Global Journal of Politics and Law Research
Vol.2,No.4,pp.6-25, October 2014
Published by European Centre for Research Training and Development UK (www.eajournals.org)

NIGERIA, SHARIA PRAXIS AND NATIONAL INTEGRATION: ANY LESSONS FROM THE SUDAN EXPERIENCE?

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ABSTRACT: *This paper examines critically the implication of wide scale adoption of sharia in a multi religious and pluralistic Nigeria. Specifically, it studies the effect of the legal system on the national integration and unity which paradoxically constitutes mantra in the mouth of almost every Nigerian national. It is discovered that the entrenchment of the criminal and non-personal aspects of Islamic law by the core northern states had become a counter-point on the corporate existence of Nigeria. This is more so as the country's Constitution had restricted the application of sharia to its personal regime. The Boko Haram menace that ravages the country and its environs may not be unconnected with the much dreamt of islamization of the whole sovereign enclave. Yet, it is further noted that the huge population of southern Christians that virtually constitute half of the nation's population cannot be cowed into the proselytist agenda. This development is a threat to national unity. A comparative analysis of the socio-legal phenomenon in relation to Sudan before the emergence of South Sudan was a task before the writer, especially as the Muslim/Christian ratio in the pre-divided Sudan resembles that in Nigeria. More still, the comparison is ad rem as the north-south religious divide in both jurisdictions is almost coterminous. This study recommends national dialogue, religious toleration, patriotic spirit, avoidance of fanaticism, inter alia, as antidote to disintegration.*

KEYWORDS: Sharia, Nigeria, National integration, Sudan, South Sudan, Law

INTRODUCTION

There is scarcely any doubt that Islam and its Sharia constitute an important index in Nigerian socio-political and economic matrix. This is because Islam understands its principles as relevant to all aspects of human living. Yet, some of these principles are sometimes at variance or in conflict with those of other religious adherents. This paper examines the effects of the practice of Islamic law on national integration in Nigeria. This discussion has become particularly germane as Sharia Islam is predominant only in the northern part of Nigeria. Nigeria is a country known for its multi-religious and multi-ethnic nature. The consequence is that Islamic insistence to spread the regime of Sharia in the midst of pluralisms has bred violent crises that portend danger for national unity. This study involves a comparative analysis of the Nigerian situation with that of the pre-divided Sudan with a view to drawing some relevant lessons emergent from the effects of later ensued division. The paper considers whether the gains of the divided Sudan can outweigh those of the hitherto united Republic, and what

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ISSN 2053-6321(Print), ISSN 2053-6593(Online)

implications are there for Nigeria. This comparison is informed by the fact that both countries are third world, African, developing, oil-dependent, and share a lot more in common. This paper theoretically assumes that in spite of the multifaceted causes of the crises that led to the division of Sudan, religion is a major factor.

For the purpose of this study, national integration connotes and requires a progression from the purely structural manifestation of organization, (internationally recognized boundaries, and established system of governance, laws, finances, and so on) to the attitudinal aspects of citizenship and social consensus. The concept of national integration assumes that there is a difference between the notion of statehood and that of nationhood or national consciousness. The former is a precursor of the latter and it is observed that not all states eventually become nations. For Jacobs and Tenue, national integration is "a relationship of community among peoples within the same political entity… a state of mind or disposition to be cohesive, to act together, and to be committed to mutual programmes"[2]. Ojo, agreeing with Morrison *et al,* sees national integration as "a process by which members of a social system (citizen for our purpose) develop linkages and location so that the boundaries of the system persist over time and the boundaries of sub systems become less consequential in affecting behavior"[3]. In this process, members of the social system develop an escalating sequence of contact, cooperation, consensus and community. National integration is a means of progressive reduction of socio-religious, cultural and regional tensions and discontinuities in the process of creating a homogenous political community[4]. Be that as it may, our conception of national integration relates to a plural society where component parts are reasonably contented and united in the polity vis-à-vis equity and justice in resource allocation, political participation and access to equal opportunities.

Meaning and Brief History of Sharia Law in Nigeria

'Sharia' is Arabic word that literally means "a drinking place or a path leading to a watering hole"[5]. The term is interchangeably used with the phrase "Islamic law". For Nzomiwu, 'sharia' or 'shariah' connotes "the clear path to be followed and which is technically referred to as the canon law of Islam"[6]. Farlex describes sharia as a "code of law derived from the Koran and from the teachings and examples of Mohammed"[7]. Johnson expands the meaning of sharia to a rule "inspired not only by Islam and Koran but also by Arabic traditions and early Islamic scholars"[8]. No wonder sharia is often regarded as the "totality of Allah's commandments as revealed in the Quran and elaborated in the Hadith and Sunna and interpreted by Ijma"[9]. Several studies show that Muslims claim that Sharia governs the

[2] P.E.Jacobs and H. Tenue, The Integrative Process; Guidelines for Analysis of the Bases of Political Community in P.E. Jacobs and J.V. Toscand (eds.), *Integration of Political Communities*, New York:J.P. Lippincott Company, (1964) 9-22.

[3]E. O. Ojo, Federalism and the Search for National Integration in Nigeria, 3 (9) *African Journal of Political Science and International Relations* (2009) 384-395at 384. Available at http://www.academicjournals.org/AJPSIR. Accessed on 07/10/12.

[4] J.S. Coleman and C.G. Rosberg, *Political Parties and National Integration in Tropical Africa,* Berkley and Los Angeles: University of California Press (1964) 9.

[5] C.O. Ubaka, *Sharia in Nigeria: its Implications for Non-Muslims*, Engugu: Snaap Press Ltd. (2000) 11.

[6] J.P.C. Nzomiwu, *The History and Message of Islam,* Awka: Meks- Unique Publishers (1989) 117.

[7] P. Farlex, "Sharia" in *The Free Dictionary on Line* (2009). Available at http://www.thefreedictionary.com/sharia. Accessed on 23/12/09.

[8] B.Johnson, "Sharia" in *About.com World News* (2009). Available at http://worldnews.about.com/od/qt/9/sharia.htm. Accessed on 23/12/09.

[9] J.P.C. Nzomiwu, supra note 6, p.117.

ISSN 2053-6321(Print), ISSN 2053-6593(Online)

entirety of a man's life from cradle to the grave[10]. Among the different schools of jurisprudence, the applicable one in Nigeria is the *Maliki* version that is a strict type.

Sharia alongside Islam was introduced into what is now Nigeria through Kanem Bornu Empire in the 11th century[11]. At this time, Islam thrived as a court religion together with its Sharia while few commoners practiced it in their private lives. This was the situation of Islamic law in the enclave until 1804 when Uthman dan Fodio launched a jihad. Although his initial aim was to purify Islam of certain abuses, Fodio later succeeded in overthrowing the Hausa rulers and establishing a theocratic empire with its headquarters in Sokoto. This theocracy was what the Sokoto Caliphate became. With this, the stage was now set for a fuller application of Sharia. Last holds that at this time, "the emirs were instructed to not only carry on the Jihad, study and teach the Quran and other Islamic sciences, command the good and prohibit the evil, but also to appoint judges (*qadi*), tax collectors, army commanders and prayer leaders"[12]. According to Ubaka, "with all these state machinery set in motion and the functionaries carrying out their duties to the best of their abilities the Islamic state came into full operation"[13.] "The Sharia became the law of the state insofar as the learned judges interpreted and administered it".[14] Sharia and other Islamic sciences were taught by the Mallams. Ozigbo notes that in this period, "all Islamic socio-political and judicial processes and institutions were emphasized"[15]. Surely, this enthronement of Islamic state involved the administration of Sharia criminal justice. Ahmed observes that the Jihad of Uthman dan Fodio "put in place a highly centralized system of criminal justice administration and a distinct legal system"[16]. In the same vein, Okonkwo notes that "in much of the North, there was the highly systematized and sophisticated Moslem law of crime"[17.] Thus, after the Jihad and "prior to the British conquest of the northeastern part of present Nigeria in the Old Borno Empire, the Saifawa dynasty established sharia as comprehensive legal system wherein Islamic law administered the life of the people and adjudicated their affairs"[18]. Hence the socio-economic and political life of the people was re-organized on the basis of Sharia.

[10]*Ibid.*; B.B. Aliyu, *The Sharia: Its Place in Islam and Application in Nigeria*, Paper Presented in Missiological Symposium (SIST, Atakwu, Enugu, 2001) pp.3-4; I. R.A. Ozigbo, An *Introduction to the Religion and History of Islam* , Enugu: Fourth Dimension Publishers (1988) 48.

