

ISLAM AND CONSTITUTIONALISM IN NIGERIA: 1999 CONSTITUTION AND THE CHALLENGES OF ISLAMIC LAW AND PRACTICES*

Abstract

Adherents of the two major religions, Islam and Christianity, sometimes relegate any state law that conflicts with their practice/faith. They would rather obey God than man¹. In Geron Ali v. Emperor², an Indian Muslim decapitated two persons and presented the heads to his religious instructor who asked for only one head. In Ashiruddin v. King³, the prisoner killed his son to secure a divine favour. Religious extremists will not have their religious teachings and practices 'bow' to any constitution. This paper, employs the analytical method, using journals, internet based materials, case law, historical records etc., to identify examine faith in the sharia law and the place of the Constitution of the Federal Republic of Nigeria, 1999 (henceforth referred to as CFRN) in the hearts of Islamic faithful. It concludes by recommending inter alia that patriotism and nationalism be inculcated into the citizenry right from childhood in our private and public schools.

Keywords: *Islam, Constitutionalism, 1999 Nigerian Constitution, Sharia*

1. Introduction

About two millenniums ago, in the pagan Rome of Apostle Paul's time, it was a capital offence to preach the gospel of Jesus. Over half a millennium after this, the Prophet of Islam had it uneasy with the Meccans at the beginning of Islam. The state in these two periods was at war with faithful whose teachings and practices were at variance with its laws. The non Muslims in Nigeria had the fear that the secularity of Nigeria⁴ was being lost gradually to a full fletch shari'a law regime in 2000 with the introduction of shari'a law in Zamfara State. The fear might have been rooted in the experience of the people of Mecca who were conquered during the Prophet's time; the Dan Fodian jihad crusades of 1804 in the Hausa kingdoms that went as far as parts of present day Edo State; the 'political rehabilitation' Islam received from the Turkey authorities in the 1970s and 1980s that is believed be part of the causes of the over 97 per cent of Turkey population being Muslims today⁵. It was argued for the Muslims of Zamfara that the then Penal Code was a common law concept that had 'failed'; and found to be inefficacious leading to 'rise of crime, corruption, moral decadence, frustration and delay in the adjudication system...'⁶ To secure for the muslim of Zamfara State what he needed, the state had to travel to Sudan and Saudi Arabia to come up with a penal code for its citizens⁷. Abu Rannat CJ, the then Chief Justice of Sudan, was the Chairman of the predominantly muslim committee that adopted sharia law of the Maliki school in 1959 to strike a compromise between the muslim and non Muslim populations of the defunct Northern Region of Nigeria and the penal code the committee came up with was a code that was working in the states of Sudan, Pakistan and India with similar heterogeneous cultural backgrounds with Northern Nigeria⁸. One can assert, without fear of contradiction, that Zamfara State is witnessing more armed robbery, kidnap for ransom and cattle rustling after the introduction of the sharia penal code than at any time of its history prior to the Code.

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¹ Christians' position about 2000 years ago, Acts 5:29.

² [1914] AIR (Cal.) 129.

³ [1949] AIR (Cal.) 182.

⁴ Ahmed B. Mahmud, *Introduction to the Sharia Penal Code*, Cap. 1, Laws of Zamfara State, 2000.

⁵ <https://en.m.wikipedia.org> visited 15/12/2018.

⁶ Ibid.

⁷ Ibid.

⁸ Kharisu S Chukkol, *Defences to Criminal Liability in Nigerian Law: A Critical Appraisal* (Zaria: A.B.U. Press Ltd., 1985) p. 2 -4.

The sharia was more of politics than it was the need of the Muslims in Zamfara State. Rest could be found after this bold assertion among other things, from the cushion provided by the Attorney General of Zamfara State then, Ahmed B. Mahmud, when he said that: ‘The Governor, Alhaji Ahmed Sani Yeriman Bakura, had campaigned and promised the electorate to fulfil their desire for change...’⁹ In the Muslim mind, especially the uneducated, there was created the false impression that sharia law as it is in Saudi Arabia, Iran, Brunei etc., was in the offing and, consequently, in the event of any conflict with the CFRN, the latter should give way. The key words of this paper shall be Quran, hadith, constitution, apostasy and discrimination.

2. The Status of Islamic Law among other Laws

The whole body of Islamic law is derived primarily from the Quran, the sayings and practices of the Prophet (hadiths), Al-Ijma (consensus of opinions of the Ulama: scholars, judges and jurists) on issues not clearly spelt out in the other sources¹⁰. The Muslim law is described as a customary law¹¹ alongside the customary laws of hundreds of other ethnic groups. It is a needless stress trying to distinguish Islamic law from other customary laws. The divine source of the Islamic law aside, it is the Muslim’s way of life and therefore undoubtedly his rules of custom.

