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UNITED STATES COMMISSION *on*
INTERNATIONAL RELIGIOUS FREEDOM

POLICY UPDATE: BLASPHEMY LAWS IN NIGERIA

October 2022

USCIRF's Mission

To advance international freedom of religion or belief, by independently assessing and unflinchingly confronting threats to this fundamental right.

Blasphemy Laws in Nigeria

Introduction

The increasing enforcement of blasphemy laws enshrined in Nigeria's criminal and Shari'a codes poses a significant risk to religious freedom for Nigerians, especially religious minorities and those who espouse unpopular or dissenting beliefs, worldviews, or religious interpretations. This policy update places Nigeria's blasphemy laws in social and political context. It describes both penal and Shari'a codes in Nigeria that criminalize blasphemy, as well as high-profile blasphemy cases in recent years, and highlights the problematic impacts these cases have on freedom of religion or belief for Nigerians. It concludes by recommending that the U.S. government support a national dialogue on combating religious intolerance without restricting freedom of speech under the law, as called for in UN Human Rights Council (UNHRC) Resolution 16/18 (2011). This update also highlights several interim policy options for protecting the rights of religious minorities and individuals with dissenting worldviews as the needed civic dialogue unfolds.

Background

Nigerian society demonstrates a roughly even balance of Muslims and Christians, with *estimates suggesting* that approximately 53.5 percent of the country's roughly 225 million people identify as Muslim and 45.9 percent identify as Christian. The remaining 0.6 percent (1.3 million people) reportedly identify as Baha'i, Jewish, Hindu, Buddhist, humanist or nontheist, or practitioners of traditional or indigenous religions. With a vibrant marketplace for ideas, Nigerians often merge religious practices from a variety of traditions and influences. Interfaith tolerance and harmony are commonplace in many parts of Nigeria, especially among Christians and Sufi Muslims, with communities reporting that they jointly celebrate religious holidays from both traditions with one another.

During a visit USCIRF made to Nigeria in June 2022, many religious leaders and members of civil society expressed the belief that individual Nigerians have the right to interpret Christianity or Islam in their own way, and that such right should be protected by the State. Many of these stakeholders also espoused the belief that insulting someone else's religion should be considered inappropriate in Nigerian society, with some expressing support for targeted laws criminalizing such insults. These values appear rooted in customary legal concepts, with *traditional notions* of insulting or abusive language being "considered reprehensible and punishable because of its tendency, in smaller communities, to result in breaches of the peace or disturbances of the societal equilibrium." These contradictory beliefs demonstrate the

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dilemmas currently facing Nigerian civil society actors as they engage in discourse surrounding the impacts that blasphemy laws are having on citizens' rights to freedom of religion or belief.

Blasphemy in Nigerian Law

The *Nigerian Constitution* prohibits the federal and state governments from adopting a state religion and provides a strong legal foundation for the protection of freedom of religion or belief. Article 38, in similar language to the International Covenant on Civil and Political Rights (ICCPR), affords every Nigerian the right 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." It also prohibits education institutions from requiring students to engage in religious practices other than their own and protects religious communities' rights to provide religious instruction within their places of education.

The Nigerian Constitution allows for legal pluralism at the federal and state levels, including high courts of appeal, customary courts of appeal, and Shari'a courts of appeal. Despite protections under Article 38, the Nigerian Criminal Code (applied in southern states), Penal Codes (applied in northern states) and Shari'a Codes (applied in 12 northern states) include laws criminalizing blasphemy, with sentences including significant prison time and even the death penalty in some cases. The enforcement of these laws, which has increased in recent years, constitutes a particularly severe violation of international religious freedom as defined by the *International Religious Freedom Act* (IRFA). It constitutes the denial of a person's liberty on the basis of their exercising the right to manifest their beliefs through worship, observance, practice, and teaching. International law protects every individual's right to peacefully express views that others may consider blasphemous, and tasks governments with the responsibility of protecting that right.

The Nigerian Constitution allows laws to restrict fundamental rights, including freedom of religion or belief, if those laws are "reasonably justifiable in a democratic society" and in the interest of defense, public safety, public order, public morality, or public health. This language may allow for more restrictions on religious freedom than does the ICCPR, which only permits limitations to the manifestation of religion or belief if such limitations are "necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others."