[11] J.S. Trimingham, *A History of Islam in West Africa*. London: Oxford University Press (1962) 115; A.I. Abikan, Constitutional Impediments to the Total Enthronement of Sharia in Nigeria in Z.I Oseni, (ed.) A *Digest of Islamic Law and Jurisprudence in Nigeria* , Auchi: Darun – Nur (2003) 164-163-188 at 164; M.B. Uthman, Protecting the Rights of Accused Persons through the Proper Implementation of the Sharia Procedural Guarantees in Northern Nigeria in J.N. Ezeilo, M.T. Ladan, and A. Afolabi – Akiyode, (eds.), *Sharia Implementation in Nigeria: Issues & Challenges on Women's Rights and Access to Justice* Enugu: Women's Aid Collective & others, (2003) 171-205 at 177.

[12] M. Last, Sharia in Northern Nigeria, *Politique Afriicaine* 79 (2000) 141-152 at 146.

[13] C.O. Ubaka, supra note 5*, p*.26.

[14]C.O. Ubaka, supra note 5*, p*.26

[15] I. R.A. Ozigbo, supra note 10,p.141.

[16] A.B. Ahmed, Administration of Islamic Criminal Law and Justice in a Constitutional Democracy: Problems and Prospects in J.N. Ezeilo, M.T. Ladan, and A. Afolabi-Akiyode (eds.), *Sharia Implementation in Nigeria: Issues & Challenges on Women's Rights and Access to Justice*, 164-176 at 165.

[17] C. O. Okonkwo, *Introduction to Nigeria Law*, London: Sweet and Maxwell, (1980) p.4.

[18] A. Zubair, Re-Introduction of Sharia Courts in Nigeria: Some Perspectives in J.N. Ezeilo, M.T. Ladan, and A. Afolabi-Akiyode (eds.), *Sharia Implementation in Nigeria: Issues & Challenges on Women's Rights and Access to Justice*, pp. 228- 243 at 230.

ISSN 2053-6321(Print), ISSN 2053-6593(Online)

The scenario, however, became different with the advent of the British colonists in 1900. Although the initial intention of the colonists was to allow the continuance of the administration of Sharia law which "extended to all matters even crime and capital offences except for penalties such as mutilation, lapidation and crucifixion"[19], yet it was soon discovered that Sharia application could not augur well with English law and the colonial program in spite of the indirect rule policy. Hence, Allot observes that "during the six decades of the British rule, the colonial factor transformed the content and methodology of the Islamic criminal legal system"[20], and indeed later abolished it. The beginning of this process was no doubt the recognition of Sharia as "native law and custom"[21]. The implication of this colonial classification of Sharia as part of native 'law and custom' is that the law is now subject to the validity tests failing any of which the law would not be enforced by the English-style courts. These tests include 'repugnancy test', 'incompatibility test' and 'public policy test'. For instance, the application of incompatibility test on any provision of Sharia would mean that once it is inconsistent with any written law for the time being in force, such a Sharia provision would be rendered unenforceable. Certainly, this colonial measure curtailed drastically the jurisdictional scope of Sharia. But it was in 1959 that full application of Sharia including Islamic criminal law was finally legislated out of existence. The supplanting Penal Code 1959 despite its Sharia bias was a fruit of the British colonial effort and not of the interpretation and codification of the injunctions of Allah. Although the code retains most of the Sharia offences, the punishments thereof were radically altered. In addition, the gradual dying of Sharia criminal justice system was quickened by the provision of section 3(2) of Northern Nigeria Penal Code Law, which states that "no person is to be liable to punishment under any native law and custom". Ozigbo notes that at this time "only aspects of the Sharia relating to marriage and family life, divorce and inheritance were allowed to operate"[22]. It is precisely these aspects that are referred to as Islamic "personal law" which regime extended well into the post-colonial era.

Further restriction was also made with the constitutional abolition of unwritten customary law. Thus, section 22 (10) of the Republican Constitution 1963 states that "no person shall be convicted of a criminal offence unless that offence is defined and the penalty therefor prescribed in a written law except in contempt of court". This provision was retained in section 33 (12) and section 36 (12) of 1979 and 1999 Constitutions respectively. The only difference is that the clause "except the contempt of court" in the 1963 Constitution was deleted in subsequent constitutions. But it was only the latter two constitutions that specify that the "written law" for the purpose of the provision must have been one enacted by the National Assembly or the State House of Assembly or in form of subsidiary legislation or instrument under the provision of a law[23]. Until recently, this provision has enormous implications for Sharia criminal justice. Firstly, some aspects of Sharia law were unwritten. For even though the Koran and the *Sunna* as compiled in the *Hadith* are written sources, *ijma, qiyas* and other sources of Islamic law are clearly unwritten. Secondly, even the written sources of Sharia were not enacted by the relevant legislative authority as provided for in the constitutions. Thirdly, it is quite debatable as to whether a source of law precisely as a source can amount to 'a law' within the

[19] J. Kenny, Sharia in Nigeria: A Historical Survey, 4 (1) *Bulletin of Islam and Christian-Muslim Relations in Africa* (BICMURA) (1986), 1-15 at 2.
[20] A. Allot, *The Limits of Law*, London: Longman, (1980) 56.
[21] Northern Nigeria, *Native Courts Law,* 1957, section. 22.
[22] I. R.A. Ozigbo, supra note 10, p.137.
[23] Constitution of the Federal Republic of Nigeria, 1979, section 33 (12); Constitution of the Federal Republic of Nigeria, 1999, section 36 (12).

ISSN 2053-6321(Print), ISSN 2053-6593(Online)

constitutional understanding of law and legislation. Therefore, along these lines, Sharia criminal law could not meet the constitutional demands.

Similarly, the constitutional delimitation of the application of Sharia to 'Sharia personal law' is yet another barrier to Sharia criminal justice administration in Nigeria. The Constitution of the Federal Republic of Nigeria,1979 states that "the Sharia Court of Appeal of a state shall… exercise such appellate and supervisory jurisdiction in civil proceedings involving questions of Islamic personal law…"[24]. Islamic personal law pertains to issues of marriage, family relationship, guardianship of infant, gift, will, succession, and so on[25]. Notwithstanding the various attempts by the provisions of the Constitution of the Federal Republic of Nigeria (Amendment) Decree No 26 of 1986 and section 261 of the aborted Constitution of the Federal Republic of Nigeria 1989 to delete the word "personal" from their respective provisions on the jurisdiction of the Sharia Court of Appeal of a State, the 1999 Constitution still retains the word and reproduces verbatim the provisions of the aforementioned section 242 (1) & (2) of the 1979 Constitution[26]. It seems that the constitutional concern on Sharia Court of Appeal's jurisdiction derives from the fact that it alone, among other possible Sharia Courts, is a constitutional and superior court of record endowed with appellate and supervisory roles[27]. It appears that whatever jurisdiction is vested on the Sharia Court of Appeal determines the extent of the jurisdiction of courts of first instance that apply Islamic law. Hence, until 1999, Sharia personal law and that alone constituted the four walls within which the Sharia Court of Appeal and probably other relevant courts of original jurisdiction operated.

However, the period from 1999 till date witnesses a dramatic turn of events in the enforcement of Islamic law in Nigeria. Following a new interpretation of the 1999 Constitution, most northern states led by Zamfara made certain laws, repealed some, and amended some others. By these they established Sharia courts and vested them with not only the entirety of civil but also criminal jurisdictions. Zamfara State, for instance, arrived at these by way of five laws. They include:

a). Sharia Court (Administration of Justice and Certain Consequential Changes) Law No. 5, 1999.
b). Sharia Court of Appeal (Amendment) Law No. 6, 2000.
c). Area Courts (Repeal) Law No. 13, 2000.
d). Sharia Penal Code Law 1999.
e). Sharia Criminal Procedure Code Law No. 18, 2000.

In that order, the first law provides for the establishment, composition and jurisdiction/grades of Sharia courts, and makes general provision for the administration and implementation of Islamic law in the state. The second provides for the jurisdiction of Sharia Court of Appeal of the state to hear and entertain appeals from the decisions of the Sharia courts in both civil and criminal matters decided on Islamic law. The third legislation repeals the Area Courts Law in the state and makes transitional provisions for the take off of Sharia courts. The fourth makes provision for the substantive Sharia Penal Law and the criminal law to be applied in the state. In other words, the law codifies the offences in

[24] Constitution of the Federal Republic of Nigeria, 1979, section 242 (1).
[25] *Ibid*., section 242 (2).
[26] Constitution of the Federal Republic of Nigeria, 1999 (as amended), section 277 (1) & (2).
[27] *Ibid.*, section 6 (4).

