

## **‘THE PRESIDENT OF NIGERIA HAS NO FINAL SAY’: SHARIA LAW CONTROVERSIES AND IMPLICATIONS FOR NIGERIA**

### **Abstract**

The unusual response of former President Olusegun Obasanjo (of Nigeria) to the adoption of shariah law in northern Nigeria that it “will soon fizzle out” was as intriguing and philosophical as the formal adoption of shariah law itself. This is against the backdrop of his antecedence in handling burning national matters. The critical issues bordered on whether the adoption of sharia was political or religious since it was through the parliament rather than the mosque. The paper examined the President’s responses against the prevalent political factors and showed that its implications have continued to reverberate in the Nigerian polity. The paper argued that a definite secular or multi-religious status (not a religious state) of the country should be articulated through the gristmill of thorough-bred intellectual and constitutional engagement.

**Key words:** sharia, Obasanjo, clash of civilisations, boko haram, Islam

### **Introduction**

We start by trying to understand the meaning of sharia. Literally, sharia means a drinking place or a path that leads to a watering hole. This implies that sharia is the fountain of both mundane and spiritual aspects of a Muslim’s life.<sup>2</sup> From the root *shara’a*, sharia translates as follows: ‘to introduce,’ ‘enact,’ ‘prescribe,’ ‘revealed religious law.’<sup>3</sup> Abdul Fattah Raji views sharia as encapsulating all rules that govern Muslims in their relationship with God and humanity. As such, it does not differentiate between politics and religion or any other ramification of life.<sup>4</sup>

Joseph Kenny distinguishes between *fiqh* and sharia. According to him, *fiqh* is the human interpretation of sharia, ‘the heavenly word of God which has

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2 Oraegbunam, I. K. E. ‘Sharia Criminal Law, Islam and Democracy in Nigeria Today’ *OGISIRI: A New Journal of African Studies*, Vol. 8, Nigeria, 2011, p. 184; Kenny, J. ‘Sharia in Nigeria: A Historical Survey’ *Bulletin of Islam and Christian-Muslim Relations in Africa*, vol. 4, BICMURA, 1986, p. 20.

3 Glasse, C. *The Concise Encyclopedia of Islam*, revised ed. EPP Books Services, London, 2005, p. 419.

4 Raji, Abdul F., *Islam and Human Rights in Broader Perspectives*, Alashela Islamic Publication, Lagos, 2001, pp. 57-60.

no discrepancy within itself.<sup>5</sup> *Fiqh* only reflects, interprets and applies the sharia. But in the course of time *fiqh* positions have become prevalent and pungent over sharia itself. Ibrahim Muazzam defines *fiqh* as 'the outcome of various deductive and inductive methods of reasoning which are dependent on the social, material and intellectual milieu of age and polity.'<sup>6</sup> This clarification, Muazzam presupposes, is preponderant to the mix up in sharia understanding and application as Kenny showed above. Muazzam points out that 'sharia is not a punishment system but is divided into five branches.' The branches include: *Itiqadat* (beliefs), *Ibadah* (ritual worship), *Adab* (morals and manners), *Muamalat* (transactions and contracts) and *Uqubat* (punishment). He maintains that classical exponents of Islamic law such as Malik, Abu Hanifa al-Shafii, Ibn Hanbali and Jafa al-Sadiq did not set out to form legal schools. They recognised geographical, sociological, ideological and cultural peculiarities in forming their opinions on sharia. This is why he notes that 'the attempt to reify and objectify Islam and sharia by divorcing it from intellectual activity, learning and understanding in some Muslim societies is quite a recent innovation.'<sup>7</sup>

The traditional *fiqh* masters were challenged by the reformers whenever the former tended to claim divine authority to their opinions. The reformers postulate that 'the legal rulings of the Qur'an itself must be understood in their historical context and not universalized to cover all circumstances for all time.'<sup>8</sup> Sanusi Lamido Sanusi pushes the argument further that 'theoretical presuppositions and ontologies that play a key role in interpretive process' are conditioned by one's understanding. Hence 'to pretend to any form of universalisation of the local, totalisation of the partial, eternalisation of the historical, or objectivisation of the subjective would be counter-intuitive to the project of criticism.'<sup>9</sup>

It is actually the objectivisation and universalisation of sharia that is preponderant to clash of civilizations which polarised the globe into near irreconcilable divides. Just like Islam has objectified and universalised its tenets so also do Christianity and the West. The alignment of the northern Nigeria with Arab civilisation and the southern Nigeria with the West partly explains the violence that resulted from the formal adoption of the sharia in 1999 by the Nigerian northern states. As it were, the sharia controversy has remained unresolved despite the political solution President Olusegun Obasanjo sought. The issues that fell out

5 Kenny, Joseph Commentary, in: *Comparative Shariah in Nigeria*, P. Ostien, J. M. Nasir and F. Kogelmann (eds.), Spectrum Books, Ibadan, 2005, pp. 135-136. For a comprehensive detail of the issues and debates on these concepts, and particularly sharia and its discourses, see for instance, AECAWA Interreligious Dialogue's Proceedings of a Seminar of the Plenary Assembly, AECAWA, Lagos, 22-26 October, 1986.

6 Muazzam, I. Sharia and the National Question: Managing the Politics of Difference, in: *The Management of the National Question in Nigeria*, E. E. Osaghale and E. Onwudiwe (eds), Igbinedion University Press, Okada, 2007, p. 175.

7 Muazzam, Sharia and the National Question... p. 176.

8 Kenny, Commentary, p. 136.

9 Sanusi, S. Lamido, The West and the Rest: Reflections on the Intercultural Dialogue about Shariah, in: *Comparative Shariah in Nigeria*, P. Ostien, J. M. Nasir and F. Kogelmann (eds.), Spectrum Books, Ibadan, 2005, pp. 251-252.

of his responses spontaneously call for national dialogue; and it is these that this paper is giving intellectual cum philosophical grounding.

### **The clash of civilisations and agitation for sharia**

Up till the end of the Cold War, Western scholarship and policy-makers thought that the influences of secularisation and privatisation had overwhelmingly relegated religion to the background. Historian Scott Appleby stoutly remarked that "Western myopia on the subject of religious power has been astounding."<sup>10</sup> This religious characterisation misread the reality of the surge of revivalist movements which were and are the roots of civil rights movements across the globe. Stark and Bainbridge posit that secularization is a precursor to revival because religious movements arise to 'restore the potency of the conventional religious traditions', in response to 'an unmet demand for more efficacious compensators.'<sup>11</sup> Berger observes that modernization is both a cause and effect of secularization; an effect that resonates in 'counter-secularisation' now prevalent in Asia, sub-Saharan Africa and the Latin America.<sup>12</sup> For Vlas, the ideological pressure secularisation mounted on religion and its policy influence is only short-lived. Since the Peace of Westphalia religion has been relegated to the background in favour of secularisation. But at the beginning of the 21<sup>st</sup> century, empirical evidence has demonstrated that many security crises around the globe are induced or traceable to religion, making religion one phenomenon of inevitable discourse in global public sphere. The extreme points of both can be understood in terms of 'civilisation conflict.'<sup>13</sup> Adrian Pabst analyses the 'shrill and hysterical' tension thus: 'This, combined with the decline of more traditional forms of belief and the rise of atheist scientism, has led to fresh demands for a secular liberal resistance to religious extremism. Thus, we are seeing a growing confrontation between militant atheism and fundamentalist creeds.'<sup>14</sup>

Miroljub Jevtic notes that 'secular scientists thought that religion was product of economic backwardness and unenlightened social development and that it would wither away once those social ailments were redressed.'<sup>15</sup>

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10 Appleby, R. Scott, *The Ambivalence of the Sacred: Religion, Violence, and Reconciliation*, Rowman & Littlefield, New York, 2000; Appleby, R. Scott, Retrieving the Missing dimension of Statecraft: Religious Faith in the Service of Peace building, in: *Faith-based Diplomacy: Trumping Realpolitik*, D. Johnson (ed.), Oxford University Press, New York, 2003, p. 231.