3. Equality of Man in Islamic Law

Mohammad¹² sees equality in Islamic law as the equal standing of mortals or humanity before the Almighty God in reverence especially during prayers. Mohammed’s words: ‘How worthy we are when we turn our hearts to His sublime holiness and majesty, soliciting him to strengthen us and guide us to the truth to realise the profound equality which characterises all men in such weakness! How inevitable is then our realisation of the absolute equality of mankind, equality in impervious to any amount of wealth and power achievable on earth...’¹³

At the gender level, Ojobi argues that men and women are equal¹⁴. He cited a hadith that says: ‘Women are the sisters of men.’ On this ground, he maintains the equality of men irrespective of sex. He posits that the inferiority of women to men is a prejudice without legal basis under Islamic law as man and woman were created by the same divine breath. He relied on the Quran¹⁵ which provides that: ‘O mankind! Be careful of your lord who created you from a single soul and from him (Adam). He created his mate and from them twain hath spread abroad a multitude of men and women.’¹⁶ Mohammad appears to have approached equality before God from the perspective of race, socio-political position in the society etc., while Ojobi appears to have hinged his argument on the equality of both genders before God¹⁷.

⁹ Ahmed B. Mahmud (n4).

¹⁰ Dauda Ojobi, *Where Lies the Truth in the Bible or in the Qur’an?* (Zaria: A.B.U. Printing Press Ltd., 2016) p. 167. This system of law excludes any other customary practice that is not. See Alhaji Ishaku v. Hadeja N.A. 1 Sh. L.R.N. 1 at 3.

¹¹ High Court Law, Kaduna State, 1991, s.34; High Court Act, Federal Capital Territory, Abuja s. 34, See *Adesubokun v. Yunusa* [1971] NNLR 77 at 80.

¹² Mohammad Husayn Hakyal, *The Life of Muhammad* (P.B.U.H.) Part 2, translated by Ismail Ragi A. alfaruqi (Al-Azhar Al-Sharif: Zharan Bookshop, 1976) pp. 937 and 938.

¹³ (n11).

¹⁴ Dauda Ojobi (n10 p. 204).

¹⁵(n13).

¹⁶ Chapter 4:1 of the Quran (Translated by: Dr. Muhammad Tai-ud-Din Al-Milali).

¹⁷ Provided for by the CFRN, s. 17(1) and (2) (a) and (b).

4. Discrimination against females

Equality before the law is another way of saying that no citizen shall occupy a lower rung of the justice ladder on grounds of religion, sex or circumstances surrounding his birth etc.¹⁸ The supremacy of the CFRN over all other laws¹⁹ is as sure as the overriding effect of a written law over a rule of customary law²⁰. There would have been no qualms if the rule of Islamic law on the rights of citizens were to be on the basis of the universal equality of citizens or Muslims argued by Ojobi above. A legal crisis situation arises where the Quran provides that:

There is a share for men and a share for women from what is left by parents and those nearest related, whether, the property be small or large.²¹ Allah commands you as regards your children's (inheritance); to the men, a portion equal to that of two females; if (there are) only daughters, two or more, their share is two thirds of the inheritance; if only one, her share is half. For parents, a sixth share of inheritance to each if the deceased left children; if no children and the parents are the (only) heirs, the mother has a third; if the deceased left brothers or sisters, the mother has a sixth. (The distribution in all cases is) after the payment of legacies he may have bequeathed or debts...²² (Emphasis supplied).

In that which your wife leave, your share is a half if they have no child, but if they leave a child, you get a fourth of that which they leave after payment of legacies they may have bequeathed or debt. In that which you leave, (your wives) is a fourth if you leave no child, but if you leave a child you get an eighth of that she leaves after payment of legacies that they may have bequeathed or debts. If the man or woman whose inheritance is in question has left neither ascendants nor descendants, but has left a brother or sister, each one of the two gets a sixths; but if more than two they share in a third; after payment of legacies he or she may have bequeathed or debts so that no loss is caused to anyone. This is a Commandment from Allah; and Allah is Ever All-Knowing, Most-Forbearing.²³ (Emphasis supplied).

