

DRAFT
**Democracy and Minority Rights in Nigeria:
Religion, Shari'a and the 1999 Constitution**

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Introduction

The development of democratic culture is dependent on the existence of a modern state that can protect the rights of its citizens and extract duties from them. Modern states are characterised by the practice of equity, the rule of law and the search for legitimacy. The legitimacy of the state is linked to its capacity to present itself as a provider of necessary public goods and more important, a neutral arbiter that guarantees the security of all sections of society. When the state is generally perceived as serving the particularistic interests of one group, it starts losing its legitimacy, and indeed, its authority. As state capacity declines, fear of "the other" rises and inhabitants of the state resort to other levels of solidarity such as the religious, ethnic and regional forms in search of security. Religious insecurity is particularly insidious and dangerous because it makes people feel threatened not just in their present lives but also in the hereafter. The argument in this paper is that some provisions of the 1999 Nigerian Constitution and statutory provisions enacted in some states thereafter are creating serious conditions of insecurity, which need to be addressed.

Before addressing these issues however, it is useful examining the dynamics of religious movements in contemporary Africa.

Religion as the Arena for Civil Society Struggles

The dynamics of religious movements in contemporary Africa is very complex and cannot be reduced to a simple "revivalist tendency" or a mechanical response to political and economic crisis. What is known is that there is a multiplication of religious movements in the continent and an intensification of their fervour. The prevailing context is one of serious economic and social crisis. It is also one of the collapse of ideological frameworks that provide meaning and/or development. Nothing seems to work anymore. How does religion fit into the attempt by common people and by political entrepreneurs to produce alternative autonomous spheres of meaning and action? How can we understand and elucidate the interface between growing and wide ranging struggles for democratisation, and the multiplication of religious movements and the intensification of their activities?

Central to the importance of the religious sphere in contemporary Africa is the fact that it is an arena open to a wide range of actors and a broad spectrum of social projects. It is difficult for the access of actors to be blocked because as more established doors are closed, even more doors can be opened elsewhere. The religious arena therefore produces a very rich and intensive social dynamics in which the belief, adherence and commitment of large groups of people shift continuously, with the general direction of movement being from established traditional religious organisations to new and more populist versions and sects. An important dimension of contemporary social movements is that they are products of more open-ended processes of socialisation which are replacing traditional forms of socialisation rooted in the family, school, church and the workplace (Magala, 1992:180). Early in their life cycles, people encounter "clusters" of influences or organisations, which affect them. As traditional agents of socialisation such as the family and established or orthodox religious organisations are decomposing, new agencies such as the mass media and computer technologies are taking the centre stage. The significant characteristic of the new agencies is that the hitherto pervasive system of control by powerful actors - states and transnational corporations has been substantially undermined.

Civil Society

Civil society is one of the key words of this epoch. It is a very nebulous concept, and in essence, scholars use it to say what they want it to say. In this paper, the argument is that in Africa, a significant proportion of "really existing" civil society is religious society. If we accept that civil society is an alternative social sphere relatively autonomous from the state and the family that organises interaction (see Ahrne, 1996:112), then most of civil society in Africa is located within the religious sphere. Civil society then, is a part of society that has a life of its own, which is distinct from the State and fairly autonomous from it. According to Shils, the idea of civil society has three main components;

The first is a part of society comprising a complex of autonomous institutions - economic, religious, intellectual and political - distinguishable from the family, the clan, the locality and the State. The second is a part of society possessing a particular complex of relationships between itself and the State and a distinctive set of institutions which safeguard the separation of State and civil society and maintain effective ties between them. The third is a widespread pattern of refined civil manners. (1991:4)

The third aspect has not been emphasised in a lot of the current literature on civil society. For civil society to exist, the conduct of members of society towards each other must be characterised by civility. Polished and refined manners are expressions of respect for other members of society. It is a pre-condition for democratic practice as citizenship cannot be effective if the rights and the dignity of the person are not respected (Ardigo, 1985:49). Part of the African tragedy is that refined and civil manners, which are essential elements of socialisation in most traditional societies, have been eroded by state terrorism, war, hunger and parochial politics of authoritarian leaders, which have pushed people into losing respect for their neighbours. What has not been sufficiently emphasised is that many active religious movements have an even more effective capacity and record of inculcating intolerance, an ideology of contempt and exclusion and indeed, incitement to annihilate the other.

Another important attribute of civil society is that it is necessarily pluralist. On the one hand, there are the partially autonomous spheres of economy, religion, culture, intellectual and political activity which operate in their domains. On the other, within each sphere, there is a multiplicity of partially autonomous corporations and institutions that operate independently (Shils, 1991:9). The world of African religious movements is the highest expression of difference and plurality in civil society. The three broad categories of Islam, Christianity and Traditional African Religions are in fact vast spaces in which a plethora of different beliefs systems, social practices, economic interests and modes of life interact, express themselves and contest over leadership and for followers. The plurality of civil society actors is a major factor in the maintenance of its relative autonomy from the state and other institutions that seek control. Some actors and organisations are always manipulated and subordinated to certain forces, local and international, but many others are not. Religious civil society operates within a framework that is simultaneously global and local, formal and informal.

Contemporary African social life, including religious life, is characterised by two basic tendencies. The first one is globalisation. Religious life and activities are experienced and propagated in universal ways and traditional as well as the most modern means of communication and networking are used to ensure that the religious community is not bound by the pedestrian borders of nation-states. The second important tendency is informalisation. Orthodox and traditional religious orders are crumbling due to internal pressures and struggles and new and more informal religious organisations and movements are occupying the religious terrain. At the same time, rural crisis, rapid urbanisation, economic crisis and new policies seeking to limit the role of the state are transforming urban settlements into major population centres that have to cater for vast groups of recent migrants thus creating huge informal sectors.