11 Cited in Richard Hugh Burgess, *The Civil War Revival and its Pentecostal Progeny: A Religious Movement among the Igbo People of Eastern Nigeria (1967-2002)*, An Unpublished PhD thesis submitted to The University of Birmingham, Department of Theology, June 2004, p. 16, available at <http://etheses.bham.ac.uk/910/1/Burgess04PhD.pdf>.

12 Burgess, *The Civil War Revival and its Pentecostal Progeny*, p. 40.

13 Natalia Vlas, Is Religion Inherently Violent? Religion as a Threat and Promise for the Global Security, *Politics and Religion*, Vol. 4, No. 2, Belgrade, 2010, p. 289.

14 Adrian Pabst, "Unholy War and Just Peace: Religious Alternatives to Secular Warfare" *Politics and Religion*, Vol. 3 No. 2, Belgrade, 2009, p. 209.

15 Miroljub Jevtic, Political Science and Religion, *Politics and Religion Journal*, Vol. 1, No. 1, 2007, Belgrade. <http://www>.

Consequently, 'religion was then very rarely taken as subject of political research, and, as a result, political scientists explained political processes, political life, political organizations, political regimes, political parties etc. within a purely materialistic framework, neglecting the influence of religion, even when it should have been acknowledged.'<sup>16</sup> Unfortunately, political science was unable to fully grasp the contours of religion and its forceful influence on politics. Political scientists, using their social science methodology, failed to countenance how religion undergirds people's political sentiments, and how the so-called private sentiments are enacted directly and indirectly in public space even in secular context. Jevtic carefully assesses this failure thus: 'one obvious modern example of this is that, in consequence of this approach, a completely incorrect prognosis was made of the impact religion in general and the organized religious right in particular had on the 2004 US elections and the reelection of George W. Bush.'<sup>17</sup>

In fact Samuel Huntington blazed the trail when he wrote his controversial article 'The Clash of Civilisations' which was expanded later into a book. In it, he raised critical issues that pushed public debate on the pertinence of religion in international affairs or foreign policy. According to him, 'the fault lines between civilizations will be the battle line of the future.'<sup>18</sup> Rather than being driven by ideological prowess and economic puissance that determined the prosecution of the Cold War, Huntington argued that the fundamental source of conflict would be based on culture. The seven or eight major civilisations that would influence the world include: Western, Confucian, Japanese, Islamic, Hindu, Slavic-Orthodox, Latin American and possibly African. The kernel of this future inevitable conflict between Western civilisation and Islamic world was hinged on religion because civilizational categories were mostly defined in terms of, and by, religions. The isolation of Islamic category was instructive for Huntington because its clash with the Western civilisation would be vitriolic. According to him, "Islamic civilization will be the most violent civilization and the primary threat to the West in the post-Cold War era."<sup>19</sup> He further maintained that

The West must exploit differences and conflicts among Confucian and Islamic states to support... other civilization group sympathetic to Western values and interests, to strengthen international institutions that reflect... Western

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[politicsandreligionjournal.com/images/pdf\\_files/engleski/volume1\\_no1/political\\_science\\_and\\_religion.pdf](http://politicsandreligionjournal.com/images/pdf_files/engleski/volume1_no1/political_science_and_religion.pdf) (accessed May 8, 2014).

16 Mirosljub Jevtic, Political Science and Religion, *Politics and Religion Journal*, Vol. 1, No. 1, 2007, Belgrade. [http://www.politicsandreligionjournal.com/images/pdf\\_files/engleski/volume1\\_no1/political\\_science\\_and\\_religion.pdf](http://www.politicsandreligionjournal.com/images/pdf_files/engleski/volume1_no1/political_science_and_religion.pdf) (accessed May 8, 2014).

17 Mirosljub Jevtic, Political Science and Religion, *Politics and Religion Journal*, Vol. 1, No. 1, 2007, Belgrade. [http://www.politicsandreligionjournal.com/images/pdf\\_files/engleski/volume1\\_no1/political\\_science\\_and\\_religion.pdf](http://www.politicsandreligionjournal.com/images/pdf_files/engleski/volume1_no1/political_science_and_religion.pdf) (accessed May 8, 2014).

18 Huntington, Samuel P., *The Clash of Civilizations and the Remaking of the World Order*, Simon & Schuster, New York, 1996, p. 183.

19 Huntington, *The Clash of Civilizations*, p. 183.

interests and values, and to promote the involvement of non-Western states in those institutions.<sup>20</sup>

For Huntington, the Western universalisation (that goes by the name globalisation) of its values and beliefs as superior to all others is the immediate precursor for future conflict. And since Christianity is hardly distinguished from Western culture from the Islamic perspective, the latter will clash with Christianity because they are both universal religions, which conversion strategies call for mutual resistance. Huntington's oversimplification of contemporary world did not provoke much criticism as his insistence on religion and culture as the catalysts that would dash the hope of the post-Cold War optimism.<sup>21</sup>

The 'future' Huntington spoke about was not too distant from his thought: the terrorist attacks on US and the reprisal attacks on Afghanistan, the clash with Iraq, Pakistan, etc. amply brought the future closer than initially envisaged. The revival of Confucian ideology and ethics in China<sup>22</sup> and its global economic strength are pertinent to Huntington's thesis. China's influence in Africa, for example, is widespread: China donated Africa Union Secretariat. This does not only portend a veritable source for more interest in Africa by the West but will in the course of time be a potential source of conflict between China and the West in tandem with Huntington's thesis. This is apart from the security challenges Africa will have to face. In other words, the 'Chinesisation' of Africa will be a fault line that will provoke clash because political, economic and cultural interests in no distant time.

Although Huntington's argument was initially thought to be anchored on Western philosophy of scepticism, later demonstrable events proved him right. Some scholars were interested in theoretical compass and framework to situate and criticise his work, especially as it concerns culture and civilisation, which they believe he did not provide sufficient or explicit theory to explain in his argument. While loopholes were sought, the reality stared the world in the face, namely, Islamic political ideology based on shariah challenged the Western-American powers. As Yusuf and Abdulsalam maintain:

After the Cold War, the so-called "Democratic Liberalism" was deemed to have emerged victorious over its ideological opponents, the non-Western socio-political systems. They were deemed to have all been ideologically conquered. But unknown was one state ideology: a bitter rival, a perceived implacable opponent, a capable and a difficult-to-challenge contestant for world dominion, and, in fact a direct opposite of the West in every respect: Islam, which endured without the least injury.<sup>23</sup>

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20 Huntington, *The Clash of Civilizations*, p. 183.

21 Hackett, R. I. J. Rethinking the Role of Religion in the Public Sphere: Local and Global Perspectives, in: *Comparative Shariah in Nigeria*, P. Ostien, J. M. Nasir and F. Kogelmann (eds.), Spectrum Books, Ibadan, 2005), 76.

22 Umejesi, Innocent O., *Oriental Religions: A Quest for Liberation and Wisdom*, Pon Publishers, Ekpoma, 2010, p. 67.

23 Yusuf, J. and Abdulsalam, H. A. Time, Knowledge and the Clash of Civilizations: An Islamic Approach, *Ilorin Journal of*

Yusuf and Abdulsalam enthusiastically add that every Muslim is called upon to 'fight every barrier that serves as an insurmountable barricade to human right without interference from foreign political systems.'<sup>24</sup> Thus for them, the shariah is the only genuine and authentic source of both personal and public value and morality to which every society must subscribe. This is smack of exclusivism just as the Western values they have caustically challenged.

Denial of Huntington's thesis has not apodictically obliterated its reality. Civilizational clashes have been part of history, which as Charles Colson averred has an eschatological undertone. Colson argued in support of Huntington that 'great clashes or world view – that is how people understand the ultimate reality – continue to divide the world, and will do so until the end of history when the Lord returns.'<sup>25</sup> This means that Huntington's postulation is not essentially new from historical and eschatological perspectives. History has shown that civilizational conflicts have been part and parcel of human developmental stages, and eschatology sees it as a continuum that will end with the world itself. What is therefore pungent in Huntington's civilizational conflict thesis is not its 'originality' but a reminder that after one conflict is managed or resolved another crops up. So after the end of the Cold War, the world would have to be confronted with cultural-religious conflict, now not between ideological differences and persuasions between the Western and the Eastern blocs but between Western and Islamic civilisations.

