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Chapter Four: An Alternative Vision of *Sharī'a* Application in Northern Nigeria: Ibrahim Salih's *Ḥadd offences in the sharī'a*³⁸⁴

Abstract: After Islamic criminal law was introduced in northern Nigeria in 1999/2000, sentences of amputation and stoning to death were handed down by *sharī'a* courts. Within a short period of time, however, spectacular judgments became rare. Given the importance of religion in northern Nigerian politics, this development must have been supported by influential Muslim scholars. This article analyses an alternative vision of *sharī'a* implementation proposed by influential Tijāniyya *ṣūfī* shaykh Ibrahim Salih. He calls for a thorough Islamisation of northern Nigerian society, relegating the enforcement of Islamic criminal law to the almost utopian state of an ideal Muslim community. In this way he not only seeks to accommodate the application of Islamic law with the realities of the multireligious Nigerian state but also tries to conserve the unity of Muslims in the face of a perceived threat for Nigeria's Muslims of being dominated by non-Muslims in the country.

At the beginning of the twenty-first century of the Christian era, Islamic criminal law was re-introduced into parts of northern Nigeria. This development coincided with the country's return, after long years of military rule, to a civilian system of governance. Soon after the introduction of the new legislation the media began to report amputations of hands and the imposition of sentences of stoning to death. In the Western world, in particular under the impression of the attacks of 11 September 2001 in the United States, the Islamisation of criminal law in northern Nigeria was mainly perceived in the context of heightened fears of an alleged worldwide attempt by radical Islamists to overthrow democratically elected governments and establish totalitarian Islamist regimes. A pivotal African nation was seen at risk of "sliding into lawlessness and terror, like Afghanistan under the Taliban" (Marshall 2002).

³⁸⁴ Originally published in *Journal for Religion in Africa*, 40:2 (2010), 192-221, and reprinted with permission from Brill Academic Publishers.

In practice, however, the execution of harsh punishments such as amputation or stoning to death, was soon hampered by mounting opposition. The right hands of three convicted thieves were amputated between March 2000 and July 2001. No amputations have been reported after that date. Hundreds of amputation sentences for theft remain in place, but have not been executed because the governors of the states in which these verdicts have been handed down refuse to approve them (Dekker and Ostien 2009: 252-253; Chapter Three). The most prominent stoning sentences were those of two unmarried mothers who were convicted of illicit sexual intercourse on the basis of pregnancy or childbirth out of wedlock (Chapter Two). Safiyya Hussaini of Sokoto State, who was sentenced to death by stoning in October 2001, was discharged and acquitted for lack of evidence on 25 March 2002 (Peters 2006). Around that time Amina Lawal of Katsina State was sentenced to death by stoning for the same offence. Her sentence was confirmed on 19 August 2002 before being quashed in a second appeal on 25 September 2003.³⁸⁵ The last stoning sentences against unmarried mothers were reported in 2004; they were quashed in a matter of weeks. No stoning sentence has been carried out in Nigeria to date. All death sentences imposed on unmarried mothers on the basis of pregnancy or childbirth out of wedlock have been revoked. Today, while the question of the constitutionality of the *sharī'a* penal codes remains, Islamic criminal law continues to be administered in *sharī'a* courts in northern Nigeria but spectacular cases like those mentioned have become rare. This is a remarkable development that needs explanation.

Northern Nigerian Muslim politicians need to ensure that their policies receive the support of religious leaders who legitimise their rule in the eyes of their Muslim constituencies. The governors' unwillingness to implement sentences of amputation and stoning is certainly due to the implications that the execution of such sentences would have for their personal political careers in the Nigerian federal system (Ostien 2007: 4:203; Chapter Three). Notwithstanding, their attitude must still be backed by influential Muslim currents, led by Muslim scholars whose mastery of the Arabic language and Islamic sciences allows them to legitimise certain interpretations of the religion. An important development, such as the observed change in the implementation of Islamic criminal law in northern Nigeria, must have been accompanied or preceded by a scholarly discourse.

While the dogmatic discussions surrounding the confrontations of *ṣūfī* brotherhoods (*ṭarīqas*) and Muslim reform movements in northern

³⁸⁵ The proceedings and judgments of the two trials have been published in English translation in Ostien (2007, vol. 5).

