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A Historical Perspective of the Sharia Project & A Cross-Cultural and Self-Determination Approach to Resolving the Sharia Project in Nigeria

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A HISTORICAL PERSPECTIVE OF THE *SHARIA* PROJECT & A CROSS-CULTURAL AND SELF-DETERMINATION APPROACH TO RESOLVING THE *SHARIA* PROJECT IN NIGERIA

I. INTRODUCTION

The end of colonialism in numerous former colonial countries has brought rapid changes in the understanding and expansion of international human rights law. African nations have been particularly affected by the international community's post-colonial attempts to implement international human rights law and standards into these newly formed nations' domestic legal structures.[1] Nigeria is a model example of such an African nation. Nigeria has persistently amended its national constitution, underlying domestic legal structure and international relationships to comply with international law and to respond to the international community's allegations of international human rights violations.[2] For example, in an attempt to pacify the international human rights community, Nigeria has signed numerous human rights conventions.[3] Also, following

1. Makau wa. Mutua, *Why Redraw the Map of Africa: A Moral and Legal Inquiry*, 16 MICH. J. INT'L L. 1113, 1114 (1995).

2. *See generally* Christian N. Okeke, *International law in the Nigerian Legal System*, 27 CAL. W. INT'L L.J. 311 (1997). From October 1, 1960, to date, Nigeria has had five or six different national constitutions and more than a dozen changes in leadership. Jide Ajani, *All Efforts to Have a Unified Nigeria Have Failed*, THE VANGUARD, Oct. 1, 2000, *available at* http://www.allAfrica.com (last visited Oct. 2, 2003).

3. Nigeria is a party to the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social, and Cultural Rights, Convention on the Rights of the Child (signed but not yet ratified the Optional Protocol to the CRC as of Dec. 2002), Convention on the Elimination of All Forms of Discrimination Against Women ("CEDAW") (signed but not yet ratified the Protocol to CEDAW as of Dec. 2002), the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention Relating to the Status of Refugees and Protocol, the Rome Statute of the International Criminal Court and the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. AMNESTY INTERNATIONAL

years of military dictatorship, Nigeria recently formed a newly democratic elected government.[4]

Despite the post-colonial Nigerian government's attempts to create a unified democratic federal government in support of human rights, dissidence continues to grow within its internal borders.[5] Since the presidential election of General Olusegon Obasanjo in 1999, twelve states in Nigeria's Northern region have questioned the validity of the Nigerian federal government by adopting and extending *Sharia*[6] into their penal codes.[7] The current political problems, associated with the adoption and expansion of *Sharia,* developed into the *Sharia* Project — as it has come to be known among legal scholars — when Zamfara State enacted the *Sharia* Courts (Administration of Justice and Certain Consequential Changes) Law of 1999.[8] Subsequently,

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REPORT 2003, SELECTED INTERNATIONAL HUMAN RIGHTS TREATIES (Dec. 31, 2002), *at* http://web.amnesty.orgweb/web.nsf/3cf824eb039d237c80256d2700483ac2/fb462403f6b59b1180256d2e005c7d6a/$FILE/treaties.pdf.

4. BBC World News, *Nigeria Elections Timeline* (Mar. 8, 1999), *at* http://news.bbc.co.uk/1/hi/world/africa/280552.stm. General Olusegun Obasanjo won the first democratic presidential election on March 1, 1999, following 15 years of military rule. *Id.*

5. A.B. Mahmoud, The *Sharia* Project in Northern Nigeria and Governance in a Federal Nigeria, 1 (Mar. 8–10, 2002) (unpublished paper to the conference on "Globalization, State Capacity, and Self-Determination in Muslim Contexts," organized by the Centre for Global International and Regional Studies, University of California Santa Cruz)(on file with author). "Any assumptions about the settled nature of Nigeria's constitutional and legal order have now been upturned by the events of October 1999 in Zamfara State which triggered a wave of criminal justice reforms across the predominantly Muslim States of Northern Nigeria." *Id.*

6. *Sharia*, or Islamic law, is a religious set of principles based on the four pillars of Islam: *Qu'ran* (Islamic Holy text), the *Sunna* (teachings of the Prophet Mohammed), the *Ulama* (religious scholars) and the *Qiyas* (case law). Ismene Zarifis, *Rights of Religious Minorities in Nigeria*, 10 HUM. RTS. BR. 22, 22 (2002).

7. M. Ozonnia Ojielo, *Human Rights and Sharia'h Justice in Nigeria*, 9 ANN. SURV. INT'L & COMP. L. 135, 137–38 (2003). The twelve Northern states are Zamfara State, Niger State, Kano State, Katsina State, Borno State, Yobe State, Kebbi State, Bauchi State, Kaduna State, Sokoto State, Jigawa State and Gombe State. Mobolaji E. Aluko, *The Unfizzled Sharia Vector in the Nigeria,* Dawudo.com (Mar. 18, 2002), *at* http://Daw odu.com (last visited Sept. 2, 2003) [hereinafter Aluko, *The Unfizzled Sharia Vector*].

8. Ojielo, *supra* note 7, at 137.

> Under this law, the application of Sharia'h law in Zamfara State was extended to cover certain Sharia'h crimes and punishments (such as

eleven other Northern states followed suit.[9] The expansion of *Sharia* into the penal law created uproar within Nigeria and the international community.[10] In particular, two fairly recent events have brought the *Sharia* Project to the front lines of the international community: the adultery case of a Nigerian Muslim woman, Amina Lawal,[11] and the riots caused by the Miss World Competition.[12] In fact, the *Sharia* Project has become so devastating to the peace and unification of the Nigerian Federal Republic that it has been referred to as "tragic" by internationally respected Nigerian author Chinua Achebe.[13]

> amputation, stoning to death and flogging) that were not included in the current penal code as drafted after independence. New higher and upper courts were created by this law, which also expanded the jurisdiction of the courts to include civil as well as criminal matters.

Id.

9. *Id.* at 138; Aluko, *The Unfizzled Sharia Vector*, *supra* note 7.

10. *See, e.g.,* Mahmoud, *supra* note 5; Ojielo, *supra* note 7; Madhavi Sunder, *Piercing the Veil*, 112 YALE L.J. 1399 (April 2003); BBC World News, *Nigeria's stoning appeal case fails* (Nov. 22, 2002), *at* http://news.bbc.co.uk/1/hi/world/Africa/2202111.stm.

11. BBC World News, *Nigeria woman fights stoning* (July 8, 2002), *at* http://news.bbc.co.uk/1/hi/world/Africa/2115278.stm. Ms. Amina Lawal is a woman from the Northern Nigerian State of Katsina, who conceived a child outside of marriage — allegedly two years after her divorce from her husband. She was sentenced to death by stoning for this alleged crime by the Katsina State *Sharia* Court of Appeals. Her sentence has been overturned, and her case will be discussed further in Section III of this Note. *Id.*

12. BBC World News, *Muslims Condemn Nigerian Fatwa* (Nov. 29, 2002), *at* http://news.bbc.co.uk/2/hi/Africa/2525573.stm. Disapproval and boycotting by Nigerian Muslims over the presence of the Miss World Competition in Nigeria resulted when ThisDay newspaper writer Isioma Daniel said in an article that Prophet Mohammed may have approved of the competition and would have likely chosen a wife from the competitors. The comment infuriated Nigerian Muslims resulting in massive riots in the Northern region of Kaduna. A religious *fatwa* for death was also ordered by a Zamfara State official against the writer. The Nigerian government, though, refused to allow the *fatwa* against Ms. Daniel to be carried out and called off the Miss World Competition due to the violence and controversy surrounding the event. *Id.*

13. BBC World News, *African Author attacks "tragic" Nigeria* (Nov. 22, 2002), *at* http://news.bbc.co.uk/2/hi/entertainament/2504023.stm. Speaking to the BBC, Nigerian Professor and Writer Chinua Achebe commented on the rise of *Sharia* law in Northern Nigeria:

> We have dug ourselves into *Sharia*; into a situation where we have become a laughing stock of the world, because we are discussing things like stoning women to death in the 21st century….Religious differences have not just been introduced. Muslims and others have al-

This Note will discuss the *Sharia* Project in the context of the Nigerian Federal Republic. It will attempt to clarify the roots of the *Sharia* Project and present some possible legal approaches to resolving the current international human rights problem resulting from the *Sharia* Project. Specifically, this Note will attempt to answer the question, "Is there an international response to Nigeria's human rights violations?" Part II of this Note will discuss in detail the complicated and highly contentious political and social history of Nigeria. In particular, this section will discuss the transformation of Nigeria from a precolonial conglomerate of ethnic kingdoms and states to its current unified Federalist form. Finally, Part II will briefly outline the origins and sources of Nigerian Law — including the Nigerian Penal Code, the federal and state court systems, and the Nigerian Constitution. Part III will discuss the Amina Lawal case and present a more thorough understanding of *Sharia*. This section will also describe the *Sharia* Project and its origins.

Part IV will discuss the numerous constitutional and international arguments supporting and condemning the *Sharia* Project. Specifically, this section will look at the numerous Nigerian constitutional provisions and international treaties relevant to understanding and explaining the *Sharia* Project. Part V will outline the numerous possible international and Islamic legal approaches to resolving the *Sharia* Project. This Part will look primarily at some of the major international and Islamic theories behind the interpretation of international law and discuss a cross-cultural and self-determination approach to resolving the *Sharia* Project. Part VI will conclude by summarizing and attempting to reconcile the various arguments and solutions presented in this Note.

> ways been there, but somehow they didn't wipe each other out…What is happening today is that some people are using these differences to promote their ambition and this is an abuse of politics…that's why the selfishness of the elite stands so clearl[y].

Id.

II. HISTORICAL BACKGROUND

A. Introduction

The modern Nigerian State came into existence with the end of British colonial rule in 1960.[14] The modern Nigerian legal system is based upon the English common law, statutory law, Islamic law, and customary law.[15] Today, Nigeria is structured as a Federal Republic (Federalist model).[16] The Federalism model resulted from the political elite's attempts to reconcile the multi-ethnicity and self-determination problems that plagued Nigeria following the end of colonial rule and the start of independence.[17] Initially, Federalism found widespread support among Nigeria's diverse ethnic and religious communities.[18] These communities viewed Federalism as the only viable option if Nigeria was to attain independence as a single unit.[19] However, the recent problems surrounding the *Sharia* Project have Nigerians questioning the Federalism model.

In addition to the conflict surrounding the *Sharia* Project, the history of pre-colonial Niger and the post-colonial Nigerian Republic has been tumultuous and complicated, following the nation through a multitude of geographic, political, and governmental changes.[20] These changes and Nigerian history are essential to understanding the roots of the *Sharia* Project.

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14. *History of Nigeria*, Country Reports Website, *at* http://www.countryreports. org/history/nigehist.htm (last visited Oct. 2, 2003) [hereinafter *History of Nigeria*, Country Reports Website]. Nigeria became an independent nation by act of the British Parliament on October 1, 1960. *Id.*

15. CENTER FOR REPRODUCTIVE LAW AND POLICY, 2001 PROGRESS REPORT: WOMEN OF THE WORLD: LAWS AND POLICIES AFFECTING THEIR REPRODUCTIVE LIVES (ANGLOPHONE AFRICA) 77 (2002) [hereinafter CRLP REPORT].

16. Mutua, *supra* note 1, at 1156.

17. *Id.*

18. *Id.*

19. *Id.*

20. Mobalaji E. Aluko, *Trouble in the Nigerian House of Othman Dan Bello*, Aug. 28, 2002, *at* http://www.onlinenigeria.com/articles/ad.asp?blurb=36 (last visited Oct. 2, 2003) [hereinafter Aluko, *Trouble in the Nigerian House*]. In the forty-one years Nigeria has been independent; it has spent twenty-nine of those years under military rule. The last twelve years have seen major internal "fractionalization." *Id.*

B. Pre-British and British-Raj Eras

1. Pre-British

Prior to 1500, Nigeria consisted of numerous states, identified today by the existence of various ancient city-states and ethnic kingdoms.[21] The period between the 16th and the 19th centuries saw increasing turmoil between several ethnic factions.[22] The turning point, though, for modern Nigeria and the Islamic North came primarily in the 1800s.[23] This period saw the expansion of Islam, resulting from Usman dan Fodio's[24] holy war and the slow colonial conquest of Nigeria by the British Empire.[25]

2. British-Raj Era

The British gained control over the majority of present-day Nigeria by 1862.[26] Prior to 1900, despite British influence, Ni-

21. *History of Nigeria*, Country Reports Website, *supra* note 14. Examples of these ancient city-states and ethnic kingdoms are the Yoruba Kingdoms, Ebo Kingdoms, Hausa cities, Nupe, Kanem and various cities around Lake Chad. *Id.*

22. *Id.*

23. *Id.*

24. *Pre-Colonial African History*, Fulani Theocracy, *at* http://berclo.net/page99/99en-afr-notes.html (last visited Oct. 2, 2003).

> In the 1790s a Fulani reformer, Usman dan Fodio, encouraged the Hausa people to revolt against their kings whom he accused of being little more than pagans. He led Hausa and Fulani troops in holy war (*jihad*) which swept through the Hausa States and Yorubaland to the South and established a Theocratic Empire based in Sokoto (northwest Nigeria), that lasted until it was defeated by the British at the turn of the 20th century.

