

4 NIGERIA'S BLASPHEMY LAWS AND THE COMPETING RIGHTS: TAMING THE SELF-APPOINTED GOD AVENGERS THROUGH JUDICIAL PROCESS

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INTRODUCTION

The recent extrajudicial killing of Bridget Agbahime in 2016 in Kano and many similar events in the states of Zamfara, Kebbi and others on allegation of blasphemy demonstrate the tension that exists between two competing rights: freedom of expression and freedom of religion. In an attempt to find a solution to this quagmire, the Office of the High Commissioner for Human Rights (OHCHR) organised a series of expert workshops on the prohibition of incitement to national, racial or religious hatred in Vienna (9-10 February 2011), Nairobi (6-7 April 2011), Bangkok (6-7 July 2011), Santiago (12-13 October 2011) and finally, Rabat (4-5 October 2012), in which legislative patterns, judicial practices and policies in this regard were explored. This culminated in the adoption of the Rabat Plan on the Prohibition of Advocacy of National, Racial or Religious Hatred that Constitutes Incitement to Discrimination, Hostility or Violence).² The discussions during these workshops focused mainly on the negative impact of blasphemy laws, harassment of journalists and human right activists, maltreatment of members of religious minorities, among other things.

This chapter does not address all issues discussed in the Rabat Plan, but rather is limited to evaluating the recommendation of the experts that laws prohibiting blasphemy be proscribed. By this recommendation, the Rabat Plan has given upper hand to freedom of expression over freedom of religion. The possibility of repealing such laws in the Nigerian context is doubtful, since the volatility of the Nigeria's federation makes it prone to religious crisis, causing a serious threat to human security. Indeed, from the many incidents related to blasphemy in Nigeria over the years, it is easy to conclude that ordinary citizens do not see the Nigerian state as active in preventing incitement because of its failure to deal with people whose actions constitute insult to religion. The people, thus, resort to taking the law into their own hands by extrajudicially killing suspects and looting or destroying

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 - 2 Rabat Plan on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence. Conclusions and recommendations emanating from the four regional expert workshops organised by OHCHR in 2011, and adopted by experts at the meeting in Rabat, Morocco, on 5 October 2012, addendum to the Annual report of the United Nations High Commissioner for Human Rights, A/HRC/22/17/Add.4, 11 January 2013.

valuable property, including places of worship, government establishments and residences. It further argues that the repeal of blasphemy laws would further aggravate the crisis, as it would constitute a deliberate action of state to acquiesce in the desecration and humiliation of the religious symbols and figures that the faithful hold dear.

The chapter is divided into eight parts. After the introduction, part two provides some background on the Rabat Plan, highlighting the justification provided in prioritising freedom of expression over freedom of religion. Part three discusses the various perspectives of blasphemy from religious groups to demonstrate that they are all at one in their reverence of religious symbols and icons. The anti-blasphemy provisions under Nigerian law are featured in part four to show how in highly religious Nigeria blasphemy is criminalised in all of the federal units. This is followed by discussion on the tension between the two competing rights of expression and religion in part five.

In the context of Nigeria, downplaying public rights in favour of individual rights may only exacerbate the problem, particularly when the Nigerian courts toe the lines of the United States courts and adopt the absolutist's view as demonstrated in the case of *Texas v Johnson*. Part six of the chapter thus identifies factors militating against the actualisation of the recommendation of the experts to repeal Nigerian blasphemy laws under the Rabat Plan. The point is that legislative power to criminalise blasphemy lies in the federating units, making it less likely for blasphemy to be decriminalised. In part seven, I argue that judicial intervention is the most viable solution to human security dilemmas, but this is only possible if government garners the political will to prosecute offenders, leading to conclusions presented in part eight.

OVERVIEW OF THE RABAT PLAN

Over the years, lives have been lost over violence associated with religious crisis in Nigeria. Religious crises in the context of this chapter relate to those occurring between Muslims and Christians where both sides accuse the other of incitement. On the one hand, Muslims revere some religious symbols and icons, such that any word or action considered disparaging to such symbols and icons is met with violent response. On the other hand, Nigeria's obligation on the international plane mandates it to accord every citizen the right to freedom of expression and freedom of religion. There is however uncertainty as to the scope of the right to religion, particularly when juxtaposed with the right to freedom of expression. This uncertainty is not a problem only to Nigeria. Indeed. Other countries face the same challenge, as oftentimes it leads to violent reactions and deaths capable of enveloping a whole country.