The Quranic provisions for the share of a female child or widow in relation to those of a male child and widower are *ultra vires* the provisions of the CFRN²⁴. The female share (female child or widow) is less than that of a son or widower by the above Quranic provisions for the obvious reason of the circumstances surrounding their birth. Disadvantaged female Muslims in the scheme of the sharing of a deceased estate on grounds of their faith or poverty don't challenge the constitutionality of their subhuman treatment. They may not want to be identified as being at war against the provisions of the Holy Book of their religion or may be hindered by poverty from litigating over such rights. Muhammad²⁵ argued that there are instances where females inherit more than males. This position he puts forward citing the Quranic provision: Verily, those who unjustly eat up the property of orphans, they eat up only a fire into their bellies, and they will be burnt in the blazing fire!²⁶ It is most likely that this jurist mistakenly cited this provision instead of the verse immediately after it. The appropriate verse appears to be: 'Allah commands you as regards your children's (inheritance) to the male a portion equal to that of two females; if (there are) only daughters two or more,

¹⁸ See CFRN, s. 42(2), s. 9 of the Constitution of Republic of South Africa, 1996, Articles 1,2 and 7 of the Universal Declaration of Human Rights (see League For Human Rights, Dakas C.J. Dakas and Nankin Bagudu (ed.) *Human Rights: A Compendium of International Instruments and Internet Resource Guide*(Jos: Dales Press Ltd.,2004) p. 30; Articles 2 and 3 of the African Charter on Human and Peoples' Rights; see Dakas C.J. Dakas and Nankin Bagudu (n18, p.30).

¹⁹ The CFRN, 1999, s.1.

²⁰ High Court Law, Laws of Kaduna State, 1991, s. 34(1). Each High Court Law of a state has a similar provision.

²¹ Chapter 4:7 (Translated by: Dr. Muhammad Tai-ud-Din Al-Milali).

²² (n21 verse 11).

²³ (n21 verse 12).

²⁴ s. 42(2).

²⁵ Muhammad A. Muhammad Ph.D., 'The Status of Women and Marriage Under Law', Vol. 30 *Journal of Comparative Law*, 2015, p.1 at p.5.

²⁶ (n 21. verse 10).

their share is two thirds of the inheritance; if only one, her share is half...'²⁷ The case that establishes this position is that of *Dundurur v. Charka*²⁸ where a sole female heir was held entitled to half of the deceased's estate. The situation in the above verse rightly supports the submission of Muhammad but narrowly misses the point sought to be made here. The unequal treatment arises when the heirs, male or female, claim on the same footing; as children, grandchildren or widow and widower.

5. Evidence before Sharia Courts

Shari'a courts decide cases on the bases of evidence adduced before them. Like any other court empowered to take evidence, they receive evidence; evaluate it before coming to conclusion in their determination of citizens' rights and obligations.

Evidence of Women

The treatment of the evidence of a female as half that of a man²⁹ is another area of concern. The Islamic law rule that accepts the evidence of two men at least in prove of a matter before a court is not only contrary to the Evidence Act³⁰, but is inconsistent with the CFRN³¹. The rule of fair hearing would be violated if what causes a Muslim his case is that he did not call at least two witnesses when the evidence Act requires even one to prove a cause³². The requirement that the testimony of two women equals that of a man with the implication that not even three women can prove a matter before a court assaults the dignity of a woman by reducing her to the position of a subhuman being because of the circumstances surrounding her birth³³. This violates the divine rule of equality of males and females³⁴. This treatment of the sharia law of women as witnesses is incompatible with the express provisions of section 200 of the Evidence Act that does not require any particular number of witnesses to prove a matter.

Evidence of non-Muslims

It is a tenet of Islamic law that by the unimpeachable testimony of two male witnesses or one male and two women at least, shall a matter be proved. The question that arises is, 'must the witnesses be Muslims too?' The rejection or reception of non Muslims' testimony in Muslim cases has been argued to depend on jurists' understanding of chapters 5:106, 65:2, 2:282 and 4:106³⁵ of the Quran. For clarity purposes, the provisions are reproduced thus:

O you who believe! When death approaches anyone of you, and you make a bequest, then take the testimony of two just men of your own folk or two others from outside, if you are travelling through the land and the calamity of death befalls you. Detain them both after As-Salat (the prayer), (then) if you are in doubt (about their truthfulness) let them both swear by Allah (saying): We wish not for any worldly gain in this, even though he (the beneficiary) be our near relative. We shall not hide the testimony of Allah, for them indeed we should be of the sinful.³⁶

²⁷Chapter 4:11

²⁸ [2007] 3 SLR (pt 4) 14.

²⁹ *Akanke v. Atanda* [1 Sh. LRN 194, *Sule v. Aruwa* [1986] 5 NWLR (pt 44) 744, *Ummaru v. Bakoshi*[2006] 3 SLR (pt 1) 80 at 101, *Kaka v. Nagwanja* [2006] 3 SLR (pt 2) 1

³⁰ The Evidence Act, 2011, Nigeria s. 200.

³¹ The CFRN, 1999, s. 36(2) (a).

³²(n30 s. 200).

³³ The CFRN, 1999, s. 42(2).

³⁴ See n12, n13, n14 and n15.

³⁵ M. A. Ambali, *The Practice of Muslim Family Law in Nigeria* (3rd ed.) (Lagos: Princeton and Associates Publishing Co. Ltd., 2014) pp. 145 and 146.

