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Islamic criminal law in northern Nigeria: politics, religion, judicial practice

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[Link to publication](#)

Citation for published version (APA):

Weimann, G. J. (2010). Islamic criminal law in northern Nigeria: politics, religion, judicial practice. Amsterdam: Vossiuspers UvA - Amsterdam University Press.

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Introduction

On 19 August 2002, Amina Lawal of Kurami village in northern Nigeria's Katsina State, a divorcee of 30 years of age, lost the appeal of her sentence of death by stoning for extramarital sexual intercourse, which had been imposed by a *sharī'a* court in the town of Bakori in March of the same year on the strength of a pregnancy out of wedlock. The upper *sharī'a* court that handled the appeal did not accept Lawal's withdrawal of her initial confession and confirmed the verdict of first instance. This was a major setback for Lawal's defence team, which in the interceding months had invested time and resources to build a solid case combining arguments founded in statutory and Islamic law. The 19 August 2002 was my first day in office at the Embassy of the Federal Republic of Germany in the Nigerian capital Abuja on a two-year assignment in the framework of the German Foreign Office's efforts for the promotion of intercultural dialogue.¹ It is not surprising, then, that the implementation of Islamic criminal law became a major focus of my interest in the following two years. The present work is based on the experience and material gathered during this period.

The adoption and enforcement of Islamic criminal legislation in northern Nigeria, which started in 1999 when Nigeria returned to a civilian system of government, raises the question of how Islamic criminal law can be implemented and how Muslims in northern Nigeria think it should be implemented in the present political and social situation. The present research focuses on judicial practice in Islamic criminal law in northern Nigeria after 1999. The different studies try to provide explanations for the observed developments from different perspectives, including regional and historical preferences (Chapter One), cultural factors (Chapter Two), political considerations and strategies (Chapter Three), and the religious doctrine (Chapters Four and Five).

Islamic criminal law is not an unproblematic term. Criminal law, the body of law that regulates the power of the state to inflict punishment on persons in order to enforce compliance with certain rules (Peters 2005: 1), does not have an equivalent in the traditional categories of Islamic law in the sense of a single, unified branch of the law. Offences in the prosecution of which the state is expected to be involved are discussed in three separate chapters (Peters 2005: 7). Firstly, the *ḥadd* (pl.

¹ On the German Foreign Office's activities in the area of intercultural dialogue, see <<http://www.diplo.de/diplo/de/Aussenpolitik/KulturDialog/InterkulturellerDialog/Uebersicht.html>>. Some conclusions drawn from my time in Nigeria are formulated in Weimann (2004).

ḥudūd) offences are those mentioned in the Qur'ān and are considered violations of the claims of God (*ḥuqūq Allāh*). They comprise theft, banditry, unlawful sexual intercourse, the unfounded accusation of unlawful sexual intercourse, drinking alcohol and—according to some schools of jurisprudence—apostasy. Secondly, the prosecution of offences against persons, i.e. homicide and wounding, is subject to the will of the victim or—in case of homicide—the victim's family, who have considerable influence on the punishment, e.g. by demanding or remitting retaliation (*qiṣās*), and are entitled to financial compensation (*diyya*). Finally, the courts and the public authorities are empowered to punish at their discretion sinful or forbidden behaviour (*ta'zīr*) or acts endangering public order or state security (*siyāsa*). Thus, Islamic criminal law is a term which combines offences in Islamic law which under a Western legal understanding are regarded as part of criminal law. This composite nature of Islamic criminal law is not only a construct of Western scholarship but is also reflected in the *sharī'a* penal codes of northern Nigeria, which are divided into “hudud and hudud-related offences,” “qisas and qisas-related offences” and “ta'azir offences.”² Thus, the term symbolises the transformation of Islamic law in the process of its adaptation to legal and constitutional systems based on Western concepts. The questions whether this transformation, which for instance entails the codification of the law, is acceptable and whether the Islamic nature of the law is preserved in this transformation are at the centre of debates about the status of Islam in many countries at the present stage.