Globalisation

Globalisation is now the key word in explaining the contemporary international conjecture. It refers to the universalisation of certain practices, identities and structures and more significantly, to the expression of the current global restructuring of modern capitalist relations - see Tade Aina (1996:8). Central to globalisation is the

emergence of and contestation of a new world order in which inequities in the distribution of power and resources are growing wider. In his introduction of the thought provoking book on Transnational Religion and Fading States, Rudolph reminds us that:

Religious communities are among the oldest of the transnationals: Sufi orders, Catholic missionaries and Buddhist monks carried word and praxis across vast spaces before these places became nation-states or even states. Such religious peripheries were versions of civil society. In today's post-modern era, religious communities have become vigorous creators of an emergent transnational civil society. (Rudolph, 1997:1)

Religion has not faded away with modernity, it has not disappeared with the triumph of science and rationalism. On the contrary, the religious sphere has expanded, fuelled largely by global secular processes such as urbanisation, migration, transnational capital and the mass media. Religion today is a product of modernity as well as a response to it.

Informalisation

We are living in a world in which urbanisation is growing at an incredible rate. Cities everywhere continue to grow rapidly, resisting all attempts to limit them. Cities are indeed the focal points for the globalisation of the economy, for the production of goods and services. Between 1990 and 2030, it is predicted that the world population will rise by 3.7 billion and 90 per cent of that increase will take place in developing countries and in addition, 90 per cent of the growth in developing countries will be based in the cities. In Nigeria, the urban population was growing at a rate of 5.5 per cent over the period 1980-1993 - (World Bank, 1996"). The direction of growth of African cities has been the increase of the relative area occupied by the shanty towns. These cities are also the focal point for the aggravation of poverty. In the developing world, it is estimated that 330 million people live in absolute poverty, 600 million live in life threatening situations and 800 million live in sub-standard housing - (United Nations, 1996:4). In Africa, urban poverty has grown more rapidly than rural poverty (United Nations, 1996:4).

The major characteristic of the urban crisis in contemporary Africa is the precariousness of life. Daily subsistence needs of life such as food, housing, healthcare and education cannot be met by a large proportion of the population. There is serious pressure on modes of livelihood, both formal and informal. More and more people are being pushed into the informal sector. The breakdown of the social fabric and family bonds is producing a lumpen culture characterised by delinquency, violence, prostitution and other vices of a similar type that only religion seems to have an effective cure for.

The conditions created by urbanisation and social transformation have created ideal conditions for the proliferation of informal as well as formal religious activities and actors. Sufi Orders in West Africa for example provide many survival functions – shelter, medical support and economic networks that neither the family nor the state are providing in these times of crisis (Kane, 1997:48). Religious actors are social agents that provide meaning for the new and difficult conditions in the squatter towns, new forms of bonding and differentiation have to be created, new social networks to provide comfort and emergency relief to those in distress are needed, new lucrative spheres for accumulation, both for the "genuine" as well as for the "charlatans" have to be created – and for all of these and more, the religious sphere provides the most effective framework. Over and above all these profane needs, religion also provides salvation for the African soul, the most vital of needs in the post-modern age. Who then are the major actors of this religious civil society?

Proliferation of Divinity

There is a proliferation of divinity in Africa and actors in the religious field are among the most important in contemporary Africa - (Mbembe, 1993). All forms of religions, Islam, Christianity, Eastern religions and traditional African religions are experiencing a phase of intense activism. The result is a runaway inflation in the production of religious movements, leaders and followers. Most of the new religious actors operate in the field of popular religion. Jeff Haynes (1995:101) defines popular religion as one which serves "as a community expression of a group desire to achieve a religious satisfaction which is not forthcoming from a mainstream religion". The new religious actors are therefore defined primarily by their autonomy from

established religious orders. Hierarchy, order and centralised control are being increasingly challenged in the world today in all spheres of activity and the city is the centre of that movement while the youth are the main actors.

Actors

African civil society is dominated by a large and growing number of actors who define themselves as belonging to the religious sector. Although religion appears to draw its authority from the past, from revelations and traditions, it has been one of the most important spheres for the expression of and contestation between different strands of modernity. In the forefront of this modernity is the role played by a powerful vanguard of youthful actors. There is however a profound interstice dividing the disaffected urban youth who are the major activists in this sphere. One group of actors is composed of people with the highest and the best that modernity seems to offer, they are people who have been to the university, speak many foreign languages, are part of international conference circuits and are familiar with home pages on the World Wide Web. The other group, which has recently been uprooted from the rural areas, is composed of illiterate, hungry and angry youth in search of an ever-elusive mode of survival in urban ghettos. It is a field that is full of contradictions. Understanding the social project(s) of these actors is fundamental to any analysis of the possible outcome(s) of African modernity. It enables us to pose the correct questions in relation to what is in gestation for the recomposition of hierarchy, order and authority in Africa as well as how to incorporate the movementisation of social change as part of our reality. The forces of modernity - migration and urbanisation, the development of the print and electronic media, higher literacy and educational standards have led to the rapid development of religious movements rather than their decline. The spread of early Christianity and Islam followed the path of trade, conquest and colonial domination. Religion today has many more possibilities as it uses the new means of communication provided by modern technology to expand.

Dynamics: Fundamentalism and Modernity

The dynamics of religious civil society in Africa revolves around four main poles. First, the enabling conditions created by serious and persistent economic crisis. Secondly, a rising intensity of religious

belief and fervour, often referred to as fundamentalism. Thirdly, the persistence and growth of the power of the unseen, a phenomenon that is often called witchcraft. And fourthly, a continuous fissiparous process that creates factions, breakaways and more factions within religious movements.

The key word today in discourses about religious militancy is fundamentalism. According to Shupe and Hadden (1989:109-111) the concept can be used to describe a specific type of response, and indeed challenge to the process of globalisation. It could be seen as resistance to the way in which the ideology and practice of secularisation is trying to compartmentalise religion and deny its relevance to other institutional spheres. Global fundamentalism could therefore be seen as an attempt to dedifferentiate the institutional bifurcation between the sacred and the secular and bring religion back to the centre stage of not only civil society, but also public policy decision-making:

Fundamentalism is a truly modern phenomenon - modern in the sense that the movement is always seeking original solutions to new, pressing problems.... In the process of undertaking "restoration" within contemporary demographic/ technological centres, new social orders are actually being promulgated. (Shuppe and Hadden, 1989:112)

Fundamentalism has been one of the most powerful responses to issues of survival, consumption, meaning and indeed modernity currently confronting Africans.