³⁶Holy Quran 5:106

Then when they are about to fulfil their term appointed, either take them back in a good manner or part with them in a good manner. And take for witness two just persons from among you (Muslims). And establish the witness for Allah...³⁷

... And get two witnesses out of your own men. And if there are no two men (available), then a man and two women, such as you agree for witnesses, so that if one of them (two women) errs, the other can remind her. And the witnesses should not refuse when they are called on (for evidence). You should not become weary to write it (your contract), whether it be small or big, for its fixed term, that is more just with Allah; more solid as evidence, and more convenient to prevent doubts among yourselves, save when it is a present trade which you carry out on the spot among yourselves, then there is no sin on you if you do not write it down. But take witnesses whenever you make a commercial contract. Let neither scribe nor witness suffer any harm, but if you do (such harm), it would be wickedness in you. So be afraid of Allah; and Allah teaches you, and Allah is the All-Knower of each and everything.³⁸

And seek the forgiveness of Allah, certainly, Allah is Ever Oft-forgiving, Most Merciful.³⁹

Ambali opines that in a plural religious society such as ours where: ‘...Muslims and people of other faiths freely intermingle in all spheres of life it can be logically reasoned as factors making the evidence of non-Muslims acceptable as it was laid down by the Qur’an 5:106 in the circumstances of being on a journey, threat of death or other factors of necessity’.⁴⁰ In the above quotation, if Ambali is positing that plurality should be a ground the Quran allows the reception of non Muslim evidence then he is out of tune with the unambiguous provisions of the Quran. It is hardly necessary labouring to find a way out of such the situation created by the Quran in view of the factors that make a witness competent under the law⁴¹ and the constitutional need for fair hearing.

It could be argued that Sharia’s courts are not bound by the provisions of the Evidence Act thus the sharia’s rules of evidence could be applied by sharia’s courts. This cannot change the legal relationship of the two laws, that in the times of incompatibility, the Act prevails⁴²; furthermore, sharia law cannot provide for evidence since evidence is an item on the exclusive legislative list in the CFRN⁴³. No sharia law of a state can validly be made on evidence. Apart from the Evidence Act, there is the inescapable constitutional hurdle, fair hearing, to contend with. A person aggrieved by the decision of a court where his witness was shut out because he is not a Muslim, can found his case on appeal on the violation of the rule of fair hearing under the CFRN. In *Tela v. Daudu*⁴⁴, it was held that it is improper to discriminate against a witness on grounds of religion in a case where Muslim law is applied because Nigeria is a secular state⁴⁵. Our position finds support in the Evidence Act⁴⁶ that does not lay down sex and religion as qualifications for a witness before any court. The court held in *Usman v. Umaima*⁴⁷ that difference in religious sect is no ground for the exclusion of the evidence of a witness.

6. Inheritance Rights

The shari’a provisions that treat inheritance have been treated above. There is an important aspect of it with constitutional implications that are discussed below.

³⁷ Holy Quran, 65: 2.

³⁸ Holy Quran, Suratul Al-Baqarah (Chapter 2)

³⁹ Holy Quran, 4: 106.

⁴⁰ Ambali, (n35 p.147).

⁴¹ (n30 s. 175).

⁴² High Courts Laws of States of Northern Nigeria, s. 34.

⁴³ *Benjamin v. Kalio* [2018] 15NWLR (pt1641)38

⁴⁴ 1 Sh. L.R.N. 50, [1975] NNLR 87.

⁴⁵ The Constitution of Nigeria, 1963 Constitution, s. 28(1) was applied in this case.

⁴⁶ (n30 s. 175(1)).

⁴⁷ 1 Sh.L.R.N. 172 at 174.

Right of a non Muslim to inherit a Muslim and vice versa

There are situations that a non-Muslim could have a Muslim brother/sister that dies intestate; the position of Islamic law in such a situation is as stated by Hammudah: ‘It is held by all jurists that a non Muslim may not inherit Muslim relative’s property.’⁴⁸ This Islamic position on law is ultra vires the constitutional provision against discrimination on religious grounds⁴⁹. It is difficult for the provisions of a will by a deceased Muslim in favour of a non Muslim relation can be successfully challenged in court⁵⁰.

Islamic law and illegitimate children’s right of inheritance

According to Hanafi Fiqh, an illegitimate child cannot inherit save through the mother⁵¹. In *Chowdhury v. Chowdhury*⁵² it was the view of the court that Islamic law of inheritance has no remedy for the position of an illegitimate child. In *Mbonde v. Selemani*⁵³, the Tanzanian court held a child born out of wedlock to have no right of inheritance from his father under Islamic law. In situations of conflict such as this, there is no gainsaying the obvious legal position that the rule of the CFRN against discrimination for reasons of circumstances surrounding a citizen’s birth prevails.