For this reason, this chapter focuses on blasphemy laws which the Rabat Plan frowns on and recommends be proscribed. According to the Rabat Plan:

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[T]he Human Rights Committee stresses that “[p]rohibitions of displays of lack of respect for a religion or other belief system, including blasphemy laws, are incompatible with the Covenant, except in the specific circumstances envisaged in article 20, paragraph 2, of the Covenant. Such prohibitions must also comply with the strict requirements of article 19, paragraph 3, as well as such articles as 2, 5, 17, 18 and 26 of the International Covenant on Civil and Political Rights. Thus, for instance, it would be impermissible for any such laws to discriminate in favour of or against one or certain religions or belief systems, or their adherents over another, or religious believers over non-believers. Nor would it be permissible for such prohibitions to be used to prevent or punish criticism of religious leaders or commentary on religious doctrine and tenets of faith.”³

The greater weight on freedom of expression is predicated on the fact that “the right to freedom of religion or belief, as enshrined in relevant international legal standards, does not include the right to have a religion or belief that is free from criticism or ridicule.”⁴ Therefore anything outside Articles 2, 5, 17, 18, 19(3), 20(2) and 26 of the International Covenant on Civil and Political Rights (ICCPR) cannot be employed to restrict the right to freedom of expression.⁵ Finally, the Rabat Plan recommends that all state parties to the ICCPR should take steps to repeal their laws on blasphemy, as such laws deprive people of full enjoyment of their rights and inhibits healthy dialogue and debate about religion.

UNDERSTANDING BLASPHEMY FROM VARIOUS PERSPECTIVES

Blasphemy is defined in legal terms as an “offense of speaking matter relating to God, Jesus Christ, the Bible, or the Book of Common Prayer, intended to wound the feelings of mankind or to excite contempt and hatred against the church by law established or to promote immorality.”⁶ To a Muslim, blasphemy has to do with treating with contempt the Almighty Allah, His Messenger or anything Muslims

3 See Rabat Plan on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence. Conclusions and recommendations emanating from the four regional expert workshops organised by OHCHR in 2011, and adopted by experts at the meeting in Rabat, Morocco, on 5 October 2012, addendum to the Annual report of the United Nations High Commissioner for Human Rights, A/HRC/22/17/Add.4, 11 January 2013 (emphasis added).

4 El-Tayeb MS. 2008. “The Limitations on Critical Thinking on Religious Issues under Article 20 of ICCPR and Its Relation to Freedom of Expression”, in OHCHR. Expert Seminar on the Links Between Articles 19 and 20 of the International Covenant on Civil and Political Rights, “Freedom of Expression and Advocacy of Religious Hatred that Constitutes Incitement to Discrimination, Hostility or Violence”, Geneva, 2-3 October, 35. Online at: <http://www.ohchr.org/Documents/Issues/Expression/ICCPR/Seminar2008/CompilationConferenceRoomPapers.pdf>

5 International Covenant on Civil and Political Rights, G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force Mar. 23, 1976.

6 2004. *Black's Law Dictionary*. Eighth Edition. Eagan, MN: Thomson West, 512.

hold dear. This includes slighting any prophet mentioned in the Quran, tearing, spitting or burning the Quran,⁷ and other blasphemous acts committed by both Muslims and non-Muslims. As can be seen from these definitions in both Islam and Christianity, things considered sacred are highly revered. As such, desecrating any of these could incite violence against the offender. Amazingly, these have been considered inconsequential and deserving no attention in the Rabat Plan. Little wonder the Rabat Plan has been characterised by British law and religion scholar Mark Hill as “religiously illiterate and politically naïve.”⁸

It is noteworthy that both the European Commission on Human Rights and the European Court of Human Rights, in a number of cases, have given prominence to public rights over the private rights of individuals. States are allowed to prevent believers from manifesting their beliefs if improper means are used, and this includes not respecting the freedom of others to their thoughts, conscience or religion.⁹ For instance, in *Otto-Preminger-Institut v Austria* (13470/87) a cinema advertised a film titled “Council in Heaven”, which depicted God as a senile man prostrating himself to the devil, erotic tension between the devil and the Virgin Mary and Christ as a low-grade mental defective. The European Court of Human Rights prioritised the freedom of other believers over the filmmaker’s freedom of expression by placing a ban on the film’s advertisement. Similarly, in *Wingrove v UK*, the European Commission opined that freedom of expression must be subject to avoiding as far as possible “expressions that are gratuitously offensive to others and thus an infringement of their rights, and which therefore do not contribute to any form of public debate capable of furthering progress in human affairs”.¹⁰