Id. (emphasis added).

25. *History of Nigeria*, Country Reports Website, *supra* note 14.

> First, the Islamic holy war of Usman dan Fodio set the stage for the establishment of the Islamic empire in present-day Nigeria, as well as a large portion of East and West Africa. Second, between 1807 and the 1860's the British Empire de-legalized the Atlantic slave trade, resulting in the empire's greater intervention in the markets and government of Southern Nigeria. The empire's intervention coupled with the expansion of Usman dan Fodio's movement helped lead to the colonial conquest of Nigeria in the 19th century.

Id.

26. Major Nannguhan Madza, *The Judicial System of Nigeria*, 1987 ARMY L. 20, 20 (1987).

geria maintained a conglomerate of distinct ethnic and tribal states and territories that were simply overseen by the British Empire.[27] But, on January 1, 1900, the British managed to impose a complete stronghold over the various territories.[28] In 1914, the British Empire, under Sir Lord Frederick Lugard,[29] finally formed a single unit, called Niger, by uniting the northern territories, southern territories and the colony of Lagos.[30]

The period between 1944 and 1959 was also an intense era marked by political agitation and struggle for independence by ethnic Nigerians.[31] In 1954 Nigeria became a federation of four regions.[32] Under this federation, the government structure continued the three-tiered government model used during the early years of British rule.[33] Also, between 1951 and 1959, the Nigerian government showed increased deference to, and shared power with, local politicians.[34]

C. Post-Colonialism

Nigeria gained independence from Great Britain on October 1, 1960, and formally became a republic on October 1, 1963.[35] In January 1966, the Nigerian military staged a coup and displaced the civilian government.[36] The military government then created individual states in 1967, following a failed attempt at

27. Aluko, *Trouble in the Nigerian House*, *supra* note 20.

28. *Id.*

29. Madza, *supra* note 26, at 21. Sir Lord Frederick Lugard was the Governor General who oversaw the formation of the Niger State under the British Empire. *Id.*

30. *Id.*

31. Aluko, *Trouble in the Nigerian House*, *supra* note 20.

32. Madza, *supra* note 26, at 21. "Nigeria became a federation in 1954. The country was divided into the Northern, Eastern, Western, and later, Midwestern regiona." *Id.*

33. *Id.* at 21.

34. Aluko, *Trouble in the Nigerian House*, *supra* note 20. This sharing of power was established through a series of Constitutions including the Richards Constitution of 1944, the MacPherson Constitution of 1951, the Lyttleton Constitution of 1954 and the Willinks Minority Commission report of 1957. *Id.*

35. *Id.* Upon gaining independence, Nigeria became a Federation under a parliamentary system of law, a prime minister, a ceremonial governor-general and regional governors. This government structure was formed under the Queen of England, who stood as the ceremonial Head of State. *Id.*

36. *Id.*

creating a Westminster Model[37] of government.[38] The creation of the states was a landmark decision for the Nigerian government as it attempted to reunite and strengthen a slowly disintegrating nation, resulting from years of political instability.[39]

Thirteen years of military rule ended with the adoption of the 1979 Nigerian Federal Constitution ("1979 Constitution") on October 1, 1979.[40] By the time the 1979 Constitution was adopted, Nigeria had grown into nineteen different states.[41] Nevertheless, the initial peace and structure established by the 1979 Constitution came to a halt with another military coup, this time lasting four years.[42] Between 1979 and 1999 Nigeria went through numerous changes, including a slow increase in the number of states, eventually totaling thirty-six by 1999 (the current number), and constantly changing government heads.[43]

On May 29, 1999, Chief Olusegun Obasanjo won his first presidential term in the nation's first democratic elections.[44]

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37. The Westminster Model of government is the type of parliamentary structure found in Great Britain, Canada and Australia. The Westminster Model is considered a "responsible government": a political system where the executive government, the Cabinet and the Ministry are drawn from, and accountable to, the legislative branch. The model varies from country to country. Westminster System, Australian Politics, *at* http://www.australianpolitics.com/democracy/terms/Westminster-system.shtml (last visited Oct. 2, 2003).

38. Madza, *supra* note 26, at 21. The Westminster Model failed because it was too homogeneous a system for such a diverse nation as Nigeria. *Id.*

39. *Id.*

40. *Id.* The 1979 Nigerian Federal Constitution was modeled after the United States Constitution and set up a similar legislative system with a Senate and a House of Representatives at the federal and state levels. *Id.*

41. Aluko, *Trouble in the Nigerian House*, *supra* note 20.

42. *Id.*

43. *Id.* President Shaghari (Oct. 1979–Dec. 1983) was displaced by a military coup, following a reign by Buhari for eighteen months, who was also subsequently displaced by another military coup. Babangida followed and stepped down in 1993. Shonoken then rose to power but was displaced again by a coup after only 81 days in office. Finally, Abdusalami Abubakar followed Shonoken's rule until the first democratic elections saw Chief Olusegun Obasanjo win the Presidency in 1999. *Id.*

44. Chika Onyeani, *Obasjano: The Wounded Presidency*, AFRICAN SUN TIMES, Aug. 22–28, 2002, *available at* http://www.gamji.com/NEWS1597.htm.

> Chief Obasanjo was elected as the first civilian president of Nigeria in 1999, after 16 years of dictatorial military rule ending with the death of General Sani Abacha in 1998, and the assumption of the of-

Obasanjo won as the result of overwhelming support from two of Nigeria's main ethnic groups, the Hausa-Fulanis and the Ibos.[45] Since Obasanjo's election, Nigeria has gone through another period of great internal strife and displeasure with the Obasanjo government. Specifically, Nigerians who voted Obasanjo into office are disenchanted with his government and have accused him of corruption and favoritism.[46] As this Note will discuss, the internal displeasure with Obasanjo's government is one of the major reasons for the secession of various Northern states from the 1999 Federal Nigerian Constitution ("1999 Constitution") and the adoption of *Sharia* penal law.[47]

D. The Common Law in Nigeria

The British introduced the common law in Nigeria on January 1, 1900 through the Foreign Jurisdiction Act of 1830. This Act allowed the Governor General to make laws for the colonies and to enact the Interpretation Act, which permitted existing laws in England on January 1, 1900 to apply to Nigeria.[48] Prior

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> fice of Head of State by General Abdulsalami Abubakar…Presiden[t] Obasanjo himself was the first military man to have handed power peacefully to a civilian elected president in 1979, having served as military Head of State from 1976-79.

Id. Obasanjo recently won a second term in the April 19, 2003 presidential elections with sixty percent of the votes. The 2003 elections were the first civilian-run presidential elections since the end of military rule. The elections results were contested heavily by opposition parties and EU observers cited "serious irregularities" in the voting. Nevertheless, Obasanjo is still the current Nigerian President. BBC, *Timeline: Nigeria* (N.D.), *at* http://newsvote.bbc.co.uk/mpapps/pagetools/print/news.bbc.co.uk/1/hi/world/africa/country_profiles/1067695.stm (last visited Oct. 2, 2003).

45. Onyeani, *supra* note 44. The Hausa-Fulani have historically controlled the North, the Ibo the East, and the Yoruba the West. These three groups are the three major ethnic groups in Nigeria. There have been constant power struggles between the three groups since independence. Mutua, *supra* note 1, at 1156. Oddly enough, Obasanjo's own ethnic group, the Yorubas voted overwhelmingly against him. Onyeani, *supra* note 44.

46. Onyeani, *supra* note 44.

47. Aluko, *Trouble in the Nigerian House*, *supra* note 20. "Thus it has been asserted that the official introduction of expanded forms of Shari[a] Islamic law into twelve far Northern (Muslim) States since Obasanjo's commencement as president is mere 'political Shari[a] — a reaction and counter-weight to Obasanjo's government's actions." *Id.*

48. Madza, *supra* note 26, at 21. The Interpretation Act is also referred to as the Common Law Application Law. The Act allowed names, locations,

to independence, other English acts were enacted that applied directly to the Nigerian State.[49]

Post-independence, due to populous uproar over the culturally divergent English laws, the regions enacted numerous acts that reflected the various indigenous values of the regions over the English laws.[50] Despite these acts, some English laws remain in effect today.[51] However, the most effective period of post-independence Nigerian law-reform was between 1970 and 1979.[52] It was during this period that some of the most long-standing and essential laws were enacted.[53]

E. The Penal law in Nigeria

Currently, Nigeria has two separate criminal codes: the Northern Nigerian Penal Code and the Southern Nigerian Criminal Code.[54] Although the two separate codes are similar in content, the Northern Penal Code reflects the Islamic values of the predominantly Muslim North, while the Southern Criminal Code reflects the colonial Christian values of the predominantly Christian population in the South.[55] The distinction between the Northern and Southern criminal codes was created when Southern Nigeria became self-governing in 1956 and Northern Nigeria became self-governing in 1959.[56] In particular, the predominantly Muslim North wanted to adopt a penal code that more closely reflected their Islamic values.[57] But, the British did not completely accept Northern Nigeria's self-governing

counties, and office and penalties to be changed. Numerous Nigerian regions adopted and incorporated the Act into their local laws. *Id.*

49. *Id.* at 21.

50. *Id.*

51. *Id.*

52. Madza, *supra* note 26, at 21.

53. *Id.* For example, the National Youth Service Act of 1973, the Land Reform Act of 1972, the Marriage Act of 1968 and the Companies Act. *Id.*

54. *Id.* PENAL CODE (The Laws of Northern Nigeria 1963) (Nig.) Vol. III, ch. 89. CRIMINAL CODE (the Laws of the Federation 1990) (Nig.) Vol. III, ch.89.

55. *Id.* CRLP REPORT, *supra* note 15, at 78.

56. Madza, *supra* note 26, at 21. Northern Nigeria was uncomfortable with the clashing of their customary laws with the British common law and as a result Northern Nigeria declared self-governing status and passed Islamic legislation. *Id.*

57. *Id.*

status or their desire to adopt such a penal code.[58] They felt that a nation-wide adoption of an Islamic penal code would alienate the large non-Muslim Nigerian community.[59] As a result, the British enacted a separate modified penal code for the North, which remained in effect until the creation of the individual states in 1967.[60] Currently, each Nigerian state has its own penal laws but the Northern states reflect some common similarities with the original pre-1967 penal code, while the Southern states reflect some common similarities with the British Criminal Code.[61]

F. The Nigerian Courts

Prior to independence, the Privy Council of the British House of Lords heard appellate cases from the West African Court.[62] The Nigerian Federal Court system has three levels of courts. The highest level is the Federal Supreme Court of Nigeria. Post independence, but prior to Nigeria gaining republican status, the Federal Supreme Court of Nigeria heard appellate cases.[63] Immediately following its change to republican status, the Federal Supreme Court of Nigeria became the Supreme Court of Nigeria.[64] The Supreme Court has original and exclusive jurisdiction over disputes between states and between the states and the federal government.[65] Most importantly, this Court is the final arbiter in determining the constitutionality of any laws or executive orders passed by the individual states or the federal government.[66] The Court has a maximum of fifteen justices, three of whom must be learned in both Islamic law and customary law.[67] The intermediate courts are the Federal High

58. *Id.*
59. *Id.*
60. *Id.* The Northern Penal Code differs from the Southern Criminal Code in numerous ways. For example, adultery is a crime in the North punishable by death or lashings, while it is only a tort in the South. Also, murder has a much broader definition in the Criminal Code then in the Penal Code. *Id.*
61. *Id.*
62. *Id.*
63. Madza, *supra* note 26, at 23.
64. *Id.* at 23.
65. *Id.*
66. *Id.*
67. *Id.*

Courts[68] and the State High Courts are the lowest courts.[69] State High Courts have unlimited jurisdiction over all civil matters, but they do not have supervisory or appellate jurisdiction over *Sharia* Courts.[70]

Separate from the federal government court system, some states adopted the *Sharia* Court of Appeals and the Customary Court of Appeals.[71] The *Sharia* Court of Appeals was established during the 1978 Constituent Assembly.[72] In this complicated legal structure, Islamic and customary laws are given full status within the recognized federal and state judiciary systems.[73] The Nigerian court system also has a Federal and State Judiciary Commission that supports both the state and national court levels.[74]

The *Sharia* Court of Appeals has created chaos within the Nigerian court system. Until recently, the *Sharia* Court of Appeals only had appellate jurisdiction over civil matters.[75] On October 27, 1999, the *Sharia* Project developed into the political problem it is today.[76] The problem began when the Northern state of Zamfara extended *Sharia* to not only encompass civil law matters but penal law matters as well.[77] Eleven other Northern states followed suit.[78] *Sharia* advocates argue that

68. Dr. Broadus N. Butler, *An Afro-American Perspective: The 1979 Constitution of the Federal Republic of Nigeria and the Constitution of the United States of America: A Historical and Philosophical Comparison*, 1987 HOW. L.J. 733, 742 (1987). In addition to the Supreme Court, the Federal court system consists of the Federal Court of Appeals and the Federal High Court. *Id.*

69. Madza, *supra* note 26, at 24.

70. *Id.*

71. *Id.*

72. Jibrin Ibrahim, Democracy and Minority Rights in Nigeria: Religion, Shariah, and the 1999 Constitution, 8 (Mar. 7–10, 2002) (unpublished draft paper for the Conference on "Globalization, State Capacity, and Self-Determination in Muslim Contexts," organized by the Center for Global, International, and Regional Studies, University of California–Santa Cruz, Santa Cruz) (on file with author).

