CHRISTIANS AND THE SHARIA ISSUE

AN ADDRESS BY

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(1) Introduction

In recent years in our country, we have all become familiar with the Sharia. I suspect however that far too many people know exactly what the Sharia is. In order to fully comprehend the theme of this lecture, it is necessary to start by defining what the Sharia is in simple terms. The Sharia is the body of Divine Law in the Religion of Islam that governs the religions and secular life of Muslims. It is inscribed in the Holy Koran and is regarded as the commands of the Almighty Allah. In short the Sharia constitutes enforceable rules of law binding on all believers in the Religion of Islam. It is acknowledged that these rules are not binding on non-Moslems including Christians.

I propose to start this lecture by showing the history of the administration of the Sharia from the time of the amalgamation of Northern and Southern Nigeria by Lord Lugard up to modern times. Thereafter I intend to show the roots of the present Sharia Controversy in Nigeria. I also intend to express my own view on the importance of resolving the problems arising from the administration of the Sharia. I will emphasize the leadership role which must be played by the leaders of thought among members of the Muslim community in Nigeria and the role which we as Christians ought to play in ensuring that the problem is resolved in the interest of the continued existence of Nigeria as one Nation under our Federal Constitution.

(2) A Brief Account Of The Sharia In The Nigerian Legal System

The administration of the Sharia as the personal law for Moslems in Northern Nigeria in civil causes and matters has not created any controversy whatsoever. Nor has there been any protest from any quarter regarding the right of Sharia courts to exercise jurisdiction over disputes involving the application of the Sharia in matters which have been clearly set out in our Constitution. It is in respect of the

administration of the Sharia in criminal causes and matters that controversy has arisen.

In a very recent publication by a Committee of Concerned Citizens on the Sharia Issue in Nigeria, a number of distinguished jurists (Moslems and Christians) contributed considered papers on the subject of the Sharia Issue in Nigeria. Two of these jurists (one Moslem and one Christian in the person of the Honourable Mohammed Bello a former Chief Justice of Nigeria and Professor B. O. Nwabueze an acknowledged authority and highly respected on authority Nigerian Constitutional Law very clearly explained that it would be unconstitutional for any State to impose some of the punishments prescribed by the Sharia. For example, part of what the Honourable Mohammed Bello said reads as follows:

> "It is clear from the provision of section 36(12) that a person should not be convicted for any Sharia offence unless that offence and its punishment are enacted by the National Assembly of or State House of Assembly. Accordingly, application of the Sharia criminal law without codification by the National Assembly or a State House of Assembly will be unconstitutional.
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> It should be stated here, for the avoidance of doubt, that the Sharia law as stated in the Quran, Hadith and other sources is not a 'written law' within the meaning of Section 36(12) of the 1999 Constitution."

In his own paper, part of what Professor Nwabueze said is as follows:

> "I agree with the Honourable Mohammed Bello, the retired CJN, that without codification by law enacted by the National Assembly or a State House of Assembly, the application of Sharia criminal law by virtue of authority derived directly

from the Quran or the Sunnah will be inconsistent with section 36(12) which prohibits the conviction of a person of a criminal offence 'unless that offence is defined and the penalty therefor is prescribed' in a law enacted by the National Assembly or a State House of Assembly.

But with the greatest respect to the retired CJN, the matter goes far beyond the noncodification of Sharia criminal law by an enactment of the National Assembly or a State House of Assembly. The question is whether the power of the federal or state government can, conformably with the prohibition in section 10 of the Constitution, be employed to codify Sharia criminal law in all its plenitude as ordained in the Quran, the Sunnah and other Islamic Holy Books, and to enforce it against moslem and non-moslem offenders alike by arrest, detention and prosecution. To restrict the application of such a code to moslems alone will lay bare its character as the law, albeit in a codified form, of the religion of Islam, and expose it as a state sponsorship of that religion. The conclusion is thus inescapable that the prohibition in section 10 of the Constitution stamps with an indelible taint of unconstitutionality, the Sharia criminal law, whether in its original form as contained in the Quran and the Sunnah or in a codified form to be ***enacted*** by the National Assembly or a State House of Assembly".

It is not completely accurate to suppose that prior to the enactment of the Penal Code in Northern Nigeria, the Alkali Courts had unqualified licence or power to administer the Sharia Criminal Law. It is to be remembered that shortly after the amalgamation of Northern and Southern Nigeria in 1914, the Nigerian Government enacted a Criminal Code for the entire country. It may be true that notwithstanding that enactment, the Alkali Courts continued to administer the criminal law in accordance with the provisions of the Sharia.

