

**United Nations Human Rights Council
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Nigeria**

Submission of The Becket Fund for Religious Liberty

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The Becket Fund is a nonprofit, interfaith, public interest law firm protecting the free expression of all religious traditions.

United Nations Human Rights Council Universal Periodic Review of Member-State Nigeria

The Becket Fund for Religious Liberty, in special consultative status with ECOSOC, submits this analysis of the rule of law and religious freedom law in Nigeria as a contribution to the Universal Period Review of UNHRC member-state Nigeria.

1. Background

Nigeria is a religiously and ethnically diverse state, and religious conflicts often mirror tribal and ethnic tensions.¹ Despite the government's legal guarantees of religious freedom, such rights are often not implemented at the regional level. Majority faiths in each state enjoy general freedom to practice their faiths, but religious minorities face discrimination and even violence, particularly due to the implementation of Sharia penal codes in 12 of Nigeria's 36 states.²

Nigeria should be commended for crafting constitutional guarantees of religious freedom. However, the nation fails to put those provisions into practice. The chief impediments to full human rights appear to be strong religious tensions, *de facto* state religions, and lack of respect for the constitution's guarantees. Until Nigerian officials at all levels accept and respect the guarantees laid out in the constitution, *de jure* efforts to guarantee religious freedom will have very limited efficacy.

2. Legal Framework

2.1. Constitutional Guarantees of Religious Freedom

Nigeria's constitution guarantees religious freedom, including the right to change one's:

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. - Constitution of the Federal Republic of Nigeria ("Nigerian Constitution"), Art.38.

The constitution also contains a number of more specific guarantees of religious freedom. It prohibits discrimination on the basis of religion.³ It provides that no student can be compelled to participate in religious ceremonies of another faith, and that religious organizations may run their own schools.⁴ Article

¹ See U.S. Department of State International Religious Freedom Report, 2007 ("IRF Report 2007").

² See *infra* section 3.2, 3.3, 4.1.

³ "(1) A citizen of Nigeria of a particular community, ethnic group, place of origin, sex, religion or political opinion shall not, by reason only that he is such a person:-

"(a) be subjected either expressly by, or in the practical application of, any law in force in Nigeria or any executive or administrative action of the government, to disabilities or restrictions to which citizens of Nigeria of other communities, ethnic groups, places of origin, sex, religions or political opinions are not made subject; or

"(b) be accorded either expressly by, or in the practical application of, any law in force in Nigeria or any such executive or administrative action, any privilege or advantage that is not accorded to citizens of Nigeria of other communities, ethnic groups, places of origin, sex, religions or political opinions." Nigerian Constitution Art.42. See also Art. 15(2).

⁴ "(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." Art.38(2), (3).

10 states that “[t]he Government of the Federation or of a State shall not adopt any religion as State Religion.”

2.2. Constitutional Provisions for Religious Courts

Although the constitution of Nigeria makes provisions for religious freedom, it also makes provisions for religious courts, creating a legal system which has impeded equal human rights for all Nigerians. Articles 275-279 permit the establishment of Sharia appellate courts “for any State that requires it.” The constitution does not describe the function of lower state Sharia courts, but clearly contemplates that some states will implement them. In addition to state Sharia appellate courts, the constitution provides for two federal Sharia appellate courts.⁵ The government has not yet actually established these courts.⁶

The constitution does not limit the subject matter of the Sharia courts. Its provisions for appellate courts suggest that the courts be limited to personal status, inheritance, and family law cases, but specify these are “in addition to such other jurisdiction as may be conferred upon it by the law of the State.”⁷ This language permits states to enlarge the jurisdiction of the Sharia courts, including in criminal law.

3. Implementation

Nigeria’s use of a legal system combining religious and civil law presents serious human rights concerns because of its inadequate due process protections, its conflict with Nigeria’s commitment to religious freedom, and its negative effects on Nigerian society.

