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GOING TOO FAR: EXTENDING SHARI'A LAW IN NIGERIA FROM PERSONAL TO PUBLIC LAW

Today, Amina Lawal is a free woman. However, for months, Amina lived with the fear that she would be executed for committing an act of indiscretion. In 2002, a Nigerian Islamic court sentenced Amina to death by stoning¹ for committing adultery.² As a result of this adulterous relationship Amina gave birth to a daughter.³ Although a judge sentenced Amina to death, her former lover and the father of her daughter remained free from prosecution.⁴ Luckily, after several appeals and great international pressure, a Shari'a law court (court of Islamic law) overturned Amina's death sentence.⁵ However, the religious law that convicted Amina remains in place.

Amina lives in Katsina,⁶ a northern Nigerian state governed by Shari'a law. Many other northern Nigerian states have enacted Shari'a law as their ruling legal system,⁷ causing a controversy within the country and the international community.⁸ Unfortunately, convictions similar to Amina's

1. Simon Robinson, *Casting Stones*, TIME MAGAZINE, Sept. 2, 2002, at 36-37. In addition to Nigeria, death sentences by way of stoning occurred in other African and Mid-East nations such as Sudan, Saudi Arabia, Pakistan, Yemen, and Iran. *Id.* at 37. While Iranian penal codes outline the procedure for stoning, and newspapers often report stoning activity, there is no conclusive evidence showing that all death sentences in other African and Mid-East nations are carried out. *Id.*

2. Under Islamic law, adultery is considered a crime. Adultery is defined as "any sex outside of wedlock if the woman has been previously married." Margaret Wentz, *Stone Her to Death: Family Values*, THE GLOBE AND MAIL, Aug. 27, 2002, at A13.

3. Robinson, *supra* note 1.

4. *Id.* Amina's former boyfriend and the father of her child is Yahaya Mohammed. *Id.* at 30. The judge dropped the adultery charges against Yahaya Mohammed because the strict requirements for proving adultery—four eye witnesses to the act or a confession—were not met. *Id.* at 37. However, a judge ruled that in Amina's case, Amina's daughter constituted sufficient proof for an adultery conviction. *Id.*

5. Somini Sengupta, *Lawal Defies Death By Stoning*, ALL AFRICA, (Sept. 30, 2003), at <http://allafrica.com/stories/200309300501.html> (last visited Oct. 11, 2003).

6. Robinson, *supra* note 1, at 36.

7. As of January 2003, twelve states have enacted Shari'a law. These states are Katsina, Sokoto, Zamfara, Kano, Jigawa, Yobe, Borno, Kebbi, Niger, Kaduna, Bauchi, and Gombe. *Analysis: Nigeria's Sharia split*, BBC NEWS ONLINE, at <http://news.bbc.co.uk/1/hi/world/africa/2632939.stm> (last visited Sept. 6, 2003).

8. For example, several contestants in the Miss World pageant, scheduled to be held in Nigeria, refused to participate unless the sentence was overturned. Rory Carroll, *No Stoning, Nigerian Minister Vows*, THE GUARDIAN, Oct. 30, 2002, at 20. The Miss World pageant was moved to London after Muslims rioted in the city of Abuja, the city in which the pageant was to be held. D'Arcy Doran, *Riots Move Miss World Out of Nigeria*, AP Online, 2002 WL 103439089 (Nov. 23, 2002). The rioting began after Muslims became angry at a newspaper article suggesting that the Prophet Muhammad would enjoy the pageant. After three days of rioting, many churches and mosques were damaged and

are not unique occurrences.⁹ Amina is free but many others remain subjected to the harsh penalties of Shari'a law.

Part of the controversy is that the implementation of Shari'a law in northern Nigeria violates the constitutional and civil rights of all non-Muslim Nigerians. This Note will examine whether the current operation of Shari'a law in Nigeria does indeed violate the constitutional and human rights of Nigerian citizens, and if so, what can be done to ensure that all Nigerians are treated equally and fairly. Part I will provide a brief background on Shari'a law and Shari'a's law existence in Nigeria. Part II will examine whether Shari'a law violates the Nigerian Constitution's prohibition on the adoption of a federal and state religion, as well as possible violations of Nigerian and international human rights standards. Also included is an examination of three majority-Muslim nations and how these nations faced issues involving Islamic law. Finally, in Part III, this Note will articulate ways in which Muslims and Christians in Nigeria can peacefully co-exist under a common legal system. Nigeria must come to a new consensus as to the scope of Islamic law and its implementation. In addition, Shari'a law courts must be monitored to ensure their rulings do not conflict with the supreme law of the land.

I. HISTORY OF SHARI'A LAW

A. *What is Shari'a Law?*

Shari'a¹⁰ law is the law of the Islamic faith. Although referred to as a law, Shari'a law is more accurately characterized as a "system of duties" that encompasses Muslim morals and values.¹¹ The main principles of Shari'a law include "the promotion of human dignity, justice, and

destroyed, at least one hundred and five people had died, and over five hundred people were injured.

9. In March 2002, the death sentence of another convicted adulterer, Safiya Husseni, was overturned. However, a judge overturned the sentence on a technicality, not on the merits of the case. Robinson, *supra* note 1. In June 2002, Yunusa Rafin Chiyawa became the first man ever sentenced to death for adultery under the new Nigerian Shari'a law penal codes. *Nigeria: How Much More Suffering under Sharia Penal Legislation?*, Amnesty International, at http://web.amnesty.org/web/web.nsf/print/nga-260803-action_erg (last visited Sept. 6, 2002). Recently, a couple who had a child when they were not married was sentenced to death for adultery. Carroll, *supra* note 8, at 20. One man was sentenced to death by stoning for raping a 9 year old girl but the sentence was quashed in exchange for a plea of insanity. "Sharia Appeal Court Saves Man From Death", ALL AFRICA, Aug. 20, 2003.

10. Shari'a law is also spelled as Shariah and al-Shari'a law. For the purposes of this Note, only one spelling (Shari'a law) will be used.

11. THE OXFORD HISTORY OF ISLAM 134 (John L. Esposito, ed., Oxford University Press 1999).

equality.”¹² Shari’a law is based upon divine revelations in the Quran,¹³ the Sunna,¹⁴ and the teachings of the Prophet Muhammad.¹⁵ Shari’a law is “the law of God, handed down to humans to provide a guideline for attaining both earthly justice and an afterlife.”¹⁶ For Muslims, adherence to Shari’a law is not only a legal duty but a civil and religious obligation.¹⁷ Shari’a law is not meant to address the needs of the community; rather, it requires the community to conform to the law of Shari’a law.¹⁸

Historically, Shari’a law has been a jurists’ law.¹⁹ Jurists are scholars considered to have a thorough knowledge of the law.²⁰ Jurists interpret and clarify religious sources, and their decisions are regarded as the “authoritative statements of Islamic law.”²¹ Permitting legal scholars to interpret religious sources is the essence of Shari’a law.²²

B. *Shari’a Law in Nigeria*

Islam in Nigeria dates back to the early ninth century.²³ As a result of a jihad²⁴ led by Shehu Usman Dan Fodido, the religion rapidly spread

12. *Id.* at 135. Other objectives include “the establishment of a consultative government; the realization of the lawful benefits of the people; the prevention of harm (ducat); the removal of hardship (Haraj); and the education of the individual by inculcating in him or her a sense of punctuality, self-discipline, and restraint.” *Id.*

13. The Quran also has different spellings: Qu’ran, Al-Qu’ran, Koran, Ko’ran. For the purposes of this Note, I will use the spelling Quran.

14. See WEERAMANTRY, *ISLAMIC JURISPRUDENCE: AN INTERNATIONAL PERSPECTIVE* 34 (St. Martin’s Press 1988) (“The authority of the traditions of the prophet [are] collectively know as *Sunna* in Islamic law.”).

15. THE OXFORD HISTORY OF ISLAM, *supra* note 11, at 108.

16. MATTHEW HASSAN KUKAH & TOYIN FALOLA, *RELIGIOUS MILITANCY AND SELF ASSERTION* 118 (1996).

17. THE OXFORD HISTORY OF ISLAM, *supra* note 11, at 131.

18. *Id.* at 144.

19. Anne Elizabeth Mayer, *Islam and the State*, 12 CARDOZO L. REV. 1015, 1023 (1991). See also Bassam Tibi, *Islamic Law/Shari’a, Human Rights, Universal Morality and International Relations*, 16 HUM. RTS. Q. 277, 279 (1991) (“ . . . Sharia law was in fact constructed by Muslim jurists . . . Although derived from . . . the Qu’ran and Sunna, Shari’a law is not divine because it is the product of *human interpretation* of those sources.”) (internal citation and quotations omitted).