ISSN 2053-6321(Print), ISSN 2053-6593(Online)

their classifications along with the punishments stipulated therefor. The last one provides for the rules of practice and procedure to be followed and applied by the Sharia courts established in the state in their exercise of criminal jurisdictions and in the enforcement of Sharia Penal Code Law. It is also noteworthy that some other eleven northern states (Jigawa, Kaduna, Kano, Katsina, Sokoto, Kebbi, Niger, Bauchi, Bornu, Yobe, and Gombe) have long since followed suit in imitation of Zamfara State, and many of which have copied almost word for word the Zamfara laws.

Sharia criminal law, no doubt, unsettles the frameworks for accommodating religious convictions in public policy under liberal legality in Nigeria[28]. The accommodation began during colonialism and continued after independence until 1999. The re-introduction of sharia criminal justice system redraws the structure of the relationship between religion and politics in Nigeria. It became a constant campaign point on the banner of restoration of Islamic justice, a populist theme that resonated among the poor and oppressed people of Zamfara who had become disenchanted with the malfunctioning civil law system. The Sharia Penal regime inaugurates a full criminal jurisdiction to try offences ranging from trivial crimes like possession, sale and drinking of alcoholic beverages to other more serious offences like prostitution and adultery. The law recognizes a guild of Islamic clerics who could act as judges of Sharia courts and grants them power to award the death penalty in sundry offences such as by stoning in the case of adultery by a married or divorced woman. The role of the public prosecutor is more or less performed by a vigilante group--the Hisba-- otherwise called the "Sharia Police". In effect, legal dualism in Nigeria has taken a trajectory contiguous to its geo-political dualism.

Despite the controversies generated by this application of Islamic criminal law, the justice system has continued to operate in most of Northern Nigeria. Punishments such as amputation, lapidation, stoning to death, crucifixion and so on still attach to Sharia offences in the North. Today in Nigeria, in spite of the possibility of combination of various factors, the *Boko Haram* insurgence that mainly destroys the lives and property of Christians most of whom are southerners who are forced down to their primordial homes together with the negative effects on their businesses, is originally sharia-motivated, whether misguided or not.

Northern Nigeria's Recent Adoption of Wide scale Sharia in Its Socio-political Context

There are two levels of socio-political contexts to keep in mind to understand Sharia as a phenomenon in Nigeria. The first is the socio-politics of deploying Sharia as a tool of bargain with the Christian south in Nigeria's largely ethno-religious politics. The second is the socio-politics of internal exegetic and theological struggle within Nigerian Muslim community. The immediate socio-political context of the Sharia crisis is the election of Chief Olusegun Obasanjo, a Christian Southerner, as president in 1999. Muslim northerners have held executive power in Nigeria since independence[29]. Although

[28] For discussion on the debate on Sharia and public law in Nigeria during and after independence in 1960, see the following: S. Ilesanmi, Constitutional Treatment of Religion and the Politics of Human Rights in Nigeria, 100 *African Affairs,* (2001), 529 -554; I. Ngwoke, *Religion and Religious Liberty in Nigeria Law (from Colonial Days to 1983)*, Roma, (1984) and J.N.D. Anderson, Islamic Law in Africa: Problems of Today and Tomorrow in Anderson (ed.), *Changing Law in Developing Countries*, London, Oxford University Press (1963).

[29] In 1960 Nigeria became independent with Dr. Nnamdi Azikiwe, a Southern Christian as a ceremonial President. The Prime Minister, Sir Abubakar Tafawa Belewa, a northern Muslim, exercised executive power following the British model of Parliamentary Democracy [See A. Burns, *History of Nigeria*, London: George Allen and Unwin Ltd. (1969) 256-261].

ISSN 2053-6321(Print), ISSN 2053-6593(Online)

Religion has always been the meat of Nigerian politics, it did not play any direct role in the election[30]. It was felt that Obasanjo a Yoruba Christian should become president to compensate the Yoruba for the invalidation of the 1993 presidential election allegedly won by Chief Abiola, a Yoruba. Obasanjo was preferred to his fellow Yoruba, Olu Falae, because he was seen as able to protect the interest of Hausa-Fulani oligarchy that has ruled Nigeria for the better part of four decades of self-rule. Earlier in his reign, Obasanjo was believed to have betrayed the powerful oligarchy that brought him to power. As soon as Obasanjo became president, Pentecostal Christians made it clear that they would play important roles in guiding the presidency. Obasanjo himself made heavy weather of his conversion. He claimed to be born again and organized a big evangelistic meeting as part of his inaugural ceremonies. The perception of the overbearing influences of Pentecostal Christianity on Obasanjo's Presidency, elicited fears of domination from Muslim leaders in Northern Nigeria. The nepotistic nature of politics in Nigeria made such fear reasonable. Sharia was found as a veritable tool of political blackmail and bargaining by Northern Governors. In the hands of aggrieved and affrighted northern Governors, Sharia becomes a cynical exploitation of Islamic religiosity and the nostalgia of ordinary northern Muslims for the fabled social justice of classical Sharia, to unnerve President Obsanjo. Kukah puts it succintly:

What is happening is really a contest of power; who lost power, who won power, and who wants power back… The processes that threw up Obasanjo were intimately bound up with the political crisis that has gripped the northern political class. Obasanjo whom they had supported refused to play their game, and let himself be appropriated by the South-West politicians, so they claim[31].

Furthermore, the Governors who initiated Sharia penal law were all from the rival political party, the All Peoples' Party (APP), and considered their action as a strategy to tap into the growing Islamism of Northern Muslims for political gains. Thus, it is not only politics at play, but politics riding on the waves of Islamic resurgence.

The second level of politics is connected to the resurgence of Islamism in northern Nigeria. The failure of democratic politics in Nigeria (as rudimentary and disrupted as it is) to produce good enough social goods has led to a nostalgic return to the rule of piety rather than policy. The ruinous military dictators failed woefully and tragically to maintain security and welfare. There was no justice, especially for the poor. In that context, people began to look up to Sharia as answer to social anomie. The crisis of the state in Nigeria impacted differently on different people. But on the whole it bred the quest for authenticity through a totalizing vision, which as Karl Popper observed is the consequence of social uncertainty[32]. One recent manifestation of the importance of Sharia in the quest for social justice in

[30] M. H. Kukah, *Religion, Politics and Power in Northern Nigeria*, Ibadan: Spectrum (1994). This work discusses in details how Islam has shaped the struggle for political power in northern Nigeria.

[31] The report of proceedings on a conference on the theme 'Beyond Sharia: Interpreting Recent Religious and Ethnic Clashes in Nigeria', organized by the Center for Democracy and Development in London. See report on http://www.cdd.org.uk/sharia .htm). Accessed on 7/10/12.

[32] K. Popper, *The Open Society and its Enemies* as cited in S.L. Sanusi, Sharia and the Women Question, *Weekly Trust Newspaper,* September 18, 2000, p. 1. Sanusi argues that the restriction of the rights of women in Muslim societies does not find justified accommodation in Islam as a religion, but is a form of social practice. Lamido Sanusi shows how the leader of the Islamic Jihad in Nigeria, Shehu Usman Dan Fodio treated women gracefully and thereby left an example and moral about treatment of women in Islam. He however notes that this sort of revisionism does not nullify adultery as an offence or the *prima facie* discriminatory burden of proof in the Maliki School of Islamic law.

ISSN 2053-6321(Print), ISSN 2053-6593(Online)

Northern Nigeria is the use it is being deployed lately to ensure democratic accountability. In Jigawa State, one of the northern states that have implemented Sharia penal law, a former minister of government took the state governor to a Sharia court on a charge of corruption. The minister justified resort to Sharia because it is the only system of justice that has not been corrupted. In the suit, the former minister wanted the court to compel the Governor to account for how he spent federal allocation of over N30billion for the development of the local governments in the state. The Nigerian constitution grants the governor of a state immunity from persecution while in office, of which provision one Governor has taken advantage to escape criminal prosecution for forgery[33]. However, in his ruling on the case, the presiding Judge of the Dutse Upper Sharia Court, relying on the provisions of the Sharia held that with Sharia there is no immunity. He rejected the argument that the court lacked jurisdiction over the Governor, but nevertheless asked the petitioner to supply further particulars so that the case can be taken on its merits. This case gladdens the heart of many ordinary Muslims. In the first place, it helps portray Sharia as a just legal system that is far from the barbarism its antagonists make it to be. But, more importantly, it turns the tables against the Governors who manipulated Sharia to cut off the arms of petty thieves without bothering about the widespread and more damaging issue of corruption in government[34]. The quest for authenticity is underwritten by a struggle within Islamic discourse and northern politics.

