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## Rights of Religious Minorities in Nigeria

by Ismene Zarifis\*

Several states in Nigeria have enacted a Nigerian-adapted version of the Sharia criminal code, a set of legal provisions based on the principles and morals of Islam. The Sharia criminal code, as adapted and applied in Nigeria, is the subject of recent controversy because its implementation violates fundamental rights. Although Sharia criminal law provisions safeguard some internationally protected rights in certain circumstances, such as a Muslim's freedom of religion, implementation of Sharia law violates other fundamental rights such as the right of minorities to practice the religion of their choice, the right to life, and the right to be free from cruel, inhuman or degrading treatment or punishment. Religious minorities in Sharia-declared states are suffering widespread discrimination and harsh penalties that violate Nigeria's international human rights obligations. They have reacted to the infringement of their right to freedom of religion with violence. As a result, inter-religious conflicts have claimed thousands of lives since the introduction of Sharia in January 2000.

### Background

Nigeria is a secular federation consisting of 36 multi-religious states. In this system, a strong federal government controls states possessing local autonomy. Although state governors may decide matters concerning their own states, all states are bound to respect the Nigerian Constitution. Secular federalism also allows states to make decisions satisfying the interests of their residents without affecting the residents of other states.

The two predominant religious communities in Nigeria are the Muslims, located mostly in the north and accounting for 50 percent of the population, and the Christians, located mostly in the south and accounting for 40 percent of the population. Ten percent of the population practices indigenous religions. Many people practice elements of Christianity or Islam and indigenous religions. In a country as religiously diverse as Nigeria, secular federalism has been effective for maintaining peaceful co-existence, discouraging religious conflicts, and encouraging religious tolerance.

The Nigerian Constitution upholds the ideals of a secular state by prohibiting the adoption of an official religion under Article 10, and guaranteeing the freedom of religion in Article 38. Historically, Sharia courts exercised limited jurisdiction over personal and family matters and were available to Muslims who elected to resolve their disputes in such courts.

Contrary to constitutional provisions prohibiting state-mandated religions, several governors of northern Nigerian states have unilaterally extended Sharia law to criminal offenses, making it applicable to all individuals within the

state's jurisdiction. According to the Nigerian Constitution, a person may not be convicted for any Sharia offense unless that offense and its punishment are enacted by the National Assembly or State House of Assembly. Where Sharia penal codes are declared without codification by the National Assembly or State House of Assembly, the codes are unconstitutional. Despite the violent reaction by the non-Muslim minority to the introduction of Sharia in the northern state of Zamfara, several other states in northern Nigeria followed

the Zamfara example. Imposition of Sharia penal law violates rights under international law and subsequently threatens peace and security because groups whose human rights have been violated react with physical violence. States invoking Sharia penal law have relied on a Nigerian constitutional provision, which states that "the Sharia Court of Appeal may exercise such other jurisdiction as may be conferred upon it by the law of the State." At the time of this writing, this provision had yet to be interpreted by the Supreme Court of Nigeria. Regardless of the constitutionality of Sharia penal law, the imposition of severe penalties for certain lesser offenses has raised concerns within the international community

about the violation of fundamental rights protected by international human rights instruments.

### Sharia Law in Nigeria

Sharia, or Islamic law, is a religious set of principles based on the Quran (Islamic holy text), the Sunna (teachings of the Prophet Mohammed), the Ulama (religious scholars) and the Qiyas (case law). These principles are applicable to public and private behavior in everyday life. Sharia may be used to guide the acts of an individual or group of individuals in society and may be used to resolve disputes between individuals or nations. The Nigerian Constitution provides for a Sharia Court of Appeals at the state and federal levels, but these courts' jurisdictions are limited to considering only matters of Islamic personal or family law.

### Offenses and Penalties under Sharia Law

Sharia criminal law sets forth a number of crimes and penalties that are the object of much criticism from the international human rights community. The following are examples of the most seriously contested offenses and their respective punishments under the Zamfara state's version of Sharia law. For the offense of alcohol consumption, Article 150 of the Sharia penal code mandates caning and imprisonment whether the alcohol consumption is conducted in a public or private place. This provision exclusively protects



Credit: Stephan Farris

Safiya Huseini was sentenced to death by stoning for allegedly committing adultery. She was acquitted on procedural grounds.