20. BLACK’S LAW DICTIONARY 360(7th ed. 2001)

21. Mayer, *supra* note 19, at 1022-23.

22. WEERAMANTRY, *supra* note 14, at 30. “The study of law and theology in Islam went hand-in-hand. No distinction was made between rules of law and rules of religion . . . law became the central discipline of Islam.” *Id.*

23. Ibrahim Gambari, *The Role of Religion in National Life: Reflections on Recent Experience in Nigeria*, in RELIGION AND NATIONAL INTEGRATION IN AFRICA 86 (John O. Hunwick ed., 1992).

24. A jihad is a “war of Islamic expansion.” THE OXFORD HISTORY OF ISLAM, *supra* note 11, at 76. A jihad “is not a holy war against unbelievers . . . but rather . . . ‘the expenditure of oneself for the please of God Most High, emptying oneself of everything for His sake, and divesting oneself of

throughout the country in the early nineteenth century.²⁵ When Britain colonized Nigeria in the late nineteenth century, European law, which was based in the Christian tradition, displaced Shari'a law.²⁶ The British did allow Shari'a law to exist, but limited its jurisdiction to the areas of personal status law.²⁷

Although Nigeria gained independence in 1960,²⁸ the country was under military rule²⁹ and therefore did not enact a constitution until 1979.³⁰ During the constitutional convention, Muslim Nigerians expressed their desire that the constitutional commission incorporate a federal Shari'a law court of appeals into the constitution.³¹ The committee rejected the idea because of the extreme tensions between Christian and Muslim members of the Constitutional Committee.³² However, individual states, mostly located in the north, included provisions in their respective state constitutions that permitted Shari'a law courts.³³ Subsequent drafts of the national constitution acknowledged that states could implement state Shari'a law courts.³⁴ Shari'a law opponents conceded that Muslims could be ruled under their holy law but maintained that Shari'a law rule should be limited exclusively to Muslims.³⁵

In 1999 conflict arose in Nigeria³⁶ when Zamfara, a northern state, implemented rules that "harmonized" Shari'a law provisions with those of

reliance in the material world.'" *Id.* at 102-03.

25. Gambari, *supra* note 23.

26. Mayer, *supra* note 19, at 1026.

27. *Id.* at 1027.

28. Gambari, *supra* note 23, at 87.

29. *Id.*

30. *Id.* Nigeria considers itself to be a nation-state. Mayer, *supra* note 19, at 1016. A nation-state "is premised on popular sovereignty, constitutionalism, a legal system in which citizens have equal rights and obligations, and a common allegiance to the nation as a basis for solidarity." *Id.*

31. Don Onadike, *Muslim-Christian Conflict and Political Instability in Nigeria*, in RELIGION AND NATIONAL INTEGRATION IN AFRICA 116-17 (John O. Hunwick ed., 1992).

32. *Id.* at 117. The federal Shari'a law court was rejected for four reasons: (1) Christians feared that allowing federal Shari'a law would lead to the islamization of Nigeria; (2) "Section 17 of the draft constitution stated that Nigeria shall not adopt any religion as the state religion"; (3) only half of the country was Muslim; and (4) allowing special courts for Islamic law may have required the establishment of Christian courts or other religious legal systems. *Id.* Today, a federal Shari'a law court is allowed in the federal territory of Abuja. See NIG. CONST. §260.

33. OLADIMEJI ABORISADE & ROBERT J. MUNDT, POLITICS IN NIGERIA 226 (Longman 2d ed. 2002).

34. *Id.*

35. See TOYIN FALOLA, VIOLENCE IN NIGERIA 87 (1998).

36. This is not the first time conflict arose in Nigeria. In 1987, the residents of Kaduna rioted and the uprisings lasted for nearly one week resulting in death and property damage. Gambari, *supra* note 23, at 90-91. The rioting began over religious conflicts surrounding Christianity and Islam. *Id.*

the secular code.”³⁷ Essentially, this change erased a secular legal system and subjected even non-Muslims to Islamic authority.³⁸ Muslim Nigerians believed that Nigerian federal laws “smacked of colonialism” and, therefore, “needed to be rejected in favor of an Islamic legal system.”³⁹

However, the dispute over Shari’a law is fueled by other issues as well. Although religion is the largest contributor to the dispute regarding Shari’a law, regional and ethnic conflicts play vital roles as well. For example, Islam is prevalent in the northern regions of Nigeria while Christianity reigns in the southern regions.⁴⁰ Therefore, the dispute is not only between Christians and Muslims, but also between southerners and northerners. In addition, the strong relationship between ethnicity and religion⁴¹ contributes to the tension. Ethnicity heavily influences the political process.⁴² Thus, the Shari’a law dispute affects many aspects of everyday life.

II. SHARI’A LAW AND THE NIGERIAN CONSTITUTION

The Nigerian Constitution is the ruling law of the land. All other laws, both state and federal, should be aligned with the constitution. Shari’a law, as it presently operates, violates the Nigerian Constitution because it negates the secular intent of the constitution, extends beyond the constitution’s permissible bounds, and violates many Nigerian and international human rights standards.

37. ABORISADE & MUNDT, *supra* note 33, at 226.

38. *Id.*

39. FALOLA, *supra* note 35, at 79.

40. Gambari, *supra* note 23, at 86-87. Seventy percent of the population in the northern regions are Muslim. *Id.* Approximately twenty to thirty percent of southerners are Muslim. *Id.* The Muslim population in Nigeria is one of the largest found outside of the Middle East. *Id.* at 86-87.

41. *Id.* at 88. See also SIMEON O. ILESANMI, RELIGIOUS PLURALISM AND THE NIGERIAN STATE 135 (Center for International Studies, Ohio University 1997) (“Ethnicity goes hand in hand with the manipulation of the religion”). The largest ethnic groups are the Hausa (21%), Yoruba (21%), Ibo (18%) and Fulani (11%). Natural History Museum, *Africa: One Continent, Many Worlds: Atlas*, available at <http://www.nhm.org/africa/atlas/nigeria/> (last visited Sept. 6, 2003).

42. Philip C. Aka, *Nigeria: The Need for An Effective Policy of Ethnic Reconciliation in the New Century*, 14 TEMP. INT’L & COMP. L.J. 372, 332 (2000) (“For all the constitutional and institutional reforms . . . ethnicity forms ‘the basis on which political values are defined, articulated, contested, or challenged’ in Nigeria.”).

A. *Shari'a Law Negates the Secular Intent of the Nigerian Constitution*

Section ten of the Nigerian Constitution reads, "The Government of the Federation or of a State shall not adopt any religion as State Religion."⁴³ On its face, this phrase seems unambiguous. However, this clause is the source of much debate on Shari'a law's implementation. The controversy concerns whether this constitutional provision implies that Nigeria is a secular nation. If Nigeria is a secular nation, the question becomes whether the current operation of Shari'a law courts is unconstitutional because Shari'a law courts operate in conformity with Islamic rules and not the Nigerian Constitution.

Politically, the purpose of secularism is to "eliminate the dominance of religion."⁴⁴ Many Muslim Nigerians wish to eliminate the dominance of Christianity⁴⁵ in Nigeria. In fact, secularism⁴⁶ emerged as a protest movement against Christianity.⁴⁷ In short, secularism's objective is to ensure that religion does not infringe upon the liberties granted to the nation's citizens.⁴⁸

Nigerian scholars argue that the prohibition of a national or state religion is not a clear implication that Nigeria is a secular state.⁴⁹ They maintain that because section ten does not expressly state that Nigeria is a

43. NIG. CONST. § 10.

44. Mohammed Ben-Yunusa, *Secularism and Religion*, in RELIGION, LAW AND SOCIETY 81-82 (Tarek Mitri ed., 1995). Compare *id.* ("The main aim of secularism was to eliminate the dominance of religion in human affairs by providing a system according to which people would develop on a purely social and intellectual basis.") with ALI M. ANSARI, IRAN, ISLAM AND DEMOCRACY: THE POLITICS OF MANAGING CHANGE 15 (The Royal Institute of International Affairs 2000)

Secular is a term used to distinguish the temporal or worldly from the spiritual, while secularism has come to denote a philosophy that privileges the domain of the temporal and diminishes that of the spiritual. The former grows to cover civil affairs and education, while the latter is increasingly restricted to the areas of private belief, worship and conduct.