Nigeria until the mid-1990s have been amply documented,³⁸⁶ little has been published to date about scholarly perceptions of the introduction of Islamic criminal law after 1999.³⁸⁷ This chapter analyses an alternative vision of the application of Islamic criminal law in northern Nigeria proposed by the influential Maiduguri-based Tijāniyya shaykh Ibrahim Salih. The analysis is based on a scholarly work in Arabic and focuses on the theological arguments provided. It is difficult to assess the impact of Ibrahim Salih's views in this matter on the Muslim community in Nigeria with any degree of exactitude. However, it is argued that the widespread acceptance of his or similar ideas have probably been at the root of the observed change in the application of Islamic criminal law.

Ibrahim Salih in the northern Nigerian religious context

Ibrāhīm bin Muḥammad al-Ṣāliḥ al-Ḥusaynī,³⁸⁸ known as Shaykh Sharif Ibrahim Salih, was born in 1939 in Dikwa (Borno State) into a family of Shuwa Arabs, the only population of Arabic native speakers in Nigeria. His linguistic and geographic origins allow him to present himself as an independent Muslim authority in Nigeria. In the nineteenth century AD, the region now covered by Borno State was the core of the Muslim empire of Bornu, the only northern Nigerian Muslim polity to withstand the expansion of the Sokoto Caliphate despite several attempts by Sokoto to conquer it. Its *de facto* ruler and later Shehu of Bornu Muḥammad al-Amīn al-Kanemi defied Sokoto not only militarily but also on a dogmatic level in a famous correspondence with the leader of the Sokoto *jihād* Usman ḍan Fodio and his companions, in which al-Kanemi questioned the legitimacy of Sokoto's fight against Muslims (Hiskett 1973: 109-110; Brenner 1973: 40-42). This debate reinforced Sokoto's already existing intransigence toward dissenting voices. The view prevailing in Sokoto was that Muslims who refused to accept its authority were not only enemies but non-Muslims (Last 1967: 58 fn). Until today, many Muslim Hausa, the predominant ethno-linguistic group in northern Nigeria that culturally dominated the Sokoto Caliphate, tend to glorify the legacy of the Sokoto *jihād* and claim a position of leadership in

³⁸⁶ E.g., Loimeier (1997); Seesemann (2000); and Kane (2003).

³⁸⁷ Umar (2001: 140) believes that Muslim scholars of all currents were caught off guard by the project of Western-educated Muslim politicians to implement "full *shari'a*." Loimeier (2007) discusses the attitudes and reactions of the different Muslim currents in Nigeria to the implementation of Islamic criminal law. O'Brien (2007) describes the relations and cooperation between different Muslim factions in Kano in implementing the *shari'a*.

³⁸⁸ For his complete *nisba*, see Hunwick (1995: 407). Biographical and bibliographical information on Ibrahim Salih is provided in Hunwick (1995: 407-415); Loimeier (1997: 271-273); Seesemann (2000: 138-140); and Kane (2003: 167-172).

Nigerian Islam on this basis, while non-Hausa, including non-Hausa Muslims, view it with more reservations.

Ibrahim Salih comes from a family with a long tradition of *ṣūfism*. His family claims descent from the Prophet. His father and grandfather were affiliated with the Tijāniyya,³⁸⁹ while earlier generations were linked to the Qādiriyya (Loimeier 1997: 271). Whereas under the Sokoto Caliphate the Qādiriyya was the dominant *ṣūfī* brotherhood, affiliation with the Tijāniyya was viewed as a symbol of resistance. British colonial authorities were quick to view it with suspicion as well (Umar 2006: 35-40). It would be wrong, however, to consider the Tijāniyya, or any other *ṣūfī* brotherhood for that matter, to be an organised movement of political opposition. *Ṣūfī* brotherhoods are not monolithic blocks but rather split in a multitude of different networks that co-exist and compete with each other, each grouped around a number of spiritually, politically, and economically influential religious scholars (Loimeier 1997: 15).