The Shari'a Question in Nigerian Politics

Since 1978, the Shari'a has become a major bone of contention in Nigerian politics. It has become an important idiom through which civil and political society actors have been carrying out their struggles. During the 1978 Constituent Assembly, the most contentious debates that occurred were centered around the issue of the Shari'a. Specifically, Christian and Muslim members differed over a proposal for the establishment of a Shari'a Court of Appeal. Many Christians saw the suggestion as the first step towards the establishment of an Islamic state in the country. Muslims on the other hand argued that the established of the Appeal Court was a logical extension of the existence of inferior Shari'a courts which Muslims had been demanding for, for a long time. In the compromise that emerged, the

Shari'a Court of appeal was established but its appellate jurisdiction was limited to civil law. The situation at that time seemed to have been as follows. Christians appeared to have accepted that the Shari'a juridical structure be federalised and the Muslims accepted that the application of Shari'a be restricted to civil matters.

The Shari'a question developed into a major political confrontation on 27th October 1999 when Governor Ahmed Sani Yerima of Zamfara state inaugurated the adoption of the Shari'a legal system, which took effect from 27th January 2000. The Zamfara Law extended the application of Sharia from personal law to criminal law. Following the Zamfara example, eleven other Muslim dominated states in the North have also adopted similar laws. The attempt by the Kaduna State House of Assembly to pass a Sharia bill led to a series of demonstration, first by Muslim supporters and then by Christian opponents. The anti-Sharia demonstration by Christians on 21st February 2000 led to a major conflict between the two groups resulting in massive killings of people on both sides, the destruction of religious buildings, general arson and the destruction of property. The scale of massacres and destruction was very high and thousands of people were reported to have been slaughtered like rams. People were said to have organised the killing of their neighbours simply because they belonged to a different religious order. This phenomenon led to a major religious re-structuring of the town with people congregating in areas where their religious faith had a majority of inhabitants.

The Kaduna conflict demonstrated the fundamental problem posed by the adoption of the Sharia legal system. It created acute insecurity among Christian minority groups in the affected states. They feared that the new legal regime would affect them adversely, despite claims to the contrary by Muslim supporters. Indeed, many voices on both sides called for the partition of Nigeria rather than the adoption / abandonment of the Sharia legal system. The Kaduna mayhem led to retaliatory killings and burning of mosques in Aba and Owerri in which Igbo youths targeted Northerners, who they accused of killing their kith and kin in the North. As the conflict was assuming state-threatening dimensions, a meeting of the National Council of State was called to discuss and seek solutions to the problem. The Council is composed of the Head of State, former heads of state and state

governors. At the ends of the meeting on 29 February, it was announced that the Sharia laws being enacted would be suspended and there would be a return to the status quo ante; the Penal Code.

Two members of the Council and former heads of state Shehu Shagari and Mohammadu Buhari denied that such a decision had been taken and contended that Muslims were not ready to compromise on the Shari'a. Tensions mounted once again and new riots were reported in Sokoto and Borno States. Non-muslims started fleeing the Muslim dominated parts of the North. Finally, at the beginning of April, Northern Governors met and agreed to set up a joint Muslim-Christian Committee to align the Sharia with the Penal Code and to counter the threats to Northern and National unity posed by the Shari'a issue. Their communiqué, read by Governor Bafarawa of Sokoto state, announced that: "We have resolved to uphold the whole North as one indivisible geographical entity within the Federation of Nigeria". Shortly after this announcements, however, a thief, Buba Bello Jengede, had his right hand amputated on the orders of a Shari'a Court Judge in Zamfara state – for stealing a cow. Other cases, especially of women accused of adultery were soon to follow. The most spectacular case is that of a women in Sokoto State who has been sentenced to death by stoning for adultery. She has appealed against the verdict and judgement is being awaited.

The Shari'a debate has always been a debate about the nature of the state because Muslim activists have consistently campaigned for the extension of Shari'a law to the domain of criminal law. As Ben Nwabueze has argued, it was a debate not just over law, but on the very nature of the Nigerian state:

The distinction between civil and criminal law has an important bearing on the issue of state enforcement. In civil law, the state, through its judicial arm, the courts, merely interposes its machinery as an impartial disinterested arbiter between parties in a dispute; it lacks the power to initiate the process of adjudication, and must wait until it is moved by one of the disputants. So the enforcement through the courts of the civil aspects of Shari'a does not involve the support, promotion or sponsorship by the state of the Moslem religion in preference to other religions....

In criminal law however, the position is entirely different. The state invokes its coercive power to arrest and detain an alleged offender, to initiate a criminal charge against him in court, and to see to the effective prosecution of the charge. Thus, as complainant, initiator of the criminal process and prosecutor, the state is an interested party. Accordingly, the enforcement by the state of the Shari'a criminal law under the Quran involves the use of its machinery to aid, support and sponsor the Islamic religion in preference to other religions. (The Post Express, April 13th, 2001)

Similar debates occurred during the 1989 and 1995 Constitutional Conferences.

Federalism and the 1999 Constitution: The Contested Religious Terrain

The Debate over the Shari'a has posed in clear terms the contest over the definition and redefinition of Nigeria's political community. Section Ten of the 1979 and 1999 Constitutions have a very short prohibition section, which states that: ***"The Government of the Federation or of a state shall not adopt any religion as a State Religion."*** Christians have argued that the interpretation of this provision is that the country is secular, a position that Muslim activists, have rejected. Following the rejection of the concept of secularism by Muslims, the formulation in Section 10 was done by the Obasanjo Administration in 1979 in such a way as to deliberately ambiguous, in our view. The major problem with the provision is that it appears to allow for preferential treatment to be accorded to particular religions without formally adopting the said religion as a state religion. The 1989 Constituent Assembly tried to clarify the situation by formulating a less ambiguous provision: ***"No Government shall overtly or covertly give preferential treatment to any particular religion"***. This formulation was however rejected by President Babangida's Armed Forces Ruling Council which decided to retain the 1979 formulation. The same thing happened with the 1995 and 1999 Constitutions. The implication of the retention of this provision is that a political choice for an ambiguous formulation has been made and political actors have more room to make public

policy choices on the terrain. It is this ambiguity that has created the conditions for the current political crisis over the introduction of Shari'a criminal laws in some states in the country. Each side has interpreted it in a manner that supports particular conceptions of Nigeria's political order – federalism.