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Islam, as there is a strict ban on the consumption of alcohol by all adherents to the faith. Article 127 punishes the offense of adultery with caning of one hundred lashes if unmarried, and imprisonment or death by stoning if married. Article 129 punishes the crime of rape with caning of one hundred lashes or imprisonment if unmarried or death by stoning if married. Similar punishments are mandated in Articles 130 and 133 for the crimes of sodomy and incest. These penalties, although protecting Islamic religious principles, mete out harsh penalties that violate the right to life and, in many cases, may reach the threshold of torture or cruel, inhuman or degrading punishment.

The crimes of theft and robbery are considered two of the most serious crimes under Sharia law. Theft is punishable by amputation of the right hand for the first offense, amputation of the left foot for a second offense, amputation of the left hand for a third offense, and amputation of the right foot for a fourth offense. The fifth offense of theft is punishable by imprisonment. The initial penalty for robbery imposes a life sentence when the offense is committed without causing death or seizing property, and amputation of the right hand and the left foot when the property was seized but no death occurred. In cases in which death is caused during a robbery, the law imposes the death penalty. These penalties are seriously contested by members of the international human rights community, such as Human Rights Watch, due to their apparent violation of the right to life and the right to be free from torture or cruel, unusual, or degrading punishment. Furthermore, by their nature, these crimes are not uniquely offensive to an Islamic value system, but constitute common crimes that require regulation by a standard system of law enforcement.

### Nigeria's International Human Rights Obligations

Nigeria is a party to a number of international human rights treaties, which bind Nigeria to respect and ensure the human rights of all individuals within its territory. Nigeria is a party to the International Covenant on Civil and Political Rights (ICCPR), the African Charter on Human and People's Rights, the Convention on the Elimination of All Forms of Racial Discrimination, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), the Convention on the Elimination of All Forms of Discrimination against Women, and the African Charter on Human and Peoples' Rights, among others. In addition, a number of international instruments such as the Universal Declaration of Human Rights and the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities (Minorities Declaration) are binding as customary international law.

According to Article 14 of the Vienna Convention on the Law of Treaties, once these international treaties have been ratified a state party is bound to carry out its international obligations and may not invoke its domestic law as justification for non-implementation. Thus, the federal government of Nigeria has the ultimate responsibility to ensure that human rights are respected in the territory. As a result, state-declared Sharia law may not be invoked as a reason for

non-implementation of Nigeria's international human rights obligations.

### Human Rights Implications of Sharia Law on Religious Minorities and Other Sectors

The restrictions on freedom of religion violate Article 27 of the ICCPR, which protects persons belonging to religious minorities from being denied the right to practice their religions "in community with the other members of their group." The imposition of Sharia criminal law infringes on the right of religious minorities to practice their own religion and penalizes them for acts not tolerated under Sharia. The right to be free from religious discrimination is further protected in the Minorities Declaration. It is important to note that not all Nigerian Muslims support the new laws. Those Muslims who prefer to be judged by a constitutionally mandated court, in accordance with the Nigerian penal code, are precluded from this option in Sharia-declared states.

The application of Sharia law also regulates consumption of alcohol, imposes gender segregation in schools, mandates the dress code of women and restricts women's freedom of movement. A particular source of concern is the religious enforcers who mete out harsh, on-the-spot punishments against female Muslims and non-Muslims for violating the dress code or for travelling alone in taxis. Despite some declarations that Sharia law will be applicable to Muslims only, there have been a number of documented cases where the opposite is true,

especially in cases in which religious enforcers have administered on-the-spot punishments of individuals they believed were in violation of Sharia. Furthermore, Human Rights Watch reports that in the Sharia legal tradition, the rules of evidence and rights of appeal and legal representation applied to Muslims are different than those applied to non-Muslims, revealing inherent discrimination against non-Muslims. In short, the mere application of Sharia penal law to both Muslims and non-Muslims implies an infringement on the right to practice religion freely.

### Implication of Sharia on the Fundamental Rights of Muslims and Non-Muslims

#### Protection of the Right to Life

The Sharia penal code permits the death penalty in cases of rape or adultery in which the individual is married. This form of punishment violates Article 6 of the ICCPR, which protects the right to life. In a controversial case, Safiya Huseini was sentenced to death by stoning for allegedly committing adultery. She was finally acquitted on procedural grounds. A woman from Katsina was sentenced in March 2002 to death by stoning after she gave birth outside of marriage.