3.1. Penal Code and Criminal Trials

Zamfara was the first state to implement “full Sharia.” Other state Sharia systems are based on the one in Zamfara. After the new constitution was written in 1999, 12 of Nigeria’s 36 states incorporated Sharia provisions into their penal codes.⁸ (Sharia courts previously heard only personal status and family law cases.)⁹ The rush to implement Sharia meant that there were at first an insufficient number of trained jurists, which lead to erratic rulings. In some states, such as Zamfara, any criminal cases involving Muslims must be heard before the Sharia court. In others, such as Kano and Niger, Muslim defendants may choose the Sharia or common law courts.

Nigeria has been criticized for some of the harsh punishments meted out by the Sharia courts. Sharia courts increase punishments for crimes such as theft and prostitution, and impose the death penalty for adultery and blasphemy. However, many of the harshest sentences have been overturned.¹⁰ The harshest penalty, death by stoning, has not been carried out. At least two sentences of amputation have been carried out. Other punishments, such as caning, are more common.¹¹ Some such harsh punishments are incompatible with ICCPR Art. 6 and 7.

⁵ Nigerian Constitution Art.237, 244, 247; 260-64.

⁶ IRF Report 2007.

⁷ Nigerian Constitution Art.277.

⁸ IRF Report 2007.

⁹ Marshall, Paul. RELIGIOUS FREEDOM IN THE WORLD 310 (Rowman & Littlefield 2008). *See also* Nigerian Constitution Art.262, 277 (anticipating Sharia appellate courts would handle questions of personal status and family law).

¹⁰ IRF Report 2007.

¹¹ *Id.*; Hamid, Ruhi. *Inside a Sharia Court*. BBC (Oct. 1, 2007).

Other human rights problems arise from the use of Sharia criminal courts. Women often receive harsher punishments, and courts devalue their testimony. Low-income defendants in Sharia courts are often unaware of their right to legal counsel.¹² These courts also impose severe penalties for press offenses.¹³

3.2 Normative Effects of the Hybrid Legal System

The existence of religious criminal laws, together with the use of religious courts and religious police to enforce them, leads to the erosion of religious liberty and free expression. Although non-Muslims are not legally required to submit to Sharia courts, the imposition of Sharia has negative effects on religious minorities.¹⁴ Religious minorities are subjected to Sharia penal codes, and thus subjected to the religious laws of another faith, rather than laws based on universal and fundamental freedoms. Further, laws which penalize or censor statements offensive to Islam can silence voices critical of the current government, restricting free religious expression for all Nigerians.

Religious police, or Hisbah, have increasing influence and power in northern states, notably Kano. These groups may arrest people on suspected violations such as prostitution, alcohol consumption and indecent conduct, provisions which are broadly interpreted.¹⁵ The Hisbah have also censored films made in the area, and have been involved in the destruction of some churches for alleged zoning violations.¹⁶ The federal government attempted to limit the activities of the Kano Hisbah in 2006, but it retains power and influence today.¹⁷

The effective imposition of Islam as a state religion in the north—a situation which violates the constitution's guarantee of no religious establishment—has led to widespread religious discrimination. Nigeria's constitution prohibits government religious discrimination. But non-Muslims in the north report being passed over for government jobs and promotions, with the same position often going to less-experienced Muslim candidates. In Katsina, only two of 34 local government legislatures include Christians.¹⁸ Discrimination in education is also a problem. State schools provide religious instruction, but often fail to hire teachers of minority faiths, forcing all children to attend the same religious classes.¹⁹ In Katsina, Christian studies were cut from the curriculum and Islamic studies made compulsory. In addition, teachers of minority faiths are often funded by the faith group, while the state pays for the Islamic teachers. In Kano state, Islamic dress is now mandatory in both public and private schools.²⁰

Those who violate religious law face the threat of violence, often with no recourse to the unsympathetic local government. For example, Sharia penal codes impose the death penalty for conversion and blasphemy (in contravention of the constitution's guarantee of freedom to change one's religion). While there are no reported death sentences for conversion, there are reports of violence against converts,

¹² IRF Report 2007.

¹³ Marshall 309. In some northern states, imposition of Sharia law has led to stricter social standards, such as restrictions on the sale or consumption of alcohol, gender segregation and dress codes in schools, and gender segregation on public transportation. U.S. State Department Report, IRF Nigeria 2006; *see also* n.21, 22, 24.