73. Butler, *supra* note 68, at 742.

74. *Id.* The purpose of the Commission is to advise on matters relating to judicial qualifications and judicial conduct. *Id.*

75. Ibrahim, *supra* note 72, at 8–9.

76. *Id.* at 9.

77. *Id.*

78. See *supra* note 7 for a list of Northern Nigerian States that have adopted *Sharia* thus far.

the *Sharia* Project is permissible because the 1999 Constitution left the establishment of *Sharia* courts and customary courts open to the desire of the states.[79] Currently, there is no legal theory under Nigerian national law or international human rights law for overturning a religious court's holding, except by the prescribed court methods.[80]

G. The Nigerian Constitution

The Nigerian Constitution has an extensive history of instability and evolution. Nigeria has had nine different constitutions since the inception of the first Nigerian Constitution in 1922.[81] The most recent version of the Nigerian Constitution was created in 1999.[82] The 1999 Constitution, which is based on the 1979 Constitution,[83] came into existence shortly after the election of President Obasanjo's first term on May 29, 1999.[84] The 1979 Constitution is of great social[85] and political importance to the modern structure of the Nigerian Republic because it was the first time a new presidential style Federal Constitution was adopted by the Nigerian Republic.[86] The 1999 version went even further than the 1979 Constitution by expanding the federal powers of Nigeria through the addition of five major sections: Separation of Powers, Federalism, Bill of Rights, Party

79. NIG. CONST. (Constitution of the Federal Republic of Nigeria, 1999) §§ 275–77. *Sharia* advocates' constitutional arguments will be discussed later in Part IV.A of this Note.

80. Sunder, *supra* note 10, at 1405.

81. Radio interview with Philip Emeagwali, Discussion of the 1995 Draft Constitution for Nigeria, at the Grand Hyatt Hotel in Washington D.C. (Dec. 5, 1998). Nigeria has had nine different Constitutions: 1922, 1946, 1951, 1954, 1960, 1963, 1979, 1989 and 1999. *Id.*

82. NIG. CONST. (Constitution of the Federal Republic of Nigeria, 1999).

83. Butler, *supra* note 68, at 733. The 1979 Nigerian Constitution, adopted on October 1, 1979, is considered by some scholars to be the most definitive statement of the goals of democratic nationhood, national unity in human diversity, and commitment to Civil and Human Rights since the United States Constitution and Declaration of Independence. *Id.*

84. *Nigeria Index*, Institut für öffentliches Recht-Aktuell, *at* http://www.oefre.unibe.ch/law/icl/ni__indx.html (last visited Oct. 2, 2003).

85. Butler, *supra* note 68, at 745. "Nigeria pursues the unification of the nation (through the 1979 Constitution) by making all types of racial, ethnic, religious, sexual, or regional discrimination unconstitutional." *Id.*

86. *Nigeria Index*, Institut für öffentliches Recht-Aktuell, *supra* note 84.

System, and Secularism.[87] The addition of these five sections has created dissent in Nigeria and uproar in the *Sharia* Project.

III. THE AMINA LAWAL CASE, *SHARIA*, AND THE *SHARIA* PROJECT

A. Amina Lawal Case

The Amina Lawal case created a huge controversy in the international human rights community. The case represents the types of human rights violations that the expansion of *Sharia* in Northern Nigeria can generate, and the types of violations the Nigerian federal government wishes to deter. Ms. Lawal is a woman from the Northern state of Katsina.[88] A local *Sharia* court sentenced Amina to death by stoning for allegedly committing adultery.[89] The official charges read to the accused by the Bakori *Sharia* court read, "Amina admitted that she had committed adultery with Yahaya, which had resulted in the birth of the baby."[90] Yahaya denied the adultery accusation and stated that there were no witnesses to prove he had committed adultery.[91] Instead, he accused Ms. Lawal of making a false accusation.[92] The court then simply asked Yahaya to swear on the *Qu'ran* that he was not guilty, which he did, and then the court passed a guilty judgment on Ms. Lawal and discharged Yahaya.[93] The court passed a guilty judgment on Ms. Lawal based on the following evidence:

> Her confession of *Zina* is implied through the birth of a child out of wedlock, the evidence of the baby presented by the

87. Yemi Akinseye-George, *Correspondent's Report in Nigeria*, JURIST, May 29, 1999, *available at* http://jurist.law.pitt.edu/world/nigeriacor1.htm.

88. Katsina is one of the Northern states that has extended the scope of *Sharia*. *See supra* note 7.

89. Legal Memorandum from Aliyu Musa Yauri & Hauwa Ibrahim, The Case of Ms. Lawal Lawal Kurami: Sentenced to Death by Stoning for Adultery (reporting on the decision of The *Sharia* Court in Bakori to the Upper *Sharia* Court in Funtua, Katsina State) (on file with author) [hereinafter Legal Memo]. Ms. Lawal was sentenced on March 22, 2002 by the *Sharia* court in Bakori. *Id.*

90. *Id.* Yahaya was the man accused of committing adultery with Ms. Lawal. Yahaya only admitted that he had been courting Ms. Lawal for marriage. *Id.*

91. *Id.*

92. *Id.*

93. *Id.* The court passed a guilty judgment on February 20, 2002. *Id.*

> prosecution, the charge against her which is contrary to the *Suratul Bani Ismaila* Verse 32 of the Holy *Qu'ran* where Allah (SWT) said, "And come not near unto adultery. Lo! It is an abomination and an evil way."[94]

On March 22, 2002, the judge sentenced Ms. Lawal to death by stoning — based upon passages from the book *Al-Risala*, the *Hadith of Arba'una*, and Section 125(b) of the Katsina State Laws.[95] The judge then stated that Ms. Lawal would be scheduled for execution after she had weaned her child.[96] Following an appeal by Ms. Lawal, the *Sharia* Appellate Court of Funtua affirmed the lower court's decision on August 19, 2002.[97] The case was then appealed to the Katsina State *Sharia* Court of Appeals.[98]

In the interim, the Nigerian government received intense pressure from various international human rights organizations and foreign governments.[99] Both Italy and Brazil had even offered asylum to Ms. Lawal.[100] Despite the international pressure, Nigerian Justice Minister Kanu Agabi declared that Nigerian law did not allow the federal government to interfere with

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94. *Id.* *Zina* is unlawful sexual intercourse. *See infra* n.117.

95. *Id.*

> [T]he book Al-Risala reads: "Whoever being of complete faculties commits the offence of *zina* should be stoned until he/she dies." Furthermore, he cited the Hadith of Arba-una which was narrated by Ibn Masud on page 70 verse 14 where the Prophet is said to have said: "The blood of a Muslim can only shed validly in 3 circumstances: 1) a married person, male or female, (or who was once married) who commits adulter[y]."

Id. A *hadith* is the narration about the life of the Prophet and about the behaviors and practices he approved. *Sunna and Hadith*, USC Website, *at* http://www.usc.edu/dept/MSA/fundamentals/hadithsunnah (last visited Oct. 2, 2003).

96. *Id.*

97. Press Release, Save Ms. Lawal Lawal and Oppose the Practice of Death by Stoning, Amnesty USA (Sept. 2002), *available at* http://www.amnestyusa.org/actioncenter/actions/Ms.Lawallawal.pdf.

98. *Id.*

99. Somini Sengupta, *Facing Death for Adultery, Nigerian Woman Is Acquitted*, N.Y. TIMES, Sept. 26, 2003, at A3.

100. *Id.*

the Islamic court's ruling, unless an appeal reached the Federal Supreme Court in Abuja.[101]

Following a great amount of international pressure and numerous appeals, the Katsina State *Sharia* Court of Appeals finally overturned the lower court's conviction of Ms. Lawal in a four to one decision on September 25, 2003.[102] The ruling was a relief for both Ms. Lawal and the Nigerian government. The ruling relieved President Obasanjo from having to overrule a negative decision by the *Sharia* court on constitutional grounds, which would have further antagonized the Muslim North.[103]

The court overturned the lower court's decision largely based on procedural and substantive irregularities, finding that: [104] (1) the lower court had been wrong in not allowing Ms. Lawal's retraction of her earlier confession of guilt; (2) Ms. Lawal's first confession of guilt was invalid because it was uttered only once, instead of four times as required by Islamic law; (3) the first trial was invalid because only one judge presided over the case instead of the requisite three; (4) the police who arrested Ms. Lawal produced no witnesses to the fornication; and (5) the court found validity in defense counsel's "sleeping embryo theor[y]."[105] Arguably, from a human rights perspective, the grounds for her final not guilty judgment were as questionable as the grounds for her initial conviction, albeit the final result was more just. Despite the positive outcome of Ms. Lawal's Case, *Sharia* still exists as means of criminal enforcement in Northern Nigeria, and the *Sharia* Project is far from resolved.

101. BBC World News, *Nigeria Vows to Prevent Stoning* (Nov. 8, 2002), *at* http://news.bbc.co/uk/2/hi/Africa/2430603.stm.

102. Sengupta, *supra* note 99, at A3.

103. *Id.*

104. *Id.*

105. *Id.* The sleeping embryo theory is a theory which states that under certain interpretations of *Sharia*, an embryo can be in gestation for up to five years, which means that Amina's baby could have been fathered by Amina's former husband. *Id.*

B. Sharia and the Sharia Project in Nigeria

1. *Sharia*

"Islam rightly means submission to the will of God."[106] *Sharia* is the law of Islam.[107] Since 1978, *Sharia* has been a major actor in the struggle for civil and political rights in Nigeria.[108] Nigerians are predominately of the *Sunni* tradition of Islam, and practice a specific school of Islamic law known as the *Maliki* school of thought.[109] The *Maliki* School of Islamic jurisprudence

106. Ojielo, *supra* note 7, at 143.

107. Zarifis, *supra* note 6, at 22; Hamid M. Khan, *Nothing Is Written: Fundamentalism, Revivalism, Reformism and the Fate of Islamic Law*, 24 MICH. J. INT'L L. 273, 279 (2002) [hereinafter Khan, *Nothing Is Written*].

108. Ibrahim, *supra* note 72, at 8.

109. *See* Ojielo, *supra* note 7, at 132.

> The *Sunni* tradition, which today comprises approximately 85-90 percent of all Muslims, differs from *Shia* tradition, which comprises the remainder of the Muslim world. The distinction between the two traditions essentially derives from different approaches to governance. The *Sunni* believe, based on specific provisions of the *Qu'ran* and the *Sunna*, that the Muslim people are to be governed by consensus (*ijma'*) through an elected Head of State, the *khalifa*, according to democratic principles. The *Shia*, however, believe that the leader of Islam, whom they refer to as the imam rather than the *khalifa*, must be a descendant of the Prophet. The concept is the basis for a hereditary hierarchy in the *Shia* tradition.

The School of Thought in Islam, Middle East Institute, *at* http://www.mideasti.org/library/islam/schools.htm (last visited Oct. 2, 2003).

> The Maliki school of thought was founded by Abd Allah Malik ibn Anas (ca. 715-95), a leading jurist from Medina. Malik ibn Anas is said to have particularly regarded as important the old pre-form of legal school of Medina as the "city of the prophet" and the legal discourse of the local jurists. The Maliki school which emerged as a countercurrent to the Hanifite school spread mainly to North Africa — Tunisia, Algeria and Morocco — Spain and to several areas in West Africa as well as Central Africa. Today, the Maliki school may also be found in Upper Egypt, Mauritania, Nigeria, West Africa, Kuwait and Bahrain. Apart from the four sources of jurisprudence as established by ash-Shafii, the Maliki school of law additionally recogni[z]es legal decisions based on judgments more conducive to the public interes[t].

Islamic Jurisprudence and its Sources, Immer noch sterben Menschen Steinigung, *at* http://www.steinigung.org/artikel/islamic_jurisprudence.htm#I5b (last visited Oct. 2, 2003).

provides that a person is presumed guilty until proven innocent.[110]

Sharia is a set of religious principles based upon four sacred Islamic pillars of law and practice: "*Qu'ran* (Islamic holy text), the *Sunna* (teachings of the Prophet Mohammed, the *Ulama* (religious scholars), and the *Qiyas* (case law)."[111] It is a guide by which Muslims and Muslim societies resolve disputes, and by which they can live their lives according to the word of *Allah*.[112] It prescribes guidelines and rules for most every-day activities, from marriage to prayers to dress to crime.[113] *Sharia* does not distinguish between "the religious and the secular, between the legal, ethical, and moral questions or between the public and private aspects of a Muslim's life."[114] This lack of distinction is the crux of the problem surrounding the *Sharia* Project.