45. PAT WILLIAMS & TOYIN FALOLA, RELIGIOUS IMPACT ON THE NATION STATE 139 (Avebury 1995). Since gaining independence, Muslims have fought to free themselves from the reign of colonial British law. *Id.*

46. A secular state is really a state that neither endorses nor opposes religion but instead respects various religious doctrines and practices. *Id.* at 82. Secularism can take two forms: 1) total indifference to religion, and 2) active opposition to religion. *Id.*

47. Ben-Yunusa, *supra* note 44, at 82, 84.

48. *Id.* Secularism ensures that "religion does not overstep its bounds and infringe upon matters of public interest." *Id.*

49. Dr. Muhammed Tabiu, *Shari'a, Federalism and the Nigerian Constitution*, Address at The International Conference on Sharia (Apr. 14, 2001), http://www.shariah2001.nmnonline.net/tabiu_paper.htm (last visited Oct. 7, 2003). See also Professor Auwalu H. Yaddud, *Benefits of Shariah and the Challenge of Reclaiming a Heritage*, Address at The International Conference on Sharia, (Apr. 14, 2001), at http://www.shariah2001.nmnonline.net/yadudu_paper.htm (last visited Oct. 7, 2003).

secular state, one cannot reasonably interpret that Shari'a law courts violate the constitution.⁵⁰ Many Muslims oppose the assertion that Nigeria is a secular nation because it promotes "Western" and "atheist" ideals.⁵¹

On the contrary, a secular state is not inherently "a godless, atheistic or non-religious state."⁵² In addition, a state need not assert that it is secular for the government to be classified as such.⁵³ In the absence of the adoption of a state religion, a nation is most accurately described as secular.⁵⁴ Thus, Nigeria's prohibition of a national or state religion automatically qualifies the country as a secular nation.⁵⁵

Religion is one of the leading forces in the Nigerian political system. Many Muslim Nigerians use their religion as a basis for seeking support in national and state elections.⁵⁶ Since the dispute over Shari'a law erupted, Muslim Nigerian politicians became noticeably more active in the political sphere,⁵⁷ almost guaranteeing that the Shari'a law debate will remain one of the nation's more pressing issues.⁵⁸ Nevertheless, Muslim participation

50. Tabiu, *supra* note 49. "We can see that the section does not establish . . . [the] claim that the Constitution describes Nigeria as a secular state. In fact the Constitution does not use the word secularism or any of its derivatives at all. How then can they build an argument, alleging violation of the Constitution, merely on their personal interpretation of such a word of varied and controversial meaning, which is not even in the Constitution?" *Id.* See also Mayer, *supra* note 19, at 1023 ("The mere absence of a provision that Islam is the state religion does not by itself mean that a State . . . is more secular . . .").

51. KUKAH & FALOLA, *supra* note 16, at 133-34.

52. M. Ozonnia Ojielo, *Human Rights and Sharia'h Justice in Nigeria*, 9 ANN. SURV. INT'L & COMP. L. 135, 155-56 (2003).

53. *Id.* at 154. "Section 10 is a clear, positive, and aggressive prohibition of state religion. In order to violate the provision, a state need not issue a declaration adopting any religion. It need not even acknowledge that it is adopting or has adopted a religion. It need not use the terms 'adopt' or 'state religion.'" *Id.*

54. *Id.* at 155.

55. See Ben-Yunusa, *supra* note 44, at 79. ("In politics, secularism argues for a government that is independent of any religious function or organization, meaning that no religion is recognized or adopted as a state religion.").

56. See, e.g., Sani Ahmed, *Nigeria's Islamic State Governor Doubles Pay of Religious Leaders*, Agence France-Presse, Dec. 24, 2002, 2002 WL 23678840. (In December 2002, the governor of Zamfara "doubled the monthly pay of Islamic scholars in a move seen by observers as an attempt to curry their support for his re-election. The governor also moved the monthly pay of the deputies of Islamic leaders. Each of the some 5,000 religious leaders was also given a motorcycle, while each of their deputies got a bicycle.").

57. KARL MAIER, THIS HOUSE HAS FALLEN: MIDNIGHT IN NIGERIA 144 (2000) ("Calls for Sharia had been sweeping the north for months. Local politicians, bereft of serious political programs, latched on to Sharia as an easy tool to win support from a population desperate for an end to years of frustration, corruption, and more than anything, hopelessness.").

58. Jonathan Clayton, *Nigeria Faces 'Battle of the Generals' at the Polls*, THE TIMES OF LONDON, Jan. 9, 2003, 2003 WL 3094359. The All Nigeria's People's Party elected Muhammadu Buhari as its presidential candidate in the April 2003 election. "The vote not only ensures that both main candidates in the spring's election in Africa's most populous country will be former dictators, but

in the political arena is in itself a secularization of Islam⁵⁹ because Muslims are themselves participating in a political system based on Western methods.

While Muslims may not agree that participation in the Nigerian political process constitutes acknowledgment of a secular political system, many objective observers believe Islam is being used as a basis for religious movements seeking to influence the political process.⁶⁰ This idea supports the notion that Muslim Nigerians do not support the separation of church and state. Because Muslim Nigerians will not acknowledge that separation of religion and politics⁶¹ is essential to Nigeria's success and stability, it is imperative to monitor the Shari'a law courts' behavior in order to uphold the principles of the Nigerian Constitution.

B. The Extension of Shari'a Law Goes Beyond the Permissible Jurisdiction Boundaries and Is Arbitrarily Applied

The mere existence of Shari'a law is not the sole factor in the dispute over religion in Nigeria. The Nigerian Constitution allows Shari'a law courts to rule Muslim life, limited to personal status law, in specified areas.⁶² But recently, some northern states⁶³ extended this jurisdiction to

also that the clash of the generals will also mirror the country's north-south divide." *Id.* President Obasanjo is a 'Christian from the southwest' while General Buhari is a 'Muslim from the north'. "Since General Obasanjo's 1999 election, Sharia has been the most divisive issue between north and south." *Id.*

59. Transforming Islam into a political ideology used to seek the fulfillment of particular political goals is in itself a secularization of Islam. Mayer, *supra* note 19, at 1026.

60. See Philip C. Aka, *The "Dividend of Democracy": Analyzing U.S. Support For Nigerian Democratization*, 22 B.C. THIRD WORLD L.J. 225, 233 (2002) ("Many observers correctly view these states' adoption of Shari'a law as politically modified attempts to undermine the administration."). See also Muhammad Nafik, *The Enforcement of Shari'a-Impossible, Unviable [An Interview with Abdullahi Ahmed An-Na'im]*, JAKARTA POST, Jan. 4, 2003, at P3, 2003 WL 4360828. ("Muslim history clearly shows that an Islamic state is not a valid idea. It's all political and it was created in the struggle for power. To call a state an "Islamic" state is to create a condition of intimidation . . . Islam is used as a front for a political struggle; this is wrong.").

61. See Bert F. Breiner, *Secularism and Religion: Alternative Bases for the Quest for a Genuine Pluralism*, in RELIGION, LAW AND SOCIETY 93-94 (Tarek Mitri ed., 1995). One reason that many Muslims cannot acknowledge a separation of church and state is the idea that secularism maintains that "the world in which we live may be understood entirely in its own terms. There is no need to refer to any other point of reference in order to understand its meaning and its value." *Id.* As previously stated, Muslims believe it is their duty to adhere to Shari'a law, a law that is divinely inspired by the Quran and the teachings of the Prophet Muhammad and interpreted by Muslim jurists. See *supra* note 17, at 17, 18.

62. See NIG. CONST. § 260 (providing that "There shall be a Shari'a Law Court of Appeal of the Federal Capital Territory, Abuja"); NIG. CONST. § 275 (allowing a state to establish a Shari'a law court of appeals.). Section 277 states:

public law, thereby adopting Shari'a law as their only legal system.⁶⁴ The method by which Shari'a law currently operates in these states is unconstitutional because it extends beyond its intended scope, and thus, often results in controversial and divisive decisions.

The constitution limits the jurisdiction of Shari'a law courts to personal

(1) The Shari'a Law Court of Appeal of a State shall, in addition to such other jurisdiction as may be conferred upon it by the law of the State, exercise such appellate and supervisory jurisdiction in civil proceedings involving questions of Islamic personal law which the court is competent to decide in accordance with the provisions of subsection (2) of this section. (2) For the purposes of subsection (1) of this section, the Shari'a law Court of Appeal shall be competent to decide:—(a) any question of Islamic personal law regarding a marriage concluded in accordance with that law, including a question relating to the validity or dissolution of such a marriage or a question that depends on such a marriage and relating to family relationship or the guardianship of an infant; (b) where all the parties to the proceedings are Muslim, any question of Islamic personal law regarding a marriage, including the validity or dissolution of that marriage, or regarding family relationship . . . ; (c) any question of Islamic personal law regarding a wakf, gift, will or succession where the endower, donor, testator or deceased person in [sic] a Muslim; (d) any question of Islamic personal law regarding an infant, prodigal or person of unsound mind who is a muslim [sic] or the maintenance or the guardianship of a muslim [sic] who is physically or mentally infirm; or (e) where all the parties to the proceedings, being muslims, [sic] have requested the court that hears the case in the first instance to determine that case in accordance with Islamic personal law, any other question.