BLASPHEMY PROVISIONS UNDER NIGERIAN LAW

According to communication studies scholar Bala Musa, “Nigeria is a country with the heart of religion, the only difference being that Nigeria’s heart pulsates with the irregular rhythm of a multiple belief system.”¹¹ Nigeria is an amalgam of Southern and Northern Protectorates and the colony of Lagos formed in 1914, which finally gained independence from the Great Britain in 1960. It is a federation of 36 states and a Federal Capital Territory, Abuja. It is the most populous nation in Africa,

7 Peters R. 2005. *Crime and Punishment in Islamic Law: Theory and Practice from the Sixteenth to the Twenty-first Century*. New York: Cambridge University Press, 64.

8 Hill M. 2017. “Hate Speech, Blasphemy and Defamation of Religion: Assessing the Impact in Africa and Globally of the Rabat Action Plan (2012)”. Paper presented at the fifth annual conference of the African Consortium for Law and Religion Studies, International University of Rabat, Morocco, 15 May.

9 See *Otto-Preminger-Institut v Austria* (13470/87), *Kokkinakis v Greece* (14307/88), *Ahmet v Greece* (18877/91).

10 See, generally, Evans MD. 1997. *Religious Liberty and International Law in Europe*, Cambridge: Cambridge University Press.

11 Musa B. 2000. “Pluralism and Prior Restraint on Religious Communication in Nigeria: Policy versus Praxis”, in Thierstein J and Kamalipour YR (eds). *Religion, Law, and Freedom: A Global Perspective*. Westport: Praeger Publishers, 98.

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and recent United Nations estimates put the population at 182,202,000, making it the seventh in the world in terms of population.¹² Although the last official census figures did not indicate the religious inclinations of Nigerians, the United States Central Intelligence Agency has put the percentage as follows: Muslims, 50%; Christian, 40%; and 10% other religions.¹³ The federal arrangement was necessitated by diverse ethnic nationalities numbering over 250 groups.¹⁴ Linguistic studies in 1979 showed the diversity to be wider than thought, identifying 394 ethnic groups in Nigeria,¹⁵ with some sources putting the number as high as 500.¹⁶ Muslim followers of Sunni Maliki School are dominant in the northern part of the country, and they also have significant presence in the Southern part of Nigeria, particularly, the South West. Elsewhere, the Southern part is predominantly populated by Christian faithful.

Like any other colony, Nigeria was bequeathed the criminal law regime of its colonial masters at independence; however, the diverse religious leanings made it impossible to have a uniform criminal code for the country. This might not be unconnected with its colonial history, as it is on record that when the colonialists conquered the Sokoto Caliphate in 1903, the northern traditional institutions resisted it, as it entailed political and cultural hegemony. Then Governor General Lord Lugard promised non-interference with their religion and recognised Muslim law of Maliki School as applicable in all native courts in the region.¹⁷ Indeed, Nigeria was the only British colony where Islamic criminal law was allowed to apply hand-in-hand with the English Criminal Code, albeit with strict administrative and judicial scrutiny.¹⁸ This was attested to by an English lawyer, missionary, and Arabist JND Anderson, who observed that, "[U]ntil recently, the case of Northern Nigeria was, indeed, almost unique, for up until less than twenty years ago, this was the only place outside the Arabian peninsula, in which the Islamic law, both substantive and procedural, was applied in criminal litigation – sometimes even in regard to capital

12 United Nations Department of Economic and Social Affairs/Population Division. 2015. *World Population Prospects: The 2015 Revision, Key Findings and Advance Tables*. New York: United Nations. Online at: https://esa.un.org/unpd/wpp/Publications/Files/Key_Findings_WPP_2015.pdf

13 Central Intelligence Agency. 2017. "Nigeria", in *The World Factbook 2017*. Washington, DC: Central Intelligence Agency. Online at: <https://www.cia.gov/library/publications/the-world-factbook/geos/ni.html>

14 Central Intelligence Agency, "Nigeria"; United States Department of State. 2017. "U.S. Relations with Nigeria: Bureau of African Affairs Fact Sheet", 21 February. Online at: <http://www.state.gov/r/pa/ei/bgn/2836.htm>

15 Usman YB. 2004. "The Sokoto Caliphate and Nation Building". Paper presented at the International Conference on the Sokoto Caliphate and its Legacies, Abuja, Nigeria, 14 March. Online at: <https://dawodu.com/usman2.htm>

16 Central Intelligence Agency, *World Factbook*, "Nigeria".

17 Kenny J. 1996. "Sharia and Christianity in Nigeria: Islam and a Secular State", *Journal of Religion in Africa* 26(4):352.