The quest for establishing himself as an independent authority within the Tijāniyya characterises Ibrahim Salih's biography. As did other ambitious shaykhs, he tried to free himself from local sources of authority and build an independent position (Loimeier 1997: 272-273). While he considers himself to be a disciple of Aḥmad Abū al-Faṭḥ (d. 1424/2003), a renowned shaykh of the Tijāniyya in Maiduguri (Seesemann 2009: 311), he sought and obtained other *silsilas*, or continuous chains of spiritual descent, that connect him with the order's founder Aḥmad al-Tijāni through Tijāniyya centres in Nigeria (Kano), Egypt (Cairo), Senegal (Kaolack) and Morocco.

In the 1960s and 1970s Ibrahim Salih concentrated on establishing his trade in books and his publishing house in Maiduguri. He developed trading contacts in Egypt, the Sudan, and the Central African Republic (Loimeier 1997: 272-273), which allowed him to be economically independent from donations of his supporters. During the same period Ibrahim Salih founded several *Islāmiyya* schools whose curricula combine Islamic and "Western" subjects, and contributed to the establishment of higher Islamic education institutions in his home state of Borno (Seesemann 2000: 139). Finally, in the 1980s, he began a prolific literary production that earned him a reputation for his scholarship.³⁹⁰

Ibrahim Salih should be counted among the most influential living Tijāniyya shaykhs, not only in Nigeria but in the greater part of Africa and beyond. He regularly leads Nigerian delegations to Tijāniyya conven-

³⁸⁹ On the emergence, the doctrines, and the development of the Tijaniyya until the first half of the twentieth century AD, see Abun-Nasr (1965).

³⁹⁰ Hunwick (1995: 408-415) reproduces a list, partly provided by Ibrahim Salih himself, of ninety-five works. Loimeier (1997: 273) refers to an interview with the Islamic periodical *The Pen* in 1989 in which Ibrahim Salih claimed to have written 132 "books."

tions in Morocco. To the east, his influence reaches far beyond Nigeria into Chad, the Central African Republic, and the Sudan, with particularly strong support in Darfur. By the early 1990s he began to make frequent appearances at international gatherings of Muslims, including the Muslim World League and the Organisation of the Islamic Conference (Seesemann 2009: 312). In Nigeria Ibrahim Salih has not avoided contact with the state. General Ibrahim Babangida, Nigerian military head of state from 1985 to 1993, regarded him as his personal *malam*, that is, a religious teacher and spiritual guide (Loimeier 2007: 49). During this period he regularly performed the Ramadan *tafsīr* in the Abuja National Mosque (Seesemann 2009: 312). His close links to the northern Nigerian political elite enhance his independent position.

In the 1990s Ibrahim Salih was appointed chairman of the *fatwā* committee of the Nigerian Supreme Council for Islamic Affairs (NSCIA). The NSCIA was founded in 1973 by a number of regional Muslim organisations with the aim of achieving a national consensus in matters pertaining to the development of Islam in Nigeria (Loimeier and Reichmuth 1993: 61). Its president is the Sultan of Sokoto, its vice president the Shehu of Bornu, and its secretary-general a Yoruba Muslim. Due to his chairmanship of the NSCIA's *fatwā* committee, Ibrahim Salih is frequently introduced as the Muftī of Nigeria by Muslim news providers such as IslamOnline.net, and by Arabic media. However, in contrast to the situation in some countries in the Middle East, the NSCIA is not backed by the Nigerian state but derives its authority solely from its ability to speak in the name of its distinguished leadership.

Another title used by Ibrahim Salih abroad is that of the chairman of the Assembly of Muslims in Nigeria (AMIN), a Muslim organisation with headquarters in the Nigerian capital Abuja.³⁹¹ AMIN's objective is to provide "the much-desired collective leadership for the *Ummah* by our *Ulama*."³⁹² AMIN's Arabic name is *al-Majlis al-Islāmī al-Nayjīrī*, which—possibly not without intention—is easily confused with the Arabic name of the NSCIA (*al-Majlis al-a'lā lil-shu'ūn al-Islāmiyya bi-Nayjīriyā*). In addition, Ibrahim Salih is among the few Nigerian Muslim scholars with an extended presence on the Internet. The site *al-Siyāda* [Leadership] is available, albeit not without interruptions, in Arabic at <<http://www.alsiyada.org>> and English at <<http://www.alsiyada.net>>. While the Arabic version provides access to the text of a number of Ibrahim Salih's writings, the English version seems to double as official site

³⁹¹ For example, he used this title to register on the Internet site of the Muslim World League (<<http://www.themwl.org/Bodies/Members/default.aspx?d=1&mid=1099&l=AR>>).