NIG. CONST. § 277.

63. ABORISADE & MUNDT, *supra* note 33, at 66. The state of Zamfara was the first state to adopt Shari'a law as its legal system. *Id.*; *see also supra* note 6.

64. *See supra* note 33 and accompanying text. *See also* THE OXFORD HISTORY OF ISLAM, *supra* note 11, at 130-31 (“[Shari'a law] advocates the moral autonomy of the individual and visualizes a basic harmony between private and public interests”).

First, it is important to understand the difference between personal and public law. Personal law is often referred to as private law. For the purposes of this note, it will be referred to as personal law. Public law consists of areas such as constitutional, criminal, administrative and international and human rights law. *See* BLACK'S LAW DICTIONARY 1244 (7th ed. 1999) “The body of law dealing with the relations between private individuals and the government, and with the structure and operation of the government itself; constitutional law, criminal law, and administrative law taken together . . . A statute affecting the general public . . . ” *Id.* Personal law is restricted to areas regarding religious practices and private life, such as family and inheritance law. *Id.* *See also* Bharathi Anandhi Venkatraman, *Islamic States and the United Nations on the Elimination of All Forms of Discrimination Against Women: Are the Shari'a and the Convention Compatible?*, 44 AM. U. L. REV. 1949, 1971-72 (“Many Islamic nations . . . are very much aware of the public/private distinction, adopting secular Western norms in the realm of public law, but continuing to follow the Shari'a law in matters of personal status or private law.”). *See also* THE OXFORD HISTORY OF ISLAM, *supra* note 11, at 633. Britain, Canada, and the United States have historically recognized Islamic personal law. The U.S. and Canada family courts recognize Islamic marriage documents. *Id.* Black's Law Dictionary defines personal law as

The law that governs a person's family matters, usu. regardless of where the person goes . . . The idea of the personal law is based on the conception of man as a social being, so that those transactions of his daily life which affect him most closely in a personal sense, such as marriage, divorce, legitimacy, many kinds of capacity, and succession, may be governed universally by that system of law deemed most suitable and adequate for the purpose

BLACK'S LAW DICTIONARY, *supra*, at 1164 (7th ed. 1999) (internal citation omitted).

law.⁶⁵ Shari'a law supporters argue that one specific phrase of section 277 permitting Shari'a law courts to rule in areas of personal law "in addition to such other jurisdiction as may be conferred upon it by the law of the State," allows Shari'a law to be extended to areas of public law,⁶⁶ provided a state consents to this expansion.

However, Shari'a law supporters fail to read this language in its proper context. While section 277(1) permits a state to confer additional jurisdiction upon a Shari'a law court, this court must be competent to rule "in accordance with the provisions of subsection (2) of this section."⁶⁷ Subsection (2) refers to areas of personal law regarding marriage, divorce, child custody, wills, trusts, and the care of the incapacitated.⁶⁸ Therefore, the proper interpretation of the constitution is that Shari'a law courts may have extended jurisdiction in areas in which it is competent to rule, touching only the areas regarded as personal law. Moreover, it is clear that it was the Nigerian framers' intent that Shari'a law be limited to personal status law because the constitutional drafters only allowed Shari'a law courts to exist if they were strictly limited in scope.⁶⁹

Furthermore, the extension of Shari'a law has caused uproar amongst Nigerian citizens, threatening the stability of the nation.⁷⁰ Many people

65. NIG. CONST. § 277.

66. See Tabiu, *supra* note 49 ("The constitution establishes, for each state that requires it, a Shari'a law Court of Appeal and grants the court jurisdiction to hear appeals on Islamic personal law, expressly declaring that this jurisdiction is 'in addition to such other jurisdiction as may be conferred upon it by the law of the state'."). It is also important to remember that Shari'a law "draws no distinction between religious and secular, between legal, ethical and moral questions, or between public and private aspects of a Muslim's life." See Venkatraman, *supra* note 64, at 1964. Therefore, the idea that Muslims desire Shari'a law rule in both the personal and public sphere is no surprise and to them is not unreasonable.

67. NIG. CONST. § 277(1).

68. NIG. CONST. § 277(1)(a)-(e).

69. See WILLIAMS & FALOLA, *supra* note 45, at 111.

It was the government itself that determined the final outcome of the Shari'a law question by deciding that: 1. The court is given jurisdiction only in matters relating to the Muslims personal life . . . 3. These courts will hear cases involving only Muslims. Unlike in the 1979 Constitution, any person who is not a muslim [sic] will not have anything to do with the Shari'a law Court.

Id.

70. Aka, 22 B.C. THIRD WORLD L.J., *supra* note 60, at 233 ("The more widespread adoption of this [Shari'a] law, which involves replacing both civil and criminal legal systems with Muslim laws, has led to deadly conflicts . . . Approximately 10,000 people have died from violence traceable to ethnic-religious conflict since General Obasanjo took office [in 1999]"). See also ABORISADE & MUNDT, *supra* note 33, at 161, tbl. 6.1 (showing that disputes occurred in Niger, Kaduna, and Zamfara over the application of Shari'a law in the year 2000). Many people have lost their lives in violent conflicts over the expansion of Shari'a law.

believe the extension of Shari'a law is merely a political ploy⁷¹ to gain Muslim support and to overturn the government,⁷² which has led to the distrust of public officials. In addition, the interpretation of Shari'a law results in arbitrary punishments⁷³ and thus many people view Muslim courts as corrupt⁷⁴ and arbitrary.⁷⁵ These concerns illustrate that the current operation of Shari'a law requires reexamination and renovation.

Because of judicial discretion, the application of Shari'a law is not uniform and results in a wide range of rules and an even wider array of how those rules are enforced.⁷⁶ The application of Shari'a law differs greatly because it is applied "in accordance with the differences existing among . . . societies."⁷⁷ Moreover, Shari'a law courts are discriminatory because the life and rights of a Muslim are valued higher than those of a non-Muslim.⁷⁸ Thus, different Nigerian Shari'a law courts may apply different standards to citizens, depriving Nigerians of equal protection.

71. Aka, 14 TEMP. INT'L & COMP. L.J., *supra* note 42, at 336 ("Many observers see the elevation or intended elevation of Sharia into criminal code (from its former more limited application as civil and family law) . . . more as a political issue, rather than a religious or ethnic dispute.").

72. *See* Aka, 22 B.C. THIRD WORLD L.J., *supra* note 60, at 233 ("Many observers correctly view these states' adoption of Shari'a law as politically motivated attempts . . . to undermine . . . [the] administration.").

73. THE OXFORD HISTORY OF ISLAM, *supra* note 11, at 144. Additionally, "[Shari'a law] oriented public policy authorizes government leaders to conduct government affairs in harmony with the spirit and purpose of the [Shari'a law], even at the expense of a temporary departure from its specific rules." *Id.* at 143.

74. *See* KUKAH & FALOLA, *supra* note 16, at 135 (stating ". . . [N]igeria is faced with the dilemma of dealing with those who execute the laws. Corruption within the judiciary is a very serious problem.").

75. *See* Venkatraman, *supra* note 64, at 1975-76 ("Reform of the personal law system requires the formulation of airtight laws that are not subject to manipulation by a potentially biased judiciary."). *See also* THE OXFORD HISTORY OF ISLAM, *supra* note 11, at 144 ("Shari'a law can legislate both within and outside Shari'a law regulated areas.").

76. *See* Nafik, *supra* note 60.

It is very dangerous to call any state an Islamic state, or to enforce sharia, because for Muslims, sharia is divine revelation that is understood by human beings. On the other hand, people disagree about this. That's why we have so many madzhab (schools of Islamic jurisprudence) who are at odds with each other. If a state applies sharia, it will choose only one among many opinions . . ."

Id.

77. *See* WAEL B. HALLAQ, A HISTORY OF ISLAMIC LEGAL THEORIES 235 (1997).

The Shari'a law is nothing but a way or a method of conduct . . . that expresses belief in God, and each nation or group conceives of a particular way that suits its needs, to express its own belief in the one and only God. This is why religion is but one, emanating from one God, but the *shara'i* (pl. of *Shari'a law*) governing societies commensurately differ in accordance with the differences existing among these societies.