7. Fair hearing under Islamic Law

It is trite that a person cannot be a judge in his own cause in Islamic law. This is in accord with the constitutional command that every citizen be given fair hearing in the determination of his civil rights⁵⁴. It is the position in Islamic law that a party is not a competent witness in his own case⁵⁵. This is an infraction of the evidence law⁵⁶ and the constitutional right of fair hearing that entails a citizen being given the opportunity to adduce evidence in support of his case⁵⁷. The violation of fair hearing right would include the general Islamic law rule that: ‘Generally under Islamic law, a near relative like a mother is not a competent witness to her son or daughter when the evidence given favours either of the two.’⁵⁸ The exception is when a parent gives such evidence against his child in a matter with another one of his children⁵⁹. There is hardly need to emphasise the position of the evidence Act on who is qualified to give evidence and the superiority of this Act over rules of Islamic law to the contrary.

Oath taking and Fair Hearing in Islamic Law

This practice arises where a plaintiff cannot discharge the onus of proof put on him. The defendant is given the opportunity of swearing an oath and carrying the day in court. When a plaintiff calls a single witness without more to meet the requirement of at least two men or a man and two women, a defendant could be called upon to take the oath and have judgment entered for him⁶⁰. Relying on the Hadith: ‘It is the duty of the plaintiff to establish his claim and the oath is on the defendant...’ the Court of Appeal held that: ‘Thus unless in a situation which requires of necessity, both parties to produce evidence, the obligation of the defendant is to subscribe to an oath to justify judgment in his favour.’⁶¹ In *Kausani v. Kausani*⁶², the Court

⁴⁸ Hammudah Abdal, *Family Structure in Islam* (Lagos: Publications Bureau, 1982) p. 256.

⁴⁹ CFRN, s. 42(2).

⁵⁰ *Adesubokun v. Yunusa* (supra).

⁵¹ Hanafi Fiqh ‘Does an illegitimate child inherit from the Estate of his/her father/mother?’ <https://islamqa.org> visited 1/12/2018.

⁵² [1921] BOMLR 636 <https://blog.ipleaders.in/illegitimate-children-muslim-law/> visited 1/12/2018

⁵³ [1988] TLR 254.

⁵⁴ The CFRN, s. 36(1).

⁵⁵ *Nasi v. Haruna* [2006] 3 SLR 9pt 2) 154 at 163, *Dada v. Liman* [2006] 3 SLR (pt 2) 221, *Bami v. Majo* [2006] SLR (pt 4) 14.

⁵⁶ (n30 s. 175).

⁵⁷ CFRN, s. 36(2) (a). This rule could also be displaced by the Evidence Act, 2011, ss. 175 and 200.

⁵⁸ *Salisu v. Lawal* [1986] 2 NWLR (pt 23) 435 at 438, *Kaka v. Nagwanja* [2006] 3 SLR (pt 2) 1.

⁵⁹ *Ambali*. (n35 p. 144).

⁶⁰ *Mudi v. Bafilace* [2006] 3 SLR 37 at 40-45.

⁶¹ *Ibid*.

⁶² [2006]3 SLR (pt 1) 49 at 75.

of Appeal restated this position and went further to state that the implication of the defendant refusing to take an oath is that he would not have judgment entered for him. Given that Sharia Courts are not bound by the provisions of the Evidence Act but are merely guided by it⁶³, no Sharia Court can lawfully apply any rule of evidence contained in any rule of native law and custom even if the state government approves of it by legislation. It is exclusively within the purview of the Federation to make law on evidence. Any state law on evidence is *ultra vires* the CFRN⁶⁴. It is for this reason that any rule of evidence of Islamic law on burden or method of proof that is not in line with the Evidence Act and not contained in an Act of the National Assembly is void. The requirement of at least two witnesses, two men or two women and a man, before a cause can be established before a court under sharia's law is *ultra vires* the CFRN being rules of evidence not passed by the National Assembly. It could be argued that the Federation legislates for Abuja, thus such sharia's practices meet the standard laid down in a recent court decision⁶⁵. This argument shall be founded on sinking sand. The Federation has not passed such Sharia's practices into an Act of the National Assembly thus they remain rules of customary law.