It is also likely that this practice may have been encouraged by the coming into force in 1934 of the Native Courts (Protectorate) Ordinance No. 44 of 1933 which stipulates, ***inter alia***, that a Native Court shall administer –

> "The Native Law and Custom prevailing in the area of the jurisdiction of the court, so far as it is not repugnant to Natural Justice or morality, or inconsistent with any provisions of any other Ordinance."

There can be no doubt however that the administration of Sharia Criminal Law in its unqualified form was never intended to be, and was not indeed permissible by Nigerian Law. This became clear from the judgment of the West African Court of Appeal in ***Tsofo Gubba v. Gwandu Native Authority*** reported in XII WACA 1947 at Page 141. In that case the WACA overruling a previous decision of the same court pointed out that the Native court operating at that time in Northern Nigeria had no authority or power to convict a person of murder under the Sharia if the facts were only compatible with the offence of manslaughter under the Nigerian Criminal Code. This was so notwithstanding the provisions of Section 10(1) of the relevant Native Court Ordinance. The court referred to the relevant enactments including sections 2 and 4 of the Nigerian Criminal Code Act and to section 10(1) of the Native Courts (Protectorate) Ordinance and commented as follows:

> "The effect of these enactments in relation to the issue in this case is, in our opinion, that while a Native Court is empowered by section 10(1)(a) to administer the native law and custom prevailing in the area of its jurisdiction it can only do so in so far as that law and custom is not inconsistent with the provisions of any other Ordinance, and that no person is liable to be tried or punished in a Native Court for an offence against the Criminal Code or other Ordinance except under the provisions of the Criminal Code or other Ordinance. Section

10(2) of the Native Courts Ordinance does, it is true, make such express provision, in that it enacts that 'for offences against any native law or custom a Native Court may' impose certain sentences as therein prescribed. In our opinion this sub-section, read together with the provisions of the other relevant enactments to which we have referred, means no more than that, where an act constitutes an offence against native law and custom but does not constitute any offence against the Criminal Code or other Ordinance of Nigeria, the Native Court is empowered to inflict the penalty appropriate by native law and custom, subject to the restrictions prescribed by the section. To interpret this section of the Native Courts Ordinance so as to empower Native Courts to administer native law and custom in relation to offences created by the Criminal Code would, in our view, deprive of all effect that amendment of the Criminal Code Ordinance which repealed the exclusion of Native Tribunals from the operation of section 4 of the Criminal Code and would, in our opinion, offend against the established canons of interpretation of statutes. We have therefore reached the conclusion that where, by virtue of the provisions of the Native Courts Ordinance and of the appropriate warrant under section 8 thereof, a Native Court exercises its jurisdiction in relation to an act which constitutes an offence against the Criminal Code, whether or not it is also an offence against native law and custom, it is required to exercise that jurisdiction in a manner not inconsistent, that is to say, in accordance, with the provisions of the Code."

Following this case the position of the enforcement of Sharia Criminal Law was considered at the highest level and by the then Colonial Office in London. As a result section 10 of the Native Courts (Protectorate) Ordinance was amended.

Among the amendments introduced, was a new section 10A which enacts as follows:

> "10A. Subject to the provisions of this Ordinance, but notwithstanding anything contained in the Criminal Code Ordinance, where any person is charged with an offence against native law or custom, a native court may try the case in accordance with native law or custom even though the act or omission constituting the offence may also constitute an offence under the provisions of the Criminal Code or of any other enactment:
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> Provided that where an act or omission constituting an offence against native law or custom also constitutes an offence under the provisions of the Criminal Code or of any other enactment, a native court shall not impose a punishment in excess of the maximum punishment permitted by the Criminal Code or such other enactment."

It is quite clear from the foregoing amendments which were introduced by section 2 of Ordinance No. 2 of 1951 that the criminal courts which were authorised to administer Sharia criminal law were not given unqualified licence to do so. It is important to take note of the proviso which stipulates that "A Native Court (which includes an Alkali Court) shall not impose a punishment in excess of the maximum punishment by the Criminal Code or ..... other enactments." This limitation is sufficient to bar punishments such as amputation for the offence of stealing. I entertain no doubt that a punishment such as amputation for the offence of stealing or stoning to death for the offence of adultery could not have been imposed during the period of British Colonial Administration. If it was then it must be because the victims were not aware of their legal rights. The importance of this

point is to demonstrate that the introduction of a legal system which permits punishment by amputation for the offence of theft, is something which is being introduced for the first time. It had been illegal for a period of over 84 years. To do so now is not a question of putting the hands of the Nigerian Clock backwards. It is in truth a question of putting them where they never were at any time since Nigeria became a single political entity.