18 Ruud P. 2001. "Study on the Reintroduction of Criminal Sharia Law in Northern Nigeria", 12. Online at: https://www.ecoi.net/en/file/local/1411812/mv177_peters-ngr0901.pdf

offences".¹⁹ Since independence, the English-styled Criminal Code remains in force in the Southern states, while a Penal Code adopted from Sudan is operational in all the Northern parts of Nigeria. In 1999, the Sharia Penal Code joined the suit also applicable in 11 Northern states popularly known as *sharia* states.

There is no state in the federation of Nigeria in which blasphemous acts are left unpunished, though punishment varies by degree. In some states, the penalty ranges from imprisonment to fine; in others it carries death penalty. Examples from Lagos State in the south and in Jigawa State and Zamfara State in the north illustrate two different kinds of penal legislation on point. Section 204 of the Criminal Code of Lagos State, which is similar to other laws enacted at the time in other southern states, provides: "Any person who does an act which any class of persons consider as a public insult on their religion, with the intention that they should consider the act such an insult, and any person who does an unlawful act with the knowledge that any class of persons will consider it such an insult, is guilty of a misdemeanour, and is liable to imprisonment for two years."²⁰ Similarly, in the states of Northern Nigeria, where two penal systems often coexist, offences against religion have been outlawed. One can cite the example of the Jigawa State Penal Code, in which Section 210 reads: "Whoever, by any means, publicly insults or seeks to incite contempt of any religion in such a manner as to be likely to lead to a breach of the peace, shall be punished with imprisonment for a term which may extend to two years or with a fine or with both."²¹

The 1999 resuscitation of the criminal law of Islam ushered in a more elaborate criminalisation of blasphemy in all the eleven *sharia* states.²² Thus, the Sharia Penal Code, 2005 of Zamfara State provides:

406. (1) Whoever by any means whatsoever intentionally abuses, insults, derogates, humiliates or seeks to incite contempt of the holy Prophet Muhammad (SAW) or his prophethood or any other prophet of Allah recognised by the religion of Islam shall be punished with death.

(2) Whoever destroys, damages or defiles the Holy Qur'an in whatever form or manner with the intention, thereby, of insulting, humiliating, derogating or disrespecting the Holy Qur'an or the religion of Islam or with the knowledge that Muslims are likely to consider such utterances or acts as insulting, abusive, derogatory to the Holy Qur'an or the religion of Islam, shall be punished with death.²³

19 Ruud, "Study on the Reintroduction of Criminal Sharia Law in Northern Nigeria", 119. See also Anderson N. 1976. *Law Reform in the Muslim World*. London: The Athlone Press, 27; Ostien P and Dekker A. 2010. "Sharia and National Law in Nigeria", in Otto JM (ed). *Sharia Incorporated a Comparative Overview of the Legal Systems of Twelve Muslim Countries in Past and Present*. Leiden: Leiden University Press, 566.

20 The Criminal Code Law, Cap. C17 Laws of Lagos State of Nigeria, 2003.

21 Penal Code Law, Cap. P3 Laws of Jigawa State of Nigeria, 2012.

22 Bauchi, Borno, Jigawa, Kaduna, Kano Katsina, Kebbi, Niger, Sokoto, Yobe and Zamfara state.

23 Sharia Penal Code, 2005 of Zamfara State of Nigeria. In the same vein, Section 382(b) of the Sharia Penal Code of Kano State also provide as follows: "Whoever by any means publicly

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The import of this provision is that certain acts, such as denigrating any person recognised as a prophet in Islam disrespecting the Holy Quran or the religion of Islam, are blasphemous and carry the highest penalty under the law.