8. Faith: A Thriving Danger to the CFRN

History has it that Muslim leaders such as Usman Danfodio⁶⁶ led the 1804 Jihad in the Current northern Nigeria and that the Prophet of Islam and his successors⁶⁷ who uprooted the Meccan leadership and its religious practices to establish the religion of Islam as the God's approved religion in the Uhud war and subsequent wars⁶⁸. Founders of terrorist groups today have these past leaders as their models. The 2011 September 11th attack of the United States' twin tower coordinated by Al-Qaeda network headed by Osama Bn Laden has not only seen to the emergence of more of such groups but has reinvigorated the activities of existing ones. When Jesus Christ went through the experience of Golgotha⁶⁹, Stephen opened the gateway of martyrdom⁷⁰ that many other Christians till today flock in. Faith of citizens in their God, be they Muslims or Christians, assumes a dangerous posture when they ignorantly or lawlessly refuse to avail themselves of the rich provisions of the CFRN on their freedom of religion. The spade of suicide activities of religious sects in Nigeria and abroad, the 1978 mass suicide caused by Christian leader, Jones who caused faithful to go through in Guyana are clear examples⁷¹. At this dangerous stage, Patriotism, nationalism and, of course, constitutionalism is seen as unfaithfulness to one's creator thus legalism gives way to anomie! Ojobi would attribute such practices to either disobedience to the teachings of the religion or ignorance of its teachings⁷². He would be quick, however, to maintain that an Islamic state has an ideal socio-political and economic format of government that can guarantee national and international peace. He understands constitutionalism that is not Islam oriented as Christian system of Government. Thus, to him, the Islamic system guarantees 'uniform justice' and saves people from 'being swayed by the whims, shortsighted decision of the [secular] legislators... in the parliament'⁷³. (sic). He sees sovereignty not from the perspective of the constitution⁷⁴, but a thing that resides with God according to the Quran, Suratul Al-Imran⁷⁵ which provides: 'Say; O God owner of sovereignty! Thou givest sovereignty unto whom Thou will and Thou withdraw with sovereignty

⁶³ (n30, s. 1(2)).

⁶⁴ (n42).

⁶⁵ Ibid.

⁶⁶ Crowder Michael, *West Africa: An Introduction to its History* (London: Longman Group Ltd., 1977) p. 78-82. Show how the Danfodian jihadists fought to unseat the Hausa kings who were believed not to be in the practice of pure religion.

⁶⁷ Francis Fukuyama, *The Origins of Political Order* (London: Profile Books Ltd., 2011) pp.192 and 193.

⁶⁸ Ibid.

⁶⁹ Matthew 27:35

⁷⁰ Acts 7:57-60.

⁷¹ <https://www.britannica.com/event/jon>

⁷² Dauda Ojobi (n10).

⁷³ (n 9 Pp. 117 and 118).

⁷⁴ The CFRN, 1999, s. 1 vests sovereignty in the Federation of Nigeria.

⁷⁵ (n 9 p.118).

from whom Thou will. Thou exaltest whom Thou will. Thou basest whom Thou will. In Thy hand is the good. Lo! Thou art able to do all things.⁷⁶ (Emphasis supplied).

From this Quranic provision there is absolutely no need for an interpreter to show that a secular or religious sovereign state exists by the permission of God who can do all things. When the superiority of the Islamic state is asserted and the secular constitution abased in a state such as Nigeria that guarantees freedom of religion⁷⁷, as maintained by Iwobi⁷⁸, the threat to the rights of citizens would be carried to a higher level. In a multi-ethno/religious set up like Nigeria that has settled for secularism from before independence, what is needed most is a constitution such as the CFRN that would cater for the interests and rights of citizens irrespective of ethno-religious leanings but short of denying any citizen his freedom to practice his religion and to propagate it within the precincts of the law. The sovereign position of God argued by Ijobi⁷⁹ is, with due respect to him, not a correct rendition of the Quranic provision cited by him. God is sovereign over all men but permits the sovereignty of men over others under His Lordship or sovereignty. That is why God, by that provision, gives sovereignty over the affairs of men on any man He pleases. An understanding such as Ojobi's would enhance unnecessary persistent agitations for a system of Islam law for Nigeria⁸⁰, undermine the righteousness of other groups' members or even occasion the emergence of violent Islam sects coupled with ignorance and sometimes flagrant disobedience to the rule of the religion of Islam⁸¹. This is very possible if paradise in the event of death when fighting for the cause of one's faith is in view⁸². This is the state of faith that hardens the hearts of citizens against the state and its constitution. This is the faith or conviction that makes a citizen joyfully, with the hope of making paradise, give up his life in absolute disloyalty to the state.⁸³ The solution to this would not lie in the postulation of Andras Sajó for the use of state might⁸⁴; as against this, a modification of the attitude of the secular state in its response to conflicts in a diverse and plural society should be taken more seriously as advocated by Lorenzo⁸⁵.

9. Apostasy and its 'Penalty' in Islam

The right to practice Islam or any other religion and opt out of it for any other religion or for even atheism is codified in the CFRN⁸⁶. By this provision, it is perfectly legal for a Muslim to convert to Christianity and vice versa or to some other religion. There is no penalty prescribed by any law for the change of religion by a Muslim that will not be *ultra vires* this provision of the CFRN⁸⁷. Lionel reports of Lina Joy, a Malaysian, who was born a Muslim. Her appeal to the nation's highest court to be recognised as a Christian after the faith of her Indian boyfriend was refused. Her effort to remove the word 'Islam' from her identity card so that she could marry her Christian boyfriend was barren as civil courts held that it was only the Sharia courts that could sanction her change of religion⁸⁸. She had to take to hiding for fear of imprisonment, a hefty fine

⁷⁶ Chapter 3:26 (Translated by: Dr. Muhammad Tai-ud-Din Al-Milali).