Moreover, international *legal precedent* reveals that blasphemy laws do not, under any circumstances, meet the requirements for acceptable limitations on the right to manifestation of religion or belief as proscribed under the ICCPR. Permitted limitations must be narrowly tailored and construed in favor of the right at issue. They must center the protected right—in this case, freedom of religion or belief—as the norm and signal that the limitation is the exception. Laws against incitement to imminent violence fall within these parameters, even if such incitement invokes God or other religious sentiments. Other permissible restrictions include time-limited and equitability enforced closures of houses of worship during public health crises, or requiring specific apparel that

may interfere with religious dress requirements in order to protect workplace safety. Laws against blasphemy, however, fall short of the constraints placed on acceptable limitations to freedom of religion or belief.

Article 20 of the ICCPR requires that "any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law." However, to avoid unduly restricting fundamental rights that the ICCPR protects, including freedom of expression, this provision is interpreted narrowly, to mandate prohibition only of speech inciting imminent violence (see UNHRC *Resolution 16/18* (2011)). Other types of hate speech should be countered through non-criminal measures, including dialogue, education, and counter-speech.

Blasphemy in Criminal and Penal Codes

Nigerian criminal law includes two main codes—the Criminal Codes applied in southern states, and the *Penal Codes* adopted in northern states. Both codes include provisions against blasphemy. Article 204 of Nigeria's Criminal Code states that "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 misdemeanor and is liable to imprisonment for two years." Various articles in northern Penal Codes include *language* like the following: "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."

Prosecutions under the Criminal and Penal codes appear rare. However, in recent years the high-profile case against humanist activist *Mubarak Bala* has brought these laws into sharper focus. Nigerian authorities arrested Bala in April 2020, transferred him across state lines, and detained him without charge for over a year, restricting his access to his legal representation. Kano authorities refused to comply with a federal order to release Bala in December 2020. In August 2021, authorities charged Bala under provisions of the Kano State Penal Code with *18 counts* of causing a public disturbance by posting blasphemous content on social media. In April 2022, Bala *pled guilty* to all charges filed against him, against the advice of his lawyers and reportedly against his own convictions. The Kano state court sentenced him to 24 years in prison. Bala's lawyers have appealed the sentence.

In May 2022, officials in Bauchi state reportedly arrested Christian healthcare worker *Rhoda Jatau* on charges of blasphemy and have held her without bail and without trial, in contradiction of the Nigerian Constitution. Jatau reportedly shared a video via WhatsApp that members of her community considered blasphemous in the aftermath of the mob killing of Christian university student Deborah Emmanuel, who was accused of blasphemy in neighboring Sokoto state—an incident discussed in more detail in the following section. Jatau, a 45-year-old mother of five is reportedly charged under the State Penal Code and federal cybercrimes law with inciting a public disturbance, exciting contempt of religious creed, and cyber stalking.

The government's willingness to enforce blasphemy prohibitions appears inconsistent and possibly discriminatory. There is no record of the courts pursuing charges against individuals who insult humanism, Judaism, or traditional or indigenous religions, despite that public discourse frequently includes language that practitioners of these religions find insulting. Evidence suggests that prosecutions are influenced by social, economic, and political power, which individuals with dissenting beliefs and minority worldviews often lack. Informants familiar with Bala's case allege that his father's influence as head of a powerful Muslim family played a role in his arrest and cross-state transfer to Kano. In northern states, laws specifying that only insults likely to lead to an undefined "breach of the peace" are prosecutable further foster a discriminatory approach, as comments considered insulting to the religious majority are more likely to lead to public disorder than comments considered insulting to religious or belief minorities.

Some cite the infrequent prosecutions of alleged blasphemers under Criminal and Penal codes in Nigeria as evidence that these laws pose no threat to religious freedom in the Nigerian context. However, the existence of blasphemy laws in these codes keeps the door open for state officials to pursue blasphemy charges in a court of law. These charges will mostly likely continue to disproportionately impact individuals expressing dissenting religious interpretations or beliefs.