On the national and international level, the debate on *sharī'a* implementation in northern Nigeria has focused on political and ideological arguments. With regard to judicial practice, reference has constantly been made to a small number of iconic cases, in particular those of Safiyya Hussaini and Amina Lawal. Reliable statistical data on judicial practice, which could have helped to objectify the debate, has been missing. Even large-scale research projects, such as the joint University of Jos (Nigeria) and University of Bayreuth (Germany) project led by Franz Kogelmann and Philip Ostien (Ostien, Nasir and Kogelmann 2005; Ostien 2007), have been unable to provide such data. The only way of gathering representative data would have been to visit a fair sample of the *sharī'a* courts and prisons in northern Nigeria individually to copy their registers. Given the geographical expanse of the twelve northern Nigerian states implementing the *sharī'a*, the number of *sharī'a* courts (70 to 80 per state) and prisons and the difficulties of getting access to and inter-

² See, e.g., the table of contents of the Harmonised Sharia Penal Code (in Ostien 2007: 4:36-44).

preting the registers, this exceeds the scope or budget of any research project.

The articles which form the body of the present work aim at gathering and analysing publicly available data on judicial practice in Islamic criminal law in northern Nigeria. Information on judicial practice was mainly provided by journalists and civil rights groups. In the absence of more reliable data, this has become the main source of information for the present studies.³ It is to be noted that such sources do not provide a representative sample but are an illustration of *sharī'a* judicial practice in northern Nigeria after 1999. The identified trials are listed in the appendix.

In my professional capacity, I had the opportunity to devote much time to establishing and maintaining contacts with Muslim leaders, rights groups and other stakeholders in an effort to understand the history and the dynamics underlying the initiative to introduce and implement legislation inspired by the *sharī'a*, particularly as regards criminal offences. For reasons of loyalty towards my former employer and towards the people who spoke to me in my capacity as a German diplomat, I cannot refer to the conversations which I entertained with my contacts in Nigeria. Thus, my research has not been based on field work. Instead, I have relied on published sources and information provided by fellow researchers. My selection and use of academic and media sources were informed by the background knowledge I acquired in Nigeria.

My arrival in Nigeria in August 2002 coincided with the climax of the controversy about *sharī'a* implementation in northern Nigeria. The tensions which had been building up over the two preceding years escalated in the so-called Miss World crisis a few months after my arrival. Even though the aborted 2002 Miss World contest in Nigeria was not directly related to the introduction of Islamic criminal law, it was interpreted on both sides in the context of the deteriorating relations resulting from this introduction between the country's Muslim north and the mainly Christian south.

From a southern perspective, the defiance of northern politicians and religious leaders, the huge crowds cheering at ceremonies marking the introduction of the *sharī'a* and the implementation of corporal punishments for offences such as drinking alcohol and amputations of hands for theft nurtured the already existing fears of an Islamisation of the Nigerian state. The apparently intransigent reactions even from Muslim umbrella organisations in northern Nigeria suggested a concerted effort to assert Muslim predominance in the country. It was alleged that Islam

³ For a discussion of the sources used for the analysis of judicial practice in Islamic criminal law, see Chapters One (pp. 23 to 25) and Three (pp. 110 to 111).

was rapidly expanding and that Nigeria was at risk of becoming a country dominated by Muslims in which other religions would be relegated to a position of minorities without rights. However, true figures on the number of converts to or from Islam are missing, as are statistics of the overall proportion of Muslims and Christians in the Nigerian population.⁴ Instead, the spectre of mass conversions to Islam is used to emphasise the “Muslim threat.”⁵