Sharia penal law provides a detailed set of principles, crimes, and penalties for offenders.[115] For example, under Article 150 of Zamfara State's *Sharia* penal code, alcohol consumption mandates caning and imprisonment, and Article 127 mandates one hundred lashes for adultery if unmarried and imprisonment or death by stoning if married.[116] Specifically, *Sharia* penal law falls under three separate categories of offenses and punishments: (1) *Hudud* (*Qu'ranic* offenses and punishments);[117] (2) the law of homicide and hurt;[118] and (3) *Ta'zir, Siyasa*[119] (other

110. Ojielo, *supra* note 7, at 143.
111. Zarifis, *supra* note 6, at 22.
112. *Id.*
113. Khan, *Nothing Is Written*, *supra* note 107, at 277.
114. *Id.* at 277.
115. Zarifis, *supra* note 6, at 22.
116. *Id.*
117. DR. RUUD PETERS, EUROPEAN COMMISSION, THE REINTRODUCTION OF ISLAMIC PENAL LAW IN NORTHERN NIGERIA 8 (Sept. 2001) (A Study Conducted on Behalf of the European Commission with the assistance of Maarten Barends, Lagos) (on file with author). The *Qu'ranic* offenses are crimes mentioned in the *Qu'ran*. Under *Sharia*, these offenses have fixed penalties, referred to as the *Hudud* collectively, or *Hadd* punishment, singularly. *Id.* The *Qu'ranic* offenses include unlawful sexual intercourse or *zina*, theft or *sariqa*, robbery or *hiraba*, drinking of alcohol or *shrub al-khamr*, and false accusation of unlawful sexual intercourse or *qadf*. *Id.*
118. *Id.* These offenses are only punishable if the victim or his "avengers" demand that the offender is punished. Under these offenses, if homicide or hurt is done intentionally, then the punishment is equal retaliation—"an eye for an eye." If it is an unintentional crime or if the victims or heirs are willing

crimes that are punishable at the judge's discretion).[120] The *Qu'ranic* offenses have garnered the most attention from the international community, particularly the offense of unlawful sexual intercourse (*zina)*, theft (*sariqa)*, robbery (*hiraba)*, drinking of alcohol (*shrub al-khamr)*, and false accusation of unlawful sexual intercourse (*qadf)*.[121] As stated earlier, the punishment for *zina,* the crime at issue in the Ms. Lawal Lawal case, is stoning to death for persons who are or have ever contracted a valid marriage.[122] For persons "who have never contracted a valid marriage, the punishment is one hundred lashes, and in addition, banishment for men."[123]

2. The *Sharia* Project

a. Background

The rise and expansion of *Sharia* in many Islamic countries and communities is considered by scholars to be a method of regaining Muslim cultural identity.[124] The *Sharia* Project, in Nigeria, is considered by many scholars to be the Muslim North's attempt at regaining its cultural identity; however, some Christians believe that the *Sharia* Project is political, not a spiritual or religious movement, and aims to marginalize

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to forgo the punishment, then the punishment is the payment of a *diya* or blood price. *Id.*

119. *Id.* These offenses are deemed sinful or undesirable by Islamic criminal code and the offenses and punishments are usually left to the discretion of the judge and possibly legislators. *Id.*

120. *Id.*

121. *Id.*

122. *Id.*

123. *Id.*

124. Khan, *Nothing Is Written, supra* note 107, at 299.

> For the vast majority of Muslims, the resurgence of Islam [i]s a resurgence of cultural identity, formal religious observance, family values, and morality. The establishment of an Islamic society is seen as requiring a personal and social transformation that is a prerequisite for true Islamic government. Effective change is to come from below through a gradual social transformation brought about by implementation of Islamic law.

Id.

Christians.[125] Other reasons and arguments supporting and denouncing the *Sharia* Project are discussed later in this section.

The same issues surrounding the *Sharia* Project today were also the root of the most contentious debate during the 1978 Constituent Assembly.[126] One of the primary contentions among various members of Nigeria's Christian and Muslim communities covered during the debate concerned the proposed establishment of a *Sharia* Court of Appeal.[127] The final compromise between the two groups resulted in the creation of a *Sharia* Court of Appeal with limited jurisdiction to civil law.[128] However, the *Sharia* Project has created tension between Christians and Muslims groups again.[129] There has been continuous opposition by Christians since Zamfara State first adopted *Sharia* law.[130] For example, on February 21, 2000, in Kaduna State, a Christian anti-*Sharia* demonstration led to a major battle between Christians and pro-*Sharia* Muslims resulting in "massive killings of people on both sides, the destruction of religious buildings, general arson and the destruction of property."[131] The "Kaduna Conflict" led to widespread insecurity among Christian minority groups in the affected states and resulted in

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125. *See generally* Ojielo, *supra* note 7; Zarifis, *supra* note 6. *See also* BBC World News, *Fifth Nigerian State Extends Sharia Law* (Jan. 14, 2000), *at* http://news.bbc.co.uk/1/hi/world/Africa/603681.stm.

126. Ibrahim, *supra* note 72, at 8.

127. *Id.* Christians viewed the establishment of the *Sharia* Court of Appeals as the first step toward the establishment of an Islamic State, while Muslims argued that the establishment of the Court was a natural extension of the establishment of the lower *Sharia* Courts, of which Muslims had been demanding the creation for a long time. *Id.*

128. *Id.* at 8–9.

129. *Id.* at 9.

130. BBC World News, *Fifth Nigerian State Extends Sharia Law*, *supra* note 125.

131. Ibrahim, *supra* note 72, at 9.

> The scale of massacres and destruction was very high and thousands of people were reported to have been slaughtered like rams. People were said to have organized the killing of their neighbors simply because they belonged to a different religious order. This phenomenon led to a major religious re-structuring of the town with people congregating in areas where their religious faith had a majority of inhabitants.

Id.

members of both religious groups calling for the partition of Nigeria.[132]

The *Sharia* Project culminated with the gathering of the National Council of State on February 29, 2000.[133] The National Council directed that the *Sharia* laws enacted by the Northern states be retracted and that their legal systems return to the *status quo ante*.[134] This decision was not met with much support and riots between Christians and Muslims resumed in increasing numbers in the Northern states.[135] Finally, in April 2000, a committee of various Northern governors met to resolve the continuing riots and the *Sharia* Project.[136] The committee announced: "We have resolved to uphold the whole North as one indivisible entity within the Federation of Nigeria."[137]

b. North vs. South: The Rise of the *Sharia* Project

The *Sharia* Project did not arise out of a vacuum. There exists a long history of struggle for Muslim self-identity within post-colonial Nigeria and the Nigerian political structure. Ben Nwabeuze,[138] a professor of constitutional law and member of the 1978–79 Constituent Assembly, has argued that the *Sharia* Project is not just a debate over law, but a debate over the very nature of Nigeria.[139] Defining what exactly the "very nature" of

132. *Id.* The state of Kaduna continued to experience religious riots resulting from the *Sharia* Project. Two other riots, in June 2001 and in November 2002, resulted in massive violence and destruction in Kaduna. *Major displacement as religious violence broke out in Kaduna State (February 2000; July 2001 and November 2002),* Global IDP Database, *at* http://www.db.idpproject.org/Sites/idpSurvey.nsf/wViewCountries/BFA28324C3E0CA8FC1256B10003CB2B4 (last visited Oct. 2, 2003).

133. Ibrahim, *supra* note 72, at 9–10. The National Council of State is a federal organization composed of the Head of State, former Heads of State, and State Governors. *Id.*

134. *Id.*

135. *Id.* at 10 ("Two members of the Council and former Heads of State, Shehu Shagari and Mohammadu Buhari, denied that such a decision had been taken and contended that Muslims were not ready to compromise on the *Sharia*.").

136. *Id.* The Governors set up a joint Muslim–Christian Committee in hopes of aligning the *Sharia* law with the Penal Code and in hopes of countering threats to the unity of the North and Nigeria as a whole. *Id.*

137. *Id.*

138. Ibrahim, *supra* note 72, at 10.

139. *Id.*

Nigeria means has, in fact, helped bolster the *Sharia* Project. The various arguments defining and explaining the *Sharia* Project and the "very nature" of Nigeria are described below.

For example, the reintroduction of *Sharia* penal law is justified by Muslims on religious grounds.[140] Muslims believe that in order to be a good Muslim, one must live one's life according to Islamic law, which supposes that religion, law, and the rituals of daily life are inseparably intertwined.[141] In addition, many Muslims welcome the extension of *Sharia* as a way to eliminate a wide range of social crimes and corruption, which are believed to be a product of globalization.[142] In response to globalization's effect on religion, as in the context of the *Sharia* Project, one

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> The distinction between civil and penal law has an important bearing on the issue of state enforcement. In civil law, the state, through its judicial arm, the courts, merely imposes its machinery as an impartial disinterested arbiter between parties in a dispute; it lacks the power to initiate the process of adjudication, and must wait until it is moved by one of the disputants. So the enforcement through the courts of the civil aspects of *Sharia* does not involve the support, promotion or sponsorship by the State of the Moslem religion in preference to other religions….In criminal law however, the position is entirely different. The state invokes its coercive power to arrest and detain an alleged offender, to initiate a criminal charge against him in court, and to see to the effective prosecution of the charge. Thus, as complainant, initiator of the criminal process and prosecutor, the state is an interested party. Accordingly, the enforcement by the state of the Sharia penal law under the *Qu'ran* involves the use of its machinery to aid, support and sponsor the Islamic religion in preference to other religions. (Quoted from The Post Express, April 13th, 2001).

Id.

140. PETERS, *supra* note 117, at 15.

141. *Id.*

142. *See id. See also* Ibrahim, *supra* note 72, at 4–5.

> The *Sharia* under this paradigm the [*Sharia* Project] becomes a form of Northern resistance — not to Southern Nigeria, but to the forces of globalization and to their westernizing consequences. Even the policy of the privatization of public enterprises is probably an aspect of the new globalizing ideology. Privatization in Nigeria may either lead to new transnational corporations establishing their roots or to private Southern entrepreneurs outsmarting Northerners and deepening the economic divide between the North and the South (quote[d] [in] the Weekly Trust, May 18th, 2001).

Ibrahim, *supra* note 72, at 18–19.

Nigerian scholar states, "[r]eligion today is a product of modernity as well as a response to it."[143]

Second, corruption has been an open wound for Nigeria. Nigeria is considered one of the most corrupt countries in the world.[144] For example, former military dictator Sani Abacha allegedly stole approximately five billion dollars from the Nigerian treasury.[145] The public has been, and continues to be, insistent on finding answers to such allegations, as for corruption.[146] As a result, some Nigerians believe that former leaders such as Abacha are attempting to divert the public's attention from their own past crimes by attempting to destabilize Nigeria through the *Sharia* Project, instead of providing truthful answers.[147]

Third, political disaffection and a history of political monopoly by the North are also considered root causes of the expansion of *Sharia*.[148] Since 1960, eight of the twelve heads of the Nigerian federal government originated from the North.[149] These eight Northern heads governed Nigeria through thirty-six of the forty-one years of its independence.[150] Furthermore, seven of these twelve heads of State have been Muslims, covering thirty-one of the forty-one years.[151] But, the current federal government is headed by a southerner, Obasanjo, and many Nigerians believe that the North's unhappiness with his presidency has resulted in the North's attempt to regain power in Nigeria via the *Sharia* Project.[152] This history of the Muslim North's political monopoly though underlies the South's and

143. *Id.* at 5.

144. Radio interview with Philip Emeagwali, *Sharia* Crisis in Nigeria (Mar. 16, 2000), *available at* http://emeagwali.com/interviews/*Sharia*/crisis-in-nigeria.html; *see also* Transparency International, World Corruption Perception Index, *available at* http://www.transparency.org/pressreleases_archive/2003/2003.10.05.cpi2003_launch_announcement.html (last visited Oct. 2, 2003).

145. *Id.*

146. *Id.*

147. *Id.*

148. Aluko, *Trouble in the Nigerian House, supra* note 20.

149. *Id.*

150. *Id.*

151. *Id.*

152. *Id.* The current President is a Southerner and a Christian. *See infra* Part II.C.

non-Muslims' apprehension and revolt over the *Sharia* Project.[153]

Specifically, the alleged "power shift" in 1999 is offered as support for the North's adoption of *Sharia*.[154] As a result of the North's political monopoly, the people of Southern Nigeria called for the federal seat of power to shift from the North to the South in 1999.[155] By chance, the realization of the Southern people's call for power coincided with the democratic presidential elections of May 1999.[156] In order to ease the growing political tensions between the North and the South, the political majority in the North created a "political pact" to not contest the presidency so that a Southerner could become president.[157]

However, the attempts to ease tensions were unsuccessful. The conservative southern Yoruba political elite felt that Obasanjo did not reflect the political ideals of the South, and that he was merely the North's puppet.[158] Yoruba skepticism of

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153. *Id.*

154. Ibrahim, *supra* note 72, at 19. The term "power shift" was coined first by the Southwestern Press in Nigeria. *Id.*

> As Alex Ekwueme, former Vice-President during the Second Republic has argued (Guardian 26/1/99), the term was invented as an alternative to the concepts of zoning and rotation which had dominated the National Constitutional Conference of 1994-95. Section 229 of the 1995 Draft Constitution had stipulated that the Presidency should be rotated between the North and the South, Gubernatorial power rotated between the three Senatorial districts in each state and the Chairmanship of local governments between three zones to be created in each of them. These constitutional proposals were, however, completely discredited when it became clear that General Abacha had no intention of vacating power. He was planning and plotting to continue as "elected President." Since he was from the Muslim North, the implication was that the zoning was therefore going to start from the North, the region that had monopolized power for a long time. The concept of power shift arose, therefore, to remove the ambiguity associated with zoning and rotation. The idea was to focus on what was presented as the essential issue of a Southerner taking over power.