Blasphemy in Shari'a Codes

Following provisions allowing states to adopt parallel legal systems in the 1999 Nigerian Constitution, 12 northern states adopted Shari'a Penal Codes in the early 2000s. In deference to Article 38 of the Nigerian Constitution, which protects freedom of thought, conscience, and religion, Shari'a Penal Codes in northern Nigeria exclude provisions criminalizing apostasy, which is otherwise an offense punishable by death in some interpretations of Islamic law.

However, laws against blasphemy remained. Shari'a codes in northern Nigeria criminalize "insulting or exciting contempt of religious creed," with capital punishments for those found guilty of "insulting, abusing, etc. any prophet recognised by Islam." Civil laws criminalizing blasphemy may have provided justifications for such offenses to remain punishable under Shari'a codes. However, Shari'a blasphemy laws differ from civil laws in two key ways: first, they authorize capital punishment against convicted blasphemers; and second, they punish more harshly individuals who blaspheme against Islam than those who insult other religions.

In the past, Shari'a codes rarely led to blasphemy convictions, as witness requirements are substantial and strictly enforced. However, with the proliferation of social media, blasphemy charges have become easier to pursue as evidence of the transgression is witnessed by dozens of people online. Authorities in *Kano state* have brought blasphemy charges against Abdulazeez Inyass (2016), *Yahaya Sharif Aminu* (2020), and Sheikh Abduljabar Nasiru Kabara (2021). After he was denied a job in his local government area, authorities in Bauchi state arrested *Isma'ila Isah* for blasphemy in 2021 for allegedly posting a comment against the Prophet Muhammad on Facebook.

Public officials often seek to limit the enforcement of Shari'a blasphemy laws in certain ways. Governors routinely overturn death sentences after several years. In some instances, authorities have afforded alleged blasphemers the opportunity to repent or apologize for their offense in lieu of pressing charges. In 2021, security forces in Kano state *arrested Ahmad Abdul* for allegedly insulting Allah in a song he released that was not vetted by the Kano Censorship Board, releasing him only after he apologized. While this may demonstrate an attempt by government officials to avoid their legal mandate to detain an individual accused of blasphemy as dictated by Shari'a criminal codes, it may also constitute the state coercing its citizens to express religious views with which they do not agree in order to avoid arrest and prosecution.

Religious prisoner of conscience Yahaya Sharif-Aminu and his legal team recently challenged the constitutionality of blasphemy laws in Shari'a criminal codes. In an *August 2022 decision*, a high court in Kano state ruled that Shari'a blasphemy laws are allowed under the Constitution, and remanded Sharif-Aminu's case back to Shari'a courts for retrial. This ruling contradicts freedom of religion or belief protections as afforded under international law.

Risk of Mob Violence

Some informants have justified both civil and Shari'a blasphemy laws as designed to prevent threats to public order and safety. In the context of Nigeria's religious diversity and high levels of religiosity, insults to religion have historically triggered popular unrest beyond security forces' capacity to contain. In the first two decades of the millennium, incidents of mob violence in response to alleged blasphemy have erupted in *Kaduna, Abuja*, *Bauchi*, *Borno, Katsina*, *Gombe*, *Kano*, and *Jigawa* states.

More recently, in May 2022 a violent mob of university students in Sokoto state *stoned* Deborah Emmanuel, a Christian university student, to death and burned her body in response to comments she made in a WhatsApp thread that they considered insulting to Islam. Police in the vicinity were either unable or unwilling to quell the unrest, and authorities reportedly limited charges against two alleged perpetrators to *"conspiracy and inciting public disturbance."* A mob in Bauchi seeking to murder Rhoda Jatau for alleged blasphemy in the aftermath of Deborah Emmanuel's murder killed at least *11 people*. In June, an angry mob in Abuja *stoned and burned* to death Ahmad Usman, a Muslim man, for alleged blasphemy. Investigations into the incident asserted that the alleged blasphemer and his accuser had experienced a disagreement regarding joint organized criminal activity, and that the accuser had triggered the mob through allegations of blasphemy to exact revenge on the victim.

Some local officials have *publicly condemned* violence and incitement against individuals accused of blasphemy. Officials have also enforced *limited curfews* to quell escalating mob violence triggered by blasphemy allegations. However, robust legal action against those engaging in violence rarely accompanies these efforts. Despite that incitement to violence is criminalized, there is little evidence that individuals who incite such violence are prosecuted. Authorities brought *weak charges* against the individuals apprehended for their role in the mob violence that killed Deborah Emmanuel, reportedly *charging* them with criminal conspiracy and disturbing the peace, both bailable offenses. State hesitance to prosecute perpetrators and inciters of violence against those with dissenting beliefs appears rooted in the threat of public and voter *backlash* against public officials who express sympathies with those society considers having blasphemed.