Ben Nwabueze, professor of constitutional law who was also a member of the 1978-79 Constituent Assembly reads Section 10 of the Constitution as a consecration of the multi-religious nature of Nigerian society. He argues as follows:

We must be honest with ourselves and accept the plain truth that state enforcement of Sharia, in all the plenitude of its injunctions, cannot in the multi-religious society of Nigeria, co-exist with a truly federal form of political association. If, therefore any of the federating units now feel that they can no longer abide by the condition of our association as enshrined in section 10, then, all the constituent units should come together and renegotiate another form for our continued association, whatever that other form might be. (Guardian, July 3, 2000)

Professor Nwabueze concludes on the following note:

If the states in the North are bent on adopting Shari'a criminal law, and refuse to be persuaded to drop the idea, they must be taken to have opted for a confederal arrangement or a complete break-up of the association. It is better to pull apart and break-up in peace than fight over the issue. (Guardian, July 3, 2000)

Muhammed Tabiu contests this interpretation of Section 10 of the Constitution. He argues that reading a secular nature into Nigeria's constitutional norms is pure invention:

Neither Section 10 nor any part of the constitution uses the word secular or secularism. The onus therefore of proving the assertion that that prohibition of state religion means secularism and that it further translates into prohibition of Sharia courts and the sourcing of laws from Islam rests on those who make the assertion. If we examine Section 10 in the

context of the whole constitution we are forced to conclude that it is impossible to sustain that assertion. A Constitution that itself sets up Sharia Courts of Appeal to enforce Sharia laws cannot logically be assumed to make the application of Sharia its violation. (Tabi'u, 2001:4-5)

Professor Ali Mazrui also contests the position that a federal national polity cannot tolerate states within it who choose to practice a different system. He argues that we should not forget that Nigeria is an ex-British colony and Britain leads the world in legal asymmetry:

The United Kingdom virtually invented asymmetry as a constitutional order. Scotland has its own law, its own currency, and more recently, its own regional assembly under Tony Blair in the 1990s. On the other hand, Northern Ireland has had a separate regional assembly long before either Wales and Scotland. As for England, it has no separate regional assembly distinct from the national parliament of the whole country. In short, the United Kingdom has never tried to have symmetrical constitutional arrangements for its main constituent regions..... What all this means is that federalism is able to accommodate a lack of constitutional symmetry even when the areas of disagreement are about matters of life and death. The hudud in Nigeria and Sudan includes matters of life and death. So does the debate about capital punishment in the United States. (Weekly Trust, May 11th 2001)

If therefore the United Kingdom which, is not even a federal country can accept such divergent constitutional paths, Ali Mazrui does not see why federal Nigeria cannot accept similar constitutional and religious asymmetry.

The Shari'a, Rights and the Constitution

Section 38 in Chapter Four of the Constitution on Fundamental Human Rights has clear provisions on religious rights:

1. Every person shall be entitled to freedom of thought, conscience and religion, including freedom to change his religion or belief and freedom (either alone or in community with others, and in public or

- in private), to manifest and propagate his religion or belief in worship, teaching, practice and observance.
2. No person attending any place of education shall be required to receive religious instruction or to take part in or attend any religious ceremony or observance if such instruction, ceremony or observance relates to a religion other than his own, or a religion not approved by his parent or guardian.
 3. No religious community or denomination shall be prevented from providing religious instruction to pupils of that community or denomination in any place of education maintained wholly by that community or denomination.

Early in the debate on the Shari'a and rights, the then minister of Justice, Mr Kanu Agabi, declared that the Federal Government had no constitutional powers to take the states that had established the Shari'a legal code to court. It was incumbent on those who felt that their rights had been violated to seek redress:

If Shari'a violates the fundamental rights of an individual, it was the duty of that individual to sue for the enforcement of his or her rights. The right to dignity and life are fundamental rights vested in the individual, but not the state or the federation. So when people are calling on my office to seek for a declaration on the Shari'a in a court, I could not oblige because the court has no jurisdiction to entertain such a case. I have to comply with the Constitution. (New Nigerian, June 1, 2000)

Following the refusal of the Government to challenge Shari'a in court, the Christian Association of Nigeria took the matter to court on behalf of Christians who felt their rights were violated by the introduction of the new legal regime. The suit was however withdrawn soon after its introduction. The CAN Vice President, Arch-Bishop John Onaiyekan explained that the decision to withdraw the case was made when CAN realised that the introduction of the Shari'a was political and needed a political, not a legal solution, and if the worst happens, the other side will only have themselves to blame:

The northern state governors who hiding under the canopy of religion to introduce laws that negate the security of the country and threaten the corporate existence of Nigeria as a united

country should hold themselves responsible for the consequences of their unfortunate action which could lead to the disintegration of the country. To hide under religion and introduce unconstitutional laws that limit respect for the fundamental rights of citizens is an insult to God. (Guardian, July 10th 2000)

Throughout history, divine and religious laws have provided rules, regulations, moral precepts and standards of the highest nature to keep humankind along the narrow and difficult path of devotion to God, moral probity, selflessness, kindness and service to fellow human beings. As Chindo Kani writes:

Sharia is not just about amputation. It is a divine welfare programme. It is for peace, social security, good healthcare, responsible parentage and dignified childhood. It is all about transparent honesty, sincerity in high and low places responsible leadership, probity and accountability. Above all, Shari'a enshrines equity, justice, fair play, goodwill and equity before the law. (The Post Express, July 13, 2001)

The extension of Shari'a into the criminal domain poses a number of questions relating to human rights. Can non-Muslims feel safe in an environment in which the prevailing criminal law is directly sourced from religious texts? Can minorities fully practice their religious rights in a context in which a different religious order has been elevated to a privileged legal status?