Id.

155. *Id*.

156. *Id.*

157. *Id.* at 20. The pact allocated the presidency to the Yoruba of the southwest, who presented two candidates, of which Obasanjo was the winner. *Id.*

158. Ibrahim, *supra* note 72, at 20.

Obasanjo's power ultimately led to the creation of a Yoruba militia group called the Odua Peoples Congress ("OPC").[159] The OPC increased attacks on ethnic minority groups in Yorubaland, including Hausa Muslim settlers.[160]

Obasanjo, through his "modernization policies," infuriated the South and exacerbated the conflict by frustrating the North's political agendas.[161] The policies included the elimination of various political posts, which had been held predominantly by Northern Muslims.[162] As a result, these "modernization policies" were seen as an "elimination policy" and attack on the Muslim North.[163] In addition to Obasanjo's "modernization policies," his own overt, conservative Christian beliefs have made the more radical Muslims groups in Nigeria suspicious of his political actions, seeing them as policies intended to eliminate the Islamic stronghold in Nigeria.[164] As a result, some *Sharia* opponents have argued that the North's adoption and expansion of *Sharia* is merely "political *Sharia*"— a reaction and "counterweight" to Obasanjo's modernization policies.[165]

Fourth, religious sectarianism is also considered an important factor fostering the *Sharia* Project. The population of Nigeria is approximately one hundred twelve million; a little more than fifty percent of this population is Muslim and located in Northern Nigeria.[166] The majority of this Muslim population adheres to the *Sunni* tradition, rather then the *Shiite* tradition.[167] Nevertheless, over the past few years, a "radical set of

159. *Id.*
160. *Id.*
161. *Id.*
162. *Id.*
163. *Id.*
164. Ibrahim, *supra* note 72, at 20–23; Aluko, *Trouble in the Nigerian House, supra* note 20.
165. Aluko, *Trouble in the Nigerian House, supra* note 20.
166. *See id.*; *see also* CRLP REPORT, *supra* note 15, at 75.
167. Mahmoud, *supra* note 5, at 10–12. The *Sunni* and *Shi'a* (*Shiite*) distinction of Islam arose after the death of the Prophet Mohammed. The Shiites declared Ali, Mohammed's son-in-law, the successor of Mohammed, while Mohammed's wife Aisha appointed another caliph to head the *Sunni* sect. *Shi'ism* began as a political movement and its adherents believed that an Imam, or religious leader, cannot be chosen by the community as Aisha chose for the *Sunni*. Instead, the Imam would rise to power by virtue of his inherited dignity and righteousness. Alison E. Graves, *Women in Iran: Obstacles to*

fundamentalist movements" (*Shiite* movements) and groups have developed in Nigeria.[168] These fundamentalist groups are pushing aggressively for the Islamicization of the North because they are impatient with the allegedly corrupt status quo of Northern state power.[169] Thus, the *Sharia* Project also can be viewed as the result of sectarian competition between the *Sunni* and the *Shiite* traditions.

Fifth, the *Sharia* Project's success has also been attributed to the North's socio-economic disenfranchisement from the economic and developmental benefits afforded to the South.[170] The unemployment rate in Nigeria is approximately twenty percent, a number that is considered dramatically understated.[171] Unemployment and underemployment has created an environment for socio-economic disenfranchisement in Nigeria, and particularly in the North.[172] One socio-economic factor underlying Northern socio-economic disenfranchisement has been education. For many Muslims, there is a noticeable disparity between the qualities of education offered in the North versus the South.[173] The South's educational systems are predominantly based in the Western tradition whereas the North's are based in the *Qu'ranic* tradition.[174] Many Nigerians believe that a Western education does not guarantee employment, but without Western education, employment is unlikely — thus those educated under the *Qu'ranic* tradition consider themselves at a disadvantage.[175] In addition to the disparity in education, the uneven distribution of wealth between the wealthy oil producing Southern states and the poorer Northern states has created

Human Rights and Possible Solutions, 5 AM. U. J. GENDER & LAW 57, 61–62 (1996).

168. *See* Mahmoud, *supra* note 5, at 10–12. Two groups that have pushed for the Islamization of the North include *Yan Izalah* and *Maitatsine*. The *Yan Izalah*, in particular, along with other groups such as the Council of Ulama, are championing the campaign to fully Islamicize the Nigerian North. Aluko, *Trouble in the Nigerian House, supra* note 20; Mahmoud, *supra* note 5, at 10–12.

169. *Id.*

170. *Id.*

171. Aluko, *Trouble in the Nigerian House, supra* note 20.

172. *Id.*

173. *Id.*

174. *Id*.

175. *Id.*

further socio-economic disenfranchisement — particularly because Northern states believe that the Southern states are using their monopoly of the oil industry to control the Nigerian Republic and the Muslim population.[176] All of these issues are considered to be relevant reasons underlying the *Sharia* Project's success.

IV. CONSTITUTIONAL AND INTERNATIONAL ARGUMENTS

A. Constitutional Arguments

1. Introduction

The major provisions of the Constitution at issue are Section 38,[177] Section 10,[178] Section 4 and Sections 275–77.[179] Section 38 guarantees freedom of religion, Section 10 prohibits a state religion, and Sections 4 and 277 allow the states to establish *Sharia* courts and expand the jurisdiction of the *Sharia* Court

176. Femi Awoniyi, Bala Usman, G.G. Darah, and the Concept of Nation in Nigerian Politics, Rejoinder to a speech entitled "Ignorance, Knowledge and Democratic Politics in Nigeria," (April 17, 2001) (on file with author).

177. NIG. CONST. (Constitution of the Federal Republic of Nigeria, 1999) §38. Section 38 of the 1999 Nigerian Constitution reads:

> (1) Every person shall be entitled to freedom of thought, conscience and religion, including freedom to change his religion or belief, and freedom (either alone or in community with others, and in public or in private) to manifest and propagate his religion or belief in worship, teaching, practice and observance.
>
> (2) No person attending any place of education shall be required to receive religious instruction or to take part in or attend any religious ceremony or observance if such instruction, ceremony or observance relates to a religion other than his own, or religion not approved by his parent or guardian.
>
> (3) No religious community or denomination shall be prevented from providing religious instruction for pupils of that community or denomination in any place of education maintained wholly by that community or denomination.
>
> (4) Nothing in this section shall entitle any person to form, take part in the activity or be a member of a secret society.

Id.

178. *Id.* Section 10 states: "The Government of the Federation or of a State shall not adopt any religion as state religion." *Id.*

179. Mahmoud, *supra* note 5, at 13.

of Appeals.[180] The interpretation of these sections is greatly contested in the *Sharia* Project.

2. Sections 10, 38, and 275–77: *Sharia* and State Religion

Section 10 of the 1999 Nigerian Constitution reads: "The Government of the Federation or of a State shall not adopt any religion as state religion."[181] This is understood to mean that neither the legislative nor executive powers of the Federation or the States may "aid, advance, foster, promote or sponsor a religion."[182] *Sharia* advocates though counter that Section 10 does not mean secularism, as the term is never actually used anywhere in the Constitution.[183] Furthermore, advocates argue that *Sharia* has always been, and continues to be, an integral part of the Northern legal system, since pre-independence, and as a result, the adoption of *Sharia* does not amount to a state religion, and further *Sharia* applies only to Muslims, not non-Muslims.[184] Advocates further point to Section 38 of the 1999 Constitution, which expressly advocates freedom of religion (allowing Muslims the right to practice their religion, which means living according to the law of *Sharia*), and Sections 275–77, which empower the states to establish *Sharia* Courts.[185]

In particular, advocates argue that Sections 275–77 expressly allow the creation of *Sharia* courts, including a *Sharia* Court of Appeals, which gives the court jurisdiction over personal (civil) matters, and declare that the jurisdiction is "in addition to such other jurisdiction as may be conferred upon it by the law of the state."[186] So how can an express constitutional allowance for *Sharia* Court jurisdictional expansion make the extension ,adoption, and adjudication of *Sharia* penal law be a violation of the Constitution?

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180. NIG. CONST. (Constitution of the Federal Republic of Nigeria, 1999) §§ 4, 10, 38 and 277.

181. *Id.* at § 10.

182. PETERS, *supra* note 117, at 32.

183. Ibrahim, *supra* note 72*,* at 12–13.

184. PETERS, *supra* note 117, at 32.

185. *See id; see also* NIG. CONST. (Constitution of the Federal Republic of Nigeria, 1999) §§ 275–77.

186. NIG. CONST. (Constitution of the Federal Republic of Nigeria, 1999) §§ 275–77.

Sharia opponents argue that adopting and enforcing any religious penal law amounts to adopting a state religion, which is forbidden by Section 10 of the Constitution.[187] Specifically, opponents argue that recognition of Muslim personal (civil) law is sufficient for Muslims to live according to Islam, and as a result the elimination of *Sharia* penal law is not a violation of Muslim's freedom of religion, particularly since the Muslim North has lived without *Sharia* penal law for a significant period of time prior to 1999.[188] Opponents further argue that since extension of *Sharia* into the penal law would require an intensive involvement of the State, it is in fact an adoption of a state religion within the context of the Constitution.[189] While the State acts as a "disinterested arbiter" between parties in civil disputes, the State invokes its "coercive powers" in criminal matters; as a result, state expansion and enforcement of *Sharia* prejudices other religions in favor of Islam and requires the State to integrate and enforce religious law outside the confines of a secular state.[190] Opponents also see the extension of *Sharia* into the penal law as creating a slippery slope, in that, once one state is permitted to extend *Sharia*, other states will follow.[191] The slippery slope argument holds some power, exemplified by the fact that, to date, eleven states have followed Zamfara in adopting and extending *Sharia*, ultimately resulting in the slow dissolution of the 1999 Constitution. As a result, some scholars argue that opposition to the extension of *Sharia* is vital to hindering the rapid Islamicization of the Nigeria and subsequent deviation from the arguably secular Constitution.[192]

3. Section 4: State Legislative Powers

Section 4 of the 1999 Constitution is also of importance in understanding the *Sharia* Project. Section 4 divides the legislative powers of Nigeria between the Federation and the states.[193] This allocation of powers is described in detail in the 1999 Con-

187. PETERS, *supra* note 117, at 32; Mahmoud, *supra* note 5, at 13.
188. PETERS, *supra* note 117, at 32.
189. *Id.*
190. Ibrahim, *supra* note 72, at 11.
191. *See generally* Ibrahim, *supra* note 72; Mahmoud, *supra* note 5; PETERS, *supra* note 117.
192. Mahmoud, *supra* note 5, at 20.
193. PETERS, *supra* note 117, at 32.

stitution's appended Executive Legislative List and the Concurrent Legislative List.[194] The Executive Legislative List details sixty-eight subjects that fall within federal legislative power, while the Concurrent Legislative List details subjects that fall under both the federal and state legislative powers.[195] Matters that do not fall under either list are left to the states' legislative powers.[196] Neither list mentions penal law, prompting advocates to argue that the states have the legislative power to adopt or extend *Sharia* penal law.[197]

Opponents counter that while the penal law in general is not detailed in the Legislative List, the Executive Legislative List does discuss and detail the subjects of evidence, police, and prisons as federal matters, therefore, the states may not address these topics.[198] If the laws of evidence, police, and prisons are federal subjects, how can states justifiably and fairly try criminal cases or impose criminal sanctions? They cannot, because the *Sharia* Penal Codes, as the *Hadd* offenses, not only contain numerous evidentiary provisions,[199] but they also exhibit the numerous inconsistencies and differences that exist between the Islamic law of evidence and the current common law Evidence Act.[200] Dr. Ruud Peters, professor at the University of Amsterdam, describes this dilemma perfectly:

> Since the *hadd* offen[s]es in particular are subject to strict rules of proof, the constitutional position regarding evidence is an obstacle to the strict application of these rules, for the fed-

194. *Id.* at 32.
195. *Id.*
196. *Id.*
197. *Id.*
198. *Id.*
199. *Id.*
200. For example, one of the major differences between the two sets of evidence laws concerns the unequal treatment of men versus women regarding the rules of evidence. The Islamic law standards are biased against women. Under *zina*, in order to exonerate herself from a charge of adultery, a woman is required to present four male Muslim witnesses to the rape. Therefore, if a woman cannot find four adult pious males to accuse the perpetrator, the woman is accused of adultery and can be punished by stoning. Whereas, the common law Evidence Act advocates equal evidentiary standards for both men and women. Mahmoud, *supra* note 5 at 18; PETERS, *supra* note 117, at 20–21; *Rape and Incest as Penal Code Offenses,* Sisters in Islam Website — Justice, Equality, Democracy and Diversity, Nov. 30, 2000, *at* http://www.muslimtents.com/sistersinislam/PressStatements/30112000_a.htm.

> eral law of evidence admits more forms of legal proof in criminal matters than only confession and the testimony of two (for unlawful intercourse, four) adult Muslim males of good moral reputation. Application of the federal rules would make the application of corporal punishment for these offen[s]es much easier.[201]

Thus, the essence of the *Sharia* penal code is frustrated.

