. M. K. Banu Az-Zubair, 'Federalism, Shari'ah and Nigeria Constitution,' Available at: nigeriaworld.com/nigeria/odili/messageboard/naijapersonalwebpages/naijanet.com (Accessed on: 11 June 2015).
 14. Democracy Web, 'Comparative Studies in Freedom,' Available at: <http://democracyweb.org/note/94> (Accessed on: 10 June 2015).
 15. Section 10 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended).
 16. *Ibid.*, 275-9.
 17. *Ibid.*
 18. See Section 38 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) and Article 21 (1) (b) & (c) of the Constitution of Ghana, 1992.
 19. 827 F. 2d 684.
 20. N. Nsereko, 'Religion, the State and the Law in Africa,' *Journal of Church and State*, No 28 (1986): 28.
 21. (2001) 6 NWLR (Pt 710); [2001] 3 SC, 76.
 22. I. O. Oloyede, W. O. Egbewole and H.T. Oloyede, 'The Operational Complexities of Free Exercise and Adoption of Religion Clauses in the Nigerian Constitution,' Paper delivered at the *African Consortium for Law and Religion Studies*, Namibia, 17-19 May 2015, 15.
 23. CA/IL/49/2006 delivered on 18 June 2006.
 24. Section 38 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended).
 25. Outlining defense, public order, morality, health and protection of the rights of others.
 26. Suit No. ID/151/13 delivered on 17 October 2014, 13-4.
 27. *Miss Asiyat Abdulkareem (Minor) & 2Ors v. Lagos State Government & 3Ors* CA/L/135/2015. Available at: gaklawco.org/wp-content/uploads/2015/11/Asiyat-Abdulkareem-Ors-v-LASG-ors-CA.pdf (Accessed on: 30 05 2017).
 28. Nigerian Tribune, 'Chad Bans Islamic Face Veil after Suicide Bombings,' [Thursday, 18 June 2015], 48.
 29. Bauchi, Borno, Gombe, Jigawa, Kaduna, Kano, Katsina, Kebbi, Niger, Sokoto, Zamfara and Yobe.
 30. H. Ibrahim, 'Reflections on New Shari'ah Law in Nigeria,' prepared in cooperation with the Africa Policy Studies Program at Council on Foreign Relations, [June 2004], 3, Available at: <http://www.cfr.org/content/publications/attachments/Reflection-on-the-New-Shari'a-in-nIGERIA.pdf> (Accessed on 12

- June 2015).
31. Ibid, 4.
32. S. L. Sanusi, 'Fundamentalist Groups and The Nigerian Legal System: Some Reflections.' Available at: <http://www.whrnet.org/fundamentalisms/docs/doc-wsf-sanusi-nigeria-0311.rtf> (Accessed on: 12 June 2015).
33. Ibid.
34. I. Hauwa, 'Reflections on the New Shari'ah Law in Nigeria,' Available at: http://www.google.com/search?q=Ibrahim+hauwareflection+new+Shariah_law+in+Nigeria&ie=utf-8&ae=ytf-8?> (Accessed on: 12 June 2015).
35. I. Sulaiman, 'The Islamic Political System and the Political Future of Nigeria.' Paper delivered to the *National Conference on the Political Future of Nigeria*, Ahmadu Bello University, Zaria, 1-3 August 1-3, 1986.
36. Ibid.
37. A. Yadudu, 'Benefits of Shari'ah and Challenges of Reclaiming a Heritage: The Nigerian Muslim Forum' *UK Holding at Commonwealth Conference Centre*, London, 14 April 2001/20 Muharram 1422H.
38. Ibid.
39. Crisis Group interview, Dr Saidu Ahmed Dukawa, Director General of *hisbah* in Kano State, May 2010
40. This analysis of the *hisbah* is based on Crisis Group interviews with: members of *hisbah* boards and ordinary *hisbah* officials, both in Kano and Kaduna during May and October 2010; academics, Kano, October 2010; the head of the Supreme Council of Sharia in Nigeria, Kaduna, June 2009. Also see F. L. Adamu, 'Gender, Hisbah and the Enforcement of Morality in Northern Nigeria', (2008).
41. International Crisis Group Working to Prevent Conflict World Wide. Northern Nigeria: Background to Conflict, Africa Report, No. 168, [20 December, 2010], 17.
42. Similar tensions occurred in Gusau, Zamfara, see Last, 'La charia dans le Nord-Nigeria,' 22. 84 Crisis Group interview, Imam Mohammed Sani Isa, Kaduna.
43. In Kano state, a probe instituted by the government in December 2004 indicted the former governor, Rabi'u Musa Kwankwaso, and ordered him to refund almost a billion naira (about \$6.6 million). Similarly, in November 2009, a commission of inquiry ordered the former governor of Bauchi state, Adamu Mu'azu, to refund 1.6 billion naira (about \$10.3 million), which he allegedly misappropriated. See "Ex-governor, others to refund N18bn", *The Nation*, 13 November 2009. The former governor of Jigawa state, Saminu Turaki, and of Sokoto state, Attahiru Bafarawa, are being prosecuted by the Economic and Financial Crimes Commission (EFCC) on charges of corruption involving 36 billion naira (\$240 million) and 15 billion naira (\$100 million), respectively. Figures made available to Crisis Group by legal department of EFCC, Abuja, May 2010.
44. H. B. Yusuf, (N.5), p. 251.
45. S. L. Sanusi, 'Politics and Sharia in Northern Nigeria', in *Islam and Muslim Politics in Africa*, ed. Benjamin Soares and Rene Otayek (New York: Palgrave McMillan, 2007), 177-188.
46. This small organisation campaigns for better use of public resources, for election campaigns to be run on issues rather than on religious or ethnic lines, and for women to exercise their right to vote. Crisis Group interview, head of the Muslim