Id.

78. WILLIAMS & FALOLA, *supra* note 45, at 133. Non-Muslims feared Muslim law because there is a "distinction between Muslims and non-Muslims in a procedural rather than substantive law. The evidence of a male Muslim was of greater value than that of a Muslim woman, Christian, or pagan."

C. Shari'a Law Violates Both Nigerian and International Human Rights Standards

The Nigerian Constitution⁷⁹ contains provisions ensuring the human rights of all Nigerian citizens.⁸⁰ Shari'a law penal codes defy both the Nigerian Constitution's human rights provisions and international human rights standards. Many people do not receive fair trials.

This inequity is illustrated in the case of Amina Lawal. Under Islamic law, "proof of adultery consists of confession or the declarations of four eye-witnesses to the act of intercourse."⁸¹ The trial judge in Amina's case ruled that the baby was sufficient proof that she committed adultery.⁸² When Amina's adultery conviction was overturned by a supreme Shari'a law court, the presiding judges based their ruling largely on procedural errors.⁸³ Defense counsel asserted that Shari'a law was not implemented at the time Amina became pregnant and thus she could not be judged under its law.⁸⁴ Additionally, the court ruled that the requirements for a valid confession or proof of adultery were not met and that the requisite number of judges were not present at the trial.⁸⁵

However, the Shari'a law supreme court did not address the substantive argument that Amina's conviction violated her right to equal protection.⁸⁶ The trial court accepted the alleged father's word that he never had sexual intercourse with Amina without requesting a DNA test to confirm paternity.⁸⁷ Obviously, the lower trial and appellate courts applied a different standard of proof to Amina's lover, as he was never charged nor

Id.

79. See NIG. CONST. § 33-39. These rights include the right to life, dignity, a fair trial and freedom from ethnic, sex, racial, or religious discrimination. *Id.*

80. Section 33(1) reads: "Every person has a right to life, and no one shall be deprived intentionally of his life, save in execution of the sentence of a court in respect of a criminal offence of which he has been found guilty in Nigeria." NIG. CONST. § 33(1).

These rights include the right to life, dignity, personal liberty, a fair trial, privacy, freedom of thought and religion, expression, and freedom from ethnic, sex, racial, or religious discrimination. *Id.*

81. Robert Postawko, *Towards an Islamic Critique of Capital Punishment*, Comment, 1 UCLA J. ISLAMIC & NEAR E. L. 269, 289 (2002). The witnesses must be credible and are usually men. *Id.*

82. See Robinson, *supra* note 1, at 37 ("A hard-line Islamic judge ruled that baby Wasila was proof enough of Lawal's guilt.")

83. See Sengupta, *supra* note 5.

84. Lillian Okenwa, *Amina Lawal: Shekarau Lauds Verdict*, ALL AFRICA (Oct. 1, 2003), at <http://allafrica.com/stories/200310010243.html> (last visited Oct. 11, 2003).

85. See Sengupta, *supra* note 5.

86. *Id.*

87. Somini Sengupta, "Stoning trial threatens to divide Nigeria Islamic law/Dividend of democracy or infringement of rights?", INT'L HERALD TRIB., Jan. 27, 2003.

convicted of adultery.⁸⁸ The rationale behind the reversal exemplifies the fact that Shari'a law does not adhere to the rights guaranteed in the Nigerian Constitution.

Shari'a law also violates the right to religious freedom. Section ten of the Nigerian Constitution prohibits the establishment of religion and Section Thirty-Eight ensures the freedom of religion. One of the issues surrounding the extension of Shari'a law is Shari'a law applicability to non-Muslims.⁸⁹ In States⁹⁰ that practice Shari'a law, non-Muslims are subject to Islamic law "regardless of an individual's desire."⁹¹ Proponents of Shari'a law argue that it does not affect the lives of non-Muslims; however, this argument is flawed because Shari'a law subjects non-Muslims to "[bans] on alcohol, cinemas, and integration of the sexes."⁹² Christians living in Shari'a law States are fearful for their lives and have experienced widespread discrimination because of their religious affiliation.⁹³ Nigerian officials expressed their outrage at Shari'a law

88. *See Sharia Law Threatens Nigeria's Stability*, Center for Religious Freedom, <http://www.freedomhouse.org/religion/news/bn2002/bn-2002-03-27.htm> (last visited Sept. 12, 2003) ("Sharia results in corporal punishment or death sentences for women for alleged sexual crimes, whereas men are invariably not punished . . ."). *See also* ANN ELIZABETH MAYER, *ISLAM AND HUMAN RIGHTS: TRADITION AND POLITICS* 83 (Westview Press 2d ed., 1995).

Although in Islamic law one can discern elements . . . of equality, one does not find any counterpart of the principle of equal protection under the law . . . when Muslims were first attempting to come to grips with the constitutional principles of equality, they tended to assume that the principle of equality was not violated as long as *shari'a law*, with its discriminatory features intact, was applied equally to persons within the separate categories that it established.

Id.

89. ABORISADE & MUNDT, *supra* note 33, at 226. The harmonizing of Shari'a law with secular laws "suggested that Shari'a law-based law might apply to Muslim and non-Muslim alike in the north" *Id.*

90. *See supra*, note 7.

91. *The Talibanization of Nigeria: Shari'a Law and Religious Freedom*, Summary, Center for Religious Freedom, at <http://www.freedomhouse.org/religion/publications/talibanization/summary.htm> (last visited 11/20/02). *See also Preliminary Findings of the International Federation for Human Rights (FIDH) Fact Finding Mission in Nigeria* [hereinafter *FIDH statement*], at <http://www.theperspective.org/fidh.html> (last visited Sept. 13, 2003) ("The FIDH especially condemns the implementation of the Sharia on non-muslims living in the state that implements Sharia. Fear and uncertainty have resulted in migration out of Sharia States. Certain legitimate businesses have been forced to close . . .").

92. MAIER, *supra* note 57, at 145.

93. *See* Obed Minchakpu, *Christians and Muslims at Odds Over Nigerian Constitution*, CHRISTIANITY TODAY, at <http://www.christianitytoday.com/ct/2001/128/46.0.html> (last visited Feb. 4, 2003).

According to Philip Ostien, a professor at the law faculty of Jos University, in Northern Nigeria, Christians living in states that have introduced Shari'ah have 'longstanding complaints. These complaints include difficulties in acquiring land for church buildings or burial grounds, problems with school admissions and teaching Christianity alongside Islam in schools, obtaining facilities for religious broadcasting or getting government jobs. He added: 'Christians living in the affected

application to non-Muslims and believe that the strict interpretation of Shari'a law is unconstitutional.⁹⁴

While the opposition to Shari'a law is strong within Nigeria, the hostility extends beyond the nation's boundaries. The spread of Shari'a law penal laws in Nigeria receives great attention from various international human rights organizations. These organizations fear that the expansion of Shari'a law to penal law violates many of the principles expressed in both international human rights agreements⁹⁵ and Nigerian human rights guarantees.⁹⁶

Amnesty International and BAOBAB for Women's Human Rights published a joint statement condemning the various human rights violations that Shari'a law allows.⁹⁷ For example, Shari'a law penal codes allow for punishments such as stoning, flogging, and amputation.⁹⁸ These

[Shari'ah] states are with some historical justification fearful of misapplication of Islamic law to them, and fearful also of the fanaticism the new laws might encourage among Muslims.'

94. Dennis Amachree's *Nigeria Security Update*, at <http://www.defuture.com/infosecure/sharia01.htm> (last visited Feb. 4, 2003)

The Justice Minister on March 20 has notified the predominantly Muslim northern states that the federal government considers the strict implementation of Muslim Sharia law on Muslims as well as non-Muslim Nigerians to be illegal under the country's constitution. The declaration marks a toughened new stance in government policy and appears to have been prompted by an Islamic court's sentencing of a woman to be stoned to death for having committed adultery, although she has appealed the penalty and a final decision is still pending. The Justice Minister, Godwin Agabi, declared in a letter just sent to all of the northern states that 'a Muslim should not be subjected to a punishment more severe than would be imposed on other Nigerians for the same offense.'

Id.