Finally, advocates argue that the Constitution does not direct the states to enact legislation based upon specific sources beyond the agreement of the people and members, through a democratic process, and as represented by the state legislature.[202] Thus, the Northern states argue that the imposition and extension of *Sharia* has been by the support of the people in accordance with a democratic process, and with the support of their state legislatures.[203] But, in reality, it is known that no state governors engaged in any dialogue or held consultations with their citizens concerning the desirability of the adoption or extension of *Sharia*.[204]

4. Due Process and Equal Protection Issues

Equal protection is another integral problem with the *Sharia* Project. The application of two concurrent penal codes, the *Sharia* Penal Code and the Federal Penal Code, go to the heart of equal protection of the law. Specifically, this situation overtly counters the equal protection of the law advocated by the Constitution.[205] This basically means that citizens of the same territory face different punishments for the same crimes. For example, in the case of the *Hudud*, Muslims are subjected to extreme criminal punishments, such as stoning to death, for the same crimes for which non-Muslims are barely punished.[206] This disparity has created insecurity and opposition in the non-Muslim population and resentment in the Muslim population.[207]

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201. PETERS, *supra* note 117, at 34.
202. Mahmoud, *supra* note 5, at 14.
203. Ojielo, *supra* note 7, at 158.
204. *Id.*
205. Mahmoud, *supra* note 5, at 15.
206. *Id.*
207. *Grand hypocrisy of Sharia application and the politics of religious power play*, NIGERIA TODAY ONLINE (Aug. 23, 2002), *at* http://waado.org/Ni

In addition, as discussed earlier, the *Maliki* School of Jurisprudence, practiced in the North, dictates that an individual is guilty until proven innocent.[208] This standard directly counters the due process required under Article 36 of the 1999 Constitution which states, "[e]very person who is charged with a criminal offense shall be presumed to be innocent until he is proven guilty."[209] Furthermore, under state and federal legislation, courts can not enforce customary laws that are "repugnant to natural justice, equity and good conscience," "incompatible either directly or by implication with any law…in force," or "contrary to public policy."[210] These statutory, legislative and policy factors bolster the argument that the *Sharia* Project is in contradiction to the notion of equal protection and due process. The specifics of the reasons underlying this notion are discussed more in detail below.

Many Northern states, such as Zamfara and Kano, have attempted to alleviate non-Muslim concerns.[211] The various Northern governments have stated that the code does not apply to non-Muslims and therefore will not be enforced against non-Muslims.[212] But this also means that non-Muslims have no legal standing to challenge the constitutionality of the code in the *Sharia* courts, thus limiting their voice in the matter.[213] Opponents also argue that, although non-Muslims are not prosecuted in *Sharia* courts, they still have to live in the *Sharia* States where their "public life, culture, and social ethos" are greatly affected by the *Sharia* laws, particularly when dealing with enforcement issues, and where their civil, political, and constitutional rights are hindered greatly as a result.[214]

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gerDelta/HumanRights/Sharia/NigeriaOnline-23Aug2.htm (last visited Oct. 2, 2003).

208. Ojielo, *supra* note 7, at 143.

209. NIG. CONST. (Constitution of the Federal Republic of Nigeria, 1999) §36.

210. CRLP REPORT, *supra* note 15, at 77, *citing* Kaniye S.A. Ebeku, *The Legal Status of Nigerian Children Born by a Widow: Chinweze v. Masi Revisited*, 38 J. AFR. L. 46, 57 (1994).

211. Mahmoud, *supra* note 5, at 15.

212. *Id.*

213. *Id.*

214. *Id.* For example, *Sharia* outlaws the sale of alcohol, gambling, and other such practices, which other religions do not outlaw. Therefore, non-Muslims living in the *Sharia* States would not be able to purchase alcohol if they desired to do so. Similar problems exist with police enforcement. Often

Adequate police and judicial enforcement also create equal protection problem and due process problems.[215] A.B. Mahmoud, a Nigerian scholar, argues that it "appears problematic and almost an illusion for states to assume the possibility of far reaching reforms of their criminal justice systems under the present federal structure in which they neither have autonomous judicial institutions nor independent mechanisms for the enforcement of their own laws." [216] Specifically, Mahmoud asserts that the judicial systems are organized so that eventually the state courts merge into the Federal Appellate Court system, making every decision of the lowest court reviewable by the highest court in the country. [217] In reality this means that *Sharia* court holdings do not garner much weight since they can be overturned by the Federal Appellate Court, so the impact and purpose of the *Sharia* Project itself is diminished.

Similar problems with police enforcement and the prison system exist in the application of the *Sharia* Project.[218] Nigeria currently has one national police force and one prison system.[219] The federal authorities control both the police and prison systems.[220] Furthermore, the police and prison employees come from a variety of religious, ethnic, and cultural backgrounds.[221] As a result, the extreme diversity of the police and prison employees make it difficult to implement uniform enforcement of laws, because "the difficulties in enforcing unfamiliar laws in respect of which they receive no particular training and have no particular sympathies, even discounting outright hostility, are clearly enormous."[222] A greater concern, though, is the ability of

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the police are not prudent or discriminatory in their actions. Specifically, there have been numerous incidents where non-Muslims have been subjected to *Sharia* punishments because the police in the *Sharia* States have not bothered to determine the identity of the alleged offender. *Id.*

215. *Id.* at 14.

216. *Id*.

217. Mahmoud, *supra* note 5, at 14.

218. *Id.*

219. *Id.*

220. *Id.*

221. *Id.*

222. *Id.* For example, there have been numerous incidents of non-Muslim offenders being subjected to Sharia punishments because the police have failed to recognize the persons as non-Muslims, or have even failed to inquire into these people's identities. *Id.*

the Nigerian government to accommodate and enforce such "different notions of crime and punishment," particularly punishments which are seen by the international community as degrading and apparent human rights violations.[223]

Another enforcement problem is the wide discretion used by the police in choosing a proper venue for prosecution. The police are the first in the chain of prosecution, and the local police are known to choose the venue for prosecution arbitrarily and in a biased manner.[224] For example, the police will often favor Muslim offenders by arraigning them before non-Muslim courts for offences that would have garnered harsher punishments in the *Sharia* courts.[225] As a result, there is unequal protection of offenders even within the Muslim community. The Muslim aid groups or *Hisbah* also create equal protection enforcement problems in the North.[226] *Hisbah's* arbitrary use of prosecutorial power is problematic to fair notions of equal protection and due process. Specifically, the *Hisbah* are allowed to prosecute based upon their notion of what constitutes a violation of *Sharia* moral norms, but not on what "is" a *Sharia* violation — which can lead to arbitrary and capricious detention and persecution of innocent individuals.[227] Most dangerous is the fact that the *Hisbah* often do not discriminate between Muslims and Non-Muslims.[228] These are such grave *Sharia* Project problems that even some advocates of *Sharia* reform appreciate these Constitutional and legal inconsistencies.[229]

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223. Mahmoud, *supra* note 5, at 15.

224. *Id.*

225. *Id.*

226. *Id.* The *Sharia* governments created the *Hisbah* to aid in the arrest and enforcement of the *Sharia* Penal Codes. *Id.*

227. *Id.*

228. Mahmoud, *supra* note 5, at 15.

229. *Id.* at 16–17 (emphasis added).

> [U]nder the current arrangement…the overwhelming legislative and executive authority of the Federal Government has confined the states to narrow limits…*Sharia* which relies on state legislation, is constitutionally excluded from many areas of societal life especially in the area of economic policy, secondly the exclusive legislative power of the federation over some vital areas…like the law of evidence means that even where the *Sharia* applies as the substantive law, it may be subjected to adjectival rules that prevent realizing its potential. Dr Tabiue also draws attention to the fact that *Sharia* courts

The current dual legal system in the North has resulted in the abuse of the criminal justice system, the fostering of Islamic fundamentalism, and has assisted in furthering the disintegration of Nigerian national unity. Until these issues are resolved, the *Sharia* Project will continue to create an array of equal protection and due process problems.

B. International law

1. Relevant International Law

One of the major arguments in opposition to *Sharia* has been that numerous *Sharia* laws violate international human rights law. [230] Nigeria is a Member State of the United Nations.[231] As a Member State, Article 1, Section 3 of the United Nations Charter requires Member States to act together to promote and encourage "respect for human rights and for fundamental freedoms."[232] Nigeria is also a party to the International Covenant on Civil and Political Rights ("ICCPR"), the African Charter on Human and Peoples' Rights ("ACHPR"), the Convention on the Elimination of All Forms of Racial Discrimination, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment ("CAT"), and the Convention on the Elimination of All Forms of Discrimination Against Women ("CEDAW").[233] The *Sharia* Project and *Sharia* criminal sanctions sit in direct contravention to the human rights standards set forth in these treaties.

> which operate only at state level, lack independent power to interpret and apply Islamic laws. All their decisions are subject to appeal to federal courts where English legal concepts, legal methods, and legal procedures dominate. He further poses the question how far can "its (federal government) police force be relied upon to enforce *Sharia* laws…a police force (that is) manned by people of various faiths and background[s]."

Id.

230. Such as the biased treatment of women and the alleged cruelty of the *Hudud* punishments as stoning.

231. Nigeria became a member on October 7, 1960. List of Member States, UN Website, *available at* http://www.un.org/Overview/unmember.html (last visited Oct. 2, 2003).

232. U.N. CHARTER art.1, para. 3.

233. Zarifis, *supra* note 6, at 23.

In addition, Article 14 of the Vienna Convention on the Law of Treaties ("VCLT") states that once a state (nation) has become a party to these international treaties, the state (nation) has the obligation to carry out its international obligations and can not invoke its domestic law as justification for non-compliance with the treaty.[234] Under the VCLT, the Federal Nigerian government has the ultimate responsibility of ensuring that the principles set forth in these treaties are carried out in good-faith to their fullest potential.[235] Thus, it can be argued that, the Nigerian federal government's failure to control and restrict the *Sharia* Project is a violation of the VCLT and international law; particularly since state-imposed *Sharia* may "not be invoked as a reason for non-implementation of Nigeria's international human rights obligations."[236]

Furthermore, Nigeria is also obligated to abide by these international treaties domestically. Nigeria frequently uses the method of incorporation to implement international treaties domestically.[237] Nigeria incorporates and enforces the treaty provisions domestically through an act of Parliament *en banc*.[238] As a result, all fundamental rights supported by the human rights treaties that were signed or acceded to by Nigeria are applicable throughout Nigeria.[239] For example, Nigeria has signed, ratified, and incorporated into domestic law the ACHPR.[240] Therefore Nigerian courts can invoke its provisions in interpreting relevant domestic legislation.[241]

The international community has also argued that the Universal Declaration of Human Rights ("UDHR") is international customary law, and as a result sets human rights standards for all states including Nigeria.[242] Thus, under Article 5 of the

234. Vienna Convention on the Law of Treaties, art. 14, May 23, 1980, 1155 U.N.T.S. 331.

235. Zarifis, *supra* note 6, at 23.

236. *Id.*

237. Okeke, *supra* note 2, at 342.

238. *Id.*

239. *Id*.

240. *Id.*

241. *Id.*

242. *See* PETERS, *supra* note 117, at 35. *See also* Christian Boulanger, *Islamic Law and International Human Rights — The Case of Corporal Punishment in Iran*, *available at* http://userpage.fu-berlin.de/~boulang/texte/iran2.html (last visited Oct. 2, 2003).

UDHR, which prohibits torture and cruel and inhuman treatment, the imposition of *Sharia* punishments, such as stoning and amputation, violate the UDHR.[243] However, most African and Asian countries argue that the UDHR does not fairly represent these countries and their belief systems because most African and Asian countries did not participate in the formulation of the UDHR, as they were still under colonial rule during this time.[244]

Lastly, *Sharia* infringes upon numerous legal rights and religious practices accorded to religious minorities.[245] For example, Article 27 of the ICCPR "protects religious minorities from being denied the right to practice their religions 'in community with the other members of their group.'"[246] For example, the disparate standards surrounding the rules of evidence, rights of appeal, and legal representation applied to Muslims as opposed to non-Muslims, discussed in Part IV.A, inherently discriminate against non-Muslims and infringe upon the right of non-Muslims to freely practice their religion.[247] *Sharia* not only violates the rights of non-Muslim minorities but also precludes Muslim opponents of the *Sharia* Project, whose opposition isolates them from the majority *Sharia* supporters, from being heard by a constitutionally mandated court, if desired.[248] As a result, they are forced to practice Islam according to the rules of the Muslim State, and denied the civil and political rights provided by the secular federal government and international human rights standards and treaties.

Sharia also violates Article 6 of the ICCPR, which protects the right to life.[249] The *Hadd* punishment of stoning to death, such as in *zina* cases, is a clear violation of this article.[250] The UN Human Rights Commission has interpreted the ICCPR to permit the death penalty "only for intentional offenses that

243. *See* Universal Declaration of Human Rights, art. 5, G.A. Res. 217A(III), U.N. GAOR, 3d Sess., U.N. Doc. A/810 (1948); *see also* Boulanger, *supra* note 242 (arguing that *Sharia* punishments are cruel and inhumane).