The UN Human Rights Committee has interpreted the ICCPR to allow the death penalty only for intentional offenses that cause lethal or extremely grave consequences, stating that "when the death penalty is applied by a State party for the most serious crimes . . . it must be carried out in such a way as to cause the least possible physical and mental suffering." States are permitted to resort to the death penalty only

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in “exceptional circumstances,” and are obliged to abolish the death penalty for all crimes that do not meet these standards. Under international human rights law, the right to life is a universally protected right. Accordingly, the punishment of death by stoning for rape and adultery raises two problems: stoning is an excessive penalty for offenses that do not constitute the “most serious crimes,” such as murder, pursuant to ICCPR interpretation, and it is not a method of carrying out the death penalty that causes the least possible physical and mental suffering.

#### ***The Right to Be Free from Torture or Cruel, Inhuman or Degrading Punishment***

Judicial corporal punishment in the forms of flogging and amputation for the offenses of theft, alcohol consumption, robbery, adultery, and rape in the Sharia penal code constitute torture or cruel, inhuman or degrading punishment under Article 7 of the ICCPR. Furthermore, the Sharia provision of death by stoning constitutes cruel and unusual punishment because it prolongs the physical and mental suffering of the individual. Despite the protections in the international human rights treaties to which Nigeria is a party, there are a number of documented cases by Amnesty International where Sharia courts have ordered amputations for theft and robbery, and have ordered public floggings for smoking marijuana, gambling, and carrying women on the back of moto-taxis. In one case, Ahmed Tijjani, who was found guilty of partially blinding a friend during an argument, was sentenced by a Sharia court in Katsina to have his left eye removed. Such severe penalties have forced some individuals subject to Sharia law to renounce Islam, reflecting the internal dissent among Muslims that has resulted from the adoption of Sharia penal law.

The UN Special Rapporteur on Torture has stated that corporal punishment is inconsistent with the prohibition of torture and other cruel, inhuman or degrading treatment or punishment prohibited in the CAT, to which Nigeria has been a party since June 2001. The UN Human Rights Committee has also found that corporal punishment is considered excessive under Article 7 of the ICCPR, which prohibits cruel, inhuman or degrading treatment. According to the language in the international human rights treaties to which Nigeria is bound, corporal punishment provided in the Sharia penal code does not adequately protect the rights of Nigerians to be free from cruel, inhuman or degrading treatment.

#### ***The Right to Freedom of Religion***

Sharia law enables Muslims to exercise the freedom of religion guaranteed in the ICCPR and the Minorities Declaration. Freedom of religion, as protected by Article 18 of the ICCPR, includes one’s right to adopt a religion of choice and the freedom to practice one’s religion individually or with others. The only limits placed on this right are those prescribed by law and those that are necessary to protect public safety, order, health, morals, or the fundamental freedoms of others. This provision broadly protects individuals professing a faith as well as the right not to practice a religion, and extends protection to religious minorities that may be subject to hostility by a predominant religious group, according to General Comment 22 of the UN Human Rights Committee, which articulates the scope of Article 18 of the ICCPR. Furthermore, limitations on this right must be “pro-

portionate to the specific need on which they are predicated” and may not be applied discriminatorily or with discriminatory intentions. Lastly, an established state religion is prohibited from impairing the other rights protected by the ICCPR and must not discriminate against members of other religions.

#### **Conflict of Rights under International Law**

In determining how Sharia law can be enacted in compliance with international human rights standards, it is important to note the conflict among internationally protected human rights. Although the adoption of Sharia penal law by Nigerian states is protected by the ICCPR under the right to freedom of religion, the act infringes on the rights of religious minorities to practice their own faith, protected in Article 27 of the ICCPR. In short, the conflict emerges between the guarantee of freedom of religion and the guarantee of minority rights. In the case of Nigeria, the application of Sharia penal law to individuals residing within a state infringes on the right of non-Muslims to practice their own religions. According to General Comment 22, freedom of religion is wholly protected to the extent that it does not infringe on other fundamental rights protected by the ICCPR. In light of such inconsistencies, Sharia criminal law may or may not conflict with Nigeria’s international human rights obligations. A state is not prohibited from adopting an official religion, but it must not infringe on the rights of others to practice their own religions or profess no faith at all. This provision in the ICCPR is particularly relevant because non-Muslims and some Muslims prefer to be judged by a Nigerian criminal court rather than a Sharia court. Consequently, these individuals should have the right not to be subjected to a Sharia criminal court and the enforcement of religious behavior.