The above two tendencies --discursive and ethnic politics-- merge together in the dialectics of Sharia in Nigeria. Even as politicians employ the quest for Sharia to gain political power, clerics and scholars quarrel about theology. The contest by various Islamic traditions and schools of thought to gain ascendancy makes the Sharia saga an intensely political struggle and throws light on the future of secular constitutionalism in northern Nigeria. It seems there are changing categories of Islamism in Nigeria. There are those who stress issues of identity; those who stress 'Jihad of the word' emphasizing training and education; and those, usually the poor and their radical advocates, who emphasize revolutionary transformation. As Sanusi observes, this struggle is not happening in an intellectual vacuum. He identifies four broad scholarly canvasses on which this discursive battle takes place as (1) political Islam as autocracy of the *Ulama* (scholars), (2) political Islam as obliteration of *jahiliyya* (ignorance); (3) political Islam as liberal democracy; and (4) political Islam as class struggle[35]. Borrowing Isaiah Berlin's parable of the 'fox and the hedgehog'[36], Sanusi observes that the struggle over Sharia pits the traditionalists against the progressives. While the traditionalists focus on the legalism of the Sharia, the progressives focus on the principles. As a progressive, Sanusi cautions against much emphasis on the code so as not to enthrone "state and clerical despotism, and the infringement of individual liberties based on the *fatwas*". Juxtaposing elite contention for power and

[33] In a celebrated case that went up to the Supreme Court, the Nigerian Police refused to investigate and prosecute an erstwhile Governor of Lagos State, Bola Tinubu, for alleged certificate forgery citing the constitutional immunity the President, Vice President, Governors and Deputy Governors enjoy. The Supreme Court upheld this immunity. [See Constitution of the Federal Republic of Nigeria 1999, section 308; Tinubu v. I.M.B. Securities Plc. (2001) 8 NWLR (pt. 714) 192 CA].

[34] Y. Musa, At Last, Sharia for Governors, *ThisDay Newspaper* , December 9, 2004, p.5; see also M. Iman, Punishment Under Sharia and their Significance, *Newswatch Magazine*, November 3, 2002, p. 12.

[35] S.L. Sanusi, Shariacracy in Nigeria: the Intellectual Roots of the Islamist Discourses, on file with author and posted on the net at www.gamji.com. Accessed on 11/10/12.

[36] I. Berlin, The Hedgehog and the Fox in H. Hardy (ed.), Isaiah Berlin, *The Proper Study of Mankind: An Anthology of Essays*, New York: Farrar, Straus and Giroux (1997) 50-67.

ISSN 2053-6321(Print), ISSN 2053-6593(Online)

fractious exegesis of authenticity in the Sharia discourse provides the best lens to perceive the power dynamics and political incentives that define the context of the sharia crisis in Nigeria[37].

ReligionandSharia in the Pre-Divided Sudan

There seems to be special reasons why Sudan is chosen for Nigeria in view of the relationship between sharia praxis and national integration. The religious equation in Sudan is similar to what obtains in Nigeria. Apart from being an African nation as Nigeria, there is near equal ratio of Christians and Muslims who like in Nigeria dominate the southern and northern parts of the country respectively. Aside the fact that it is in Africa, Sudan was a country ravaged and torn for decades by violent conflicts, among other factors. According to Prah, "an armed struggle has been fought intermittently in the Sudan since August 1955"[38]. Bockenforde writing in 2008 noted that "at the moment, Sudan owes its presence in the media to the civil war in Dafur"[39]. The war in the Sudan was one of the longest and most destructive and might contain historical and political lessons for those African states with significant Muslim and non-Muslim components in their sociopolitical make up. The failure of the Sudan to achieve national integration generated analytical and scholarly studies which have attempted to identify the causes for failure and to propose solutions. Although the situation in Nigeria has not escalated to the level in Sudan, there is the similarity in both Nigeria and Sudan of armed fisticuffs in which religious, ethnic and political factors form a mélange. Nevertheless, the concern of this paper is particularly on how Sharia constituted a recipe for disintegration and maldevelopement of the pre-divided Sudan.

It is indeed hard to discuss Sudan's civil war without accounting for the role that religion played in the conflict[40]. Bureau of Democracy, Human Rights and Labor (BDHRL) delineates the religious demography of Sudan. Accordingly, the country has the population of an estimated 35 million. Sudan is religiously mixed in spite of the fact that Muslims have dominated national government institutions since independence in 1956. Hence, most estimates hold that between 65 and 75 percent of the population is Muslim that comprised numerous Arabic and non-Arabic groups. This is however a mere estimate, as there are no accurate figures on the sizes of the country's religious populations because of poor census data as a result of decades of war. While Muslims predominate in the North with some sizeable Christian communities, most citizens in the south adhere to either Christianity or traditional religions. That is not to say that there are no Muslims in the south. Certainly there are. The Muslim population is almost entirely Sunni (traditional rather than heretical) divided however into many different groups the two most significant of which are the Ansar and the Khatmia[41]. It seems, however, that the Muslims are determined to rule the region as an entirely Islamic one. Indeed, it is difficult to locate an academic work on the Sudanese conflict which does not lend credence to the argument that

[37] S. Amadi, Repositioning the Sharia Debate, *Thisday Newspaper*, September 19, 2002, p.7. Available at http//www.thisdayonline.com/comment/20020919com02.html. Accessed on 12/10/12.
[38] K.K. Prah, Constitutionalism, the National Question and the Sudanese Civil War in O. Nnoli, (ed.), *Government and Politics in Africa: A Reader*, Harare: AAPS Books (2000) 1-15.
[39] M. Bockenforde, The Sudanese Interim Constitution of 2005: A Model to Establish Co-existence Between an Islamic and a Secular Legal Regime in B. Krawietz and H. Reifeld (eds.), *Islam and the Rule of Law: Between Sharia and Secularization*, Berlin: Konrad-Adenauer-Stiftung,(2008) 81-91 at 81.
[40] R. Martin, Sudan's Perfect War, *Foreign Affairs,* 81(2) (2002), 108-120 at 111.
[41] Bureau of Democracy, Human Rights and Labor (BDHRL), *International Religious Freedom Report 2003* on *Sudan*. Available at http:/www.state.gov/g/drl/irf/2003/23.755.htm. Accessed on 11/04/11.

ISSN 2053-6321(Print), ISSN 2053-6593(Online)

a religious schism is, partially or wholly, responsible for the intra-state violence[42]. However, along what lines that schism is drawn is often contested. Some point to a "clash of civilizations" between Islam in the North and Christianity in the South, whereas others broaden their analysis to include 'traditional' or indigenous religions, sometimes incorrectly grouped together as 'pagan' or 'animist'[43] situated in southern Sudan as well. Nevertheless, wherever the line is drawn, the division among the different religions present within the Sudan is an apparently irreconcilable one, and one which demonstrates the intense threat posed to the Sudan's minority identities. In fact, situations in the former Sudan and now in the Sudan and South Sudan serve as terrible examples of the extremes to which religious segregation and tension can escalate within a state. Geschiere writes that religion 'plays a front-stage role' in the 'quest for belonging' and it can be concluded that this is because religion allows an individual to locate themselves within a collection of beliefs, rituals, customs, dialogues and even hierarchy and this placing of one's self within an established order begins to mould and shape one's identity[44]. Moreover, locating one's self within a religion enables individuals to identify themselves with likeminded others and this association with those with whom an individual shares beliefs, in turn roots one's identity in a partially-homogenous group and helps affirm an individual's sense of the self. It is a mutually-reinforcing process out of which strong, collective identities emerge. In the Sudan in particular, religion has proved particularly significant in identity formation, as 'Abd Al-Rahim observes:

Until at least the beginning of this century, the "Sudanese" identified themselves as members of different tribes and sub-tribes, adherents to various *Tariqas* or religious fraternities, belong to this or that religion of the country, and (especially the Northern Sudanese, when thinking of wider affiliation) as Muslin and/or Arab people. But they never thought of themselves as "Sudanese", unless they happened to belong to what were regarded as the less sophisticated, non-Islamized and non-Arabized section of the population[45]

The effects of having two exclusivist religions vying for influence and supremacy in an area have been closely examined by Falola who concludes that:

In countries where Islam and Christianity compete, as in the case of the Sudan and Nigeria, the problems of stability and identity have been compounded by rivalries for religious ascendancy, resulting in the desire for religious control or even the turning of the state into a theocracy and imposing a religious ideology [...] In cases where indigenous religions are closely bound up with communal lives, the opposition by Islam and Christianity has also meant an attack on local custom and culture[46].