244. Boulanger, *supra* note 242.

245. Zarifis, *supra* note 6, at 23.

246. *Id.*

247. *Id.*

248. *Id.*

249. *Id.*

250. *Id.*

cause lethal or extremely grave consequences, stating that 'when the death penalty is applied by a state party for the most serious crimes…it must be carried out in such a way as to cause the least possible physical and mental suffering.'"[251] The punishment of stoning to death clearly violates both of these principles when imposed to punish adultery. First, adultery does not fall under "most serious crime," and second execution by stoning is not a method that causes "the least possible physical and mental suffering."[252] Furthermore, the *Hadd* punishments of stoning, flogging, and amputation for offenses of theft, alcohol consumption, robbery, adultery, and rape violate Article 7 of the ICCPR, which prohibits torture or cruel, inhumane or degrading punishment.[253] CAT further supports this assertion.[254] In addition to these international human rights treaties, Article 34 of the 1999 Constitution also states that no person shall be subjected to torture or to inhuman or degrading punishments.[255]

Although Nigeria is a signatory to these various human rights treaties and has enacted numerous equal protection domestic policies, discrimination, specifically directed against women, persists — resulting from the extension of *Sharia*. One such discriminatory tactic was seen shortly after Zamfara State adopted *Sharia* law, when officials released a directive ordering all single and divorced women to get married or lose their jobs.[256] This directive was adopted despite the enactment of the 2000 National Policy on Women in Nigeria[257] and is clearly contrary to Article 11 of CEDAW, which requires countries to protect womens' right to work, ensure that women have equal training and employment opportunities, receive equal pay for

251. Zarifis, *supra* note 6, at 23.

252. *Id.* at 24.

253. *Id.*; International Covenant on Civil and Political Rights, art. 7, *opened for signature* Dec. 16, 1966, 999 U.N.T.S. 171.

254. Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *opened for signature* Dec. 10, 1984, 1465 U.N.T.S. 85.

255. NIG. CONST. (Constitution of the Federal Republic of Nigeria, 1999) § 34.

256. CRLP REPORT, *supra* note 15, at 84.

257. *Id*. The Policy on Women proscribes that all "labour laws shall be renewed to include more and better protective measures for women workers…which include ensuring employers provide paid maternity to working mothers, whether single or married." *Id.*

work of equal value and have access to the same benefits, compensatory schemes and allowances, especially in relation to retirement and incapacity to work, as men.[258] In addition to CEDAW, Article 42 of the 1999 Constitution embodies the principle that all persons are equal under the law.[259] Thus, certain provisions of the *Sharia* Penal Codes, such as the requirements for proof of *zina*, violate both Article 42 and CEDAW.[260]

Sharia and the *Sharia* Project have been and continue to be a constant point of controversy in the international community. The first step in recognizing the complexity of the controversy is in understanding the importance of *Sharia* for Muslims. To Muslims, *Sharia* is not just a way of life — it is an expression of divine truth.[261] Consequently, any Muslim who lives in an Islamic State and does not follow *Sharia* is not only subject to legal reprobation, but also to spiritual damnation.[262] The importance to Muslims of extending *Sharia* within the Muslim majority North is therefore understandable. Nevertheless, the conflicting philosophical and spiritual notions of human rights and freedom between international human rights law and *Sharia* continue to haunt the international community and Nigeria.[263]

2. Reconciling International Human Rights and *Sharia*

Majid Khadduri who is a leading scholar in Islamic law identifies individual freedom, dignity, brotherhood, equality without prejudice, respect for the honor, reputation, and family of each individual, as well as, the right to be presumed innocent as the "most important human rights principles in Islam."[264] Although these principles seem to agree with international human rights

258. Convention on the Elimination of All Forms of Discrimination Against Women, art. 11, Dec. 18, 1979, 1249 U.N.T.S. 13.

259. PETERS, *supra* note 117, at 37.

260. *Id.* at 38.

261. Isha Khan, *Islamic Human Rights: Islamic Law and International Human Rights Standards*, 5 APPEAL 74, 76 (1999) [hereinafter Khan, *Islamic Human Rights*].

262. *Id.*

263. *Id.* at 78 ("While Western countries may suggest that the countries applying traditional or conservative Islamic law have no regard for human rights, the Islamic world asserts itself as a champion of the human rights provided for by God, in the *Shar'ia*.").

264. *Id.* at 78.

standards, the underlying philosophy of Islam that all human acts are subject to God's will, versus the Western notion of free will, actually contravene international law in the application of *Sharia*. [265] The most controversial tension between Islamic law and international law concerns the unequal treatment of women under Islamic law.[266]

Sharia advocates argue that Islam actually empowers women by giving them a "special rank" in the Islamic order.[267] Islamic reformers have responded, in support of *Sharia,* to the international community by employing a cultural relativist approach.[268] But, even within the scope of cultural relativism, there are varying degrees of conformity to international law.[269] For example, modern Islamic reformers have attempted to legitimize *Sharia* by advocating a liberal interpretative approach.[270] Further, by employing a historical perspective, the reformers argue that the contentious gender provisions of the *Qu'ran* were made to protect women in case of marriage dissolution.[271] However, Western critics argue that the provisions reflect "unfounded gender inequity." [272]

Islamic countries, including Nigeria, have also justified their actions, such as the advancement of the *Sharia* Project, to the international community, by adopting a defensive attitude toward the Western world.[273] These advocates argue that the international community has disproportionately targeted Islam

265. *Id.*

266. *Id.* One such tension is that *Sharia* allegedly gives husbands the right to chastise their wives for "disobedience" which includes a "light beating." *Id.*

267. Khan, *Islamic Human Rights*, *supra* note 261, at 79. Proponents argue that *Sharia* makes special provisions for women to provide them with financial security and stability, which they were historically unable to achieve by themselves. Specifically, Muslims point to *Qu'ranic* provisions which state "Men have *qawarma* [guardianship and authority] over women because they [men] spend their property in supporting them [women]." *Id.*

268. *Id.* at 79.

269. *Id.* For example, strict relativists view the world in relative terms while moderate relativists recognize the need for some minimal standards; finally universalists value western concepts of rights. *Id.*

270. *Id.* at 80. "These reformers argue that the sources of *Sharia* law should be examined from a strictly historical perspective, and that much of the literal interpretation of *Qu'ranic* scripture should be contextualized, and in some cases abandoned." *Id.*

271. *Id*.

272. *Id*.

273. Khan, *Islamic Human Rights*, *supra* note 261, at 79.

ternational community has disproportionately targeted Islam for human rights violations, and as a result, the media has unfairly responded to the resurgence of Islam by also pushing Islam to the forefront of international human rights.[274] They argue that the Western media is aggressive and unfair in constantly highlighting images of rape, polygamy, female genital mutilation, violence against women, and segregation of the sexes.[275] Further, many advocates argue that the Western media skews *Sharia* by failing to distinguish between common practice and extremism and by portraying Islamic law as restrictive of individual rights, patriarchal, and demeaning to women.[276] For example, by equating such things as wearing the *burka* (veiled covering worn by many Muslim women) with a universal oppression of women through sexual segregation,[277] the Western media have hindered the development of a legitimate method for reconciling Islamic law with international human rights standards.[278]

V. POSSIBLE APPROACHES TO RESOLVING THE *SHARIA* PROJECT

A. Traditional Approaches

The federal Nigerian government's attempts to resolve the debate by itself, thus far, have been fruitless, leaving Nigeria with the only option of relying upon international law. However, as discussed above, one of the major problems underlying

274. *Id.*

> This has allowed the West to suppress the Islamic revivalist movement and the rise of radical Islamic fundamentalism by rallying the international human rights community, which itself is largely grounded in Western rights and values, to assert its abhorrence for the human rights violations taking place in parts of the Islamic world. Because human rights in theses Islamic countries are rooted in Islamic theology but are also tempered by political and economic relations with the West, the West has used this means to assert its power in the international community, and to protect its secular, socio-democratic power structure.

Id.

275. *Id.* at 82.

276. *Id.* at 75.

277. *Id.* at 82.

278. *Id.*

the *Sharia* Project is the inability to reconcile *Sharia* with both Nigerian domestic law and international law. The international community and *Sharia* advocates, though, have offered numerous theoretical approaches to resolving and legitimizing the *Sharia* Project.[279]

A few approaches offered by international legal scholars consist of a cultural relativist approach, divided further into strict and moderate cultural relativism, a universalist approach and a feminist approach.[280] Many Muslim scholars offer similar approaches, but with an Islamic perspective: the cultural relativist approach, the contemporary and liberal interpretative approach, and an Islamic universalist approach.[281]

Both international and Muslim cultural relativists believe that it is difficult, if not impossible, to establish universal human rights standards that apply equally to all cultures.[282] Strict cultural relativists recognize the contravention of international human rights by *Sharia,* but offer no tangible solution to this problem.[283] Instead, they denounce universal standards for the protection of cultural values.[284] Moderate cultural relativists acknowledge the problem, such as the *Sharia* Project, and attempt to resolve the problem by incorporating universal norms into pre-existing cultural norms.[285] International universalists reject cultural diversity in favor of universal human rights standards.[286] Finally, international feminist theorists either, deconstruct all possible solutions to the problem, such as the *Sharia* Project, advocate liberal individual autonomy, or create new "female rights" that work toward a change and resolution in policy.[287]

279. Khan, *Islamic Human Rights*, *supra* note 261, at 79.

280. Kimberly Younce Schooley, *Cultural Sovereignty, Islam, and Human Rights — Toward a Communitarian Revision*, 25 CUMB. L. REV. 651, 713 (1994).

281. Khan, *Islamic Human Rights*, *supra* note 261, at 79–81.

282. *Id.* at 79. This assertion is premised on the notion that there are too many and too diverse cultural traditions, political structures, and levels of development in the world to establish universal human rights norms. *Id.*

283. Schooley, *supra* note 280, at 713.

284. *Id.*

285. *Id.*

286. *Id.*

287. *Id.*

As briefly described in Part IV.B.2 of this Note, unlike the international community, modern Islamic reformers argue for a liberal interpretative approach.[288] This approach is consistent with the moderate relativist approach, arguing that *Sharia* law sources should be examined from a strictly historical perspective.[289] Modern Islamic reformers also believe that much of the literal interpretation of *Qu'ranic* scripture should be contextualized, and in some cases, abandoned.[290] Finally, some Muslims attempt to legitimize and support *Sharia*'s contravention with Islamic human rights by asserting their belief that Islamic law is in fact universal.[291] These supporters argue that God is the sovereign ruler of the universe, therefore, "to break the law is a transgression against both society and God, a crime and a sin; the guilty are subject to punishment in this life and the next."[292] These Islamic universalists also argue that Islam does in fact protect human rights, but according to its own set of values.[293] While these various scholarly approaches are relevant and necessary to the dialogue surrounding the *Sharia* Project and Islamic law's role in international human rights, they have nevertheless failed to achieve universal support from either the Muslim or international communities.

B. A Cross-Cultural Approach

The highly respected Islamic scholar Abdullahi Ahmed An-Na'im offers an alternative international legal approach that has seen some support from both Muslims and the international community. An-Na'im "maintain[s] that the lack of insufficiency of cultural legitimacy of human rights standards is one of the main underlying causes of violations of those standards."[294]

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288. Khan, *Islamic Human Rights*, *supra* note 261, at 80.
289. *Id.* at 80.
290. *Id.*
291. *Id*. at 81.
292. *Id.*
293. *Id.*
294. Abdullahi Ahmed An-Na'im, *Toward a Cross-Cultural Approach to Defining International Standards of Human Rights: The Meaning of Cruel, Inhuman, or Degrading Treatment or Punishment, in* HUMAN RIGHTS IN CROSS-CULTURAL PERSPECTIVES: A QUEST FOR CONSENSUS 19 (Abdullahi Ahmed An-Na'im ed., 1992) [hereinafter *Cross-Cultural Approach*].

An-Na'im argues that the first step to protecting human rights standards and to resolving human rights violations is to address the multitude of political, economic, cultural, and social factors underlying state actions.[295] This Note has discussed the various socio-economic and cultural factors that have helped initiate and support the rise of the *Sharia* Project.[296] The next step to resolving conflicts similar to the *Sharia* Project is to formulate or recognize a possible international legal approach applicable to the conflict. An-Na'im has offered the international legal community such an approach: a "cross-cultural approach."[297]

An-Na'im's cross-cultural approach focuses on a policy of discourse, legitimization of values, and understanding between societies. This approach advocates and focuses on the individuals' right to safeguard their personal integrity and human dignity against excessive or harsh punishments imposed by their own governments, such as the *Hadd* punishments for adultery.[298] At the same time, imposing external moral standards upon an alleged human rights violator is also counterproductive and likely to be unsuccessful.[299] Thus, for example,

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295. *Id.* at 19.

296. *See supra* Parts II–IV.

297. *Cross-Cultural Approach*, *supra* note 294, at 19. ("I argue that internal and cross-cultural legitimacy for human rights standards needs to be developed, while I advance some tentative ideas to implement this approach."). For the purpose of this discussion, An-Na'im defines cultures as:

> [P]rovid[ing] both the individual and the community with the values and interests to be pursued in life, as well as the legitimate means for pursuing them. It stipulates the norms and values that contribute to people's perception of their self-interest and the goals and methods of individual and collective struggles for power within a society and between societies. As such, culture is a primary force in the socialization of individuals and a major determinant of the consciousness and experience of the community. The impact of culture on human behavior is often underestimated precisely because it is so powerful and deeply embedded in our self-identity and consciousness.