Lee Marsden sees critical links between Christianity and American foreign policy. He argues that President George Bush's 'Manichean worldview of good and evil, freedom and oppression, democracy and totalitarianism... good and bad Muslims' is itself exclusive and dualistic. It is this that propelled Bush's reactions against the 'axis of evil:' Iraq, Iran and North Korea.<sup>26</sup>

How does the foregoing global analysis relate to Nigeria? First, it must be underscored that religious epistemologies have had and continue to have great influence on African, nay Nigerian political landscape, whether monarchical, military or democratic rule. Hence the clash of religious civilisations has been part of political process and development ever since the two rivalry and proselytising religions, Christianity and Islam came to Nigeria. The clash of religious civilisations is not so much between the two foreign ones and African Religion but themselves. Secondly, the two proselytising religions have interest in politics. Islam does not separate politics from religion unlike Christianity. This feature has generated a lot of tension in constitutional development and in the polity. This doctrinal fault line is the bedrock of the argument about the status of the coun-

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*Religious Studies*, Vol. 1, No. 1, Ilorin, Nigeria, 2011, pp. 52-53.

24 Yusuf and Abdulsalam, *Time, Knowledge and the Clash of Civilizations*, p. 55.

25 Colson, Charles, *Drawing the Battle Lines: We need to be informed and discerning about the Islamic Worldview*, *Christianity Today*, Vol. 46, America, 17<sup>th</sup> January, 2002.

26 Marsden, Lee, *For God's Sake: The Christian right and US Foreign Policy* Zed Books, London, 2008.

try in terms of being secular or multi-religious. Thirdly, the Christian south seems to ideologically align with the West while the Muslim north aligns with Arab civilisation in the same vein. This alignment in principle has continued to be used as a political instrument in the polity. Fourthly, 'the demographics of Muslim population, with large numbers of unemployed and disaffected young people'<sup>27</sup> have been a major influence on the agitation for sharia law, which is believed, is capable of reinstating the canons of Islamic *Ummah* (community) in line with the Median Order.<sup>28</sup> Fifthly, the future inevitability of civilisational conflict thesis as propounded by Huntington seemingly does not apply to Nigeria because right from the colonial era, the civilizational conflict of religious and cultural ideology has continued to negatively affect peaceful coexistence in Nigeria. For Nigeria specifically, it is the future of the past and the past of the future paradox. It is this that we attempt to demonstrate in this essay, within the remit of sharia debate.

### Sharia in historical purview

The controversy that trailed the demand for full sharia as a political law in Nigeria has a long history. It can be conveniently classified into three major epochs: pre-colonial, colonial and post-colonial. In the pre-colonial period, the religious thrust of Uthman dan Fodio's jihad was to purge Islam of syncretism believed to have infiltrated the faith. Islam's presence in what is today referred to as northern Nigeria dates back to the 11<sup>th</sup> century. This was mainly through trade frontiers of North Africa. At its advent, Islam was a 'palace religion', for as Umejesi observed, 'Islam was for quite sometime the religion of the court and commerce in Hausaland and the masses were indifferent to it until the 19<sup>th</sup> century.'<sup>29</sup> The kings had to be faithful to their traditional religious practices thus keeping the autochthonous continuum just as they tried to 'solidarise' with the adherents of Islam, ostensibly for commercial reasons. These kings were described as 'mixers' of faith.<sup>30</sup> It was this syncretistic or secular praxis that the Jihad of 1804 sought to purge, and to revive the true Islam, wherein 'to make the word of Allah supreme, to bring unbelief and tyranny to naught, to bring dignity and honour to Muslims and save them from the humiliation of having to live under the influence of an unIslamic power.'<sup>31</sup>

This marked the introduction of sharia to northern Nigeria. The controversy was that it was when the Hausa kings refused to adopt sharia as demanded by

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27 Marsden, *For God's Sake*, p. 220.

28 Johnson, James T., Tracing the Contours of the Jihad of Individual Duty, *Journal of Church and State*, Vol.53, No. 1, UK, 2011, pp.37-49.

29 Umejesi, Innocent O. The Sharia Question in Nigeria in a Historical Perspective: A Quest for Solution, in: *Issues in Religious Studies and Philosophy*, C. O. Isiramen, I O. Umejesi, P.O. O. Ottuh and E. A. Falaiye (eds.), En-Joy Books, Ibadan, 2010, p. 67.

30 Umejesi, The Sharia Question in Nigeria, p.67.

31 Kukah, Matthew H., *Religion, Politics and Power in Northern Nigeria*, Spectrum Books, Ibadan, 1993, p. 115.

Uthman dan Fodio that they were overthrown.<sup>32</sup> The initial religious dimension changed to political occupation. As Umejesi further observed, Fodio replaced the Hausa kings with his Fulani kinsmen, and as such 'the jihad could be viewed as both a sharia religious war (purification of Islam) and an ethnic war ('Fulanisation' of Hausaland).<sup>33</sup> This process was on when the British colonisation started.

The British intervention was not primarily to recognise sharia or propagate any religion. Religion, generally, was used as an instrument for economic advancement. Lord Lugard, the colonial governor-general ensured that Islam was given state protection, for which the Muslim leaders were amply grateful. A lot of gifts and prayers were sent to him.<sup>34</sup> This instrumentality theory is evident in cases where the British conveniently manipulated the process to engender peace solely for their economic and political purposes. Thus in 1900, there was the Native Courts Proclamation which recognised the sharia courts as equal with the customary courts insofar as 'these courts are to administer native law and custom prevailing in the area of jurisdiction and might award any type of punishment ... except mutilation, torture, or any other which is repugnant to natural justice and humanity.'<sup>35</sup> But Umejesi is of the view that the British deliberately opted for Native Law and Custom because they put into consideration the fact that there were non-Muslims in the north.<sup>36</sup>

The limitations of the sharia courts were shown in the popular case of Tsoffo Gubba v. Gwandu Native Authority. Mallam Gubba killed a man he caught having an affair with his wife. On his arraignment before the sharia court, he was found guilty of murder and was sentenced to death. On appeal to the West African Court of Appeal, the judgment of the sharia court was upturned and Gubba was found guilty of manslaughter in accordance with the British Criminal Code. The appellate judgment was considered as an affront to the supremacy of the sharia and its divine imperative. It was also a demonstration of the powerlessness of the emirs over the people since their pronouncements could be challenged by another 'superior' authority.<sup>37</sup>

32 Kenny, Joseph, *The Sharia Question in Nigeria: A Historical Survey*, in: *The Gods in Retreat: Continuity and Change in African Religions – The Nigerian Experience*, E. Ikenga-Metuh (ed.), Fourth Dimension, Enugu, 1985, p. 246; Umejesi, Innocent O., *The Spread of Islam in Nigeria*, *ORITA: Ibadan Journal of Religious Studies*, Vol. xxiv, Nos. 1-2, Nigeria, 1992, pp. 86-87; Umejesi, Innocent O., *Sharia Law and Women in Nigeria*, *Delsu Journal of Jurisprudence and International Law*, Vol. 1, No. 1, Nigeria, 2006, pp. 114-127; Umejesi, Innocent O., *Globalisation and the Sharia in Nigeria*, in: *The Arts, Man and Globalisation*, D. Stinton (ed.), Deocraftghana, Accra, 2006, pp. 229-244; Umejesi, Innocent O., *Hermeneutics of Clamours for Islamic Reforms in Contemporary Nigeria: The Sharia and Islamic Education*, *EPHA: Ekpoma Journal of Religious Studies*, Vol. 1, No. 2, Nigeria, 1996; Abdulkadir, M. S. *Islam in the non-Muslim Areas of Northern Nigeria: c1600-1960*, *Ilorin Journal of Religious Studies*, Vol. 1, No. 1, Nigeria, 2011, pp. 1-20.

33 Umejesi, *The Sharia Question in Nigeria in a Historical Perspective*, p. 68.

34 Richard Akinjide, *Nationality Question, Sharia and corporate Nigeria and 'the Southern lady of means*, available at <http://www.dawodu.com/akinjide.html> (Accessed on 16th January 2014).