#### **Conditions under which Sharia Law May Be Applied in Nigeria in Accordance with International Human Rights Instruments**

An analysis of the texts has shown that the Sharia penal code and its application are inconsistent with Nigeria’s international human rights obligations. The enactment of Sharia penal law impairs the right of minorities to profess their own faith and violates the rights of religious minorities and women to be treated equally within society. The Presidential Committee on the Review of the 1999 Constitution emphasized the constitutional provision establishing the Federal Republic of Nigeria as a secular state and recommended preserving the prohibition against adopting an official religion and maintaining the right to freedom of religion. This recommendation considered the recent religious crisis in the country, which the Committee attributed to manipulation of religion for political ends rather than religion alone, and suggested that “a clear separation can, in a multi-cultural and multi-religious nation, be maintained between the affairs of a State and individual religious beliefs and practices, subject to such limits of conduct that may make State intervention necessary.” The Committee specifically concluded that legislation seeking to blur this separation should be approached cautiously so as not to restrict the individual’s right to freedom of religion or result in a religious dictatorship threatening fundamental freedoms.

#### **Conclusion**

In cases in which Islamic law conflicts with international human rights law, the Sharia penal code should undergo

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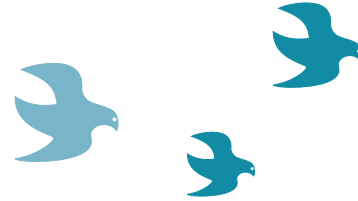
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modifications of its penalties in order to comply with the ICCPR's protection of minorities, the right to life, and the right to be free from torture or cruel, inhuman or degrading treatment. Even with safeguards, it is not clear that fundamental rights will be protected with the introduction of Sharia criminal law because its provisions affect both public and private conduct of individuals. A commonly raised question regards how to regulate the consumption of alcohol, where such consumption is criminalized under Sharia but legal for non-Muslims. Furthermore, in multi-religious states where Sharia mandates the separation of the sexes in public education and public transportation, rights of women in minority religious groups that do not require the separation of the sexes will inevitably be impaired.

In light of the above analysis, it is clear that the recommendations by the Presidential Committee on the Review of the 1999 Constitution promote freedom of religion to all members of society and promote fundamental rights under the ICCPR, in conformity with Nigeria's international human rights obligations. At the same time, the Committee's conclusions address the conflict of rights dilemma by calling for the protection of the rights of minorities to practice their religion. Moreover, preserving a secular state in which a diversity of religions is practiced promotes peaceful co-existence.

Once modified, a limited application of Sharia law may be permissible under Nigeria's international human rights obligations, but a new framework for Sharia law that guarantees these rights has yet to be developed and implemented in Nigeria. 🌐

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### Remedy

The Commission concluded its opinion by making an appeal to the Nigerian government to ensure the protection of the environment, health, and livelihood of the people of Ogoniland through stipulated measures. These measures include stopping all attacks on the Ogoni people, conducting investigations into rights violations, and ensuring adequate compensation to victims and appropriate environmental and social impact assessments for any future oil development. The Commission also recommended that Nigeria provide information on health and environmental risks and meaningful access to regulatory and decision-making bodies to communities likely to be affected by the exploitation. Finally, the Commission urged the Nigerian government to keep it informed of progress made by the institutions mandated to respond to environmental and human rights issues in Ogoniland.

### Conclusion

This case established strong precedent for the judicial enforcement of economic, social, and cultural rights within the international community. It is the first claim before an international human rights monitoring body that deals directly with alleged violations of economic, social, and cultural rights. By basing so much of its ruling within the social and economic rights guaranteed under the African Charter, the Commission effectively undermined arguments against the full recognition of these rights.

For Africa, the case marks a renewed commitment by the Commission to the implementation of economic, social, and cultural rights. Indeed, the African Commission indicated at its latest session held in July 2002 that it would host seminars and conferences on these rights as part of the fulfillment of its promotional mandate. These developments are encouraging, because most of the African constitutions adopted since the end of the Cold War have entrenched economic, social, and cultural rights in their bills of rights (for example, in Burkina Faso, Cape Verde, Ghana, Malawi, Sao Tome and Principe, and South Africa). This decision and other norm-setting activities of the Commission will be instructive to domestic courts in Africa on the enforcement of these rights.

Perhaps more importantly, the *SERAC Case* demonstrates that economic, social, and cultural rights are justiciable. This calls for the speedy ratification of the Protocol to the Charter establishing the African Court on Human and Peoples' Rights to ensure that such important decisions are enforced. 🌐

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