TENSION BETWEEN COMPETING RIGHTS OF EXPRESSION AND RELIGION

The Constitution of the Federal Republic of Nigeria, 1999, guarantees every Nigerian the right to freedom of thought, conscience and religion, which can be exercised individually or in community with others.²⁴ It also entitles every citizen to freely express their opinion and impart their ideas without hindrance.²⁵ Notwithstanding this, the right to freedom of expression is by no means non-derogable under both international and municipal laws. As such, the Nigerian Constitution limits the exercise of this right by allowing laws to be made in the interest of public safety and public order and for the purpose of protecting the rights and freedoms of other persons.²⁶

Ordinarily, these rights are supposed to be complementary, but the fact that the right to freedom of expression remains open to misuse has made it not so. The sensitivity of religion, particularly in the configuration of Nigerian Federation, makes it inevitable that citizens in the exercise of their constitutional right to freedom of expression will overstep their bounds and violate other people's rights. Aware of this problem, the federating units provide penalties in their respective penal laws outlawing insult on religion highlighted above. Of course, it is in the exercise of the right to freedom of expression that insult can occasion. Hence, the tension between the two rights. Ironically, the Rabat Plan in balancing the competing rights, appears more inclined to protect the freedom of expression in its call for abolishment of all blasphemy laws.

While interreligious dialogue is made possible only in an atmosphere in which people can air their views, it appears from the high incidence of religious violence in Nigeria that a chief cause has been vilification of the Prophet of Islam, and in few instances the desecration of the Holy Quran. Interestingly, it is these symbols that the Rabat Plan discounted as unworthy of protection. The question is whether the Rabat Plan is actually an all-inclusive document, considering the perspectives of blasphemy that exist amongst the major religious groups.

The implication of giving prominence for individual right to freedom of speech over the public was felt by the United States of America in 1998 in the case of *Texas v Johnson*, in which the United States Supreme Court held that a law punishing

insult by using word or expression in written or verbal by means of gesture which shows or demonstrate any form of contempt or abuse against the Holy Qur'an or any Prophet shall on conviction be liable to death."

24 Constitution of the Federal Republic of Nigeria, 1999, sec 38(1).

25 Constitution of the Federal Republic of Nigeria, 1999, sec 39.

26 Constitution of the Federal Republic of Nigeria, 1999, sec 45(1).

desecration of U.S. flag was in violation of the First Amendment of the United States Constitution.²⁷ No doubt, the American flag is a national symbol venerated by majority of its citizens. Yet, freedom of speech in *Johnson* was given the upper hand. It was argued that freedom of speech is not limited to writing, speaking, art and music, it also includes acts like burning of the flag, which is viewed as a political statement and a symbol of rejection of American policy and nationalism.²⁸ The Court held that the reason given by the state of Texas for prohibiting disrespect for the U.S flag – namely, “to avoid violence and preserve the flag as a symbol of nationhood and national unity” – was not enough a constitutional justification for prohibiting acts of flag burning. The judgment, ignited a debate on whether to amend the U.S. Constitution to give value to the flag.

The *Johnson* case was clearly a matter between the state and the individual, but the problem in Nigeria is that the matter is not simply between state and the individual alleged to have committed the blasphemy. It is a tripartite relationship between the state, the suspect and the public. The public frowns at the government for not acting fast to deal with the suspects, hence the mob action of self-help. Thus, if priority is given to individual right over public right, the society is likely to suffer more casualty. This should however not be construed as justifying or legalising mob action. To avert the mob action, government must garner the political will to prosecute persons responsible for the incitement, otherwise its inaction will be taken as acquiescing in an act considered blasphemous. It is noteworthy that, unlike Nigeria, in the United States, freedom of expression is held in such high esteem that one may claim it is taken too far if the case of *Johnson* is anything to go by. In that respect, there can be no comparison between U.S. and Nigeria. There are religious symbols, holy books, holy prophets and even places of worship that are highly respected by Nigerians. It is actually criminal to ridicule, destroy or deface them under the Nigerian laws – and respect for these symbols is not simply temporal, but also spiritual. Any desecration by anybody can incite violence and breach of public peace; hence, their criminalisation. Given this divergence, it is suggested that the Nigerian courts should be wary of adopting absolutist interpretations, such as those in *Johnson's* expanded definition of freedom of speech. Our heterogeneous configuration will make such interpretation unlikely to work and may even be counterproductive. It is important to note that foreign judgments are not binding precedents, but they do have persuasive effect on Nigerian courts. The fact that Nigeria jettisoned the Westminster model in favour of American-styled presidential system proves the significant influence the latter has on Nigeria. The Nigerian Constitution is fashioned after the U.S. Constitution, hence the likelihood of adopting the American interpretation by the Nigerian courts.