It is known that the problem with religiously sourced laws is that they have almost always been applied by human beings whose spiritual and moral standards have been far below the requirements of what was necessary to faithfully and truthfully implement the divine legal imperative that was originally ordained. Throughout history therefore, religious laws have more often than not, been used by amoral charlatans for their selfish and sometimes wicked and sectarian purposes. They have been used to deprive people of their spouses, their property, their freedom and indeed, their humanity. Women have suffered the worst from this. Indeed, when one reviews the re-introduction of Shari'a in the North, the emphasis has been on controlling, restricting and punishing women. The imposition of dress

codes, chasing female prostitutes out of the states, restrictions on the freedom of movement, cruel and unnatural punishment for adultery and so on have all been directed mainly at women. Indeed, the re-introduction of Shari'a criminal law has created conditions for widespread abuse of the legal process.

One of the effects of the introduction of Shari'a in Northern Nigeria is an assault on culture. There is a wide blanket of bans, not just of alcohol and prostitution, but also of cinema houses, video production, drumming, singing and dancing. In Katsina State for example, a number of clashes occurred between Muslim musicians and Yan Hizba, vigilante enforcers of Shari'a law. While the musicians argued that the Sharia code does not ban drumming and singing, the enforcers believed all traditional music, singing and dancing in Muslim Hausaland must cease immediately (Trust, 6th June 2001). The State authorities finally pronounced that the Shari'a code permits drumming and singing on specific occasions such as marriages and naming ceremonies. The enforcers have however refused to accept the position and continue to attack Muslim artistes and deny the Hausa Muslim community access to their culture. A related development is the attack on the Soyaya writing and video production in central Hausaland. Soyaya, "romantic" literature emerged in the early 1990s as a vigorous form of creative writing in central Hausaland, especially the Kano area.

Sheikh Ibrahim Umar Kabo of the Kano Council of Ulama issued an ultimatum to all NGOs in Kano to leave town within 24 hours or face the wrath of Muslims. The threat followed the attempt by the Johns Hopkins University Centre for Communications Program to organise a workshop on early pregnancy and HIV/AIDS which the cleric took to be a promotion of sexual liberty and contraception. Kabo called for "war against NGOs who teach and propagate anti-Shari'a doctrine". The Programme Officer of the organisation, Hadiza Babayaro however pointed out that their rights as Muslims were being violated. She said:

She was surprised that the Council of Ulama suddenly woke up to oppose the planned workshop after consultations had been held even with the chairman of the Ulama. Babayaro said that there was no basis for the Ulama to attack the programme of

the NGO because the organisers were also Muslims who would not do anything to harm the provisions of the Shari'a legal code. (Comet, January 9th 2001).

Christians in the Shari'a states have been complaining that their rights were constantly violated by the legal regime. One of the most important areas in which Christians feel that their rights are constantly being violated is in terms of the right to Christian worship and proselitization in the Muslim Emirates. It is not a new problem. At colonisation, Lugard has signed a pact with the Emirates promising that Christian proselitisation would not be allowed among Muslims within the Emirates and permission to build Churches would not be given in the "Muslim/traditional" parts of towns and cities in the Emirate. While it was true the Reverend Miller was allowed to establish a Church in Zaria city in 1906, it was an exception that proved the rule because on that occasion, the Emir of Zaria had given express permission that the Church be established in spite of the standing order. The Church was however moved out of the city to Wusasa village in the 1930s.

Following the introduction of Sharia in Kano, the Christian Association of Nigeria petitioned following the destruction of 17 Churches in the Bompai area of the town.⁽¹⁾ Over the past two decades, the Kano state government had taken a number of measures that limit the rights of Christians to operate in the state. According to CAN Kano, the following churches had been demolished before the introduction of Shari'a (Vanguard, June 23rd 2001):

Baptist Church, Mujik village
Assemblies of God Church, Bada village
4 ECWA Churches in Rogo, Yar Tofa, Tudun Wada and Jarkaya

These Churches belonged to Maguzawa Christians who are indigenes of Kano and who are being discriminated against, not

¹) These demolitions which took place in June 2001 involved mainly makeshift "white garment" Churches on the Bompai hill, a high class residential area that had complained over a long time about the noise emanating from these places of worship during the night.

because they are outsiders but because of their conversion from traditional African religion to Christianity

Since the early 1980s, the Kano State Government has refused to allocate plots for building of churches in the state. Christians have therefore been obliged to buy residential houses or empty plots and convert them to, or build churches. Since they have no authorisation to build these churches, the buildings are illegal and continuously under threat. In 1999. A year before the introduction of the Shari'a, the Kano State Environmental protection Agency government issued letters to 54 churches in the state threatening to demolish them for non possession of building permits (Vanguard, 23 June 2001). The concern among the Christian community is that even before the introduction of the Shari'a, there had been a long tradition of the violation of the constitutional rights of Christians within the Emirates to freedom of worship and the introduction of Shari'a would give legal teeth to these violations and legitimate them. It has been reported for example that five Churches were recently destroyed in Dutse, Jigawa state following instigation by the state owned radio station that some Christians in the state have launched a book on Christianity in the state in spite of the fact that "Jigawa is a Shari'a state (where) Christian teachings should not be tolerated" (Post Express, July 12, 2001).

Multi-religiosity and Group Rights in Nigeria: Friends and Foes of Globalisation

One aspect of the motivation in adopting Shari'a might well be the traditional fear of the forces of westernisation and globalisation on one hand and the fear of take-over by the South on the other. In the appendix below, we reproduce a recent advert from the Supreme Council for Shariah in Nigeria in which they argue that the forces of globalisation are organising under the United Nations to organise a covert campaign against Islam. The tenents of this campaign are the international instruments aimed at promoting human rights which happen to be in contradiction with Islamic norms. (Weekly Trust, February 22-28 2002)

In his article on "Shariacracy and Globalisation" Ali Mazrui has argued that:

The Sharia under this paradigm becomes a form of Northern resistance – not to Southern Nigeria, but to the forces of globalisation and to their westernising consequences. Even the policy of the privatisation of public enterprises is probably an aspect of the new globalising ideology. Privatisation in Nigeria may either lead to new transnational corporations establishing their roots or to private southern entrepreneurs outsmarting Northerners and deepening the economic divide between the North and the South. (Weekly Trust, May 18th 2001)