95. Shari'a law is alleged to violate Articles of the Universal Declaration of Human Rights, the African Charter on Human and Peoples Rights and the International Covenant on Civil and Political Right, all of which Nigeria has ratified. Center for Religious Freedom, *The Talibanization of Nigeria Shari'a Law and Religious Freedom*, *supra* note 91. See also Ema Orji, *Issues on Ethnicity and Governance in Nigeria: A Universal Human Rights Perspective*, 25 *FORDHAM INT'L L.J.* 431, 432 (2001). The African Charter on Human Rights emphasizes human rights issues in Africa. *Id.* The Universal Declaration of Human Rights "provides for civil and political rights as well as economic, social, and cultural rights." *Id.*

96. Ebrahim Moosa, *The Dilemma of Islamic Rights Schemes*, 15 *J.L. & RELIGION* 185, 193 (2001). It is important to note that under Shari'a law, God is the one who confers rights upon people and those rights are not considered universal. *Id.* See also MAYER, *supra* note 88, at 80 ("In seeking to understand the position of Muslims who assert that the retention of discriminatory rules of the premodern *Shari'a law* does not violate the principle of equality, one should bear in mind that 'equality' may have a different connotation for many Muslims than it has for people in the contemporary West who have grown up with the idea of the absolute equality of all human beings.").

97. *BAOBAB for Women's Human Rights and Amnesty International Joint Statement on the Implementation of New Sharia-based Penal Codes in Northern Nigeria*, Amnesty International, at <http://web.amnesty.org/ai.nsf/Index/AFR440082002?OpenDocument&of=COUNTRIES\NIGERIA> (last visited Sept. 13, 2003) [hereinafter Joint Statement].

98. *Id.*

punishments are considered “cruel, inhumane and degrading”⁹⁹ and conflict with Nigeria’s international position because Nigeria ratified the United Nations Convention Against Torture,¹⁰⁰ which prohibits such inhumane punishments.¹⁰¹

The conflict between Shari’a law and international human rights standards exists because Islamic law does not limit the death penalty’s scope.¹⁰² While Amnesty International opposes the death penalty in all cases,¹⁰³ it believes that countries enforcing the death penalty should only do so in cases of convictions for the most serious crimes.¹⁰⁴ Shari’a law recognizes three categories of crimes: hudud, qisas, and ta’zir.¹⁰⁵ Because they are considered crimes against God, hudud crimes have fixed punishments.¹⁰⁶ For example, adultery, a hudud crime, is punishable by death.¹⁰⁷ While adultery affects the family status, it is difficult to assert

99. *Id.*

100. *Commonwealth Human Rights Initiative*, http://www.humanrightsinitiative.org/torture/c_a_torture.htm (Nigeria ratified the Convention on June 28, 2001).

101. Joint Statement, *supra* note 97.

102. Postawko, *supra* note 81, at 269, 284-85.

103. Joint Statement, *supra* note 98. (“Amnesty International is categorically opposed to the death penalty in all circumstances because it represents the ultimate violation of the right to life guaranteed by international law . . .”). *See also* FIDH statement, *supra* note 91

Since the implementation of the criminal aspect of Sharia, there have been cases where the sentences included stoning to death . . . The FIDH denounces the condemnation to such punishments and their implementation which violate international human rights instruments, including the African Charter on Human and People’s Rights and the Nigerian Constitution.

Id.

104. Amnesty International emphasizes that the United Nations safeguards guaranteeing the protection of the rights of those facing the death penalty require that in countries which maintain the death penalty, it should only be used for most serious crimes, these are offences which are intentional and with lethal or other extremely grave consequences. The act of consensual extramarital sexual intercourse does not fulfil these conditions.

Id.

105. *See* Postawko, *supra* note 81, at 285.

Islamic law recognizes three types of punishments, or uqubat: fixed punishment (hadd; pl. hudud) as set forth in the Qur’an and sunnah, for which no pardon is possible; retaliation (qisas) for offenses proscribed by the Qur’an or sunnah of the Prophet, but that are the subject of a private claim; and discretionary punishment (ta’zir) imposed by a qadi, or judge, for offenses not covered by fixed punishment or retaliation.

Id. (internal citations omitted).

106. *Id.* at 286.

107. *Id.* at 287. There are four crimes that may result in death: adultery, apostasy, armed robbery, and rebellion. *Id.* The Prophet Muhammad set this penalty for adultery: “[When] a married woman (commits adultery) with a married woman, and an unmarried male with an unmarried woman, then in the case of the married (persons) there is (a punishment) of one hundred lashes and then stoning (to death).” *Id.* at 288 (quoting the Quran 24:2). Conversion from Islam to another religion could be considered apostasy and also be considered punishable by death. Moosa, *supra* note 97, at 200-01. Article 18 of the Universal Declaration ensures “the right to freedom of thought conscience and

that adultery is a serious crime, more serious than murder.¹⁰⁸ Sentencing a person to death for committing adultery is cruel, unusual, and unfair punishment.

III. COMPARISON WITH OTHER PREDOMINATELY-MUSLIM NATIONS

Nigeria is not the only nation that has experienced problems with the coexistence of Shari'a law and statutory law. Turkey, Sudan, and Indonesia all struggled with the application of Shari'a law in their nations. As a result, those countries endorsing Shari'a law encountered significant problems in the areas of social and economic development.

A. Turkey

Turkey is a predominately Muslim country that is avowedly secular.¹⁰⁹ Today, approximately ninety-nine percent of Turkish citizens are Muslim.¹¹⁰ However, no established state religion exists, and the constitution guarantees the freedom of religion to its citizens.¹¹¹ These constitutional provisions¹¹² are very similar those found in Nigeria's Constitution.¹¹³

Although Turkey is secular, it does allow Islamic law to rule in certain

religion, including the right to change one's religion and belief." *Id.* Therefore, a death sentence for apostasy violates international human rights.

108. William A. Schabas, *Islam and the Death Penalty*, 9 WM. & MARY BILL RTS. J. 223, 234 (2000)

It seems unarguable that the crimes for which Islamic law mandates the death penalty—adultery and apostasy—cannot by any effort at interpretation be deemed to be the “most serious crimes” for which the death penalty may be imposed in accordance with article 612 of the International Covenant of Civil and Political Rights, . . .

Id.

109. Niyazi Oktem, *Religion in Turkey*, 2 BYU L. REV. 371 (2002). Article 2 of the constitution reads: “The Turkish State is republican, nationalist, statist, secular, and reformist.” *Id.* at note 4. Turkey established a secular legal system in 1924. *Id.* This system is based on European legal systems. *Id.* Turkey is an important country because it “constitutes an important bridge between the East and the West, not only by virtue of its geographic position, but also because of its historical and cultural background . . . Turkish interpretation of Islam is multidimensional and multicolored in many of its aspects.” *Id.* at 402. See also JUNE STARR, *LAW AS METAPHOR: FROM ISLAMIC COURTS TO THE PALACE OF JUSTICE* 16 (1992). Turkey was never colonized so there has not been the Christian-Islam dichotomy in Turkey as there has been in other nations. *Id.* at 179.

110. Oktem, *supra* note 110, at 373. Of the approximately 65 million Turks, only about 105,000 are non-Muslims. *Id.*

111. *Id.* at 386-87.

112. Article 24 grants the “freedom of conscience, religious belief and conviction” and the right to freely practice one's religion. *Id.* at 386 (citing TURK. CONST. ARTICLE 24).

113. NIG. CONST. § 10, 38(1).

areas of Muslims' lives. The Director of Religious Affairs (DIB) regulates the religious life of Turkish Muslims.¹¹⁴ This agency receives financial support from the state's national budget while non-Muslim programs receive no financial support.¹¹⁵ The government monitors the DIB, which operates under Islamic principles, to ensure the secularity of the state is not compromised.¹¹⁶ For example, the government worked to engage Muslims and Christians in constructive dialogues regarding religion by instituting the Department for Interreligious Dialogue and Second Council of Religion, both begun by the DIB, to provide forums where religious leaders may discuss issues involving religion.¹¹⁷

In recent years, fundamentalist Muslims attempted to undermine the secularism of the country by engaging themselves in the political process using religious platforms.¹¹⁸ However, the Turkish government punishes people for violating the secular intent of the Turkish Constitution,¹¹⁹ even going so far as to mandate that all children receive a secular education.¹²⁰ In essence, the Turkish government accepts that the pre-modern interpretation of Shari'a law is a barrier to the country's progress and prosperity.

B. Sudan

Sudan and Nigeria have similar religious histories. Both Islamic fundamentalists and Christian missionaries conquered the land and spread their beliefs throughout the nation.¹²¹ Prior to its independence in 1956,¹²² the northern area of Sudan was primarily Islamic while the southern

114. Oktem, *supra* note 110, at 387.

115. *Id.* at 387.

116. *Id.* at 387-400.

117. *Id.* at 379.