²⁷ *Texas v Johnson*, 491 U.S. 397 (1989).

²⁸ Greenawalt K. 1995. *Fighting Words: Individuals, Communities and Liberties of Speech*. Princeton, NJ: Princeton University Press, 28.

FACTORS MILITATING AGAINST ACTUALISING THE RABAT PLAN IN NIGERIA

The chapter has identified three main hurdles along the way for the Rabat Plan to gain ground in Nigeria: (1) constitutional hurdles in domesticating international obligations, (2) fear of political backlash, and (3) activities of self-appointed god avengers. These are discussed below.

The dualist model as a stumbling block

Nigeria is a signatory to the International Covenant on Civil and Political Rights (ICCPR), and as such, it has an obligation to observe the provision of the covenant. By Section 12 of the Constitution of the Federal Republic of Nigeria, 1999, it is a dualist state, meaning that all international obligations require domestication before they become operational. Specifically, Section 12 provides:

12. (1) No treaty between the Federation and any other country shall have the force of law to the extent to which any such treaty has been enacted into law by the National Assembly.

(2) The National Assembly may make laws for the Federation or any part thereof with respect to matters not included in the Exclusive Legislative List for the purpose of implementing a treaty.

(3) A bill for an Act of the National Assembly passed pursuant to the provisions of subsection (2) of this section shall not be presented to the President for assent, and shall not be enacted unless it is ratified by a majority of all the House of Assembly in the Federation.

It is clear from the above provision that anything outside the exclusive legislative list of the Constitution will require the ratification of the majority of the legislative houses of the federating units. The dualism theory adopted in Nigeria allows the executives to enter into international obligation unilaterally and subsequently seek legislative approval, which the latter may accept or reject.²⁹ This demonstrates the pre-eminence of the legislature in the domestication process of an international treaty in dualist countries like Nigeria. Indeed, the legislature can be said to be in "constitutional control".³⁰

Article 2(2) of ICCPR enjoins state parties to take all necessary steps within the purview of the law to give effect to its provisions, and to remedy any violation of the rights that results. In line with this, the provisions of ICCPR are already incorporated in the Nigerian Constitution. In order to protect the rights of others, limits were imposed on these rights, including limits on the enjoyment of the right to freedom of expression. This also afforded states the power to maintain laws on insult to religion, including religious symbols. As a holder of obligation under the ICCPR, Nigeria could either amend the Nigerian Constitution to make freedom

29 Russel P. 1989. *Federalism and the Charter: Leading Constitutional Decisions, A New Edition*. Ottawa: Carleton University Press, 108.

30 *Attorney General of Canada v Attorney General of Ontario* (1937) A.C. 326.

of expression absolute or the federating units may indirectly incorporate them by repealing their penal laws. As shall be demonstrated, either of these alternatives is not likely to materialise.

Under the Nigerian Constitution, implementation of treaty on exclusive legislative matters is the domain of the federal legislature,³¹ while penal legislation is a residual issue squarely under the state legislature. Furthermore, amending the provisions of Chapter Four of the Constitution on fundamental rights requires legislative collaboration at national and state levels. At least four fifths of the members of both houses of the National Assembly must support the proposal, which must be backed by resolution of at least two thirds of all the state houses of assembly.³² This is a serious challenge and an uphill task.

Fear of political backlash

Beyond the logistical and numerical challenges under the Nigerian constitution, there is the volatility of Nigerian society, particularly the Muslim community, on issues of blasphemy. When a blasphemy allegation is made, it is common for people to go on a rampage, extrajudicially killing innocent people, and burning residences, religious centres and police stations. In most cases, the perpetrators go unpunished, and even receive public commendation, notwithstanding the fact that the exact words uttered are not known.