It was within the limited scope prescribed by the combined effect of the Native Courts Ordinance and the Criminal Code Ordinance that the Sharia operated in the fifties. That scope was further limited by the contents of the provisions for Fundamental Rights introduced into our Constitution in 1958 by the British. The limitations on the operation of Sharia Law inherent in the provisions for Fundamental Rights have been adequately covered by the Honourable Mohammed Bello and Professor Nwabueze and does not require repetition here. The ***status quo*** as at 1958 remained intact until the setting up of the Constitution Drafting Committee when demands for constitutional provisions to provide for the Sharia in the legal systems of those States within the Federation that wanted it, surfaced.

Eventually, after a prolonged debate, the Constitution Drafting Committee arrived at a compromise which, for the sake of brevity, I will label "the 1978 solution". The recommendation of the special committee of the Constituent Assembly which submitted a report to that Assembly on the Sharia issue was substantially in line with the 1978 solution. Although the majority of the members of the Constituent Assembly accepted the report most of the Northern Delegates found it unacceptable and decided to stage a walk out on the Assembly. Fortunately, through the intervention of the then Head of State (Lt. General Olusegun Obasanjo, as he then was) the matter was resolved. The important point to note at this stage is that for 20 good years (1979-1999) the 1978 solution worked and there was hardly any violent demonstration or protest arising from the arrangement.

(3) National Goal And Sharia Controversy

The aim and object of the 1978 solution was to work out a formula whereby all the peoples of Nigeria can continue to live together in harmony for the promotion of the economic and social advancement of our people. It follows from this that the starting point in any serious consideration of the present Sharia controversy is the need to mobilise the nation for the purpose of achieving the goal of national unity. Whilst I agree that failure to maintain the 1978 solution or to find an equally acceptable arrangement in lieu thereof can only lead to the frustration of our effort to reach the goal of national unity, I do not believe that we have reached a point where we have to throw in the towel. Subject to anyone putting forward some alternative arrangement to the 1978 solution I think the way forward is to stick to that solution and tackle the factors which have contributed to the success of certain extremists in their effort to put the hands of the clock back to where they never were in the history of this country.

Nigeria has a substantial moslem population but it is not an Islamic State. It is a secular state in accordance with the provisions of our Constitution. It cannot be otherwise unless there is a forcible imposition of the religion of Islam on the non-muslims of this country. This is something which I feel sure no sensible Nigerian considers possible. The only way consistent with our desire to build a united Nigeria is to explore ways of living together in one country with the liberty of every individual to practice and propagate the religion of his choice.

(4) Religious Extremism

It must be admitted that the 1978 solution was not unanimous but it was the decision of the majority of the representatives who participated in the Constitution Drafting Committee as well as in the Constituent Assembly. There

were extremists on both sides who were not altogether happy about the 1978 solution. These comprise:

(i) Moslems who felt that the provisions relating to the Sharia did not go far enough to enable the States which want to do so to incorporate Sharia in their legal system

(ii) Non-moslems who felt that they had gone as far as is possible (and perhaps too far) to accommodate the Sharia but insisted that provisions relating to the Sharia should not be made to appear as if that law had been given preferential treatment ***vis-a-vis*** customary law.

But for the controversy which developed in recent times the ***status quo*** as at the 1950s up to 1979 would have continued and there would have been no need to make any special provision whatsoever for the Sharia or for customary law in our Constitution.

In my view it is probably true to say that one error made by the fathers of the Constitution was their failure to recommend or propose any arrangement for imparting to the coming generation the reasoning and ideas relating to the Sharia controversy which ultimately crystallized in the 1979 Constitution. We assumed too readily that the arguments which persuaded us to opt for the 1978 solution will be automatically transmitted to succeeding generations. Hence, at our first meeting I proposed the establishment of an institution comprising of knowledgeable, experienced and independent scholars in the two major religions.

The object of that institution will be to promote the retrieval, collection and study of all material relevant to the formulation of the 1978 solution and to propose possible improvements in that solution and its implementation. The said institution should further undertake the collection and publication for the use of interested students of the report of the experts who were the architects of the legislative measures which culminated in the enactment of the Penal

Code of Northern Nigeria. This I see as a long term solution to the controversy.