35 Kukah, *Religion, Politics and Power in Northern Nigeria*, p. 116.

36 Umejesi, *The Sharia Question in Nigeria in a Historical Perspective*, p. 68.

37 Umejesi, *The Sharia Question in Nigeria in a Historical Perspective*, p. 68; Kukah, Matthew, *Human Rights in Nigeria: Hopes and Hindrances*, Missio, Aachen, 2003, pp. 20-23.

The establishment of a Muslim Court of Appeal in 1954 to placate the emirs did not actually solve the controversy. The fears of the non-Muslims were real and pervasive under the sharia. As Kukah recounted:

In the north the minorities expressed their bitterness at the discrimination they were allegedly subjected to by Muslim ruling class... Even among the Muslims themselves there was dissatisfaction with the application of justice, prompting many of them who appeared before these courts to recant and claim to be Christians so as to escape the injustices of the system.<sup>38</sup>

Consequent upon these complaints and imperfections, two panels were set up which visited Libya, Pakistan and Sudan to find out how they were operating the sharia. The recommendation of the panels resulted in the creation of a Sharia Court of Appeal at Kaduna, which was then the regional headquarters of the north. The court constituted a Grand Kadi, a deputy and two other judges learned in Islamic law. The restriction was still there, namely, sharia was limited to Islamic personal law and in matters other than Muslim personal law where both parties in the court of first instance stated in writing that they wanted the case decided in accordance with Muslim law. However, the creation of more states in the northern region by the military vitiated the judicial arrangement. The legal anomaly that resulted formed the bulwark of the agitation for a federal sharia court of appeal in the 1977/78 Constituent Assembly.<sup>39</sup>

The Constituent Assembly was a watershed in the history of the debate on sharia. In fact, it was at this time that most non-Muslims especially from southern part of Nigeria heard about it for the first time. What made the debate vitriolic was that in the draft constitution, the jurisdiction of sharia was extended beyond the personal law status it hitherto enjoyed. The draft constitution proposed the retention of sharia courts of appeal at the States, which jurisdiction extended to 'any matter in which the parties have agreed that Islamic Law should apply.'<sup>40</sup> It also recommended a Federal Sharia Court of Appeal between the State Sharia Courts of Appeal and the Supreme Court. This was the kernel of the hot controversy. The debate was resolved through a watertight compromise that navigated a middle path: there should be no Federal Sharia Court of Appeal, but that whenever a sharia case goes on appeal, a chamber should be constituted in the Federal Court of Appeal comprising three judges learned in Islamic law to handle the appeal. This compromise was then enshrined as S. 226 (a) of the 1979 Constitution.<sup>41</sup> Such compromise did not go well with a section of the Constituent Assembly as well as their supporters they had already mobilised.

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38 Kukah, *Human Rights in Nigeria*, p. 22.

39 Kukah, *Human Rights in Nigeria*, p. 24.

40 Ibid.

41 Umejesi, *The Sharia Question in Nigeria in a Historical Perspective*, pp. 71-73.

## General Olusegun Obasanjo's Reaction to the Stalemate

We have pointed out that the sharia controversy at the Constituent Assembly was hot. Reactions were not limited to the members alone. In fact, it became a national issue with a lot of political undertones. In an interview Kukah had with Balarabe Musa, Musa volunteered as follows:

In the face of the new political programme, the ruling class in Northern Nigeria knew that they were threatened by a new democracy. They had no foothold or any solid base for the political competition as a block with the rest of the country. In view of this political bankruptcy, it became clear that Islam would offer the only alternative for the protection of their class interests. But even this was not an easy card to play. The so-called Muslim North no longer existed, but all the same, it was clear that to seek to defend it would enhance their position. So, they held on to the issue of the sharia in the Assembly as their only weapon for mobilisation in the North.<sup>42</sup>

This gives an insight into the reactions of General Obasanjo, then the military Head of State. According to him, 'the African genius is a child of moderation not given to unnecessary intellectual inflexibility. It prefers to arrive at consensus through compromise... the African mind accepts that only God alone is perfect and that human beings can only give their best and no further.'<sup>43</sup> These words were soothing and appealing. It could be argued that these were not the words of a military head of state in the face of the threatening disunity engulfing the country. But it is clear that he was impatient with intellectual rigour that is believed to be time-wasting. So for him, 'unnecessary intellectual' engagement at the Constituent Assembly was unfruitful. Hence premature compromise was preferred to exhaustive intellectual scrutiny of the sharia controversy. As Umejesi puts it, 'it took the intervention and stern warning' from General Obasanjo for the sharia group which had staged a walk out to return to the Constituent Assembly willy-nilly.<sup>44</sup> But General Obasanjo warned the members should place the interest of the country above their personal religious sentiments. He reminded them that the Nigerian Civil War of 1967-1970 was caused by unpatriotic zeal, ethnic chauvinism and self aggrandisement which had characterised the behaviour of members. He insisted that 'tolerance, maturity, and accommodation' should guide their deliberation on the heated sharia debate in order to be able to fashion out an acceptable, functional and implementable constitution.<sup>45</sup>

Even though General Obasanjo's threat brought back Shehu Shagari's group that walked out, it was clear that the sharia debate had not been rest-

42 Kukah, *Religion, Politics and Power in Northern Nigeria*, p. 121.

43 Ibid.

44 Umejesi, *The Sharia Question in Nigeria in a Historical Perspective*, p. 72.

45 Cited in Ajayi, Femi, *Sharia Law and Nigeria Unity*, <http://nigeriaworld.com/columnist/ajayi/sharia.html> (accessed March 13<sup>th</sup>, 2012).

ed. The closing drama between Alhaji Mahmud, a member and the Chairman of the Constituent Assembly, Chief Udo Udoma is instructive: Mahmud: "Mr. Chairman.... As a matter of fact, we have not finished with sharia. Therefore you cannot close the House until we have finished."<sup>46</sup> The Chairman responded: "So you want the House to reopen so that you can reopen sharia? Anyway, the House has adjourned *sine die*. When the Secretariat feels that we should meet, they would summon a meeting."<sup>47</sup> But no meeting was held again.

The foregoing shows how hurriedly the Constituent Assembly was concluded without systematic appreciation and sufficient intellectual engagement on the sharia debate. It was more of an emotional and political exigency than reason that prevailed. This is partly why the sharia debate has refused to abate and remains a political instrument to mobilise the people against the government.

### Sharia in post-constituent assembly era

One conspicuous fact about the sharia from its introduction in Nigeria is that it carries serious political implication especially for the Muslim political leaders. Only a few of the leadership might have had a genuine reason for sharia. One of them is General Muhammadu Buhari. But political exigencies have also shown recently that he is not different from others in the fray of political sharia.<sup>48</sup> President Shehu Shagari's reaction to the challenges of sharia in the 1979 Constitution was simple: he had to try his best possible to fulfil his electoral promise on sharia. As Kenny observed, there was

a steady ascending and maneuvering towards sharia rule. Examples of this are the banning of alcohol from Sokoto, President Shagari's announcement of the establishment of a Presidential advisory board of Islamic affairs, and appeal to Muslims in Sokoto and Oyo States to vote for NPN....<sup>49</sup>

Kenny also pointed out that General Buhari's regime (who overthrew Shagari) was sharia-prone. As he put it:

The coup of 1<sup>st</sup> January, 1984 toppled the plans of the civilians for the time being. Yet the military government even while concentrating on exposing those who robbed the Nation's wealth, is Islamic in its general sympathy, and has been accused of being the military arm of the ousted N.P.N. Government.<sup>50</sup>

Paul Gifford noted that 'Babangida, during this period (1985-1993)... was seen as a driving force for the promotion of Islam as against other reli-

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46 Ajayi, Femi, Sharia Law and Nigeria Unity, <http://nigeriaworld.com/columnist/ajayi/sharia.html> (accessed March 13<sup>th</sup>, 2012).

47 Kukah, *Religion, Politics and Power in Northern Nigeria*, p. 127.

48 Ochon, M. E., Old Buhari versus New Buhari, <http://www.nigeriavillagesquare.com/articles/moses-ebe-ochonu/old-buhari-versus-new-buhari.html> (accessed 13th March, 2012).

