

Nigeria is one of 71 countries that criminalises blasphemy, in a law introduced during the colonial era that contravenes the country's constitution, which allows for the freedoms of thought, conscience, and expression. It is also incompatible with the nation's international obligations with regard to the freedoms of religion or belief (FoRB), and expression.

The country operates a dual legal system¹ where courts dispensing English Law and Customary Law are both able to sentence those found guilty of blasphemy. Section 36(12) of 1999 Constitution of the Federal Republic of Nigeria 2011 (as amended) states that a person cannot be convicted of a criminal offence unless that offence is defined and codified. In addition, Section 10 of the 1999 Constitution of the Federal Republic of Nigeria forbids the adoption of any religion as a State Religion.

Nigeria's blasphemy law was established during the colonial era, but has remained in effect since independence. While the sentence stipulated for blasphemy under Section 204 of the criminal code is two years imprisonment, the institution of Shari'a penal codes by 12 northern states since 2001 allowed Shari'a courts to arrogate the jurisdiction reserved for criminal courts over capital sentences, and to stipulate punishments that contravene Nigeria's international human rights obligations, including amputation for theft, stoning to death for adultery, and death for blasphemy.

In addition, the enactment of Shari'a penal codes effectively rendered Islam a de facto state religion in violation of Nigeria's secular constitution, which only recognises Shari'a courts for noncriminal proceedings. As well as contravening constitutional stipulations, this action effectively endowed the systematic marginalisation of followers of non-majoritarian expressions of faith that has existed for decades with quasi-legality.

There is a strong correlation between blasphemy laws and extremism. The unconstitutionality of Shari'a penal codes, coupled with the retention of the crime of blasphemy in the criminal code, have fed into religious extremism. The situation is exacerbated by the culture of impunity that generally surrounds religion-related crimes committed by members of the majoritarian religious community in northern Nigeria, with perpetrators of violations, and even of extrajudicial killings, barely facing any consequences for their actions.

For example, in August 2008, a mob in Kano State, northwest Nigeria, beat a 50-year-old Muslim man to death after he was accused of blaspheming the Prophet Muhammad. No perpetrators were brought to justice.

In another incident, the main instigator of a June 2016 mob attack on Mrs Bridget Agbahime, a 74 year-old market trader and the wife of a retired Deeper Life Church leader, who was battered to death by a mob in Kofar Wambai market in the Kano State capital following a false accusation of blasphemy, was arrested along with four other men; charged with 'inciting disturbance, joint act, mischief and culpable homicide' under sections 114, 80, 327 and 221 of

the Penal Code; then all were released on 3 November 2016 following a directive from the Kano State Attorney-General and Commissioner for Justice, who also terminated the case against them.

Case Study: Yahaya Aminu Sharif

On 10 August 2020 an upper Sharia court in the Hausawa Filin Hockey area of the Kano State capital found musician and member of the Tijjaniyya Sufi order Yahaya Sharif-Aminu, then aged 22, guilty of blasphemy, and sentenced him to death by hanging for allegedly blaspheming in a song he had shared via WhatsApp, which became public knowledge in March 2020.

Mr Sharif-Aminu was charged and convicted under Section 382 (b) of the Kano State Sharia Penal Code Law of 2000, which stipulates the death penalty.² Prior to his arrest and conviction, protesters had burnt down Mr Sharif-Aminu's family home and he had been obliged to go into hiding.

On 21 January 2021 the appellate division of the Kano State High Court overturned the death sentence, citing procedural irregularities, and ordered a retrial on the original count of insulting the religious creed contrary to Section 382 (b) of the Kano State Sharia Penal Code Law of 2000.

Mr Sharif-Aminu's lawyers subsequently asked the Court of Appeal in Kano to rule on whether the High Court was wrong to have ordered a retrial, arguing that it ought to have discharged and acquitted their client instead. They also argued that the High Court was wrong in not declaring the Kano State Sharia Penal Code Law inconsistent with Nigeria's secular Constitution, which limits jurisdiction for death sentences to civil courts.

On 17 August, and in a worrying split decision, the Court of Appeal upheld both the legality of the Shari'a Penal Code, and the decision of the lower court to quash the original sentence due to irregularities and order a retrial. However, Justice Mbaba, one of the three judges who heard the appeal, dissented, finding that Mr Sharif-Aminu ought to have been discharged and acquitted. His lawyers are currently studying the judgement before deciding on further action.

The ruling represents a potential setback for human rights, primarily for the right to freedom of religion or belief, and particularly the freedom to espouse a religion or belief of one's choice and to manifest it. It also challenges the supremacy of the Constitution, as it effectively means that a secular court has officially recognised the competency of Shari'a courts to impose death sentences. This point has not been lost on Kano State's Attorney General and Commissioner for Justice, Musa Lawan, who commented the Appeal Court had fully recognised Kano State's Shari'a Penal Code.

Mr Sharif-Aminu remains in prison and is petitioning Nigeria's Supreme Court. The notice of appeal filed in November 2022 states: 'that the Appellant being dissatisfied with the decision more particularly stated in paragraph 2, of the Court of Appeal, Kano Division holden at Kano, Kano

1 Shari'a or Islamic Law comes under Customary Law.

2 'Whoever by any means publicly insult by using word or expression in writing or verbal by means of gesture which shows or demonstrates any form of contempt or abuse against the Holy Qur'an or any prophet shall on conviction be liable to death.'