In October 2013, an incident happened in Zamfara State, Nigeria, where someone was alleged to have made a derogatory statement against the person of Prophet Muhammad (SAW). Without an attempt at knowing what was really uttered, the youth in Nasarawa area of Bukkuyum local government of that state pursued the suspect who sought refuge in a police station. The station was burnt to ashes, destroying all valuables in a bid to kill the suspect.³³ The suspect was eventually found and killed by those who, Emmanuel Uchenna Ugwu, a Nigerian commentator calls “self-appointed god avengers”.³⁴ What was interesting, was the way the community reacted when the killers of the suspect were to be prosecuted. All the indigenes of that local government holding key political offices in the legislative and executive arms of government were blamed by the community for allowing the arrest of the attackers. They were tasked to secure their release immediately or face the consequences. These politicians swung into action and the attackers were released on bail and the case died a natural death.³⁵ The sensitivity of cases like

31 Constitution of the Federal Republic of Nigeria, 1999, item 31 of the Exclusive Legislative List Schedule 1.

32 Constitution of the Federal Republic of Nigeria, 1999, sec 9(3).

33 “Blasphemy: Zamfara Residents Set Police Station Ablaze”, *Nigerian Best Forum*, 8 October 2013.

34 Ugwu EU. 2016. “Before the Next ‘Blasphemy Killing’”, *Sahara Reporters*, 6 June.

35 The author was a presiding Magistrate when a team of politicians, including a Commissioner, a Member of the State Assembly, and Member, State Electoral Committee in the company of their supporters stormed his court, having enlisted the support of the

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this could spell doom to politicians, who may risk being lynched or loss of political credibility if political opponents use such cases against them.

Activities of self-appointed god avengers

The state is supposed to be an umpire, but instead finds itself in a serious dilemma, given the mutual accusation from the Muslims and non-Muslims, who do not see it as alive to its responsibility. For instance, in the northern part of Nigeria, some overzealous Muslims tend to feel that the state is not doing much in protecting their religion against attack via blasphemous remarks, at least by prosecuting culprits responsible for blasphemous acts.³⁶ On the other hand, Christians also accuse the state of inaction in protecting them against attacks, by not prosecuting those involved in mob action against one of their own.

In Kano State, several incidences occurred and many people lost their lives. Gideon Akaluka's case remained spectacular in this regard. Sometimes in 1995, it was alleged that pages of the Quran were used by Gideon's wife to wipe their baby's stool in utter disrespect for the holy book. Gideon was arrested by the police, but he was pursued and beheaded by some angry youths while in custody. The youth thus arrogated to themselves the power of law enforcement. Gideon was not responsible for the alleged act and, even if he were, it was not their duty to penalise him but that of the state. At any rate, the then military government came in, identified the culprits and executed them for murder without trial.

In November 2012, a Christian tailor when chatting with his Muslim neighbour mentioned one style popularly known as "*Na Annabi ya shiga Kasuwa*".³⁷ This some people claimed that the tailor said, "the Prophet has come to the market". As a result, many innocent souls and valuables, including churches, were lost.³⁸ The author is not aware whether the perpetrators of this atrocity were prosecuted.

One cannot forget the recent massacre in June 2016 of Bridget Agbahime, a Christian woman accused of uttering blasphemous statements against the Prophet Muhammad (SAW) in Kofar Wambai market of Kano State. The suspects were arraigned for inciting disturbance, culpable homicide, conspiracy and mischief, but were subsequently released by the Magistrate Court barely five months after their arrest, as the case against them was terminated by the office of the attorney general

police to change the First Information Report (FIR) to a lesser crime. The suspects were subsequently transferred to another court with jurisdiction, and they were consequently released.

36 See *Usman Kaza v the State* (2008) 7 NWLR (PT.1085) 125 SC.

37 It is a tailoring style whereby wide pockets are made on the right and left side of the shirt. It is named "*Na Annabi ya shiga kasuwa*", because it is easy for pickpockets to gain access to one's money.

38 "Rumoured Blasphemy against the Prophet Sparks Riot in Kano", *Information Nigeria*, 23 November 2012.

of Kano State.³⁹ Their release vindicated the suspicion of the Christians that nothing would be done to the perpetrators of this act despite the promise by the Kano State governor. In fact, when it was rumoured that monetary compensation was paid by the state to the family of the deceased, many Muslims condemned the action of the state.

What one can discern from the various incidences is that there are laws against blasphemy just as there are penalties for those who take the law into their own hands. Yet, the self-appointed god avengers continue with their unilateral action not minding the consequences. Thus, it is the view of this author that removing the offence of blasphemy from the corpus of Nigerian law will only plunge the society to anarchy.