The so called “power shift” that occurred in 1999 has remained a sore point among the Northern Muslim political establishment. Power shift refers to the calls for people from Southern Nigeria that the occupant of Aso Rock, the seat of power, should shift from the North to the South. The argument, according to Charles Ibiang (Thisday, 11/2/99) is that out of the twelve Heads of State Nigeria has had; only four were from southern Nigeria. In addition, the four Southern Heads of State had ruled only six, of the thirty-eight years that the country has been independent. The term power shift was popularised by the southwestern press. As Alex Ekwueme, former Vice President during the Second Republic has argued (Guardian, 26/1/99), the term was invented as an alternative to the concepts of zoning and rotation which had dominated the National Constitutional Conference of 1994-95. Section 229 of the 1995 Draft Constitution had stipulated that the Presidency should be rotated between the North and the South, Gubernatorial power rotated between the three Senatorial districts in each state and the Chairmanship of local governments between three zones to be created in each of them. These constitutional proposals were however completely discredited when it became clear that General Abacha had no intention of vacating power. He was planning and plotting to continue as "elected President". Since he was from the Muslim North, the implication was that the zoning was therefore going to start from the North, the region that had monopolised power for a long time. The concept of power shift arose therefore to remove the ambiguity associated with zoning and rotation. The idea was to focus on what was presented as the essential issue of a Southerner taking over power.

The swearing in of President Obasanjo in May 1999 was the realisation of the goal of power shift. A political pact had been worked

out by the political class in which Northern politicians, whose constituencies are a numerical majority in the country accepted not to contest for the Presidency so that a Southerner would emerge as President and political tension in the country would be calmed. The pact "allocated" the presidency to the Yoruba of the SouthWest. The two candidates that contested for the Presidency were both Yoruba and Obasanjo was the winner. And then the problems began. The hardcore Yoruba political elite felt that Obasanjo, although Yoruba, was a Northern candidate who might be subservient to the Northern political machine. They therefore voted in bulk for the other Yoruba candidate, Olu Falae who lost. Obasanjo therefore came to power as a Southern Yoruba candidate. He had however won the elections in spite of the Yoruba vote. Although Yoruba candidates have been struggling to be elected into this exalted post for forty years, Obasanjo's victory created anger rather than joy in Yorubaland. Ethnic mobilisation and chauvinism intensified and the Yoruba militia organised in the Odua Peoples Congress (OPC) increased its attacks on Nigerians from other ethnic groups living in Yorubaland, especially Hausa Muslim settlers.

The Northern political establishment therefore felt that it was not deriving dividends from its decision to relinquish power. Appointments in the military, the police, the civil service and government boards and parastatals, brought in a lot of the groups that had hitherto been marginalised, especially the Yoruba and the South South as well as people from the Middle Belt. This meant that dominant a lot of Muslim Northerners were being displaced from their decision-making positions. The policy of retiring all officers of the armed forces who had previously held political positions for example meant the elimination of a significant part of the Northern Muslim officer corps who have long marched on the corridors of power. What Obasanjo has presented as a modernisation policy was read by many as an elimination policy. Shari'a and Islam in this context can be understood as a return to an ideological framework these forces felt they could control.

The President of the Supreme Council for Shari'a in Nigeria, Dr Datti Ahmed has insisted that apart from the Zamfara and Niger state governors, Sharia was imposed on all the other states by the popular will of the people. Given the reluctant attitude of most governors to

the full implementation of the Shari'a, Dr Ahmed called on Muslims to vote out all those who have shown themselves to be only moderately committed to the Sharia, including President Obasanjo and most of the Governors of the states that have adopted the Shari'a.. (Vanguard, 11 August 2001)

Conclusion

Throughout history, divine and religious laws have provided rules, regulations, moral precepts and standards of the highest nature to keep humankind along the narrow and difficult path of devotion to God, moral probity, selflessness, kindness and service to fellow human beings. The problem with such laws however is that they have almost always been applied by human beings whose spiritual and moral standards have been far below the requirements of what was necessary to faithfully and truthfully implement the divine legal imperative. Throughout history therefore, religious laws have more often than not, been used by amoral charlatans for their selfish and sometimes wicked and sectarian purposes. They have been used to deprive people of their spouses, their property, their freedom and indeed, their humanity. Women have suffered the worst from this. Indeed, when one reviews the re-introduction of Shari'a in the North, the emphasis has been on controlling, restricting and punishing women. The imposition of dress codes, chasing female prostitutes out of the states, restrictions on the freedom of movement, cruel and unnatural punishment for adultery and so on have all been directed at women. The re-introduction of Shari'a criminal law has created conditions for widespread abuse of the legal process. According to the former Chief Justice of Nigeria, Justice Mohammed Bello:

"Although Shari'a criminal law was written in the Quran, Hadith Books and many other learned books, punishments of many offences were not prescribed. They were left at the discretion of the Kadis. The lacuna resulted in abuses and miscarriage of justice by some Alkalis...."

There is also the problem of law enforcement. The police in particular have seized on the re-introduction of the Shari'a as an opportunity for extorting the population, particularly women.

Is Nigeria bound to live with Shari'a. We believe that religious laws are too culture bound and too resistant to change for modern multicultural society. However, the dynamics of such societies sometimes creates genuine demands for such laws. In such cases, religious laws such as the Shari'a, should be seen as temporary systems awaiting redefinition of the source of their validity..

Following the violence that accompanied the attempt by the Kaduna State Government to introduce integral Shari'a law in the country, the state government opted for an expressly multi-cultural approach based on a tripartite legal system. This involved the simultaneous application of Shari'a, Customary and Common law in the state.