49 Kenny, *The Sharia Question in Nigeria*, p. 252.

50 Ibid.

gions in Nigeria.<sup>51</sup> In 1986, he enlisted the country into full membership of the Organisation of Islamic Conference, which non-Muslims actually believe, from its composition to be Organisation of Islamic Countries. Babangida also, through 1986 Decree No. 26, amended the suspended 1979 Constitution by 'deleting' the word 'personal' wherever it appeared after the word 'Islamic' in the Constitution. This was obviously to expand the scope of the sharia even though a court of competent authority interpreted his action not to mean expansion of sharia.<sup>52</sup>

### The 1999 sharia violence and President Obasanjo's responses

The declaration by former governor of Zamfara State, Alhaji Ahmed Sani Yerima, to implement sharia law was described in various ways. Some call it 're-vival' of 'the sharia controversy during the Third Republic',<sup>53</sup> formal adoption of the sharia law,<sup>54</sup> expansion of the scope of sharia law,<sup>55</sup> establishment of sharia courts,<sup>56</sup> imposition of sharia law,<sup>57</sup> implementation of sharia law,<sup>58</sup> extension of sharia from personal law to all ramifications of life, including criminal cases,<sup>59</sup> 'introduction of sharia law',<sup>60</sup> etc. Oloyede contends that expansion is more appropriate since sharia has been part of the constitution and its praxis limited hitherto to personal law has extended to criminal law.<sup>61</sup> But how did the protagonist himself put it? The governor announced that the State had adopted 'sharia in totality in Zamfara State to ensure justice, protection of people's lives and property and sanctity which cannot be guaranteed without making the sharia our guide.'<sup>62</sup>

According to Kukah President Obasanjo's responses were not only coming piecemeal, indecisive, controversial but also smeared with personal political interest that seemingly undermined the security of the vast number of the

51 Gifford, Paul, Christian Fundamentalism and Politics in Black Africa, in: *Questioning the Secular State: The Worldwide Resurgence of Religion in Politics*, D. Westerland (ed.), C. Hurst & Co, London, 1996, p. 212.

52 Umejesi, The Sharia Question in Nigeria in a Historical Perspective, p. 75.

53 Umejesi, The Sharia Question in Nigeria in a Historical Perspective, p. 76.

54 Kukah, Matthew H. Boko Haram: Some Reflections on Causes and Effects, in: *Boko Haram: Religious Conflicts and Dialogue Initiatives in Nigeria*, vol. I, S. O. Anyanwu and I. Nwanaju (eds.), Edu-Edy Publications, Owerri, 2010, p. 17.

55 Oloyede, Ishaq O., Shariah in the North, Concerns of the South: Renewed Controversy over Shariah Law in Nigeria, in: I. A. B. Balogun (ed.), Sam Bookman Publishers, Ibadan, 2000, p. 129.

56 Oraegbunam, Sharia Criminal Law, p. 191.

57 Muazzam, Sharia and the National Question, p. 177.

58 Chukwu, Cletus N., Religion as a Factor in the Nigerian Political Culture, in: *Religion and Politics in Africa: Theological Reflections for the 21<sup>st</sup> Century*, P. I. Gichure & D. Stinton (eds.), Paulines, Nairobi, 2008, p. 61.

59 Tayob, A. The Demand for Shariah in African Democratisation Process: Pitfalls or Opportunity?, in: *Comparative Shariah in Nigeria*, P. Ostien, J. M. Nasir and F. Kogelmann (eds.), Spectrum Books, Ibadan, 2005, p. 44.

60 Olofunso, O. Samuel, Analysis of Shariah Controversy and the Nigerian Press, an unpublished long essay submitted to the Department of Philosophy & Religious Studies, Adekunle Ajasin University, Akungba-Akoko, 2007, p. 49.

61 Oloyede, Shariah in the North, p. 130.

62 Muazzam, Sharia and the National Question' p. 177.

Nigerians.<sup>63</sup> For Obasanjo, it was a 'political sharia' rather than 'real sharia.' As a result, it would 'soon fizzle out.'<sup>64</sup> However, the earliest response came from his two ministers of Justice and Aviation, Kanu Agabi and Olusegun Agagu respectively, who said it was too early to make comment a day after the adoption of sharia by Zamfara State.<sup>65</sup> President Obasanjo maintained a philosophical quietness, perhaps, indicating that it was also too early to comment. When this silence was broken, he said that 'the sharia legal system is inimical to the constitution and that it will not last since power given to government at local level is the application of sharia in personal matters such as marriage and inheritance.'<sup>66</sup> Following his declaration of the unconstitutionality of the sharia law, his minister of Justice affirmed it.<sup>67</sup>

Oloyede points out the incoherence in government's responses that the same Attorney-General and Justice Minister declared the constitutionality of the sharia. According to Oloyede, 'the informed opinion of the Attorney-General of the Federation that the Zamfara initiative is constitutional and legal is an indication that there are still men of integrity and honour in our society who will rise above sectional interest in defence of truth and justice.'<sup>68</sup>

Nevertheless, the hope that sharia would soon fizzle out spontaneously was dashed when other northern States' adoption of it was followed by spiral violence in Kaduna and reprisal in Aba, Abia State, southeastern Nigeria. Sonnie Ekwowusi summarised it:

the Obasanjo government was roundly criticized for its gross negligence in failing to arrest the bloody situations. The government later resolutely defended itself by saying, among other things, that the Sharia conundrum was a complex phenomenon in our national life. President Obasanjo himself adopted a somewhat philosophical mien about the tragic incident assuring all that the Sharia monster would fizzle out. But many commentators drew his attention to the fact that the Sharia monster would not fizzle out just like that unless something tangible was done to it, for example, dragging the monster to court and crushing it to death there.<sup>69</sup>

Governor Yerima challenged President Obasanjo to go to court if he believed that sharia was unconstitutional. It was the then governor of Niger State, Abdulkadir Kure that squarely and challengingly declared: "The President of Nigeria has no final say on what is constitutional or not, only the court of law

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63 Kukah, *Human Rights in Nigeria*, p. 24.

64 Elaigwu, J. I., Commentary, in: *Comparative Shariah in Nigeria*, P. Ostien, J. M. Nasir and F. Kogelmann (eds.), Spectrum Books, Ibadan, 2005, p. 71.

65 *The Guardian*, 28<sup>th</sup> October, 1999, p. 1, Nigeria.

66 *Daily Sketch*, 2<sup>nd</sup> November, 1999, p. 12, Nigeria.

67 Olofunso, *Analysis of Shariah Controversy and the Nigerian Press*, p. 117.

68 Oloyede, *Shariah in the North*, p. 149.

69 Ekuowusi, Sonnie, 'Obasanjo and Sharia Phenomenon' [http://www.nigerdeltacongress.com/oarticles/obasanjo\\_and\\_sharia\\_phenomenon.htm](http://www.nigerdeltacongress.com/oarticles/obasanjo_and_sharia_phenomenon.htm) (accessed 13th March, 2012).

can determine what is constitutional.<sup>70</sup> Rather than go to court or war as in Odi and Odua Peoples Congress' cases, where the government ordered military operations, Obasanjo resorted to political settlement. He thought it was a Peoples Democratic Party's family affair. But the political settlement became an albatross as the 'supreme sharia'<sup>71</sup> was unabated despite the resolution of the National Security Council meeting that the northern States should revert to the status as at 29<sup>th</sup> May 1999 i.e. at the point of the commencement of the Third Republic before the sharia palaver.