⁷⁷ 1999 CFRN, s. 38.

⁷⁸ (n10 p. 118).

⁷⁹ Ibid. see also Ahlul Bayt DILP <https://www.al-islam.org> visited 3/12/201.

⁸⁰ Isaac Terwase Sampson, 'Religion and the Nigerian State: Situating the de facto and de jure Frontiers of State-Religion Relations and its Implications for National Security' (2014) 3 OJLR 311-339 <https://academic.oup.com>

⁸¹ (n10).

⁸² Mohammad Husayn Hakyal (n11 pp. 559 and 560).

⁸³ This accounts for the spate of suicide bombings by faithful, open arm confrontations with states, attempts to unseat states' government apparatuses by the Boko Haram sect in North Eastern Nigeria, ISIS in Yemen and other Middle East Countries, El-Shabab in Kenya and the Twin Tower attack in the United States of America by the Al Qaeda Network led by Osama Bin Laden on the 11th September, 2011 etc.

⁸⁴ Andras Sajó 'Preliminaries to a Concept of Constitutional Secularism' 6 Int'l Const.L. (I.CON) 605

⁸⁵ Lorenzo Zucca, 'The Crisis of the Secular state- A Reply to Professor Sajó' <https://academicoup.com/ojlr/article> visited 2/12/2018.

⁸⁶ The CFRN, 1999 s. 38(1).

⁸⁷ Ibid.

⁸⁸ This was probably because of the amendment of the Malaysian Constitution in 1988 that introduced Article 121(1A) that delineated the jurisdictions of the High Court from that of the Sharia courts.

or time at a rehabilitation centre as a penalty for such change of religion.⁸⁹ Abu Zayd, whose writings were considered apostasy by Egypt's highest court was ordered divorced from his wife⁹⁰. In 1988, Salman, an author whose book⁹¹ was declared apostasy by the Supreme leader of Iran was given a death sentence⁹². Some Islamic jurisdictions justify the death sentence on apostates on a hadith where the Prophet of Islam passed the death sentence on a Muslim who joined non Muslims in a war in the seventh century⁹³. This Practice of the Prophet is hardly any reason enough for the conclusion of a death penalty for an apostate. The convict's offence appears to be the treason he committed and not for his change of religion. Our position finds support in the Quranic provision: 'There is no compulsion in religion. Verily, the right path has become distinct from the wrong path. Whoever disbelieves in taghut and believes in Allah, and then he has grasped the most trustworthy handhold that will never break. And Allah is All-Hearer, All-Knower.'⁹⁴ Tommaso⁹⁵, quoting other Quranic verses and authors validly maintains that: '...freedom of religion may be considered as congenital to the very meaning of Islam, which means 'submission', that is a voluntary choice to seek proximity with Allah: 'religion depends upon faith and will, and this would be meaningless if introduced by force'.⁹⁶ Furthermore, it is a sin of pride on the part of any mortal and contempt of His omnipotence to posit that God needs human intervention to win converts into Islam or maintain those within because: 'If it had been thy Lord's will, they would all have believed, all who are on earth! Wilt thou then compel mankind, against their will to believe!'⁹⁷

On the death sentence for apostasy, this is hardly tenable in view of the Quranic provisions on freedom of religion referred to above. Given that this hadith relied upon for the penalty on apostates is established, it still cannot take precedence over a clear Quranic provision which is the highest and most binding source of sharia law. It is not worth the bother analysing those schools of thoughts that argue for and against death penalty on apostates that are women as presented by Peters and De Vries⁹⁸. The arguments presented here cover everyone that is a Muslim and who changes his religion irrespective of school of thought or sect leaning. God, who has made the religion of Islam voluntary, has, in His infinite wisdom, true conversion and worship in mind thus will not employ the violence of death penalty against apostates as if to threaten those that are in not to go out. Doing so would only promote a congregation of worshippers the majority of whom shall be hypocrites! The Islamic law jurisdiction of Brunei⁹⁹ and others that might have provided for the death penalty for apostasy are on the side of human judgment without Quranic sanction. The death penalty for an offence *ipso facto* in any penal jurisdiction is not the problem, but where it is threatened for any religious reason, unconstitutionality sets in under the CFRN¹⁰⁰. The war against apostasy is more egoistically motivated in individuals or even a state than divinely commanded. A prominent Muslim would not want to hear his son or daughter converting to Christianity or even becoming an atheist. Similarly, an Islamic state may just not be happy hearing that its citizens are converted into any other religion in their thousands. There lays the ego driven war against apostasy which cannot be justified in CFRN regime.