Given the public safety threat posed by mob violence against individuals expressing dissenting religious views and beliefs, several analysts posit that the Nigerian government maintains the limited enforcement of blasphemy laws in criminal and Shari'a codes as a measure of maintaining public order in a context of weak security and justice institutions. However, as discussed in the previous section, blasphemy laws fail to meet the requirements for acceptable limitations on the right to manifestation of religion or belief as protected under international law. Nigerian authorities also justify refusing bail to alleged blasphemers and denying them their right to liberty throughout their legal proceedings as necessary for the defendants' protection from mob violence.

Conclusion and Recommendations

Blasphemy laws in Nigerian criminal and Shari'a codes undermine the country's strong legal protections for freedom of religion or belief and societal respect for interfaith tolerance. The increasing enforcement of these laws in some states demonstrates the urgent need to begin work to repeal these laws and address their impacts on religious freedom for Nigerians of minority faiths and dissenting beliefs. The risk of mob violence against individuals who express unpopular religious opinions does not justify the maintenance or enforcement of these laws. International law outlines strict criteria to warrant restrictions of freedom to manifest religious beliefs through expression in public and in private.

Given the negative impact of the enforcement of these blasphemy laws on freedom of religion or belief for Nigerians, the U.S. government should designate Nigeria as a Country of Particular Concern (CPC) for engaging in and tolerating particularly severe religious freedom violations. The U.S. government should also appoint a Special Envoy to Nigeria and the Lake Chad Basin to prioritize addressing religious freedom challenges in U.S. foreign policy in the region.

In addition, the U.S. government should lend support (technical, diplomatic, and financial) to Nigerian civil society organizations to engage in a national dialogue on implementing UNHRC Resolution 16/18 and promoting religious freedom while safeguarding freedom of expression. This dialogue, likely a multi-year process, should hold high priority level within U.S. policy in Nigeria, and should engage a diverse and inclusive cross section of Nigeria's stakeholders, including individuals (men, women, boys and girls) of different faiths, ethnicities, ages, and regions of the country. The primary objective of this dialogue should be to foster greater popular support for the repeal of blasphemy laws. The dialogue may also serve to address other aspects of Nigerian law, policy, and society that threaten Nigerians' rights to freedom of religion or belief, regardless of faith or worldview.

In the interim, there are several policy approaches that the U.S. government can urge the Nigerian authorities to adopt to mitigate the impact of blasphemy laws on Nigerians who peacefully express dissenting religious views and interpretations. These include:

U.S. officials in Nigeria should urge *federal authorities* to:

- Train and fund legal services for defendants in blasphemy cases and for the prosecution in cases against individuals who perpetrate or incite violence against alleged blasphemers;
- Establish a specialized protection force to secure relevant defendants, prosecutors, legal teams, court houses, and other individuals and infrastructure in cases involving blasphemy charges;
- Establish a covert relocation program for individuals accused of blasphemy and their families so that they may live safely and at liberty throughout their trials; and
- Issue and enforce an official policy requiring state governments to take disciplinary actions against *hisbah* (Shari'a police) and Shari'a court officials who fail to protect the constitutional and due process rights of defendants accused of blasphemy.

U.S. officials in Nigeria should urge *national and state legislative authorities* to:

- Criminalize false blasphemy accusations and other fraudulent manipulations of existing blasphemy laws to deter individuals from using blasphemy laws to exact revenge on those with whom they disagree.

U.S. officials in Nigeria should urge *state and local authorities* to:

- Prosecute individuals who perpetrate or incite violence against individuals accused of blasphemy to the fullest extent of the law;
- Issue and enforce an official policy eliminating prison time and allowing bail for non-violent defendants charged with blasphemy; and
- Issue and enforce an official policy requiring witnesses for the prosecution in blasphemy cases to have been in the location in which the alleged crime was committed and disallowing evidence from virtual platforms to be used in cases against alleged blasphemers.

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