Id. at 23.

298. *Id.* at 37–38.

299. *Id.* at 20, 38.

> Even though outsiders may sympathize with and wish to support the dominated and oppressed groups or classes, their claiming to know what is the valid view of culture of that society will not accomplish this effectively. Such a claim would not help the groups the outsiders

An-Na'im argues that "[g]reater consensus on international standards for the protection of the individual against cruel, inhuman, or degrading treatment or punishment can be achieved through internal cultural discourse and cross-cultural dialogue."[300]

The cross-cultural approach primarily relies on the notion that "[p]eople are more likely to observe normative propositions if they believe them to be sanctioned by their own cultural traditions, observance of human rights standards can be improved through the enhancement of the cultural legitimacy of those standards."[301] Therefore, in the *Sharia* Project instance, the North, the South, the federal Nigerian government, and international scholars and legislators would need to engage in a dialogue about the contentions and disparities between *Sharia* and international human rights standards. Specifically, in the case of the *Hadd* punishments for adultery, the international community and *Sharia* opponents would first need to analyze and understand the *zina* laws from the perspective of *Sharia* advocates and argue their invalidity, under international law, via a *Qu'ranic* reinterpretation of the relevant *Sharia* laws and the *Qu'ran* itself. For example, this may be possible by allowing *Sharia* opponents within the Muslim community (internal community) to redefine their own identity and rights by highlighting inconsistent provisions in the *Qu'ran* relating to *zina*.

This approach, though, first requires the international community and domestic communities in situations of internal strife, such as those in Nigeria, to recognize that despite a diversity of cultural practice and tradition, societies share certain fundamental values and interests that could be articulated into a common "culture" of universal human rights.[302] Most importantly, An-Na'im does not suggest that this approach is an "all

> wish to support because it portrays them as agents of an alien culture, thereby frustrating their efforts to attain legitimacy for their view of the values and norms of their society.

Id. at 20.

300. *Id.* at 38. An-Na'im argues that people of diverse cultural backgrounds can agree upon differing meanings, scope and methods of international human rights standard through "internal reinterpretation of, and a cross-cultural dialogue about, the meaning and implications of basic human rights values and norms." *Id.* at 21.

301. *Cross-Cultural Approach*, *supra* note 294, at 20.

302. *Id.* at 21.

or nothing" approach; rather, he suggests that while total agreement is unrealistic in many cases, significant agreement about certain issues is possible.[303] The true object of a cross-cultural dialogue is therefore to agree on a body of beliefs to guide action in support of human rights, despite disagreement over the justification, interpretation and application of those beliefs. [304]

An-Na'im offers an example of this approach by comparing the international community's interpretation of Article 7 of the ICCPR, which states, "no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment," with the Islamic law interpretation of the article.[305] The interpretation of Article 7, by *Sharia* advocates can be starkly different from the international community's interpretation of this Article.[306] For example, *Sharia* offenses are classified into three main categories: *hudud,*[307] *jinayat,*[308] and *ta'zir*.[309] *Sharia* requires states, in pursuing conviction for these offenses, to ensure decent standards of living and secure social and economic justice for Muslims before enforcing the punishments.[310] *Sharia* also requires strict standards of proof and provides narrow definitions of these offenses, making a wide range of defenses

303. *Id.* at 39.

> For example, in relation to cruel, inhuman, or degrading treatment or punishment, there is room for agreement on a wide range of substantive and procedural matters even in relations of an apparently inflexible position, such as the Islamic position on *Qu'ranic* punishments. Provided such agreement is sought with sufficient sensitivity, the general status of human rights will be improved, and wider agreement can be achieved in relation to other human rights.

Id.

304. *Id.* at 29.

305. *Id.*

306. *Id.* at 33.

307. *Id. Hudud* are a limited group of offenses which are strictly defined and punished by express terms of the *Qu'ran* and/or *Sunna*, including offenses such as theft — punished by amputation of the right hand, and fornication — punished by a whipping of 100 lashes for an unmarried offender or stoning to death for a married offender. *Id.*

308. *Id. Jinayat* are homicide or causing bodily injury, punishable by exact retribution (eye for an eye) or payment of monetary compensation. *Id.*

309. *Id. Ta'zir* are offenses created and punished by the ruler in exercising his power to protect public and private interests. *Id.*

310. *Cross-Cultural Approach*, *supra* note 294, at 34.

available to the accused.[311] With this understanding, the basic question in applying a cross-cultural approach to international law and *Sharia* is one of interpretation and application of universally accepted human rights.[312]

In the *Sharia* situation, most Muslims would accept that humans have the right not to be subjected to cruel, inhuman, or degrading treatment or punishment, however the Islamic interpretation of this human right differs from the international standard.[313] An-Na'im argues that from a secular and humanist view, *Sharia* punishments are cruel and inhuman.[314] However, for many Muslims, under at least one interpretation of Islam, the matter of punishment is settled by the will of God and expressed by the *Qu'ran*, which is not open for interpretation or question.[315] This is because Muslims believe that religious life does not end with this life but extends to the next life, so it is believed that a religiously sanctioned punishment in this life will absolve an offender from a greater or harsher punishment in the next life.[316] For this reason "in Muslim societies, human judgment regarding the appropriateness or cruelty of a punishment decreed by God is simply out of the question."[317] As a result, An-Na'im suggests that steps can be taken, in approaching a cross-cultural perspective to *Sharia*.[318]

> [T]here is room for developing stronger general social and economic prerequisites and stricter procedural requirements for the enforcement of the punishment. Islamic religious texts emphasize extreme caution in inflicting any criminal punishment. The Prophet said that if there is any doubt (*shubha*), the *Qu'ranic* punishments should not be imposed. He also said that it is better to err on the side of refraining from imposing the punishment than to err on the side of imposing it in a doubtful case. Although these directives have already been incorporated into definitions of the offenses and the applicable

311. *Id.*
312. *Id.* at 35.
313. *Id.*
314. *Id.*
315. *Id.*
316. *Cross-Cultural Approach*, *supra* note 294, at 35.
317. *Id* at 36. It is also believed that harsh punishments are necessary to reform and rehabilitate the thief, as well as to protect society and individuals by deterring potential offenders. *Id.*
318. *Id*. at 36.

> rules of evidence and procedure, it is still possible to develop a broader concept of *shubha* to include, for example, psychological disorders as a defense against criminal responsibility. For instance, kleptomania may be taken as *shubha* barring punishment for theft. Economic need may also be a defense again a charge of theft.[319]

Ultimately, as stated earlier, under a cross-cultural approach, external societies would not impose their morals upon Islamic societies but engage in a dialogue with Islamic societies to work toward a mutual understanding or agreement upon the various mechanisms underlying *Sharia* application. This dialogue would focus primarily on a reinterpretation and redefining of *Sharia* law, values, and customs, and a reconciliation of these factors with international human rights through discourse.

C. Self-Determination as an Approach to Dispute Resolution in the Post-Colonial African State.

The last few decades of the twentieth century saw a sharp increase in the number of new states, resulting from the end of the Cold War, the demise of European communism, and decolonization.[320] It is becoming increasingly apparent that the principles leading up to the decolonization of African states have backfired upon the continent and the international community at large.[321] The current rise of political corruption, unbridled militaries, ethnic conflicts, refugee flows, and economic misery in Africa can be seen as rooted in the creation of the post-colonial borders.[322]

Numerous legal scholars, such as Dr. Makau wa Mutua,[323] argue that "the foreign imposition of artificial states and their continued entrapment within the concepts of statehood and sovereignty are sure to occasion the extinction of Africa unless those sacred cows are set aside for now to disassemble African

319. *Id.*
320. Mutua, *supra* note 1, at 1113.
321. *Id.* at 1113–14.
322. *Id*. at 1114–15.
323. Dr. Mutua is co-director of the Human Rights Center at the State University of New York at Buffalo. At the time he wrote this Article "Why Redraw the Map of Africa: A Moral and Legal Inquiry" he was Associate Director of the Human Rights Program at Harvard Law School. Mutua, *supra* note 1, at 1113.

States and reconfigure them."[324] These scholars argue for self-determination for the post-colonial African States, as a possible solution to internal disputes, such as the *Sharia* Project.[325] This is the case for Nigeria. The rise of ethnic tension in Nigeria, resulting from the *Sharia* Project, has led many political leaders in the Muslim North to ask for secession and to call for self-determination.[326]

One of the major arguments in favor of self-determination, in Nigeria and throughout Africa, is that while all of these African States subscribe to international law, none of these states participated in the creation of the law prior to decolonization.[327] Another argument is that numerous pre-existing ethno-political communities and traditional African States were combined by force or through treaties to create the new post-colonial states.[328]

These post-colonial boundaries were often drawn arbitrarily and driven by pressures of competition between European powers, European trading companies, and Christian missionaries.[329] This coercive environment resulted in the elimination of sovereignty for many pre-colonial ethnic communities and kingdoms, including in Nigeria.[330] As a result of these colonial and post-colonial policies, questions of internal self-determination are on the rise again in present-day Africa. Specifically, numerous ethnic communities and kingdoms of post-colonial Africa are struggling to regain their pre-colonial sovereignty, as the Muslim North is trying to do currently in Nigeria.[331]

The argument for self-determination in the post-colonial African context is supported by Article 20 of the African Charter,[332]

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324. Mutua, *supra* note 1, at 1113.

325. *See generally* Mutua, *supra* note 1.

326. *See generally* Ibrahim, *supra* note 72.

327. Mutua, *supra* note 1, at 1122. Ethiopia and Liberia are exceptions to this argument. *Id.*

328. *Id*. at 1134. Thousands of independent pre-colonial states were compressed into forty new states. *Id.*

329. *Id*.

330. Ahmed El-Obaid and Kwadwo Appiagyei-Atua, *Human Rights in Africa — A New Perspective on Linking the Past to the Present,* 41 MCGILL L.J. 819, 824 (August 1996).

331. *Id.*

332. African Charter on Human and Peoples Rights, adopted June 27, 1981, art. 20, 21 I.L.M. 58, 60 (entered into force Oct. 21, 1986).

which deals with the right of peoples to self-determination.[333] The wording of Article 20 allows for the right to internal and external self-determination.[334] The scholars El-Obeid and Atua further argue that self-determination within the context of the African States should provide a wide array of possibilities, including the protection of a group's right to secede.[335] They also argue that the rights of the people should not be interpreted as rights of the state, which are too often translated into the rights of the leaders.[336] Instead, it is the peoples' rights and voices that should rise above those of their leaders and the arbitrary boundaries dictated by external societies, such as the international community. If correctly acknowledged and applied, this reconstructed right might be a viable solution for resolving the *Sharia* Project in Nigeria.

VI. CONCLUSION: RESOLUTION

A long troubled political and economic history has led to a religious civil war of sorts in Nigeria. The *Sharia* Project is a complicated controversy that not only implicates domestic religious strife but also international human rights conflict. The question of what can be done, can only be answered by Nigeria and the international community taking a step back and trying to understand the underlying beliefs and principles of Islamic society and *Sharia* from and insiders perspective. Foremost, the *Sharia* Project can not be resolved by taking a specific hardline approach, whether a universalist or a strict cultural relativist approach. For example, the recent religious riots over the Miss World Competition show that religious freedom in a "secular" federalist state is not a simple concept and is not easily resolved by taking an extremist approach. If anything, strict adherents of universalist or cultural relativist approaches have been the roots of the problem in Nigeria. It is therefore important to recognize that religious freedom in post-colonial states, such as Nigeria, is not just about *Sharia* or international law, but a reconciliation of the two ideologies.

333. Obaid, *supra* note 330, at 842.
334. *Id*. at 843.
335. *Id.* at 841.
336. *Id.* at 838.

An-Na'im offers a workable approach to reconciling the internal debate in Nigeria as well as the external struggle between international law and *Sharia*. An-Na'im argues for positive changes in the post-colonial Islamic world by advocating an engaging dialogue between external societies and Islamic societies.[337] The objective is that such a dialogue would foster a mutual understanding or agreement on the various mechanisms underlying *Sharia* in international law, and, hopefully, within Nigeria. He further advocates an internal legitimization of human rights standards, through a reinterpretation and reformulation of cultural standards via internal discourse. Specifically, by the creation of a "common culture" through the recognition of fundamental values and interests, countries such as Nigeria may be able to reconcile the dichotomy between the *Sharia* Project and international human rights standards.

Nevertheless, the first step toward reconciliation is through cultural discourse and dialogue. A cross-cultural approach presupposes rational societies and the ability of rational societies to engage in such a dialogue. Practically, this supposition may render a pure cross-cultural approach at least minimally ineffective in such volatile post-colonial Islamic States as Nigeria; particularly since external societies, as the Nigerian Christian and international communities, have thus far failed to show great potential for dialogue and understanding.

337. *See generally Cross-Cultural Approach*, *supra* note 294.

However, there is another possibility for resolving the *Sharia* Project. The application of a cross-cultural approach combined with a greater allowance and reformulation of the notion of internal self-determination might just advance the *Sharia* Project toward a peaceful resolution.

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