STRENGTHENING THE NIGERIAN COURTS IN FIGHTING IMPUNITY

In any ordered society, respect for rule of law is institutionalised such that people remain within their limits. By taking the law into their hands, the perpetrators undermine the authority of the state whose duty it is to protect the lives and properties of citizens. To the best of my knowledge, only a very few cases have been successfully prosecuted and the perpetrators sentenced to death. Apart from the killers of Gideon who were executed on the orders of General Sani Abacha, other cases are *Usman Kaza v State*⁴⁰ and *Abubakar Dan Shalla v the State*.⁴¹ These cases emanated from Kebbi State in Northern Nigeria on the same subject matter, i.e. the killing of one Abdullahi Alhaji Umaru of Randali village, who was macheted by the neck and slaughtered with a knife by Abubakar Dan Shalla on 14 July 1999 on the allegation that he abused the Prophet Muhammad (SAW). They were convicted and sentenced to death by hanging by the trial court, a verdict that was affirmed by the Court of Appeal and, finally, the Supreme Court. In all these stages, what constitutes the content of the insult, according to the Supreme Court, “so far has remained a mirage to the courts below and so also this has disabled the respondent to refute it”.⁴²

Only very cases few cases of blasphemy have been prosecuted, and they all involved vilification of a religious figure, Prophet Muhammad (SAW) which the Rabat Plan seeks to allow. In *Commissioner of Police v Hajiya Maryam Ibrahim Sayyada and two others*⁴³ and *Kano State Government v Abdul’Aziz Dauda (Alias Abdul Inyass)* the cases concerned derogatory remarks on the Prophet.⁴⁴ These cases emanated

39 “Blasphemy: Court Frees Five Suspected Killers of Bridget in Kano”, *This Day*, 4 November 2016.

40 (2008) 7 NWLR (Pt. 1085) 125 SC.

41 (2007) 18 NWLR (Pt. 1066) 240 SC.

42 See *Usman Kaza v the State*.

43 CR41/015 (unreported).

44 CR/54/2015 (unreported).

4. Nigeria's blasphemy laws and the competing rights

from the same subject matter on the same occasion. In May 2015, an occasion was organised by Hajiya Maryam Ibrahim Sayyada to commemorate the birth of the Tijjaniyyah Icon, Sheikh Ibrahim Nyass in Kano City, Nigeria. When one of the invited guest speakers Abdul'Aziz Dauda was eulogising his icon Sheikh Nyass, he made a disparaging statement against the Prophet Muhammad (SAW) that caused commotion at the event. The preacher, as contained in the record of proceedings of the Upper Sharia Court, Rijiyar Lemu, Kano, said in Hausa language that Sheikh Nyass deserved respect from everybody, that they would match on anybody who disrespect him; and that should the Prophet of Medina be resurrected and showed no respect to the Sheikh they would match on him too. Immediately this statement was uttered there was clear disapproval from the crowd as the venue became rowdy. The preacher escaped lynching, but the whole of Kano city was plunged into chaos. At the end, the Upper Sharia Court Rijiyar Lemu was torched destroying all the records kept therein. All the culprits were convicted and sentenced to death; although they were subsequently freed on appeal to the utter dissatisfaction of the state. The only possible solution is for the state to be alive to its responsibility and bring perpetrators on both sides to book. Effective utilisation of the court would minimise incidences of blasphemy, just as it would tame the bloodthirsty youths with a penchant for overstepping their limits.

CONCLUSION

In the foregoing analysis, an attempt was made to examine the Rabat Plan, with a view to determining whether blasphemy laws can be expunged from the Nigerian laws. One of the major weaknesses of the Rabat Plan is that it falls short of considering the perspective of many religious communities on blasphemy. Exempting religious figures like holy prophets and holy books from the list of items that can be considered in limiting the right to freedom of expression is one of its Achilles heels. Ironically, desecration of these religious symbols remains commonplace across the globe. It also noted that some elements take the law into their own hands by extrajudicially killing suspects of blasphemy not minding the consequences, which in most cases results in capital punishment. In view of these facts, it seems quite likely that expunging blasphemy laws will further plunge the country into anarchy. To avoid this outcome, the perspectives of religious organisations on blasphemy should be considered. The government must also garner the courage to prosecute those who incite violence by desecrating religious symbols and icons, and also strengthen the court to promptly deal with overzealous elements who resort to jungle justice and arbitrariness. It is believed that doing so would most likely allay the fears of both the Muslims and the Christians in Nigeria.