The intriguing aspect of President Obasanjo's responses came when on Sunday 17 February, 2002 he granted Robin Lustig, a BBC correspondent an interview on 'Talking Point.' In that interview President Obasanjo unambiguously endorsed the adoption of sharia.<sup>72</sup> When Gwandi called from Cameroun and asked him: "What is your personal stand on Sharia law and does your administration recognize it?" Obasanjo again played the political option and responded as follows:

Of course, I as the first, when I was Head of State, who put sharia law court of appeal in the constitution of Nigeria. It is part of our constitution. Sharia is part of the life and soul of a Muslim. In 1978 we had a constituent Assembly, which reached an impasse on sharia court of appeal, Federal Court of Appeal or no Sharia Court of Appeal. Because at the State level every State that feel (sic) that they have enough Muslims in the population, they have sharia law.<sup>73</sup>

President Obasanjo also denied the secularity of the country he had earlier maintained when asked why he allowed 'sharia law to exist in a secular state.' He pointedly responded: 'we are not a secular state but a multi-religious state, that is what we call ourselves in the constitution.'<sup>74</sup> This is a constitutional matter rather than semantic or political manoeuvring. Meanwhile, Lustig asked if he saw any connection between sharia's extension and application to many northern States and the increase in violence between Christian and Muslim communities in Nigeria. Obasanjo response was evasive. He answered:

I would not say "No" and "Yes" because I would like to see it proven, statistics and how. Yes, there is a coincidence of timing. Take Kaduna where we had the first blowout. For one or two reasons, Kaduna has always been a hotbed. Jos had been quiet for many many (sic) years.<sup>75</sup>

When Lustig reminded him that about 5000 had been killed in Jos in

70 *The Source*, 15<sup>th</sup> November, 1999, p. 18, Nigeria; Elaigwu, Commentary, p. 71.

71 Elaigwu, Commentary, p. 71.

72 See *Daily Trust*, 18<sup>th</sup> February, 2002, p.4, Nigeria.

73 Ihenacho, D. A. 'Obasanjo Established Sharia in Nigeria' [nigeriaworld.com/columnist/ihenacho/022302.html](http://nigeriaworld.com/columnist/ihenacho/022302.html) (accessed 18<sup>th</sup> March 2012).

74 Ihenacho, D. A. 'Obasanjo Established Sharia in Nigeria' [nigeriaworld.com/columnist/ihenacho/022302.html](http://nigeriaworld.com/columnist/ihenacho/022302.html) (accessed March 18<sup>th</sup> 2012)

75 Ibid.

September alone, Obasanjo retorted thus: 'may be sharia accentuated political violence, may be not. But I will want experts to look at what has happened to be able to say that with statistics. The issue of sharia, which I said and which I still believe is that for a Muslim, sharia is for Muslim what the Ten Commandments is for a Christian.'<sup>76</sup> But the question is: why are Christians not fighting for the enforcement of the Ten Commandments?

However, in his nationwide broadcast, President Obasanjo 'statistically' compared the sharia violence with the Nigerian Civil War casualties. According to him,

I speak to you again today with a sad and heavy heart, having recently returned from a visit to Kaduna, where I saw the carnage and devastation resulting from the recent disturbances in that city.... And yet, those who were responsible for these murders claim that they were acting in defence of faith or religion. I cannot believe that any religion in this day and age can sanction the taking of innocent life.... The disturbances there were started by a group of renegades who were under the misguided but fatal impression that they were taking due revenge for the murder of their kith and kin in Kaduna whose bodies were brought back on a trailer. When all the statistics of the devastation in Kaduna, Kachia, Aba and Umuahia are recorded, we will find, I am sad to say, that this has been one of the worst incident of blood-letting that this country has witnessed since the Civil War.<sup>77</sup>

President Obasanjo's endorsement of sharia was not a self-evident fact contrary to his claim. If he had silently approved of it, the decision of the National Security Council and the Kaduna and reprisal violence could have vitiated it. That is why he started interpreting the constitution in a way that did not allow sharia. According to Ihenacho, 'to claim now that he was 'of course' all for it at the beginning seems totally untrue. But it is that President Obasanjo in his first coming as military head of state from 1976-79 oversaw the inclusion of the Sharia Court of Appeal in the 1979 Constitution. But to assert glibly that he was the one who initiated its inclusion in that Constitution is misleading if not completely false.'<sup>78</sup>

President Obasanjo inconsistent responses have been interpreted as having political undertones. It is believed that because he was going to contest in 2003, he had to curry the favour of the north. Ekwowusi averred:

The other reason why President Obasanjo cannot wish away the Sharia monster is that the year 2003 elections are almost around the corner. Speculations are rife that the president may be standing in again in 2003 for reelection as a President. May I remind him that the Sharia monster is still hale and hearty.

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76 Ibid.

77 APIC, Nigeria: Obasanjo and the Sharia Crisis, [http://www.africa.upenn.edu/Urgent\\_Action/apic-030800.html](http://www.africa.upenn.edu/Urgent_Action/apic-030800.html) (accessed March 13<sup>th</sup>, 2012).

78 Ihenacho, Obasanjo Established Sharia in Nigeria, [nigeriaworld.com/columnist/ihenacho/022302.html](http://nigeriaworld.com/columnist/ihenacho/022302.html) (accessed March 18<sup>th</sup>, 2012).

If there is anything that will jeopardize Obasanjo's chances of being reelected as President come the year 2003, it is this Sharia monster. The bogging of the Sharia cannot be swept aside. I don't believe President Obasanjo is helpless and powerless before the Sharia monster.<sup>79</sup>

### **The status of Nigeria: multi-religious or secular**

President Obasanjo's response that Nigeria is constitutionally a multi-religious rather than secular state is instructive as well as problematic. It is so because of the claim by some that Article 10 of the 1979 Constitution declared that 'Nigeria was a secular state and therefore was religiously neutral in its state policies.'<sup>80</sup> For Ekwowusi 'What has not been said under the sun against the foolhardiness, illogicality and stupidity of imposing a State religion on the citizenry in a secular and multi-religious State like Nigeria?'<sup>81</sup> Can Nigeria be both secular and multi-religious at the same time given the fact that the President had created a context and made a constitutional matter out of it, and that Christians and Muslims do not have the same opinions about them?

Oraegbunam distinguishes four schools of thought that arose from the adoption of sharia law in 1999 in relation to the multi-religiosity and secularity debate. First, most non-Muslims hold the view that Nigeria is a multi-religious state.<sup>82</sup> Thus sharia colluded with modern democratic principles.<sup>83</sup> The second school, mainly Muslims believe that modern democratic principles are product of Western secular praxis that contradict Islam particularly its principle of sovereignty of the state which contravenes the sovereignty of God, since such a superlative word can only be used for God. The third school opines that democracy can be a requirement of Islam, hence it is within it that it can be practised. That is, Zamfara State government was able to adopt sharia in a democracy, a 'feat' that any state could not achieve during the military. The fourth school maintains that right from time, Islam practises democracy with variations from its modern concept, however. We add the fifth school which mostly comprises Christians that Nigeria is a secular state, a position most Muslims contest with vehemence. This belief hinges on the perception that secularity implies total absence of God

79 Ekuowusi, Obasanjo and Sharia Phenomenon, [http://www.nigerdeltacongress.com/oarticles/obasanjo\\_and\\_sharia\\_phenomenon.htm](http://www.nigerdeltacongress.com/oarticles/obasanjo_and_sharia_phenomenon.htm) (accessed March 13th, 2012).

80 Ihenacho, Obasanjo Established Sharia in Nigeria, [nigeriaworld.com/columnist/ihenacho/022302.html](http://nigeriaworld.com/columnist/ihenacho/022302.html) (accessed March 18<sup>th</sup> 2012).

81 Ekuowusi, Obasanjo and Sharia Phenomenon, [http://www.nigerdeltacongress.com/oarticles/obasanjo\\_and\\_sharia\\_phenomenon.htm](http://www.nigerdeltacongress.com/oarticles/obasanjo_and_sharia_phenomenon.htm) (accessed 13th March, 2012).