[42] M. Mutua, Racism at the Root of Sudan's Darfur Crisis, *The Christian Science Monitor*, July 14, 2004, p. 10.

[43] L. Akol, SPLM*/SPLA: The Nasir Declaration*, Lincoln: iUniverse (2003) xv-xvi.

[44] P. Geschiere, *The Perils of Belonging*: *Autochthony,Citizenship, and Exclusion in Africa and Europe*, Chicago: University of Chicago Press, (2009) 1.

[45] M. Abd Al-Rahim, "Arabism, Africanism, and Self-Identification in the Sudan" in D.M. Wai, (ed.), *The Southern Sudan: The Problem of National Integration*, London: Frank Cass & Co. (1973).33-34.

[46] T. Falola, *The Power of African Cultures*, Rochester: University of Rochester Press (2003) 57-58.

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What Falola makes clear, then, is that as Muslims and Christians battled for the reins of power in the Sudan, they tyrannize and attack one another and the intensity of this constant battle made Muslims and Christians more determined to not back down and so more attached to their respective religious identities. In other words, the more forcefully and insistently the Sudanese government pressed for those in the South to convert to Islam, the more we could expect those southerners to react in a somewhat stereotypical way, not in this case, by pretending to be Muslim as we might expect since this is apparently acquiescing to governmental pressure too much, but by donning a Christian mask to make it known to the government that they resist the process of Islamification as a strong and united group. The term 'mask' is used here of course because in the comfort and privacy of their own homes, these converts may continue to practice their previous religion, an idea Akol appears to support when he concedes that despite the high number of Christian converts in the South, 'the indigenous religions of the southern Sudan continue to inform ideas about ethical behavior, the moral community and political action.' In fact, in the North of the Sudan where Islam is much more prevalent, the government's policy of religious oppression in the South has had the opposite effect and has seen a rise of religious zealotry as certain sections of the population turn to Islamic fanaticism.[47]

Sudan, like all countries on the African continent was a creation of colonial powers. Although the condominium arrangement of 1898 stipulated Egyptian partnership, Britain remained to all intents and purposes the very senior partner in the arrangement. The country's religious conflict was aggravated by the perception among southerners that they were second-class citizens, as northern Muslims most of whom are native Arabic speakers, dominated political and economic structures since independence. Hence, southerners began an armed struggle to protest religious, political and economic discrimination before independence. They started seeking for autonomy, independence and some other form of regional self-determination from the north. This civil crisis continued until 1972 under the Nimieri government when the peace treaty of Addis Ababa was signed. Consequently, the south was accorded certain rights of autonomy especially with regard to religion. The period even witnessed a secular law regime, which was dominant even at the national level with the exception of few regions in the north where inheritance and family laws followed the maxims of sharia. This secular state of affairs engendered a serious opposition to Nimieri government and reconciliation efforts. This opposition culminated in resistance to the peace treaty. Various autonomy rights were cancelled, and Arabic made the official language of the south. But more importantly, the *"September Acts"* of 1983 placed the entire nation under sharia law. "Emergency courts" were established under sharia judges. The *Missionary Act* forbade any non-Islamic missionary activities and the churches were given the status of non-governmental foreign organizations. Agai, the High Court of Appeal, as well as lower courts, were required to apply Islamic law exclusively. In fact, Nimieri regime, which ruled over the Peace of Addis Abeba increasingly flouted and rescinded the terms of the agreement and propelled Sudan into the fiery vortex of a full scale war in 1983[48]. Umar Hassan al-Bashir seized power by a coup in 1989 toppling Sadiq al-Madhi government that had mitigated the enforcement of the September Acts[49]. Under al-Bashir, Islam became even more of an instrument of political power and the September Acts

[47] L. Akol, supra note 42.

[48] K.K. Prah, supra note 37, p.1.
[49] Bureau of Democracy, Human Rights and Labor (BDHRL), supra note 40; M. Bockenforde, supra note 38, p. 81.

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were reinstated fully. Al-Bashir dismissed scores of judges who were reported to be insufficiently committed to applying sharia in their decisions[50].

However, following pressures from the international community, the Comprehensive Peace Agreement (C.P.A) was signed early in 2005, and the national constitution that was based on it came into force. Borkeforde describes the new structure of Sudan as a doubly asymmetrical federal state on probation[51]. Sudan was a federal state as it consisted of 25 states endowed with extensive competences. While 15 of these states belonged to the North, 10 were in the South. Sudan structure was on probation as the new constitution would remain in force for a period of six years after which the southern Sudanese would have the right to hold a referendum on whether to remain part of Sudan or become an independent state. Sudan was also of double asymmetry. On the first asymmetry special regulations applied in two of the Northern states (Southern Kordofan / Nuba Mountains and Blue Nile) that border directly on the South. Again, although situated in the Muslim-dominated North of the country, Khartoum, the capital and seat of national government, enjoyed a special status that accorded particular importance to religious freedom. On the second asymmetry, the Government of Southern Sudan (GoSS) formed a wedge between the national government and those of the federal states. The GoSS which covered all 10 southern states had all the characteristic features of a state. It had its own government, parliament and judiciary which constituted complete structures for exercise of regional autonomy[52].

Given the above political arrangement, it would not be surprising that the resulting Sudan interim constitution implemented the "one country – two systems" legal approach as postulated in the Peace Treaty. While one system applied in the South, the other regulated the North. The national government which was the umbrella that covered both systems was free of specifically religious overtones in all matters relating to Sudan as a whole. The constitution stipulated that Sudan was not an Islamic republic, nor was Islam the religion of the state. Unlike the 1998 constitution[53], 2005 constitution did not require that any law that applied to the entire nation must harmonize with the Sharia; nor must the President belong to any particular religion[54]. However, whereas a secular approach was maintained in the South, the sharia still shaped the law in the North subject nonetheless to the provisions of the constitution as the supreme law[55].

The 2005 constitution stated that criminal and religious matters would be regulated exclusively at the level of federal states. However, a dual banking system was practiced in which Islamic banking was adopted in the North and conventional banking held out in the South. Unlike in Nigeria where the constitution provides, theoretically though, for a secular orientation in all state dealings[56], the Sudanese constitution granted that if a law motivated by specific religion did not conform to the religious orientation of the population in a federal state, the state might either make laws that conform to the religion or the custom of its majority or else introduce a bill at the national level to include exemptions

[50]http://countrystudies.us/sudan/65.htm. Accessed on 05/06/12. See also Bureau of Democracy, Human Rights and Labor (BDHRL), supra note 40.
[51] M. Bockenforde, supra note 38 p. 84.

[52]*Ibid.*
[53] Constitution of Sudan 1998, article 65.
[54] Interim Constitution of Sudan, 2005, article 225.
[55]*Ibid*., article 3.
[56] Constitution of the Federal Republic of Nigeria, 1999, section 10.

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in the Act in question[57]. The difference is that in Nigeria, federal or state laws are made for the interest of all the relevant citizens irrespective of religion or number[58]. Hence, in the Sudanese framework, the aim was to ensure religious autonomy of the federal states rather than the religious freedom of the individual. The state was regarded to be more important than the individual. One consequence is that in certain circumstances the Islamic penal code might be applied to the followers of another faith. Thus, although Article 38 guaranteed freedom of worship, the Interim constitution did not shield one from the arm of a religiously induced law unless one relocated to another part of the country. Nor was the freedom of religious conversion guaranteed in Article 38, unlike in section 38 of the Constitution of the Federal Republic of Nigeria where it is. This Sudan delimitation of religious freedom appeared however to have been circumvented by Article 27 (2) of the Interim constitution which accorded constitutional rank to international treaties, conventions and covenants; and most of these international instruments provide for complete religious freedom. Bockenforde observes that in Sudan under the Interim constitution, "most human rights infringements have no religious motivation. They are generally the result of efforts to retain power by persons who sometimes do not shy from instrumentalizing Islam"[59] He further notes that although freedom of religion is not always assured in Sudan, discrimination and marginalization mainly take place along ethnic or quasi ethnic, rather than religious lines.