118. *Id.* at 395-96. Muslims formed political parties to represent "Islamic Ideology." *Id.* at 396. These parties include the National Order Party (Milli Nizam Partisi), the National Salvation Party (Mili Selamet Partisi), the Welfare Party (Refah Partisi), and the Virtue Party (Fazilet Partisi). *Id.*

119. *Id.* "In January 1998, the Turkish Constitutional Court closed the Islamist Welfare Party for violating the secular nature of the Republic under Articles 68 and 69 of the Constitution and sections 101(b) and 103(1) of Law no. 2820 on the Regulation of Political Parties. *Id.*

120. *Id.* at 397. In 1997, the government required a secular education as an effort to suppress Islamic fundamentalism. *Id.* However, students may resume their religious education after a certain period and may receive religious training outside of school. *Id.*

121. Kent Benedict Gravelle, *Islamic Law in Sudan: A Comparative Analysis*, 5 ILSA J. INT'L & COMP. L. 1, 3 (1998). In 1877, the British controlled Sudan but in 1881 Islamic Fundamentalists began to take power. *Id.* By 1885, Shari'a law was practiced throughout the entire nation. In 1898, Sudan was again under British control. *Id.*

122. *Id.*

portions embraced Christianity.¹²³

Sudan's first civil war lasted from 1956 to 1972.¹²⁴ Christian resistance to northern (and Islamic) domination precipitated this war.¹²⁵ A second civil war began in 1983 when the Sudanese leader¹²⁶ imposed Shari'a law on the entire country.¹²⁷ By proclaiming a jihad, the leader added religion to already existing conflicts between regions and ethnicity.¹²⁸ The government already permitted Shari'a law to rule in the areas of personal law but revision of the penal code was unexpected.

The current president, President Omar al-Beshir, vowed that Shari'a law would remain the ruling religion in Sudan and that Sudan would never be secular.¹²⁹ This war over Shari'a law continues today and has cost many Sudanese their lives.¹³⁰ Currently, the opposing Sudanese groups are involved in peace negotiations in an attempt to end the civil war.¹³¹ One of the major issues at dispute is the role Shari'a law will play in Sudan's future.¹³²

Like Nigeria, the issue of Shari'a law is not limited to its application to Muslims.¹³³ In Sudan, Shari'a law applies to everyone regardless of religious affiliation.¹³⁴ Just as was the case in Nigeria, a court sentenced a

123. *Id.* See also William L. Saunders, Jr. & Yuri G. Mantilla, *Human Dignity Denied: Slavery, Genocide, and Crimes Against Humanity in Sudan*, 51 CATH. U. L. REV. 715, 718 (2002) (At the time of independence, "approximately two-thirds of the population, occupying the northern two-thirds of the country, was Arab and Muslim.").

124. *Id.*

125. *Id.*

126. Gravelle, *supra* note 122, at 3. The Sudanese dictator was Colonel Jaafar Nimeiri. *Id.*

127. *Id.* at 4. "Since independence, the basic structure of the legal system remained the same. Family, gift, and inheritance law disputes between Muslims were covered by the Shari'a law courts while all other matters were resolved through the English common law." *Id.* This system of Shari'a law "changed in 1983 when Sudan's dictator . . . imposed full-fledged Islamic law (the Shari'a law) and declared an Islamic state." *Id.* at 3-4.

128. *Sudan*, Christian Solidarity Worldwide, at <http://www.cswusa.com/Countries/Sudan.htm>.

129. No compromise on Islamic Sharia law: Sudan's Beshir, SPACE DAILY, <http://www.space-daily.com/2002/021116151212.n5n7.7fn5.html> (last visited Sept. 5, 2003). "President Omar al-Beshir vowed Saturday never to compromise on Islamic Sharia law, a major factor in Sudan's long-running civil war, and that the capital Khartoum will never become a secular city." *Id.*

130. To date, "the war has claimed more than two million lives and displaced an additional four million." Saunders & Mantilla, *supra* note 124, at 715.

131. Sudan Peace Talks Face Obstacles, DOW JONES INTERNATIONAL NEWS, Aug. 20, 2003.

132. *Id.*

133. *Sudan: A Historical Perspective*, at <http://www.sudan.net> (last visited Oct. 7, 2003). On July 20, 2002, the Sudanese government signed a peace agreement with the Sudanese rebels. The peace agreement exempted Southern Sudan from Islamic law. However, some violence has continued in the nation. Katy Salmon, 2002-2003/Africa: *The Many-Branched, Rocky Road To Peace*, INTER PRESS SERVICE, Dec. 18, 2002, at 2002 WL 103557708.

134. *Sudan*, Christian Solidarity Worldwide, *supra* note 129.

woman to death under Shari'a law for committing adultery,¹³⁵ resulting in outrage from the international community. The application of Shari'a law in Sudan prohibits the country from moving past its violent history.

C. Indonesia

Islam is practiced by most of Indonesia's 210 million people,¹³⁶ making Indonesia the world's largest Muslim nation.¹³⁷ Indonesia gained its independence on August 17, 1945,¹³⁸ and its constitutional framers debated whether the country should endorse a religion.¹³⁹ After Muslim leaders drafted a preamble to the Indonesian Constitution endorsing Islam as the state law,¹⁴⁰ the framers determined the country should remain secular and encourage religious tolerance.¹⁴¹ Since 1945, Christian-Muslim tensions have remained high.¹⁴²

Recently, Muslim fundamentalists pressured the Indonesian government to adopt Shari'a law.¹⁴³ Shari'a law courts are permitted in Indonesia but with limited jurisdiction.¹⁴⁴ Shari'a law is practiced in one province of Indonesia,¹⁴⁵ and Muslim fundamentalists believe Shari'a law

135. *Id.*

In a recent case high-lighted by the Non Governmental Organizations the Sudanese Victims of Torture Group and the World Organization against Torture, a Christian woman, Abok Alfa Akok, was sentenced to death by stoning following a flawed judicial process in the criminal court in Nyala City, Southern Darfur for having committed adultery. The entire court proceedings were conducted in Arabic. Abok does not speak Arabic, was not provided with a translator, and was never made aware of the consequences of her admission of guilt, which was later retracted. Her co-accused, a Muslim man whom she later insisted had raped her, denied the charges and was released after Abok failed to produce four witnesses to corroborate her version of events.

Id. Later, Abok's sentence was overturned by the appellate court and sent back to the trial court; however, as of February 13, 2002, reports stated she remained in jail. *Women Living Under Muslim Law*, at [http://wluml.org/english/newsfulltxt.shtml?cmd\[157\]=x-157-3384cmd\[189\]=x-189-3384](http://wluml.org/english/newsfulltxt.shtml?cmd[157]=x-157-3384cmd[189]=x-189-3384) (last visited Sept. 4, 2003).

136. *Jakarta pressured over Islamic law*, CNN, Aug. 7, 2002 at <http://edition.cnn.com> (last visited Feb. 5, 2003).

137. *Id.*

138. Bob S. Hadiwinata, *The Politics of Interfaith Relations in Indonesia*, JAKARTA POST, Jan. 11, 2003, 2003 WL 4361068.

139. *Id.*

140. *Id.*

141. *Jakarta Pressured over Islamic law*, *supra* note 137.

142. Hadiwinata, *supra* note 139. President Sukarno was a secularist and committed to maintaining this status. *Id.* In the early 1990's, President Suharto became closely associated with fundamentalist Muslims and Islamic radicalism began to grow. *Id.*

143. *Jakarta Pressured over Islamic Law*, *supra* note 137.

144. JOANNE R. BAUER & DANIEL A. BELL, *THE EAST ASIAN CHALLENGE FOR HUMAN RIGHTS* 408 (1999).

145. *Jakarta Pressured over Islamic Law*, *supra* note 137. *See also Aceh introduces Islamic Law*,

will “improve the morality”¹⁴⁶ of the nation. However, most Muslim leaders recognized that a push for the implementation of Shari’a law would be unrealistic.¹⁴⁷ Indeed, the form of Islamic practice in Indonesia is moderate,¹⁴⁸ largely because Muslim leaders believe religious values should be “compatible with national interests.”¹⁴⁹

D. Comparison

Nigeria should use the policy successes and failures in Turkey, Sudan and Indonesia to settle the dispute over Shari’a law within its own borders. If Nigeria does not come to a consensus on the application of Shari’a law, many more Nigerians may lose their lives in violent religion-based clashes. Like Turkey and Indonesia, Nigeria needs to reaffirm its secular status while respecting religious practices. If Nigeria does not do so, it may experience a violent and deadly war, like the one Sudan currently faces. Such a war would impede any progress that Nigeria has made since its independence. Nigeria may experience pressure from Islamic fundamentalists, and the government must have a strong foundation and even stronger leaders to uphold the constitution. No religious leader should be prohibited from participating in the political process provided they uphold the values of the constitution, which embodies secularism.