82 Oraegbunam, p. 182.

83 Ubaka, C. O., *Sharia in Nigeria: Its Implications for non-Muslims*, SNAAP Press Ltd, Enugu, 2000, pp. 47-49; Nwabueze, Ben, Freedom of Religion: The Religious Neutrality of the State under the Constitution and the Sharia Controversy, *Bulletin of Ecumenical Theology*, Vol.13, 2001, pp. 91-121; Okike, B. O., *The Practice of Sharia in Nigeria: A Democratic Secular State*, SNAAP Press Ltd, Enugu, 2000, pp. 20-35.

in the country. Anthony Nkwoka claims that 'whereas the Church is basically demanding for a secular state in Nigeria so that the double citizenship can be maintained by Christians, Muslims especially in Sharia states contend that the best is a theocratic state.'<sup>84</sup>

This shows that the debate on the status of the country is as unfinished as the sharia debate during the Constituent Assembly. Curiously, all the strands of opinions on it refer to the constitution as the ground norm for their positions.<sup>85</sup> But Oloyede challenges anyone to point to any section of the Constitution where the word 'secular' appears, whereas Islam, Muslim and sharia appear several times. Because it does not appear in the Constitution, he insists that Nigeria is a multi-religious state. He argues further that multi-religiosity is much more defensible because secularity is conflict-prone as well as carries a conception of godlessness. Islam, he claims, does not believe in secularity because God rules Nigeria. Therefore, any government that tries to implement the contents of secular status will be resisted.<sup>86</sup>

Ade Dopamu disagrees with Oloyede. According to Dopamu, secularisation has different features and may not mean the total absence of religion in a state. It is the case that there is freedom of worship and non-adoption of a state religion. With these, 'Nigeria is officially recognised as a secular state.' In another breath, Dopamu concludes: 'we support those who say that Nigeria is a secular state while recognising the multi-religiosity (sic) of the country.'<sup>87</sup> This dual position is also pursued by I. A. Balogun who argued that 'Nigeria should be recognized not as absolutely secular state but as a multi-religious state.'<sup>88</sup> Abiola Dopamu is not also clear about the status of the country. According to her, the extreme cases of humanism, scientism and pluralism in the West cannot allow Nigeria to be regarded as secular. Thus, 'Nigeria is de facto a multi-religious state and should be declared as such.' On the other hand, she argues that *de jure*, Nigeria has assumed a secular state through social evolution: 'secularization breeds pluralism and as a society secularises, it becomes pluralistic and multi-religious.'<sup>89</sup>

Benson Igboin disagrees with Abiola Dopamu and her secularity thesis. According to him, history has shown the influence of religions in various human

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84 Nkwoka, O. Anthony, The Nigerian Nation and the Christian Church in the Context of Jesus' Dictum in Mark 12: 13-17, in: *The Humanities, Nationalism and Democracy*, S. Akinrinade, D. Fashina and D. O. Ogungbile (eds.), Faculty of Arts, Ile-Ife, 2006, pp. 327-345.

85 Onimhwo, A. John and Ottuh, O. O. Peter, The Role of Religious Tolerance towards Peaceful Co-existence in Nigeria, *EPA: Ekpoma Journal of Religious Studies*, Vol.5, Nos.1&2, Nigeria, 2003, p. 116.

86 Oloyede, Shariah in the North, Concerns of the South, pp. 140-150.

87 Dopamu, P. Ade, In the Service of Humanity: A Farewell Lecture, Unilorin Press, Ilorin, 2009, pp. 19-24.

88 Cited in Abioje, O. Pius, Consideration of the Effectiveness of Muslim-Christian Dialogue in Nigeria: Today's Perspective, in: *Dialogue: Issues in Contemporary Discussion*, A. P. Dopamu, O. Awolalu and S. G. Delamarter (eds.), Big Small Books, Arifanla-Akute, 2007, p. 364.

89 Dopamu, T. Abiola, Religious Pluralism in Nigeria: The Example of the Yoruba, in: *Dialogue: Issues in Contemporary Discussion*, A. P. Dopamu, O. Awolalu and S. G. Delamarter (eds.), Big Small Books, Arifanla-Akute, 2007, p. 311.

societies in the past, either for good or for evil. The Enlightenment vitrified the influence of religions. With the rise of secularism, it seemed that religion began to wane in its influence, specifically in the West.<sup>90</sup> The apparent triumph of secularism is derived from the strength of research on the death of religion thesis propounded by Enlightenment sociologists and philosophers such as Emile Durkheim, Karl Marx, Nietzsche, Auguste Comte, etc.<sup>91</sup> To therefore say that secularity evolves into multi-religiosity is to turn logic upside down. In particular response to the constitutionality of secularity in Nigeria in respect of sharia, Igboin argues:

When we syllogistically represent this argument, the flawed conclusion that Nigeria is secular based on her Constitution is exposed: secular state does not adopt any religion as a state religion based on the constitution. The secular constitution allows sharia court based on Islamic law. Therefore, either secular constitution adopts a religion to run parallel with it or it does not. If it does in the first conclusion, it is not secular. If it does not as in the second conclusion, it means that it is self-contradictory because it does not adopt any religion as a state religion but simultaneously adopts a court based on religious law in contradiction to its own provisions.<sup>92</sup>

However, we must state that the fear of secularism is real when we examine its implications in the West. Western sociologists have been pursuing the secularisation thesis and at times wrongly universalise their conclusion which was drawn on the basis of particular society. Such universalised conclusion has created fear in Nigeria. This is because it is believed that it has its own religious impetus thus adding to the clash of civilisation problematique. Even in the West the assumption of the classic sociologists that the diffusion of modern life characterised by urbanisation, industrialisation, rationalisation and pluralisation would lead to decline in social relevance of religion has been abandoned by most scientists. Instead, 're-spiritualization of society,' 'de-secularization,' 'the return of the gods,' 'the return of religions,' 'the spiritual revolution,' 'de-privatization of religiousness' are some of the current terms in Western research on religion.<sup>93</sup>

Nigeria's notion of secularisation is peculiar to her. This seems to be the postulation of Jacob Olupona, who argues that Nigeria's secularisation thesis contradicts known meanings of the concept. According to him, religion still plays roles globally, it

... still serves as a conduct for political, social and moral scenes in Nigerian society. However the Nigerian phenomenon contradicts the secularization the-

90 Igboin, Benson. O., The Concomitance of Religious Conflicts in Nigeria: Secularity, Tolerance and Dialogue, in: *Human Views on God: Variety Not Monotony - Essays in Honour of Ade P. Dopamu*, A. K. Chepkwony and P. M. J. Hess (eds.), Moi University Press, Eldoret 2010, pp. 137-150.

91 Greeley, A. Unsecular Europe: The Persistence of Religion, in: *The Role of Religion in Modern Societies*, D. Pollack and D. V. A. Olson (eds.), Routledge, New York, 2008, pp. 141-161.

92 Igboin, The Concomitance of Religious Conflicts in Nigeria' p. 143.

93 Pollack, D. Introduction: Religious Change in Modern Societies: Perspectives Offered by the Sociology of Religion, in: *The Role of Religion in Modern Societies*, D. Pollack and D. V. A. Olson (eds.), Routledge, New York, 2008, pp. 1-21.

sis and the assumption that in modern democracies, there is a separation of religion and state, with the religious institutions fixed in the private domain and the state in the public. For Nigerians whose history, culture and indigenous religion have always integrated these realms, i.e. the secular and the sacred, modern democratic principles have created a dilemma, which has partly fuelled the crisis of religious faith in the country.<sup>94</sup>

The crux of the debate on multi-religiosity and secularity of Nigeria is the relationship between religion and politics. But it also raises fundamental ethical questions about religiosity on both sides. If, for instance as Anthony Gill's 'secularization – meaning the loss of private faith in the supernatural and/or the public expression of that faith'<sup>95</sup> is the fear of Muslims, particularly the proponents of sharia, it has not been apodictically demonstrated that sharia law has wiped out corruption in the states where it was adopted nor did it portray that the rights of Muslims were guarded as the revolutions in North Africa have shown. As Femi Ajayi notes, placed within the frames of secularity, 'sharia is the aisle of righteousness'<sup>96</sup> because it spells out what is expected of the believers towards God. This can be interpreted as religious obligation within the Western interpretive context. 'On the other hand, the Islamic law is against crime, commercial transactions and agreements, personal and real property. This aspect could be secular law or at least has the potential for becoming such a law. The big question of the century, are these States going to behead all their citizens that looted the State treasury during Babangida and Abacha's regimes?'<sup>97</sup>

People were hoodwinked by 'political sharia' to further corrupt the system and pauperise them. Kukah observes:

Sadly, ordinary Muslims have come to realize that their own Governors and public officers, the so called holy men of yesterday and apostles of sharia have been caught in the same web of corruption like all their contemporaries. They realized that these apostles of sharia shared in the same looting of their state treasury and were hypocritical in their claims. ... Sharia as it has turned out, in the hands of these elites has not proved to be the solution to the national and community problems contrary to their hopes.<sup>98</sup>

The same challenge goes for those who support multi-religiosity of the country, namely, 'to be human is to be *homo religious*.'<sup>99</sup> The essence of being

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94 Cited in Ojo, Matthew A., Professor Jacob Olupona's Public Lecture in Ibadan, Nigeria' in *African Association for the Study of Religions Bulletin*, No. 22 UK, November 2004, p. 27.