³⁹² AMIN "Brochure of Information," leaflet dated November 2002. Copy in the possession of the author.

of AMIN, including public statements signed by Ibrahim Salih in his capacity as AMIN chairman.³⁹³

On the dogmatic level Ibrahim Salih views himself as having been assigned the historic task of reconciling the *ṣūfīs* with their opponents (Seesemann 2000: 159). The beginning of the antagonism between mystic brotherhoods and the legalist reform movement dates back to the early years of the Federal Republic of Nigeria. After independence in 1960 the premier of the Northern Region, Ahmadu Bello, pursued a policy of political and religious unity in order to ensure the North's domination in the Nigerian federation. Following his assassination in 1966 and the loss of the north's political unity—in 1967 the three Nigerian regions were replaced by smaller states—the superficial unity in the religious sphere in the north that had been maintained with great difficulty by Bello rapidly disintegrated. The Grand Qāḍī of the Northern Region, Abubakar Gumi, began to attack the *ṣūfī* brotherhoods as carriers of un-Islamic innovations (*bida'*, sing. *bid'a*) in Islam. On the basis of their ideological affinity to the Saudi Arabian reform movement, Gumi and his followers have been labelled as Wahhābīs by their *ṣūfī* opponents (Seesemann 2000: 145).³⁹⁴ Beginning in 1977, Gumi made a series of public pronouncements of *takfīr*, thereby declaring as unbelievers those who adhered to *ṣūfī* beliefs, particularly the followers of the Tijāniyya (Brigaglia 2005: 430). In 1978 Gumi's supporters established an organisation of their own that was given the Arabic name *Jamā'at izālat al-bid'a wa-iqāmat al-sunna* [Society for the removal of innovation and the instatement of tradition] and became known in Hausa as 'Yan Izala, in an effort to transfer the struggle against the *ṭarīqas* to the grassroots level. The 'Yan Izala advocate an Islamic positivist legalism. They emphasise direct access to the sources and have led the way in expanding Muslim women's access to Arabic and Islamic learning (Umar 2001: 132).

The ferocious attacks of the 'Yan Izala, based on the religious arguments of Abubakar Gumi, put the *ṣūfī* brotherhoods, especially the Tijāniyya, under great pressure. Numerous members of the *ṭarīqas* left their religious leaders and joined either the 'Yan Izala or the growing movement of non-affiliated Muslims. The 'Yan Izala were particularly successful with their criticism of certain costly social customs, such as marriage and naming ceremonies, or donations to the shaykhs of the *ṭarīqas* (Loimeier 1997: 328). Under the pressure of Gumi's attacks the

³⁹³ In these statements Ibrahim Salih also describes himself as “chairman, Fatwa Committees of both *Jama'atu Nasril Islam* [JNI] and Supreme Council for Islamic Affairs of Nigeria [NSCIA].”

³⁹⁴ Gumi's ideological background was provided mainly by the standard sources of contemporary *salafī* thought, with some additional, sparse references to Wahhābī theologians (Brigaglia 2005: 429).

ṭarīqas stopped their internal quarrels and formed a common front against Gumi and his supporters. They also responded to the new ways introduced by the ‘Yan Izala by modernising their own approaches to, for example, education and the use of mass media.