¹⁴ IRF Report 2007. Although the constitution does not spell out the jurisdiction of the lower Sharia courts, it limits the appellate courts to cases involving Muslims. Art.277. There are reports that some non-Muslims, particularly converts, are subjected to Sharia courts. *See, e.g.*, Marshall 311.

¹⁵ Indecent conduct includes women sharing public transportation with male non-relatives. *Crackdown on Nigeria Sharia Group*. BBC (Feb. 10, 2006).

¹⁶ Walker, Andrew. *Taking on Nigeria's Islamic Censors*. BBC (Oct. 3, 2007); Nigeria: Current Human Rights Concerns, CSW (2008) (forthcoming) (discussing Hisbah's involvement in church destruction).

¹⁷ *Crackdown on Nigeria Sharia Group*. BBC (Feb. 10, 2006). Kano's governor recently conducted a government retreat supported by and including the Hisbah. *See Shekarau seeks LG bosses' support to Hisbah*. Triumph (Aug 5, 2008); *Shekarau explains importance of retreat exercise*. Triumph (Aug. 7, 2008).

¹⁸ Nigeria: Current Human Rights Concerns, CSW (2008) (forthcoming).

¹⁹ *Id.*; IRF Report 2007.

²⁰ Nigeria: Current Human Rights Concerns, CSW (2008) (forthcoming).

abduction and forced conversion of religious minorities, and mob violence over real or alleged blasphemy.²¹

Because laws reflect the justice of the state, enforcement of one set of religious laws can divide and segregate society. The establishment of religious courts and religious law in some northern states may deepen the divisions between north and south, leaving non-Muslims in the north to feel like intruders rather than fellow citizens. Many non-Muslims have fled for the Christian- and Yoruba-dominated south, or established their own enclaves within majority-Muslim cities.²² Nigeria's constitution proclaims a goal of greater integration and greater commingling of the different ethnicities, tribes, and religions in this diverse nation.²³ Its goals would be better served if it did not permit states to create political territories governed by religious law.

4. Religious Freedom and the Rule of Law

The lack of respect for the rule of law in Nigeria makes it extremely difficult to enforce guarantees of religious freedom.²⁴ This threatens religious freedom in two ways: first, it allows officials to abuse their power against religious minorities in violation of the Nigerian constitution, and second, general lawlessness allows interreligious violence to go unpunished and spread, deepening religious divisions.

4.1. Failure of Rule of Law in the Civil System

Nigeria's government has written strong guarantees of religious freedom, but such guarantees are useless when state and local governments refuse to abide by them. As described below, authorities frequently discriminate against minority faiths, applying laws unevenly, refusing to extend government benefits and services to minorities and, worst of all, failing to protect them from religious and ethnic violence and to bring the perpetrators of such acts to justice.²⁵ This discrimination is made worse by the fact that Nigeria permits the establishment of religious law and religious courts, creating a *de facto* state religion which perpetuates and justifies the second-class status of religious (and often ethnic) minorities.

4.2. Rule of Law and Mistreatment of Religious Minorities

Laws that are neutral on their face are sometimes used to suppress religious minorities. Of particular concern is the destruction of houses of worship for genuine or alleged zoning violations, generally without adequate compensation.²⁶ Churches in northern states report difficulty obtaining the necessary land and permission to build.²⁷ Mosques in southern states reported similar problems.²⁸ In one northern state, Borno, a city has refused to permit construction of a new church for over 17 years, while permitting multiple mosques.²⁹ The lack of accountability for officials in these states creates an environment where laws may be used to target religious minorities.

²¹ See *id.* (violence against converts and forced conversion); Marshall 310-11 (violence against converts); *infra* Section 4.3 (interreligious violence over blasphemy).

²² See, e.g., *Cracking down on Nigeria's 'pleasure island'*. BBC (Jul. 17, 2007) (discussing Hisbah crackdown on last minority-dominated enclave of Kano); Nigeria: Current Human Rights Concerns, CSW (2008) (forthcoming).

²³ Art.15, 17.