95 Gill, Anthony, *Secularization and the State: The Role Government plays in Determining Social Religiosity*, in: *The Role of Religion in Modern Societies*, D. Pollack and D. V. A. Olson (eds.), Routledge, New York, 2008, p. 115.

96 Ajayi, Sharia Law and Nigeria Unity, <http://nigeriaworld.com/columnist/ajayi/sharia.html> (accessed 13<sup>th</sup> March, 2012)

97 Ibid.

98 Kukah, *Boko Haram: Some Reflections on Causes and Effects*, pp. 17-18.

99 Gill, R., *The Cultural Paradigm: Declines in Belonging and then Believing*, in: *The Role of Religion in Modern Societies*, D. Pollack and D. V. A. Olson (eds.), Routledge, New York, 2008, pp. 180.

religious is primarily to be godly, especially in ethical monotheistic religions. Beyond being religious, human beings are also intensely social, for, as William Temple put it 'man is naturally and incurably social.'<sup>100</sup> This means that those who hold secular and multi-religious status of Nigeria must at once realise the inter-relatedness of humanity. After all, none of them has denied the existence of God, neither are they advocating a religious state for Nigeria. It is only a political side of it that has been the bane of unity.

We are not born into undifferentiated schema of disconnected events and relations, but into corporate life already alive with communities which structure our social existence. The moral life cannot exist apart from these, and is only possible with a view of these communities. Whatever moral consciousness we possess does not exist prior to, apart from, or independent of social relatedness.<sup>101</sup>

The features of this relatedness must be defined by every member of the community. If this is one item of the much-talked Sovereign National Conference then the unfinished debate on Nigeria's social, political and religious status and relations must always reverberate with attendant violence until there is the will to confront it holistically. This point clearly shows up in the activities of Boko Haram Islamic sect, which believes that Nigeria should be governed by sharia, thereby stirring clash of civilisation in a pluralist country – Nigeria. Although not much can be said to have been done to stem the tide of sharia agitation during the presidency of Yar'Adua because of the violence in the Niger-Delta, sharia resonated under new front called Boko Haram. Boko Haram is described squarely as a sect that tries to undermine the security of Nigeria and also to further the cause of clash of civilisation as hinted earlier. According to Marc-Antoine Pérouse de Montclos, Boko Haram as a radical Islamism destabilises the Nigerian state and challenges its secularity. In a pluralistic society, the jihad of Boko Haram raises many fears regarding Shariah, freedom of religion, the clash of civilisations, and the prospect of a civil war with Christians.<sup>102</sup>

The major planks of the sect are not only 'a rejection of secularism, democracy, western education, and westernisation,'<sup>103</sup> but whose violence and cruelty were due in part to their common hatred of the adherents of the Augsburg Confession... Then was there naught but beating and burning, plundering, torture, rape and murder... and thousands of innocent men, women and children, in the midst of a horrible din of heartrending shrieks and cries, were tortured and put to death in so cruel and shameful a manner that no words would suffice to describe.<sup>104</sup>

100 Cited in Kunhiyop, S. W. *African Christian Ethics*, WordAlive Publishers, Nairobi, 2008, p. 60.

101 Kunhiyop, *African Christian Ethics*, p. 60.

102 Marc-Antoine Pérouse de Montclos, Introduction and Overview, in: *Boko Haram: Islamism, Politics, Security and the State in Nigeria*, Marc-Antoine Pérouse de Montclos (ed.), African Studies Centre, Leiden, 2014, p. 2.

103 Kyari Mohammed, The message and methods of Boko Haram, in: *Boko Haram: Islamism, Politics, Security and the State in Nigeria*, African Studies Centre, Leiden, 2014, p. 14.

104 . Bozinovich Miki, *Politology of Religion, Politics and Religion*, Vol. 3, No. 2, 2009, Belgrade, p. 279.

## Conclusion

Our expose has opened up many issues for national debate. Sharia issue is a Muslim global interest in the clash of civilizations thesis. It defines the core of Islamic life. Its introduction into northern Nigeria also had this global outlook, as a political tool. That resulted in the 'Fulanisation of Hausaland' with the attendant minority agitations and insecurity. The sharia controversy of the Constituent Assembly was concluded prematurely. Although it has been said that General Obasanjo's political intervention was timely, the 'cavalier manner in which the issue of the Federal SHARIA Court of Appeal establishment of which was proposed in the Draft Constitution, had been resolved'<sup>105</sup> has not helped to stem its recurrence.

The same consequences of the colonial intervention on sharia reappeared in 1999, namely that since sharia was adopted through the parliament as defined by the Constitution rather the mosque, the emirs and religious leaders implicitly lost their powers. The sovereignty of God is therefore equated with that of the constitution, which it fought to subvert. And this is why the same political settlement trailed all the three episodes of sharia controversy in Nigeria.

Truly, the President of Nigeria does not have the final authority in constitutional matters. But President Obasanjo's assumption of that final authority has further generated more constitutional problems such as the constitutional status of the country. His peremptory position on sharia controversies: politicisation of sharia and sharialisation of politics; impatient disposition to intellectual engagement in the Constituent Assembly that replayed in 1999 have not helped to move the country forward. If neither secularity nor multi-religiosity appears in the constitution but implied, then the country cannot foreclose the possibility of a robust intellectual discourse in tandem with its plurality. After all sharia from inception is not averse to intellectual disquisition as it relates to historical, cultural, ideological contexts and exigencies. Therefore, there is the urgent need for the country to engage in free, robust, exhaustive intellectual debate on national issues rather than continue to toll the path of political settlement that 'eclipses' the real issues only to reoccur intermittently. Boko Haram, an Islamic sect, ravaging the country today, which believes and agitates for sharia law, is one of such consequences of the "unfinished debate on sharia."<sup>106</sup>

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105 Ajayi, F. Sharia Law and Nigeria Unity, <http://nigeriaworld.com/columnist/ajayi/sharia.html> (accessed 13<sup>th</sup> March, 2012).

106 See for details, Igboin, Benson O., 'Boko Haram Reasoning and Democratic Vision in Pluralist Nigeria' *International Studies: Interdisciplinary Political and Cultural Journal*, Vol.14, No.1, Poland, 2012, pp. 75-93; Igboin, Benson O., Fundamentalisms, Security Crisis and Tolerance in Global Context: The Nigerian Experience *Politics and Religion*, Vol.6, No.1, Belgrade, 2012, pp. 89-110; Igboin, Benson O., 'Karl Max on Religion: The Perspective of Boko Haram' *Journal of Religious Culture*, No. 183, Germany, 2014, pp. 1-17.

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## **‘ПРЕДСЕДНИК НИГЕРИЈЕ НЕМА ПОСЛЕДЊУ РЕЧ’: КОНТРОВЕРЗЕ ОКО ШЕРИЈАТСКОГ ПРАВА И ИМПЛИКАЦИЈЕ ЗА НИГЕРИЈУ**

### **Резиме**

На питање око усвајања шеријатског права у северном делу Нигерије бивши нигеријски председника Олесегуна Абасања је одговорио необично и рекао да ће тај захтев ускоро „доживети неуспех“. Тај одговор, као и касније формално усвајања шеријатског права, је било интригантан. Ово је било противно његовим тежњама да држи под контролом горећа национална питања. Критична тачка јесте да ли је усвајање шеријата политичко или верско питање због тога што је долазило од парламента а не од џамије. Овај чланак се бави председниковим одговорима против преовладајућих политичких струја и показује да њихове импликације и даље одјекују на нигеријској политичкој сцени. У овом чланку се тврди да коначни секуларни или мулти-верски статус (не верска држава) ове земље треба да буде артикулисан заједничким деловањем врских интелектуалаца и конституционалим ангажовањем.

**Кључне речи:** шеријатско право, Обасања, сукоб цивилизација, боко харам, Ислам

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