There is no doubt that the Interim constitution marked almost a complete departure from the pre-2005 Sudan. Hitherto, the right to religious freedom which is one of the oldest and most recognized human rights was flagrantly honored in breach. The pre-2005 constitutions stated that "sharia and custom are the sources of legislation". Laws of other religions were not integrated at all as sources of law making. Whereas applications to build mosques were generally granted in practice, the processes for application to build churches were more cumbersome. In fact, the government did not authorize the construction of any churches in the Khartoum capital. While non-Muslims may convert to Islam, the law made apostasy (conversion from Islam to another religion) a capital offence. Although non-Muslims were hindered in their efforts to engage in missionary activities, Muslims might do that freely. Christian religious workers, including priests had difficulties obtaining residence permits and exit and re-entry visas, as well as first time visas. Government jobs and contracts were reserved almost exclusively for Muslims, and many non-Muslims lost their jobs on account of religion. Instructions in Islam were not offered in the majority of public schools. Sundays were not recognized as the Sabbath for Christians. Employers sometimes prevented Christians in the North from leaving work to worship just as Christian students had been forced to take school examinations on Sundays. Christian churches and buildings belonging to other non-Muslim bodies could easily be razed in contrast to mosques. Although a Muslim man could marry a non-Muslim, a Muslim woman could not marry a non-Muslim unless he converts to Islam. Islamic dress codes had been enforced on both Muslims and non-Muslims. There were instances of forced religious conversions to Islam. In fact in 1999, Sudan was designated as a country of particular concern under the International Religious Freedom Act for particularly severe violations of religious freedom[60].

[57] Interim Constitution of Sudan, 2005, article 5 (3).
[58] Constitution of the Federal Republic of Nigeria, 1999, section 4.
[59] M. Bockenforde, supra note 38 p. 88.

[60] Bureau of Democracy, Human Rights and Labor (BDHRL), supra note 40

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However, the Interim constitution of 2005 helped to stem the tide of the above violations. This is not to claim that Sudan was no longer harbor for several instances of human right breaches. "After all", as Bockenforde observes, "the establishment of human rights in a constitutional system does not guarantee their observance *ipso jure.* Just as the existence of a criminal code cannot prevent crime, so constitutional reality must be judged by the quality of court judgments and their acceptance' by the government"[61]. Hence, in a country that witnessed five successful military coups in the five decades of its independence (Nigeria witnessed more), the introduction of democratic reforms and the rule of law tend to be perceived as a passing phase rather than the beginning of new era. Nigeria shares a lot in common with Sudan.

The Division of the Sudan and its Aftermaths

South Sudan broke away from Sudan after an independence vote in July 2011 following decades of war that killed more than 2 million people. Sudan's majority Christian south fought its Muslim north for 38 of its 54 years of independence from Britain. The hangover of that war is almost a million guns, mostly in civilian hands. Following a referendum precisely as provided by the C.P.A, the south voted overwhelmingly for independence and gained it. The independence of the southern state – whose 640 000 square kilometers comprise a quarter of Sudan's territory, and whose eight million inhabitants constitute one-fifth of the pre-partitioned country's population – is effectively the end of a historical era that spanned two centuries in the modern history of Sudan, an era which began with the unified state project launched by Turko-Egyptian conquest in 1821 at the hands of Mohammed Ali Pasha[62]. The independence of South Sudan, and the birth of the fifty-fourth state on the African continent, has been seen as a pivotal and historic event for the state of Sudan, and for the continent as a whole. The significance of the event goes beyond a mere change in the geographical boundaries of the divided country and the end of an era in its political history. Its consequences, as expected, would necessarily result in long-term change in the geopolitical realities of the region, and would lead to the emergence of new strategic equations. However, has the split brought progress or regression for the two countries? How will the worsening situation shape interaction between Juba and Khartoum? Is there an alternative to interdependence? Can the two neighbors live without each other eventually? What lessons for Nigeria which realities are not far away from the pre-divided Sudan's?

South Sudan is celebrating its first year of independence from Sudan, but the euphoria seems to have given way to a harsh reality as key planks in the peace deal have still not been secured. There is no agreement on sharing oil, which lies mostly under southern soil, but must be refined and exported through the north. It is unclear how foreign debts, incurred when Sudan was unified, will be repaid after the split. Of most concern is the border. Border fighting with Sudan keeps regional tensions high. The precise route of the border has not yet been decided. Already Omar al-Bashir, the President in the north, is accused of supporting loyal militia in the south to raise rebellion, especially in the oil-rich Abyei state. 120,000 people have fled fighting and bombing in Blue Nile since September 2012. Tens of thousands of northern civilians are still fleeing south after repeated bombing raids against them by the Sudan Air Force, under the instructions of Mr Bashir, who is already wanted for war crimes by the International Criminal Court.

[61] M. Bockenforde, supra note 38 p. 87.
[62]http://www.jadaliyya.com/pages/index/2291/south-sudan_post-independence-opportunities-and-ch. Last visited on 12-10.12.

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Border wars with the north, internal violence and a shutdown of oil production are therefore serious economic and security challenges. Oil provides South Sudan with 98 per cent of its revenue. In April 2012, South Sudan decided to halt oil production in the disputed border area. Without the income from oil production, South Sudan had no money to improve the lives of its people - instead it is cutting services and investment in the name of austerity. According to the UN half of the people in South Sudan do not have enough to eat. One-fifth of the people in South Sudan are suffering from chronic hunger[63]. South Sudan struggles with a severe economic crisis; it is one of the poorest countries of the world. Sudan is also facing a series of problems. The country has lost 75 per cent of its oil revenues after its separation with the South and Juba's decision in January 2012 to shut down its oil pipelines[64]. As a consequence, the economy is struggling with soaring inflation and depreciation of the Sudanese pound. President Omar al-Bashir has made a series of deep cuts and the austerity measures have prompted a rise in transport costs and a doubling of fuel and food prices. This economic meltdown has sparked angry street protests and some Sudanese are now calling for Bashir to step down. Religious leaders on both sides are now calling for reconciliation. Do these experiences provide any lesson for Nigeria?

Islam, Sharia and National Integration in Nigeria

One of the major functions of religion as a social institution is that of fostering unity among the members of society. Many a scholar has delineated religion as an integrator of human society. Thus, Bergson finds integration to be an important function of what he calls the "static religion of the closed society"[65]. Nadel insists that religion "holds societies together and contains their structure"[66]. Dzurgba similarly observes that "religion has been the most general instrument used in integrating meanings and motivations in social actions"[67]. It is here that religion's integrative duty lies. Milton Yinger and Emile Durkheim are also proponents of this view[68]. In relation to the integrating function of Islam, Toynbee observes that "the extinction of race consciousness as between Muslims is one of the outstanding moral achievements of Islam, and in the contemporary world there is, as it happens, a crying need for the propagation of this Islamic virtue"[69]. It goes without saying that the recent adoption of full Islamic law in most of northern states serves as a uniting factor among Muslims in Nigeria irrespective of sectarian differences. If not for anything, the adoption is perceived as yet another win in a jihad against non-Muslims especially Christians. This is in addition to the win over the fight for the constitutional establishment of Sharia Court of Appeal in both the 1979 and 1999 constitutions. Thus, there is a proper integration of Muslims who even as strange bedfellows are nonetheless united in the fight over common enemies. Surely, countable are Muslims, if any, who oppose the introduction of Sharia criminal system even if it is oppressive to them.

[63] . http://www.aljazeera.com/programmes/insidestory/2012/07/201271072536205955.html. Accessed on 12/10/12.
[64] .http://www.jadaliyya.com/pages/index/2291/south-sudan_post-independence-opportunities-and-ch. Last visited on 12-10.12.
[65] H. Bergson, *The Two Sources of Religion and Morality*, New York: Henry Holt & Co. (1935) 112-113.
[66] S.F. Nadel, *Nupe Religion*, London: Routledge & Kegan Paul Ltd. (1954) 30.
[67] A. Dzurgba, The Positive and Negative Functions of Religion in Society in E. Ekponobi (ed.), *Essays in Comparative Religion*, Awka: Doxa Academic Productions (1993) 79-90 at 82.
[68] M. Yinger, *Religion, Society and the Individual*, Canada: The Macmillan Company (1969); E. Durkheim, *Elementary Forms of Religious Life*, New York: The True Press (1912).
[69] A.J.Toynbee, *Civilization on Trial Essays*, London: Oxford University Press (1948) 205.

ISSN 2053-6321(Print), ISSN 2053-6593(Online)

The integrating function of religion, however, does not pretend to gloss over the fact that religion can be a source of division and rancor. But then, it would seem that such divisive tendencies occur as a result of unhealthy mixture of religion with other things like politics. Hence, the integrating role of Islamic religion is quite inapplicable in relation to Nigerian democratic society as a whole. Raising discontent among and discrimination against non-Muslims, the adoption of full Sharia law tends to be divisive and chauvinistic[70]. It is divisive and sectarian for, as experience shows, it is difficult for fundamentalist Islam to accommodate the adherents of other religions without proselytizing them into Islam either by hook or crook. Serious discrimination is meted out against all those who refuse to be so co-opted. This is despite the fact that one of the most frequently cited verses of the Koran is "that there is no compulsion in religion"[71]. Yet, Islam in practice does not tolerate apostasy which it rather punishes with death[72]. This precludes the possibility of conversion from Islam.