State contained in the judgment dated 31/08/2022 doth hereby appeal to the Supreme Court of Nigeria upon the grounds set out in paragraph 3 and will at the hearing of the appeal seek the relief set out in paragraph 4.'

It notes 'that the part of the decision of the lower court complained of is "the whole" decision,' and seeks an order 'allowing the appeal, setting aside the judgment of the Court of Appeal and entering judgment in favour of the Appellant'.

In what could prove to be a landmark ruling challenging Nigeria's blasphemy law, and the legality and constitutionality of the Shari'a Penal Code, Mr Sharif-Aminu is also seeking 'an order declaring S.382(b) of the Sharia Penal Code Law of Kano State 2000 being in conflict and incompatible with S.34(1)(a), S.38(1), S.39(1), and other provisions of the Constitution of the Federal Republic of Nigeria, Articles 5, 8, and 9, among others, of the African Charter on Human and People's Rights, and Articles 7, 18, and 19, among others, of the International Convention on Civil and Political Rights, as well as an order declaring other sections of the Sharia Penal Code³ [...] as being similarly incompatible with the Constitution and international treaties.'

A Problematic Supreme Court

The advent of the Buhari regime in 2016 was followed by a wave of arrests, intimidation harassment and raids on the homes of several judges by the Department of State Services (DSS) which seemed designed 'to humiliate, and intimidate, denigrate, and cow the Judiciary.'

The lead up to the flawed 2019 elections saw the [harassment and removal](#) on dubious grounds of the Chief Justice Walter Samuel Nkanu Onnoghen, and his replacement by Ibrahim Tanko Mohammed, formerly a Shari'a court judge, who subsequently oversaw appeals against electoral malpractices in a perfunctory manner, summarily handing victory to the ruling party.

In 2020 the federal authorities were obliged to deny responsibility for a [raid](#) by over 50 armed security operatives on the home of one of Nigeria's most senior judges, Justice Mary Odili, on a warrant allegedly issued on the orders of Attorney General Abubakar Malami (SAN) that was later revoked following an unprecedented outcry by the public and the Nigeria Bar Association.

The Supreme Court is yet to set a date for hearing appeals brought before them by the Federal Government against the October 2022 discharge and acquittal order issued by the Abuja Appeal Court in the case of Nnamdi Kanu, the British-

Nigerian leader of the Indigenous People of Biafra (IPOB), who was forcibly returned from Nairobi Airport in July 2021. As Mr Kanu awaits a date, he remains detained, even as the Supreme Court has initiated accelerated hearings on political cases.

Even more recently, 'the [credibility](#) of the Nigerian Supreme Court has been strained by its recent judgments in political cases, or so-called judicial coronations, such as one in which the court declared the winner of the election for governor of Imo State a candidate who had come in fourth place.'

As electoral challenges are underway following elections marred by violence, ballot snatching, ethnic profiling and other serious irregularities, the Supreme Court has come under greater scrutiny, amid heightened concerns regarding the progressive 'capture' of the Judiciary by the Executive.

Given the issues outlined above, and the potentially incendiary nature of his petition, which addresses the thorny issues of blasphemy and the constitutionality of what has been termed 'full Shari'a', there are grounds for concern regarding whether pressures will cause the Supreme Court to eschew due process, or Mr Sharif-Aminu's case will be delayed indefinitely while he remains in prison.

Recommendations

To the European Union:

- Urge the government of Nigeria to ensure that the Supreme Court is free to make a ruling in the case of Yahaya Sherif-Aminu in accordance with the law, and without external pressures;
- Call on the government of Nigeria to repeal Section 204 of the Criminal Code;
- Encourage the government of Nigeria to uphold the supremacy of the Constitution by bringing state laws and practices into conformity with it, and with the nation's obligations under international law;
- Urge the government of Nigeria to combat the impunity surrounding blasphemy accusations by penalising the purveyors of false allegations and bringing perpetrators of violence to justice, and thereby strengthening rule of law.
- Encourage the government of Nigeria to recognise and promote equality of citizenship, and to consider the creation of an Equity Commission with a mandate to promote freedom of religion or belief and respect for differing religious beliefs.

3 Including Sections: 94 (1) (b); 97 (a-j); 99; 115 (1) (2); 116(2); 117; 118 (2); 123; 125 (e-b), 126 (e) (2); 127 (a-b); 129 (a b); 131; 134: 134(b); 135(2); 136; 137: 140 (b); 141 (b); 146 (a); 148; 163 (c); 169: 150; 154; 155; 157; 162; 163 (c); 169: 170; 174 (3); 175-178; 186; 187; 189; 191-194; 196; 197; 199; 200; 208-211; 216-221; 223-227; 237; 246 (a); 260 (a-b); 264; 268; 273; 276 (c), (i); 277 (c); 280 (b); 281-284 (c); 285-287 (b); 290; 291 (b); 292; 293 (d) (-i); 294 (a-b); 295 (a); 296 (a); a-b); 295 (a); 296 (a); 297 (a-b); 298 (b); 299 (a-b) 300-308; 309 (a-b); 310-312; 315 (1-2); 316 (1); 317; 323; 324 (a); 325-328; 329 (a-b); 330-332; 335 (b); 336 (b); 337 (b); 338 (b); 339 (b); 340; 342 (c); 344 (c); 345 (c); 346 (c); 347 (b); 348 (b); 349 (b); 352 (a); 353; 356; 358; 360-362; 368; 369 (b); 373; 376; 377(e); 385; 387 (b); 388 (1)