⁸⁹ Lionel Beehner 'Religious Conversion and Sharia Law', <https://www.cfr.org> visited 2/12/2018.

⁹⁰ Ibid.

⁹¹ Salman Rushdie, *The Satanic verses*.

⁹² Lionel Beehner (n89).

⁹³ Ibid. In Brunei, s.112 (1) of the Penal Code enacted in 2013 provides a death penalty for apostasy. <http://www.agc.gov.bn/agc1/images/LAWS/Gazette-PDF/2013/EN/syariah%20penal%20code%20order2013.pdf>.

⁹⁴ Holy Quran 2: 256 (Translated by: Dr. Muhammad Tai-ud-Din Al-Milali).

⁹⁵ Tommaso Virgili, "Apostasy from Islam under Sharia law" <http://stals.sssup.it> visited 6/12/2018

⁹⁶ Ali Abdullah Yusuf, *The meaning of the Holy Quran* (Beltsville: Amana Publications, 2011) <http://stals.sssup.it> visited 6/12/2018

⁹⁷ Holy Quran 10:99 (Translated by: Dr. Muhammad Tai-ud-Din Al-Milali).

⁹⁸ Rudolph Peters and Girt J.J. De Vries, 'Apostasy in Islam' pp. 5 and 6, <http://www.jstor.org/stable/1570336> visited 7/12/2018.

⁹⁹ n93.

¹⁰⁰ The 1999 CFRN, 1999, s. 38(1).

10. Conclusion and Recommendations

Respect for the religious beliefs and practices of every citizen are the responsibility of the Nigerian state¹⁰¹; that must ensure a conducive atmosphere for the actualisation of religious rights¹⁰². The citizenry is to reciprocate this gesture by seeking judicial fora to assuage their grievances when their rights are infringed or threatened to be infringed. The position taken by some of our judges on Islamic law when it conflicts with the CFRN or any other law of the legislature is a standard that would bring the reality of the secularity of Nigeria to many people who have the notion of the superiority of Islamic law over all other laws. The neglect of the quality and content of teachings at centres where children below and slightly above ten years receive religious guidance is a mistake that should be avoided. At that age once certain notions are impressed on the mind it would be difficult to erase them. The result would be producing citizens with faith that sees no reason to concede to the state anything for any reason. Those that seek to make history like Usman Danfodio of 1804 should never forget that the times of changed and should take counsel from Imam Ali who remarked: 'Do not force your children to behave like you, for surely they have been created for a time which is different to your time'.¹⁰³ (sic). Usman Danfodio's time had no states and their apparatuses as we have in the modern day Nigeria. Imitating him in leading a crusade in the constitutional Nigeria today would occasion loss of lives and properties, diversion of available national resources towards the prosecution of war instead of development; making the Nigerian territory a war theatre where the efficacy of new weapons invented abroad would be tested; and of course, ending up with a malnourished economy and its inevitable consequences.

In the light of the above, periodic seminars and workshops for religious leaders by all levels of government are necessary. This should not be meant to make them understand the friendly posture of the constitution towards them and the need to respect the provisions of the constitution. Sponsors of religious of extremism should be brought to justice as a way of deterring others; while unpatriotic religious utterances by citizens should be treated in accordance with the law. With the availability of lawyers from the two major religions, the least qualification for appointment as a judge at any level should be a legal practitioner within the meaning of the Legal Practitioner's Act. These would understand the oath to uphold the CFRN better. State/Government involvement in religious affairs such as sponsoring students abroad to pursue religious studies without fully knowing the course content is a dangerous thing that the government should not do. Similarly, all religious studies out of the country should be discouraged while the course content of home religious studies should be scrutinised and possibly reviewed by the government from time to time. Authors and publishers should be admonished through the media on the need to avoid inciting writings and publications because the Nigerian readership, especially the youth, has a culture of taking as true almost anything that is put into writing. As a matter of deliberate policy, government should encourage religious rights crusaders to champion religious causes against the government through dialogue and litigations to avoid extra constitutional assertion of religious rights while the government should, on its own part, obey court orders in such matters. The judiciary should be firm in religious rights matters. Judges should make pronouncements on citizens' rights in all cases with religious background in strict adherence to the provisions of the constitution and other laws of the land. Government's obedience to court orders on religious rights matters is mandatory to demonstrate in practical terms the need to obey court orders and to provide the moral ground execute court orders against citizens in religious matters. Citation of the National Anthem and pledge should be extended to private schools and Almajiri schools to inculcate patriotism and nationalism into citizens from teen age.

¹⁰¹ n96 s.38 (1).

¹⁰³ <https://www.al-islam.org>