In Nigeria, criminal Sharia practice has raised serious problem about National Youth Service scheme aimed at uniting Nigeria[73]. It is not uncommon to observe that many corp members sent to work in the Sharia-implementing states develop cold-feet or go there with grudges. Recently, a good number of corp members were killed in the post-election violence in the North. The adoption is certainly an obstacle to the realization of Nigeria's federal union. This is because the enforcement of criminal Sharia impinges on the citizenship rights conferred on membership in the federal union, namely, the right to move about freely throughout the territory of the union, and to live wherever one chooses without molestation based on his religious affiliation[74], the right to earn livelihood in his chosen place of residence by means permitted by law, and the right to be treated alike by the state with other citizens. Therefore, there is no doubt that any action by a state government violating these citizenship rights through the enforcement of Sharia criminal or other law would have the effect of expelling from the state a non-Muslim Nigerian citizen who, for religious or other reasons cannot live under the strict injunctions of and punishments prescribed by the Koran. These include injunctions against operating a hotel or a drinking place, the consumption of alcoholic drink, and certain modes of dressing which are not necessarily forbidden by the non-Muslim's religion. Moreover, in Nigeria, this non-accommodating nature of Islam may trigger off the idea of secession in the minds of the predominantly non-Muslim South, an idea in which the possibility of waging war may not be ruled out. This is perhaps why Nzomiwu expresses the fear that if Sharia is allowed to spread, it will definitely lead to the dismembering of Nigeria[75]. Therefore, even though Sharia may foster brotherhood among Muslims, it is still inimical to national unity. Yet, the predominantly Muslim North is sustained from the crude oil from the South, a resource which constitutes over ninety-five percent of Nigeria's foreign earning. The argument that the non-Muslims are subject to a different criminal law within the same geographical

[70] D. Byang, *Sharia in Nigeria: a Christian Perspective*, Jos: Challenge Publishers, (1988); P. Marshall, *Sharia Law Threatens Nigeria's Stability*. Available at http://www.domini.org/openbook/nigeria20020327.htm. Accessed on 20/4/10.
[71] *The Holy Quran: Arabic Text, Translation and Commentary*, Rev. Ed., Pakistan: Lahore (1951), sura 2:256.
[72] *Ibid*., sura 2:217; See also H.A. Gibb, and J.H. Kramers, (eds.), *Shorter Encyclopedia of Islam*, Leiden: E. J. Brill, (1953) p.258.
[73] J.P.C. Nzomiwu, Foreword in H.Emekwu, *Democracy and Religion: Sharia in Nigeria*, Enugu: Snaap Press Ltd, (2000) 3.
[74] Constitution of the Federal Republic of Nigeria 1999, section 41 (1) & (42).

[75] J.P.C. Nzomiwu, "Foreword" in H.Emekwu, *Democracy and Religion: Sharia in Nigeria* (Enugu: Snaap Press Ltd, 2000) p.3.

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jurisdiction does not convince anyone about the effect on the adoption of citizenship rights of non-Muslims.

Closely related to the above discussion is the effect of sharia application on economic growth. There is no gainsaying that most of the functions assigned to Sharia by Abdullah centre around economic development[76]. Keffi observes that the implementation of the socio-economic aspect of Sharia has improved the quality of life of Muslims and non-Muslims in Zamfara State[77]. What Keffi regards as the implementation of socio-economic Sharia include loan disbursement, provision of social amenities, increase in wage, security, establishment of social welfare scheme, and so on. It is, however, observed that Sharia system is not necessary to put all these in place. Indeed, all these are fruits of good governance, Sharia or no Sharia. Perhaps, what mainly the criminal aspect of Sharia has been able to entrench in the minds of citizens through its stringent penalties is fear and deterrence, and invariably pseudo-security of life and property.

Surely, there is connection between religion and economic development. This is the main thesis of Weber[78]. There is no doubt too that the involvement of religion such as Christianity in the growth of education and other social infrastructures fosters, among other things, the economic growth of a nation. It is also a truism that Sharia in its all-embracing nature governs, *inter alia*, the economic life of Muslims. But how does Sharia stand with this? In Nigeria today, the truth is that Sharia has affected negatively the economic life of the relevant states and that of the entire nation. For one thing, Sharia is not in sympathy with modern economic revolution modeled, as it were, on capitalism and profit motif. The banking system is directly affected as its inner logic of interest accumulation is outlawed as usury by strict Sharia. Moreover, dealers on those commodities like alcohol and certain meats, for instance, trade on which is criminalized by Sharia would be forced to relocate with the attendant economic hazards. This Sharia practice triggers off a debate on whether the Value Added Tax (VAT) tagged on those commodities sold in non-Sharia states will ever be used on the development of the Sharia-implementing states. Will profits from alcohol and other beverages produced in other areas be used for the development of Zamfara, Kano, Sokoto or Katsina State? Certainly, the economic life of the Sharia states and its consequences for the nation as a whole will leave much to be desired. No wonder Sharia Islam has become the opium of the *"almajiris"* who are subjected to perpetual poverty[79]. Certainly, the application of Sharia criminal justice may not create the enabling environment that would attract foreign investment needed today for development in this era of globalization. The result is that the economic life of the Sharia states and its consequences for the nation would leave much to be desired.

Moreover, the adoption of Sharia criminal law in Northern Nigeria is no less a mere socio-political strategy. The adoption of Islamic criminal law is part of the agenda of governance in the North. It was even seen as aspect of the dividends of democracy to the Muslim citizens of the core Northern states. Provision of security, protection of life and property, respect for fundamental rights and sundry social benefits are regarded as the aim of the application of Sharia criminal law. But the adoption of Islamic

[76] U.Y. Abdullah, Priorities in the Establishment of the Sharia System in Nigeria in Z.I. Oseni, (ed.), supra note 11, pp. 6-13.
[77] S.U.D. Keffi, Improving the Quality of Life of Muslims through the Implementation of the Socio-economic Aspects of Sharia in Nigeria in J.N. Ezeilo, M.T. Ladan, and A. Afolabi – Akiyode, (eds.), supra note 11,pp.207-227.
[78] M. Weber, *The Protestant Ethic and Spirit of Capitalism*, New York: Scribners (1968).
[79] I.K.E. Oraegbunam, *An Examination of the Full Application of Sharia Law and Nigerian Constitutional Democracy*, Master of Arts Thesis in Religious Studies, Nnamdi Azikiwe University, Awka, Nigeria (2006) 90.

ISSN 2053-6321(Print), ISSN 2053-6593(Online)

criminal law has become so suffused with politics that the scenario has earned it the appellation, "political Sharia". It seems it is a strong political campaign point made as promises by political office aspirants. Perhaps, this is an explanation for the speedy manner the adoption spread like a harmattan bush fire among the core northern states. But like most political campaign promises in Nigeria, recently not much has been done other than the adoption in spite of its potentialities. Far from agreeing with Obasanjo that "Sharia would die a natural death", it is our view that the adoption of Sharia criminal law is more political than religious.

Another serious area where Islamic religion through the adoption of Sharia criminal justice system has influenced the Nigerian society is that of conflict resolution. By the establishment of Sharia courts as official institution for resolution of disputes, Islamic practice in Nigeria seeks to contribute to national peace and development. This intention may be realized more in questions of personal and civil jurisprudence that concern Muslims only. The case may, however, be different in issues of criminal justice. Crime is an offence against the state, which in Nigeria is made up of citizens of different religious, ethnic, political and cultural affiliations. Adopting a particular religion's law of crime may be antithetical to peace-building. This is the source of controversy over the adoption of Islamic criminal justice system by Zamfara and other eleven northern states. Rather than resolve conflict, it breeds conflict and discontent. Because issues of crime touch the dignity and life of the human person for which presumption of innocence of the accused and other procedural guarantees are provided for in the 1999 Constitution[80], such a wholesale application of a religion's law of crime especially without ensuring proper adjectival procedure would indeed breach the citizens' right. No doubt, the multiplier effect would be disastrous to national harmony and peace. This denial of fair hearing rights is evidenced in some Sharia criminal cases that were treated by some lower Sharia courts in the immediate post-adoption era. No wonder the cases of *Commissioner of Police Sokoto State v. Yakubu Tudu & Safiyatu Tudu*[81]and *Commisioner of Police Katsina State v. Lawal Kurami & Anor*[82]in which decisions denying the rights of the relevant parties were upturned at the appeal especially as a result of the hues and cries from national and international communities.