(5) Examples Of Other Countries

Before adverting to my suggestion for the measures that should be taken in the short term, it is necessary to observe that outside Saudi Arabia and the defunct revolutionary regime in Afghanistan there is hardly any modern Islamic State where the Sharia is enforced without some modification in the administration of that law. In saying this I have derived my information from reforms in Indonesia, Egypt, Syria, Tunisia, Pakistan, Turkey, Iran and Iraq as recorded in the ***Encyclopaedia Britannica***. I would propose that soonest after the establishment of the institution recommended above arrangement should be made for it's members to visit as many as possible of the modern Islamic States in order to assess at first hand how the teachings of the Holy Quran have been implemented in the present century and in the light of the expectations of the International Community in regard to the Universal Declaration of Human Rights to which Nigeria has subscribed.

(6) Short Term Solution

It is now evident that Zamfara and a few other of the Northern States have authorised the direct enforcement of the provisions of the Sharia. I would readily agree with the Honourable Mohammed Bello and Professor Nwabueze that the provisions intended to be applied in these States would be illegal and unconstitutional. None of us sitting at this meeting has any right to stop any person affected by the unconstitutional activity of a State Government to take that State to court. In the circumstances I assume that the courts will be involved in this controversy sometime or the other. Furthermore I do not believe that in the situation which has arisen it can be right for the Honourable Attorney-General of the Federation who is charged with the duty of maintaining the Constitution to sit down and fold his arms

and simply watch events as they unfold. He ought to do something. He could call a meeting of all the Attorneys-General of the States interested in the Sharia controversy and hold a meeting with them on the matter. He could invite to that meeting distinguished jurists who are versed and knowledgeable in Islamic law such as the retired Chief Justice of Nigeria Honourable Mohammed Bello and others as well as Nigerians who have served as Ambassadors in modern Islamic States who could speak with authority on the practice in those states in so far as the enforcement of the Sharia is concerned. A further option is for him to invite the Supreme Court to pronounce on the validity of the legislative measures so far made in Zamfara state or any other state. In regard to this last option, it may be suggested that there might be an embarrassment to the Chief Law Officer of the Nation who is a Christian taking Zamfara State to court on a religiously sensitive issue. My answer to that suggestion is that the proceeding to be taken by the Attorney-General cannot be construed by any sensible person as a hostile proceeding. To put it in a nutshell the Attorney-General will merely invite the Supreme Court to determine whether or not the legislative measures so far taken by Zamfara State Government are in conformity with the Nigerian Constitution. I do not think that Nigeria has reached a stage when the Attorney-General of the Federation would feel that in performing his constitutional duty to seek the assistance of the Supreme Court in regard to the constitutionality of a legislative action by a State Government, he must refrain from discharging that duty for fear that the country will go up in flames. With the most profound respect to those who think otherwise I do not think that there are good reasons to abandon the machinery provided by law for the resolution of a controversy of this nature. We shall be sending the wrong signal to those in authority by accepting the proposition that contraventions of the Constitution, however outrageous, will go unchallenged because of the sensitivity or supposed sensitivity of the issue involved.

(7) Divine Laws

All the Great Religions recognize the existence of a Code of Ethics ordained by the Almighty Omnipotent and Supreme Being which are regarded as binding on all men and women. To all believers in these Religions, the Code of Ethics which form an integral part of their Faith has a Divine Origin and they are above man made laws.

The philosophy upon which Nigerian Society under our Democratic Federal Constitution is based is not conceived to be hostile to the Divine Laws which are recognized by Moslems or Christians as part and parcel of the Religion of Islam or of Christianity. It is possible for a Moslem or a Christian to find himself temporarily or permanently resident in a foreign country where his personal Religion is not practised by the overwhelming majority of the people of that foreign country. A person who finds himself in such a situation is not relieved from the obligation to observe and conform to the Divine Laws binding on him as a Moslem or a Christian as the case may be. It is not necessary for the Government of the foreign country in question to be called upon to use its coercive or constitutional powers to enforce the relevant Divine Laws. This fact demonstrates that it is possible to separate the Code of Ethics of Religion from the man made laws of a modern State. The co-existence of man's obligations under man made law vis-à-vis his obligations under Divine Law is implicit in the words of Our Lord when he said:

> "Render therefore unto Caesar the things which are Caesar's; and unto God the things that are God's."