- League for Accountability, Kaduna, August 2009.
47. *Hisbah* groups frequently include women, who tend to limit their policing to family matters. Around 1,500 of Kano's 9,000-strong corps (or 17 per cent) are women.
 48. Oloyede et al., *The Operational Complexities of Free Exercise*, 12.
 49. Constitution of the Federal Republic of Nigeria, 1999, (Promulgation) Act Cap. C23 Laws of the Federation of Nigeria, 2010.
 50. Ishaqa et al., 13.
 51. The Pew Forum on Religion and public Life provided these statistics in 2003. Available at: www.state.pew-forum.org/world-affairs/countries/countryID=150 (Accessed on: 6 May 2015).
 52. The Constitution of the Federal Republic of Nigeria, 1999 (as amended).
 53. *Ibid.*, Section 40.
 54. *Ibid.*, Section 37.
 55. *Ibid.*, Section 37
 56. *Ibid.*, Section 41.
 57. Universal Declaration of Human Rights, 1948, International Covenant on Civil and Political Right, 1966, African Charter on Human and peoples right, 1981, etc.
 58. M. J. Shola, 'Secularism and Politics of religious Balancing.' Available at: www.irmagard-conix-stiftung.de/fileadmin/user-upload/pdf (Accessed on: 14 June 2015).
 59. 'Secular State'. Available at: <http://en.wikipedia.org/wiki/secular> (Accessed on: 14 June 2015).
 60. K. Adegbite, 'Is Nigeria Secular or non-Secular State,' Available at: www.nigerianmuse.com2012525094823z/ng-projectsovereign-national-conference-snc-project/is-nigeria-a-secular-or-non-secular-state (Accessed on: 13 June 2015).
 61. *Ibid.*
 62. Section 38 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended).
 63. *Ibid.* Section 42.
 64. The 1999 made simple for everyone's use, (1st Edn), published by Juriscope- You and the Law Series.
 65. *Ibid.*
 66. See B. Mashood, *International Human Rights and Islamic Law* (Oxford: Oxford University Press, 2005).
 67. Human Right Committee, General Comment 22, U.N. DOC.HRI/GEN/1/Rev.1, (1994), pars 3-5 in Moataz Ahmed EL Fegieri, 'Islamic and Freedom of Religion: The Case of Apostasy and its Legal Implications in Egypt,' *Muslim World Journal of Human Right* 10, no. 1 (2013): 26.
 68. *Ibid.*
 69. B. Mashood, 'A Macroscopic Analysis of Practice of Muslim State Parties to International Human Rights Treaties: Conflict or Congruent?' in *International Law and Islamic Law*, ed. Baderi Mashood (Survey: Ashgate, 2008).
 70. *Ibid.*
 71. M. K. Banu Az-Zubair, 'Federalism, Shari'ah and Nigeria Constitution,'

Available at: nigeriaworld/nigeriaweb/odili/message_board/naija_personal_webpages/naijanet.com (Accessed on 11 June 2015).

72. Section 10 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended).
73. Ibid.