Bibliography

- Ahady, Anwar-UI-Haq (1992) "The Decline of Islamic Fundamentalism" *Journal of Asian and African Studies*, vol XXVII, nos 3-4.
- Aina, T. A. (1996) *Globalisation and Social Policy: Issues and Research Directions*, CODESRIA, Dakar.
- Anwar, A. Struggles for Influence and Identity: The Ulama in Kano, 1937-1987, Unpublished M. A. Thesis, Maiduguri,
- Enwerem. Iheanyi A Dangerous Awakening: The Politicization of Religion in Nigeria, IFRAA, Ibadan, 1995.
- Fields, M. "Charismatic Religion as Popular Protest: The Ordinary and the Extraordinary in Social Movements" in Theory and Society, vol 2, no 1, 1982.
- Gbadamasi, T. and Ajayi, J "Islam and Christianity in Nigeria" in Ikime, O. (ed) Groundwork of Nigerian History, Heineman, Ibadan, 1980.
- Geschiere, Peter (1997) "Globalisation and the Power of Indeterminate Meaning: Witchcraft and Spirit Cults in Africa and East Asia", Paper for the Workshop on the <The Civil Status and Biographies of God in Africa>, CODESRIA, Dakar.
- Gilliland, D. African Religion Meets Islam: Religious Change in Northern Nigeria, University Press of America, Lanham, 1986.
- Greenberg, J. The Influence of Islam on a Sudanese Religion, University of Washington Press, Seattle, 1946 (reprint 1966)
- Hadden, J. K. (1989) "Desacrilizing Secularization Theory" in Hadden & Shupe (eds) Secularization and Fundamentalism Reconsidered, Paragon, New York.
- Haynes, Jeff (1995) "Popular Religion and Politics in Sub-Saharan Africa" *Third World Quarterly*, vol 16, no 1.
- Horsfall, A. K. (1991) "Brief on National Security" in Centre for Democratic Studies, *State of the Nation*, Abuja
- Ibrahim Jibrin 1989 "Politics and Religion in Nigeria: The Parametres of the 1987 Crisis in Kaduna State" Review of African Political Economy, no. 45/46.

- Ibrahim Jibrin 1991 "Religion and Political Turbulence in Nigeria" Journal of Modern African Studies, no. 29(1).
- Ilesanmi, S. O. "Religious Pluralism, Identity and Political Legitimacy in Nigeria" SOAS Seminar, London, 1992.
- Juergensmeyer, M. The New Cold War? Religious Nationalism Confronts the Secular State, University of California Press, Berkeley, 1993.
- Kane, Ousmane "Izala: The Rise of Muslim Reformism in Northern Nigeria" Marty, E. M. and Appleby, R. S. (Eds) Accounting for Fundamentalisms: The Dynamic Character of Movements, University of Chicago Press, Chicago, 1994.
- Kane, Ousmane 1997 "Muslim Missionaries and African States" in Piscatori, J. & Rudolph, S. H. *Transnational Religion and Fading States*, Westview, Boulder.
- Kukah, M. H. Religion, Politics and Power in Northern Nigeria, Spectrum Books, Ibadan, 1993.
- Laitin, D. "The Sharia Debate and the Origins of the Second Nigerian Republic", Journal of Modern African Studies, no. 1082.
- Lenin, V. I. On Religion, Progress Publishers, Moscow, 1963.
- Ludwar-Ene G. (ed) New Religious Movements and Society in Nigeria, Bayreuth African Studies Series no. 7, 1991.
- Magala, S. J. 1992 "Movementization of Social Change" in B. Misztal & A. Shupe (eds) *Religion and Politics in Comparative Perspective*, Praeger, Westport.
- Marshal-Fratani, Ruth 1998 "Mediating the Global and Local in Nigerian Pentecostalism" *Journal of Religion in Africa*, vol.
- Marty, E. M. and Appleby, R. S. Fundamentalism and the State: Remaking Politics, Economics, and Militance, University of Chicago Press, Chicago, 1993.
- Marx and Engels in Foreign Language Publishing House (ed) Marx and Engels on Religion, New York, 1964.
- Mbembe, Achille 1993 La prolifération du divan en Afrique subsaharienne in G. Kepel (ed) *Politiques de Les Dieu*, Seuil, Paris.
- Mernissi, Fatima 1988 "Women in Muslim History: Traditional Perspectives and New Strategies" in S. J. Weinberg (Ed) Retrieving Women's History, UNESCO, Berg,
- Muazzam, I. and Ibrahim, J. "Religious Identity Under Structural Adjustment Programme in Nigeria" Paper for Centre for Research and Documentation and Nordic Africa Institute National Seminar on the Transformation of Popular Identities Under SAP, Kano, February 1997.
- Niandou Souley, A. & Alzouma, G. "Islamic Renewal in Niger: From Monolith to Plurality" *Social Compass*, 43 (2), 1996.
- Nicolas, Guy "Le Nigéria: pôle de restructuration géopolitique, ou ligne de front entre chrétiens et musulmans?" Hérodote, no 65-66, 1992.
- Ojo, Mathews The Growth of Campus Christianity and Charismatic Movements in Western Nigeria, Unpublished PhD Thesis, London, 1986.

- Otayek, René 1993 *Le Radicalisme Islamique au Sud du Sahara: Da'wa, Arabisation et Critique de l'Occident*, Karthala, Paris.
- Ranger, T. O. "Religious Movements and Politics in Sub-Saharan Africa" African Studies Review, vol. 29 no. 2, 1980.
- Rubbins, T. "Cults, Converts and Charisma: The Sociology of New Religious Movements" Current Sociology vol 36 no. 1, 1988
- Rudolph, S. H. 1997 "Religion, States and Transnational Civil Society" in Piscatori, J. & Rudolph, S. H. *Transnational Religion and Fading States*, Westview, Boulder.
- Shils, Edward "The Virtue of Civil Society" Government and Opposition, vol. 26, no. 1, 1991.
- Shupe, A & Hadden, J. 1989 "Is There Such a Thing as Global fundamentalism" in Shupe, A & Hadden, J.(eds) *Secularization and Fundamentalism Reconsidered*, Paragon, New York.
- Sulaiman, I and Abdulkarim, S. (eds) On the Political Future of Nigeria, Hudahuda, Zaria, 1988.
- Tabi'u, Muhammed. "Religious Laws and the 1999 Constitution" Paper for Centre for Research and Documentation Workshop on Religious Pluralism in Nigeria, Kano, 2001
- Yusuf, Bilkisu 1993 "Da'wa and Contemporary Challenges Facing Muslim Women in Secular States - A Nigerian Case Study" in N. Alkali et al (Eds) Islam in Africa, Spectrum, Ibadan.