From a northern perspective, the massive support which the proposal of introducing Islamic criminal legislation received almost instantaneously from the northern Muslim population was the result of several factors, one of which was a widespread feeling of political and economic marginalisation of northern Nigeria. This feeling was not entirely unfounded if one compares Nigeria’s relatively high per capita income, which mainly results from the export of crude oil, with the dire living conditions and the situation with regard to education, health care and social services of the great majority of people living in northern Nigeria. In 1996, 37 percent of the population in north-west Nigeria were very poor with an additional 40 percent ranked as relatively poor.⁶ Only slightly better was the situation in the north-east: here 34 percent were living in great, 36 percent in relative poverty. Thus, only twenty to thirty percent of the people in the area were living in acceptable conditions. Northern Nigeria is not only one of the poorest but also one of the most densely populated areas of sub-Saharan Africa, and the population continues to grow rapidly.⁷ In 1999, a woman in the north-west had an average of 6.5 children in the course of her reproductive life, in the north-east even 6.8. Only a minority of the children receive a school education: in the north-west, 32 percent of boys and 24 percent of girls between 6 and 11 years of age attended primary school; in the north-east, these figures were 41 percent for boys and 37 percent for girls. The lack of access to education is reflected in a high rate of illiteracy: in 1999, no more than 40 percent of men and 20 percent of women above the age of 15 in northern Nigeria knew how to read and write, while in southern Nigeria 74 percent of men and 55 to 60 percent of women were literate.

Economic destitution is coupled with political depravation. In a country that over decades has been ranked among the most corrupt world-

⁴ Conventionally, it is said that Muslims make up half of the population, while Christians and followers of African traditional religions account for the other half. National censuses in the past decades eschewed the question of religious affiliation.

⁵ See Pérouse de Montclos (2008).

⁶ These and the following figures are taken from Hodges (2001).

⁷ In light of the progressing desertification, this fact aggravates the already existing tensions between communities, in particular between cattle-raising nomads and sedentary farmers.

wide, military and civilian regimes, which ironically were mainly dominated by northern Muslims, have ruled without responding to the needs or demands of the population and have contributed to the emergence of a political culture based on personal profit and clientelism. Economic and political marginalisation is not restricted to northern Nigeria, as the continuing crisis in the Niger delta shows. In an effort to avoid being challenged and to sustain their power, the Nigerian ruling classes have exploited topics such as the perceived north-south antagonism, which has existed since the colonial days, for rallying support. This has led to the paradox that, whereas Muslim and Christian political leaders in Nigeria are able to cooperate on a pragmatic level for the mutual benefit of maintaining their position of power, they have done little to attenuate ethno-religious tension.

The use of religion for rallying political support has a long tradition in northern Nigeria. For centuries, Islam was a major source of legitimacy for the states in the region. The application of Islamic law by the ruler was the most visible aspect of upholding Islam and, consequently, has become the symbol of northern religious and political autonomy in modern times. After independence in 1960, the feeling of marginalisation in northern Nigeria became identified with the question of the status of Islamic law, particularly its criminal aspects, in the Nigerian state. In the eyes of many Muslims, Islamic criminal law had virtually been abolished. Demands for a reassertion of the Muslim identity of northern Nigeria through an amplification of the application of the *sharī'a* were blocked in the constituent assemblies held since then.⁸

When general elections were announced after General Abacha's death in 1998, candidates for political office suddenly had to compete for popular support. Some sought to profit from the north-south antagonism, for example by promising to implement the *sharī'a*, knowing that the population would see this as a new option to re-establish justice where all others had failed (Loimeier 2007: 65). One of the gubernatorial candidates in Zamfara State, Ahmad Sani, promised "religious reforms" and, upon this, was elected governor. Part of the reforms introduced after his victory was the introduction of Islamic criminal law. This triggered a popular movement which forced eleven other state governors to follow Ahmad Sani's example.

The introduction of Islamic criminal law not only surprised the non-Muslims in Nigeria but also overwhelmed the existing Islamic judicial system. This system consisted of area courts, which applied uncodified Islamic law in civil and the Penal Code in criminal cases, and state *sharī'a*

⁸ Ostien (2006) believes that had the Christians made concessions with regard to the status of Islamic law, the drive for *sharī'a* introduction had not acquired such strength.

courts of appeal, competent exclusively to hear appeals from area courts in matters of Islamic personal law. Appeals in criminal and other civil cases went from the area courts to the secular state high courts. Most area court judges became judges of the newly established *sharī'a* courts. They were totally unprepared for and overwhelmed by the new tasks assigned to them, i.e. the administration of codified Islamic criminal law. The hasty and incomplete introduction of the new legislation and pressure exerted by Muslim lobby groups are largely to blame for the bad quality of the sentences passed in the initial phase.