CNN, (Jan. 2, 2002), <http://www.edition.cnn.com> (last visited Sept. 4, 2003).

146. *Jakarta Pressured over Islamic Law*, CNN, *supra* note 137. It is also important to note that the current president, Megawati Sukarnoputri, is the daughter of the founding president, Sukarno, who was a secularist. *Id.*

147. *Indonesian Islamic Leaders Call for End to Islamic Law Drive*, AGENCE FRANCE PRESSE, Dec. 31, 2002, 2002 WL 23682101.

148. This is illustrated by a relaxation of standards regarding women. Many traditional Muslims believe that women are not allowed to be leaders or hold public office:

There is no clear Qur’nic injunction . . . either allowing or forbidding women to lead or to be appointed judges. However, under juristic interpretations that prevail in Southeast Asian as well as Middle Eastern Islam, the criteria of eligibility for judicial appointment are as follows: that person must be a Muslim, of majority in age, a free person, mature, just and with integrity . . . and male. Despite this, Indonesia today has approximately one hundred women judges . . . in the Shari’a law court . . . the appointment of women Shari’a law court judges in Indonesia is justified by modernist Muslim ulama and scholars on several grounds.

Bauer & Bell, *supra* note 145, at 183. It does not violate the Shari’a law for women to be judges because, under certain interpretations, women may sit on civil but not criminal trials; because Shari’a law is limited to civil matters, there is no violation. *Id.* at 184.

149. *Id.* Ahmad Syafii Maarif, a leader of a Muslim group, stated that “if Muslims pressed on with religious formalities such as Sharia or the establishment of an Islamic state, they would collide with other religious communities in this sprawling pluralistic nation.” *Id.*

IV. PROPOSAL

In order to ensure the stability of Nigeria's government, there must be some regulation of the Shari'a law courts. A special governmental entity should be established to ensure that the implementation of Shari'a law does not contravene the Nigerian Constitution. This entity could be a kind of constitutional court that reviews Shari'a law decisions and ensures constitutional and human rights violations do not occur. Alternatively, the entity could be modeled after the DIB in Turkey which monitors the religious lives of Muslims while ensuring the secularity of the government. As guidance, Nigerian officials should enlist the assistance of the United Nations to provide insight in implementing an independent institution that ensures the protection of human rights.¹⁵⁰ The implementation of a human rights commission is nothing new to Nigerian President Olusegun Obasanjo, who implemented a human rights commission to investigate the human rights violations of past regimes.¹⁵¹ Whatever its format, the entity should focus solely on protecting the rights of all Nigerian citizens from infringement under Shari'a law.

Nigeria needs to evaluate which aspects of Shari'a law will be incorporated into law and provide guidelines as to how those rules will be administered and enforced. Since Shari'a law is a jurist's law, there is a great possibility that Islamic judges will inconsistently apply Shari'a law in the various Nigerian states.¹⁵² The inconsistent application of Shari'a law violates rights of Nigerians to a fair trial and equal treatment. Additionally, Shari'a law must be applied in conjunction with Nigerian and international human rights standards. It is encouraging to know that some Muslims believe that Islam and human rights can co-exist without diminishing either's values or principles.¹⁵³

150. Anne Gallagher, Making Human Rights a Reality: Working with New Actors and Partners, in *THE FUTURE OF UN HUMAN RIGHTS TREATY MONITORING 203-3* (Philip Alston & James Crawford eds. 2000).

151. Elizabeth Knight, note, *Facing the Past: Retrospective Justice as a Means to Promote Democracy in Nigeria*, 35 CONN. L. REV. 867, 890-99 (2003).

152. For example, in Nigeria, Amina and many others have been convicted of adultery although no witnesses were brought forth as required by the Quran. However, in Sudan, convictions are rare because of the strict burden to bring forth witnesses and because the failure to bring forth witnesses could result in the accuser being guilty of false accusation of fornication, also a hudud crime. See Gravelle, *supra* note 122, at 9.

153. MAYER, *supra* note 88, at 128.

In addition to secularist who assume that Islamization entails discrimination against non-Muslims and who thus oppose the reinstatement of premodern sharia . . . one finds Muslims who believe

Shari'a law can be interpreted flexibly to conform to the needs of modern society. Muslim law itself allows for the amendment of religious laws through the doctrine of necessity, which "dispenses Moslems from observing religious laws when the situation or environment dictates otherwise."¹⁵⁴ The laws of a conservative Shari'a, law which were developed centuries ago, do not meet the needs of Muslims today.¹⁵⁵ It is essential that an assembly, representative of all Nigerian constituents, gathers to agree on uniform application of Shari'a law. As in Turkey, leaders from every religious faction should be included in the discussion of how religion will play a role in Nigerian society.¹⁵⁶

If the Shari'a law courts are not monitored, the result could be disastrous. As in Sudan, the expansion of Shari'a law could result in a long-lasting and deadly civil war.¹⁵⁷ There must be a system of checks and

that when Islamic law, when properly understood, does not stand in the way of observing international human rights standards prohibiting discrimination based on religion . . . For example, the Lebanese scholar Subhi Mahmassani argued in his work on Islam and human rights that there can be no discrimination based on religion in an Islamic system. His approach seems basically to be one of assuming that there must be harmony between Islam and international law . . ."

Id.

154. Schabas, *supra* note 109, at 235. "While it has been argued that Islamic law governs the social order of Islamic societies, this has not prevented the [Shari'a law] from being amended or ignored when the environment dictated . . . All Islamic countries have demonstrated some degree of flexibility in the interpretation of Islamic law . . ." *Id.* at 235-61. An example of this involves the treatment on non-Muslims and jihads.

The premodern Shari'a law rules affecting the status of non-Muslims were formulated by Islamic jurists at an early stage of history of the Islamic community . . . The jihad, or Islamic holy war, was undertaken both to expand the territory subject to Muslim control and to spread the Islamic religion . . . Although the premodern doctrines of jihad remain part of the Islamic cultural legacy . . . conducting holy wars is obviously incompatible with the modern scheme of relations between nation-states . . . In practice, many of the premodern doctrines regarding jihad and treatment of non-Muslims have been discarded, having been recognized as anachronisms in present circumstances, when the Muslim community has burgeoned to over 1 billion adherents and its existence is no longer threatened."

MAYER, *supra* note 88, at 126-27.

155. *See also* Nafik, *supra* note 60.

The term 'sharia' is often misused because it is a law of Islam as understood by each Muslim generation for itself. When people talk about sharia, they talk about the only possible law of Islam as understood by Muslims centuries ago. So, if by sharia we mean the law of Islam, it is relevant and important today. But if we mean sharia as it was understood thousands of years ago, it is not applicable today.

Id.

156. *Id.*

157. THE PRS GROUP/POLITICAL RISK SERVICES, Feb. 1, 2001 (available on LEXIS). Violence has been forecast in Nigeria's future.

Conflict over the imposition of Islamic law in the northern states will produce . . . disorder and violence. Although Obasanjo fears that a firm decision about Sharia will divide the country, his

balances to ensure that all Nigerians are treated equally under the law and that their right to humane treatment is respected.

V. CONCLUSION

Nigeria is a country on the brink¹⁵⁸ of either becoming an important party in the international community or becoming a country forever scarred by religious violence and human rights violations. While the constitution allows Muslims to be ruled by their own religious law, these laws should not be extended to non-Muslims.¹⁵⁹ The government *must* ensure that Shari'a law is limited to the area of personal law.

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refusal to take a stand spurs turmoil in the north and concern among non-Muslims in the south as well.

Id.

158. Nigerians believe the country is at a critical point: "Nigeria is tearing itself up again . . . This [violence] was bound to happen. All we needed was a match." Davan Maharaj, *Riots Force Miss World Pageant from Nigeria*, THE MIAMI HERALD, Nov. 23, 2002, 2002 WL 102932353 (quoting a Nigerian bank teller after riots erupted in Abuja.).

159. ". . . [A]s long as Shari'a law rules are retained, it makes sense to allow non-Muslims to be governed in personal status matters by the law of their own religious communities." Mayer, *supra* note 19, at 1027.

* J.D. Candidate (2004), Washington University School of Law. I would like to thank my parents, Jerone and Gloria, and my sisters, Rosalind and April, for their undying love and support. Keep up the wonderful work. And last, but certainly not least, I would like to thank God for giving me strength to make it through school and for always reminding me that no matter what, I am loved.