Appendix One

Supreme Council for Shariah in Nigeria (SCSN)

Revisiting the plot to destabilise Nigeria using the United Nation (UN) covert Campaign Against Islam

Readers will recall that sometime in October 2001 we had cause to put up full-page advertorials in one national daily to sensitise Muslims and other patriotic and well meaning Nigerians on the plot to destabilise our Country through the United Nations' covert campaign against islam. Our exhaustive investigations revealed additional facts of frightening proportions, relating to this plot. It will also be recalled that some of such UN conventions have already been submitted to the National Assembly by President Obasanjo for ratification which were explained in our earliest advertorials include:-

1. UNITED NATIONS CONVENTION AGAINST CRUEL, INHUMAN and Other DEGRADING TREATMENT OR PUNISHMENT (RATIFICATION AND ENFORCEMENT) BILL, which is intended to make illegal, most aspects of Shari'a Hudud (Islamic Punishments) as divinely ordained by Allah, These include Capital punishment for murderers and armed

- robbers. Their demands is that murderers and armed robbers should not be killed. We all know, without doubt how lawless our society will be in addition to violating the fundamental belief of all true Muslims in Nigeria in particular and the world in general. Their intention is also to outlaw divinely ordained punishments of canning for drunkenness and Qazaf (Slander), fornication as well as wrist cutting for certain categories of theft so that all Muslims world wide will become nominal Muslims only. May Allah forbid this from happening?
2. UN CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN (CEDAW) – This seeks to abolish all religious, and customary beliefs and practices that deny women full and unaffected equality with men (e.g. Polygamy, which allows a man to marry from one wife up to a maximum of four, with justice and equity in their treatment in all respects of marital rights under Islamic law. They want Muslims to adopt the ways of a depraved society where adultery and homosexual marriages and other depraved behaviour condemned by Islam. They also want to outlaw the divinely ordained inheritance law where a son inherits twice what a daughter inherits.
 3. UN CONVENTION AGAINST CHILD ABUSE which deceptively sounds noble intentioned, but seeks to criminalise even parental efforts to discipline or influence a child in a bid to nurture him to a spirituality fulfilling life. This convention now awaiting ratification, confers on a child and third parties, the right to use their parents and guardians, for such measures our religion and culture view as correct and recommended, for example, reasonably beating a Muslim child of 10 years who refuses to pray.
 4. There is yet another UN Convention (also awaiting our expected blind ratification), which makes it a criminal offence for any parent to marry off his daughter below the age of 18 years. Most Muslim girls who attend schools marry at or below the age of 18 years, but Islam recognises certain cases where the girls mature preciously and the need to marry earlier than the age of 18 years. In such cases, it is in the interest of the girl, her parents and the society at large, that such a girl can marry below the age of 18 years without artificial legal hindrance. It is for such vital reason that no such artificial restrictions should be imposed. Instead of this unacceptable position, we urge the Government to make Education for both girls and boys available and affordable and the problem of early marriages for most normal girls will disappear, as the vast majority of parents now want their daughters to be well educated.
 5. Finally, the Federal Ministry of Education, at the prompting of its morally bankrupt patrons, has concluded plans to introduce SEX education in all Schools, at all levels, as a safeguard against HIV/AIDS and girl-child

pregnancies. The master plan has already been published by the Nigerian Education Research and Development Council and it titled NATIONAL SEXUALITY EDUCATIONAL CURRICULUM (for Primary, Secondary and Tertiary institutions in Nigeria). As we had noted in our earlier advertorial, the only reason for the delay in its implementation is the debate in the bureaucracy as to whether it should start at Primary or Secondary Schools levels. The SCSN believes that Sex Education in Schools is going to cause a disaster to the nation as it will remove the fear of unwanted pregnancies, HIV/AIDS and sharpen the curiosity of children to attempt practicalising such lessons with consequent catastrophic explosion of unwanted pregnancies and HIV/AIDS as there is truly no absolutely safe sex especially among teenage girls. It will also lower the moral fibre of the younger generation. May Allah (S-W.T) save us from these thoughtless planners and instigators? Regarding the other frightening aspects of the plot, firstly the Government of President Obasanjo has unequivocally undertaken to ensure the ratification of all these conventions in spite of the fact that:-

- a.) Even the messianic promoters of these heretical tendencies have not done so in their respective countries. The Americans congress is yet to even consider (1) above, because in a number of states like Texas, where President Bush was Governor, the death penalty is still in force and enjoys wide support.
- b.) Ratification of the Conventions by the National Assembly would entail compromising Nigeria's Sovereignty, since all the Conventions stipulate that once they are ratified, the provisions and obnoxious stipulations shall override and thus have an abrogating effect on all our domestic laws, customs and usages, including the constitution of the Federal republic which proclaims itself to be supreme. In other words, the provisions of our constitution and all other domestic laws that are not in conformity with the foreign dictated stipulations of the conventions shall be null and void!
- c.) On the issue of enforcement of compliance with the UN conventions after ratification any breach of the provisions of the convention by a country (or any part thereof, including its citizenry) and it government appears to the UN as being unable or unwilling to ensure compliance; the UN (read U.S.A., Britain, etal) is empowered to consider global economic sanctions or even outright force to bring that country in line with their new world order.

We wish to make it categorically clear that the wishes, values and sensitivities of the majority in a democratic dispensation, must be taken into cognisance of before fundamental issues such as these, are decided. For example, Muslims recognise Divine rights and human rights and their

faith teaches a harmonious blend of this dualism, which must be respected. Muslims will not therefore take kindly to blind acceptance of a secular system all in a bid to be seen as conforming with an arbitrary new world order, the Grafting of which was done in complete disregard of the wishes of the people it is meant to impact on. We believe Nigerians should be broad minded enough to recognise our differences in order to develop the capacity to accept them.

Finally, in the interest of peace and our unity in diversity as well as true democracy, we demand, as a right, that such bills be publicised to be debated upon by all before they are considered as fit to be submitted to the National Assembly. We therefore, challenge the Government to publish these bills now unless there is a hidden agenda behind them. We have no doubt that Nigerians will overwhelmingly reject them in their entirety as they are a sure recipe for chaos and the nation's disintegration because every true Muslim is bound to disobey such laws.

Thank you and God bless.

Dr. Ibrahim Datti Ahmad
President

Nafiu Baba-Ahmad, mni
Secretary General

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