See ***Matthew Ch. 22 v. 21***. A Moslem or Christian who is in a foreign country where the bulk of the people do not practice his Religion, remains accountable to and punishable by the Divine, the Supreme and the Omnipotent even if the Divine Laws binding on him are not laid down in

the laws made by the Government of the country where he may be at any point in time.

It is imperative for us to instruct and educate the present and future generation of Nigerians along these lines so that they can grasp the philosophy which constitute the bed rock of the provisions about Religion contained in our Constitution. If one is asked to be bold enough to put these ideas into sentences, the answer will be: ***Firstly***, our constitution ought to enable every Believer in any Religion to obey the Divine Laws ordained by his Faith. ***Secondly*** our constitution should scrupulously avoid making use of the machinery of the government of all the people for the compulsory imposition of the Divine Laws ordained by the Faith of only a section of the populace, upon all people irrespective of their Religion, however large that section may be. ***Thirdly*** the laws of Nigeria must be in accordance with the provisions of our Constitution which, in turn, must be in accord with universally accepted standards of Fundamental Human Rights.

(8) Christians and the Sharia

I have already explained that it is in the sphere of criminal law that the Sharia comes into conflict with universally accepted standards of Human Rights which are enshrined in our Constitution. This is more so in the sphere of punishment prescribed by the Sharia for those found guilty of allegations of crime against them. We have already made reference to amputation and stoning to death. It is unlikely that these kinds of punishment will ever be sustained by our Supreme Court. The fundamental problem for the leaders of thought among our Moslem brothers and sisters is to bring them to the realization that the need to conform to modern ideas in facing this problem is the price that must be paid for the maintenance of the Unity of Nigerian Nation under our Federal Constitution. We Christians must appreciate that this is by no means an easy task. But it has been resolved in other countries where Moslems form the overwhelming majority of the citizens of such countries. That being so, I feel optimistic in hoping that it will be resolved in Nigeria also.

From the time of our Lord Jesus Christ, Christians have been taught to reject the punishment of adulterers by stoning to death – a common thing in those days. At the Mount of Olives, our Lord was confronted by the scribes and the Pharisees who took a woman caught in the act of adultery to Him. They asked Him:

> "Master, this woman was taken in adultery, in the very act.
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> Now Moses in the law commanded us, that such should be stoned; but what sayest thow."

Our Lord's eventual answer to the scribes and Pharisees was to throw a challenge to those who were ready to execute or carry out the Law of Moses. Our Lord said to them:

> "He that is without sin among you, let him first cast a stone at her."

The challenge completely disarmed all those who had gathered to cast their stones at a fellow sinner. I must confess that I am not sufficiently learned in the Scriptures to expatiate on the episode which you will find in Chapter 8 of the Gospel according to St. John. What is clear from St. John's testimony is that Our Lord Jesus Christ Himself taught us that no mortal man has the moral right to cast a stone against any adulterer. Under our Constitution it is laid down in Section 34(1)(a) that:

> "Every individual is entitled to respect for the dignity of his person, and accordingly -
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> > (a) no person shall be subjected to torture or to inhuman or degrading treatment."

To my mind stoning an individual to death is plainly a contravention of the foregoing provision of our Constitution. That provision found its way into our Constitution without

protest from any of our religious leaders. From what happens in other countries the overwhelming majority of whose citizens are Moslems, it seems clear that whilst the essential provisions of the Sharia are strictly observed, the punishment imposed for the breach of any of those provisions are in conformity with the universally acceptable principles of Fundamental Human Rights. This is what leads one to the conclusion that the fundamentals of the Religion of Islam are not inconsistent with the universally acceptable standards of Fundamental Human Rights. The burden is on the ***elite*** and leaders of thought among our brothers and sisters in the Moslem Community in Nigeria to resolve the problem arising from the need to bring the administration of the Sharia into conformity with the contents of our Constitution.

This brings me to the point where it is necessary to call on all Christians in Nigeria to realize that if our country is to continue its existence as one Nation under our federal constitution, it is in the interest of all to promote all efforts designed to bring about the resolution of the problem. My considered view is that if this problem remains unresolved then, I fear that the continuance of our country as one nation is in grave jeopardy. It is not my intention to pursue the reasons for my coming to this conclusion at this particular lecture. It is sufficient for me to warn that there is no point pretending that we can continue as one Nation under a Constitution an important provision of which a substantial number of Nigerian citizens can continue to ignore. We need the prayers and co-operation of all Christians and Moslems for a resolution of the Sharia Issue.

I thank you for listening.

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