One serious negative effect of the full application of sharia is its trampling on human rights and dignity. Full application of Sharia derogates from some fundamental human rights and freedoms which include right to human dignity and befitting punishment, right to freedom of religion or irreligion, right to freedom from discrimination, and so on. More so, a system whereby Sharia does not smile at some kinds of association between a man and a woman like in studying in one school, boarding one vehicle, or holding each other's hand, surely violates basic human rights of association and assembly[83]. Furthermore, a situation which ignites a mass exodus of non-Muslims from Sharia states due to the failure of Islamic ethos to accommodate them already tramples on their fundamental right to freedom of movement and residence in any part of Nigeria[84].But it is on the question of political participation that Sharia secretes its most lethal poison on Nigerian democratic state. Sharia enjoins every Muslim community not to submit to the rule of a non-Muslim[85]. Many an international Conferences of the

[80] Constitution of the Federal Republic of Nigeria 1999, section 36 (1)-(2).
[81] Commissioner of Police Sokoto State v. Yakubu Tudu & Safiyatu Tudu, Unreported, Case No. US C / GW / CR / F1 / 10/ 01.
[82] Commissioner of Police Katsina State v. Lawal Kurami & Anor, Unreported, Case No 9 / 2002.
[83] Constitution of the Federal Republic of Nigeria 1999, section 40.
[84] *Ibid.,* section 41.
[85] *The Holy Quran: Arabic Text, Translation and Commentary*, Rev. Ed., Pakistan: Lahore (1951), sura 2:143.

ISSN 2053-6321(Print), ISSN 2053-6593(Online)

Islamic *Ummah* had always urged Muslims "to ensure the appointment of only Muslims into the strategic national and international political posts"[86]. It could also be reminisced that in 1997, Sheikh Abubakar Gumi, a renowned Muslim scholar said: "as a Muslim, you cannot accept a non-Muslim to be your leader"[87]. By virtue of this, Sharia certainly cultivates the attitude of socio-political stratification. Hence, full application of Sharia law falls short of promoting human dignity and respect for some fundamental rights which belong to man by virtue of his being human.

CONCLUSION AND RECOMMENDATIONS

Nigeria is a multi-religious country in which every citizen should be reasonably allowed to practise his faith. Although Sharia is claimed to be essential to Islam and Muslims have a right to it, yet the operation of Sharia law must stop where the right of a non-Muslim begins. Again, the question of religious freedom has to do with the very nature of man. And since every revelation is received according to the manner of the receiver, the revelation and reception of Sharia should be re-examined in the light of the free nature of man. Man is created free, and he is free to worship the way he likes or even not to worship at all. The future of Nigerian democracy would always be bleak unless Islam comes to terms with the fact that its monolithic culture has long since been replaced by modern pluralism. This is perhaps why the Constitutions of the Federal Republic of Nigeria limit the operation of Sharia to its "personal" dimension. It follows that any attempt to widen the scope of Sharia enforcement to its criminal and penal jurisdictions will certainly truncate the unity of Nigeria. In the light of the above problems associated with the adoption of Islamic criminal justice in Nigeria, especially in the North, this paper makes the following suggestions and recommendations:

Sharia and Islam should be reformed. Islam is in need of reformation even as other religions always undergo some form of reform. What obtains in the golden age of Islam should not necessarily be the yardstick for subsequent generations. The world is changing and Islam must read the signs of the time. Socio-historical change and evolutionary spirit make it inevitable for Sharia Islam to read the 'signs of the time'. Accordingly, Islam needs to reform its laws in line with the modern needs. In the same line with need for legal reform, Nigerian Islam must undergo a socio-religious rebirth. Giddens observes that "religion is a social institution"[88]. As such, it enhances the social life of the society that practices it. Therefore Islamic religion in Nigeria must learn to co-exist with other religions. Christians and adherents of other religions must be allowed to practice their faith without hindrance.

In a multi-religious state like Nigeria, common sense demands that separation of religion and politics seems to be the reasonable safe ground. Turkey provides a veritable example of a country that upholds such separation. Turkey is a nation with population of over 70 million, of which more that 90 percent are Muslims[89]. Yet Turkey's constitutionalism and state affairs are built on secularity principles. Turkey insists that sharia should not be a source of any legislation[90]. No wonder the Turkish

[86] Islam in Africa Conference, Communiqué no. 2, Abuja (1989).
[87] A. Gumi, Muslims, Be Aware, *Quality Magazine*, October 1987, p14.
[88] A. Giddens, *Sociology*, Oxford: Polity Press (1993) 387.
[89] B. Krawietz, Justice as a Pervasive Principle in Islamic Law in B. Krawietz and H. Reifeld, supra note 38,35 – 48.
[90] S. Ryu, Limits on Secularism in Korean Constitution, Korea: Pusan University of Foreign Studies (2009). (pdf); D. Mogahed,"Islam and Democracy: Muslim World Residents See No Conflict Between Religious Principles and Democratic Values". Available at http://www.muslimhestfacts.com/mwf/105643/islam-democracy.aspx2010. Accessed on 31-05-10.

ISSN 2053-6321(Print), ISSN 2053-6593(Online)

constitution does not mention the word "Islam". The neighboring Ghana is also faring well with peaceful co-existence among diverse people of different religious confessions. In Nigeria, however, it is really regrettable that Islam seems to have been propagated along with the Arabization that no less breeds violence and private vengeance. It may therefore be necessary to *inculturate* Nigerian Islam, like in the days of the Ummayads in such a way that by shedding the Arab garb, one can be authentically Nigerian and authentically Muslim. Islamic religion in Nigeria needs to employ a little bit of rationality into its manner of operation to curb fanaticism[91]. It is by this ideal that the Nigerian democratic values will be cultivated irrespective of Islam and Sharia.For the unity of Nigeria, adherents of Islam need to read beyond the letters of the Sharia and know that followers of other religions also have their laws. For the sustenance of democracy in Nigeria, there is an urgent need for government to maintain a neutral posture[92] with regard to all religions in Nigeria. In view of national integration in Nigeria, Islam and its Sharia should be aware of the multi-religious and religious pluralistic nature of Nigeria[93] and consequently respect the fundamental right to religious freedom of other believers. There is an urgent need for a national dialogue in which religion-oriented problems will, among other things, be in the agenda. This type of dialogue "will give the Nigerian citizens in a secular state, a future of peace, unity and progress"[94]. Apart from national dialogue, it may well be appropriate to often organize inter-religious dialogues in view of mutual understanding and peaceful co-existence. As one of the cardinal principles of any democracy is that of the rule of law[95], it is necessary that Nigerian Islam adheres to the constitutional restriction of Sharia enforcement to its personal aspect. The more restrictive approach, as in Kano State, of sharia enforcement being confined to areas of very huge Muslim population should only be a matter of lesser evil. This is because as sharia should be meant for human development, issues of human right are not a majority-minority matter. It is equally urgent that every Nigerian, be he governed by Sharia or by any other law, should develop some sort of patriotic sense[96] in pursuance of Nigerian national integration.

[91] B. Chidili, Religious Fanaticism, 4*West Africa Journal of Ecclesial Studies* (Wajes) (1998) 23-45 at 25.
[92] S. Ryu, supra note 89; T. Li-ann, "Religion & the Secular State". Available at http://www.we-are-aware.sg/2009/05/28/religion-the-secular-state/2009. Accessed on 7/4/10; J.S. Omotola, *Secularism and the Politics of Religious Balancing in Nigeria*, Mowe: Redeemer's University Redemption City (2009). (pdf).

[93] J.O. Odey, *The Sharia and the Rest of Us*, Enugu: Snaap Press Ltd. (2000) 45.
[94] A.B.C. Chiegboka, Sharia and National Stability in Nigeria, VI *Unizik Journal of Arts and Humanities*, (2004) 135-141 at 139.
[95] A. V. Dicey, *Introduction to the Study of the Law of Constitution*, 10th Ed., London: Oxford University Press, (1959).
[96] C. Nze, *Patriotism: A Cultural Emanation,* Onitsha: Veritas Press and Public Co. (1998).

* This is an edited version of a paper read at the 30th Conference of the Association of Third World Studies, which held at Mount Berry College, Rome, Georgia, U.S.A., 11-13 October, 2012.

ISSN 2053-6321(Print), ISSN 2053-6593(Online)