²⁴ The problem is severe: in 2006, the national bar association shut down the courts for two days with a boycott, designed to draw attention to the ineffectiveness of the courts and common disregard for the rule of law.

²⁵ For a detailed description of state government failures to respond to religious and ethnic violence, see Nigeria: Current Human Rights Concerns, CSW (2008) (forthcoming). The problem is spread across several northern states.

²⁶ CSW. "Nigeria: State employees demolish Catholic Church" (6/20/08); U.S. State Department Report, IRF Nigeria 2005.

²⁷ Marshall 311.

²⁸ IRF Report 2007.

²⁹ Nigeria: Current Human Rights Concerns, CSW (2008) (forthcoming).

Government religious discrimination is entrenched and widespread. In Katsina, rural Christian communities report that they are unable to receive government assistance digging wells and obtaining electricity, while nearby Muslim settlements have government-funded wells and solar power.³⁰ In several northern states, the government funds the Hajj pilgrimage for Muslims, but does not fund pilgrimages for other faiths.³¹ Most troubling of all, religious minorities in several states report that government intervention is limited and insufficient to quell riots and religious violence against minorities.³²

4.3 Rule of Law and Religious Conflict

Religious violence in Nigeria has decreased, but remains a serious problem. The country's national census was delayed and finally altered over threats of religious and ethnic violence. The census did not contain questions of race or ethnicity due to fears that the declaration of a religious or ethnic majority would create violence and instability.³³

A number of violent incidents have occurred in the last three years. Interreligious violence and the desecration and destruction of churches occurred in Kano state.³⁴ In 2007, Shiite and Sunni Muslims in Sokoto state were involved in violent conflict after the assassination of a prominent Sunni cleric.³⁵ Since the publication of the controversial Mohammed cartoons in 2005, there have been recurrent incidents of religious violence over real or alleged defamatory statements.³⁶ Shortly after the publication, riots and killings by Muslims in the north precipitated retaliatory riots and killings by Christians in the south. More than 150 people were killed.³⁷ In 2006, 20 people died after a Christian teacher confiscated a copy of the Koran being read by a student during class and was accused of defiling it. In a different incident in Gombe state, a teacher was brutally murdered after students she had caught cheating alleged she had desecrated the Koran.³⁸ Since 1999, tens of thousands of Nigerians have died in religious conflicts.³⁹

5. Recommendations

During the Universal Periodic Review, the UN Human Rights Council should take care to consider religious freedom in its evaluation of Nigeria. The UNHRC may wish to request more information on the use of religious law and religious courts, particularly their impact upon religious minorities. We respectfully recommend that the UNHRC not only base its evaluation of Nigeria on constitutional assurances of religious freedom, but also on the use of religious law, incidents of religious violence, and the abuse of neutral laws against religious minorities.

³⁰ *Id.*

³¹ *Id.*; IRF Report 2007.

³² Nigeria: Current Human Rights Concerns, CSW (2008) (forthcoming).

³³ See IRF Report 2007; *Nigeria's Counting Controversy*. BBC (Mar. 21 2006).

³⁴ See *Nigeria: churches damaged in religious violence ordered to vacate premises*. CSW (Aug. 1, 2008); *Nigeria: Church looted and demolished in Kano State*. CSW (Mar. 4, 2008); *Nigeria: Churches destroyed in Shari'ah State during wave of religious violence*. CSW (Feb. 8, 2008).

³⁵ Freedom House Report, Nigeria 2008; *Arrests Over Nigeria Sect Clashes*, BBC (Jul. 20, 2007).

³⁶ *Nigeria Teacher Dies 'Over Koran'*. BBC (Mar. 21, 2007).

³⁷ See, e.g., *Bodies Pile Up After Nigeria Riot*. BBC (Feb. 23, 2006); *Riots in Nigeria Leave Many Dead*. BBC (Feb. 22, 2006); *Nigeria Cartoon Protests Kill 16*. BBC (Feb. 19, 2006).

³⁸ Nigeria: Current Human Rights Concerns, CSW (2008) (forthcoming).

³⁹ *Id.*; Isaacs, Dan. *Islam in Nigeria: Simmering Tensions*, BBC (Sept. 24, 2003).