Several attempts to solve the conflict between the *ṣūfī* brotherhoods and the reform movement by negotiations failed. For a long period, the conflict largely paralysed the activities of the two Muslim umbrella organisations, the NSCIA and *Jamā‘at Naṣr al-Islām* (JNI)³⁹⁵ (Loimeier 1997: 291-292). During the 1980s, however, the conflict between the *ṣūfī* brotherhoods and the ‘Yan Izala slowly receded into the background. Eventually a formal reconciliation between the *ṣūfī* brotherhoods and the reform movement took place in January 1988 (Loimeier 1997: 308). This superficial reunion was brought about not through a settlement of the contentious dogmatic issues, but by the increasing perception of a Muslim-Christian antagonism resulting—among other factors—from the growth of Christian Pentecostal and Charismatic movements and their missionary activities in northern Nigeria and a series of outbursts of ethno-religious violence.³⁹⁶ The fragmentation of the Muslim camp was seen as the main factor responsible for the perceived preponderance of the non-Muslims in the country. Since 1988, the relationship between the *ṣūfī* brotherhoods and the reform movement has mainly been one of mutual tolerance.

A factor that has contributed to overcoming the antagonism between the *ṣūfī* brotherhoods and the reform movement is that the dividing line between the two camps has been blurred over recent decades. All major Muslim movements have suffered from internal fragmentation—even the ‘Yan Izala split into two competing factions in 1991 (Kane 2003: 217-226)—while at the same time certain factions seem to have converged with those of other movements. In particular, the modernisation processes within the *ṭarīqas* have brought them closer to the reform movement of the ‘Yan Izala (Umar 2001). In addition, the number of Western-educated Muslims who are not affiliated with one of the existing religious movements and who reject the religious conflict on account of its political implications has grown considerably. These non-affiliated Muslims are a heterogeneous group. They comprise conservative bureaucrats and judges, but also young and radical Muslim intellectuals, mainly centred in the high schools and universities of northern Nigeria, and finally dissidents from the conflicting parties of the *ṣūfī* brotherhoods

³⁹⁵ Like the NSCIA, JNI is presided over by the Sultan of Sokoto. Ahmadu Bello promoted its foundation as early as 1962 in a bid to gain the support of the Sufi brotherhoods for his policies (Loimeier and Reichmuth 1993: 47).

³⁹⁶ Kane (2003: 179-206) provides an overview of the issues and crises that characterised Muslim-Christian relations in Nigeria in the 1980s and the early 1990s.

and the ‘Yan Izala. The energetic appearance of this new class of Muslim actors has also led to a revitalisation of JNl and the NSCIA, which are under pressure to act accordingly (Loimeier 1997: 310-312).

Notwithstanding these developments and the reconciliation efforts, the conflict between reformists and traditionalists has continued on a lower level. Disputes about issues apparently unrelated to religion are used as alternative battlegrounds.³⁹⁷ In the light of the lingering conflict, advocating Muslim unity and seeking a compromise between the competing interpretations of the religion has become a major preoccupation. As the chairman of the NSCIA’s *fatwā* committee, Ibrahim Salih occupies an important position that allows him to act as a mediator between rivalling Muslim factions. Ibrahim Salih believes that in order to achieve a reconciliation between traditionalism and mysticism, it is necessary to address exaggerations (*mubālaghāt*) in the teachings of the *ṣūfīs* in an effort to bring them into line with the original teachings of Islam (Seesemann 2000: 158-159). This attitude was reflected in his approach to the conflict between the *ṭarīqas* and Abubakar Gumi’s reform movement.

Abubakar Gumi’s criticism of the Tijāniyya, as expressed in his major programmatic work *al-‘Aqīda al-ṣaḥīḥa bi-muwāfaqat al-sharī‘a* [The correct creed according to the *sharī‘a*],³⁹⁸ which was published in Arabic in 1972, concentrated on the central work of Aḥmad al-Tijānī, *Jawāhir al-ma‘ānī wa-bulūgh al-amānī fī fayḍ Sidī Aḥmad al-Tijānī* [The Jewels of the meaning and the fulfilment of the wishes in the grace of Sidi Aḥmad al-Tijānī]. Gumi criticised this work for claiming that, besides the revelation meant for all Muslims, the Prophet also transmitted “special instructions” exclusively to “specially chosen persons,” including after his death. Traditional *ṣūfī* leaders, like Nasiru Kabara for the Qādiriyya and Muhammad Sani Kafanga for the Tijāniyya, who were unwilling to give up or even revise the positions of the Tijāniyya as they were laid down in *Jawāhir al-ma‘ānī* (Loimeier 1997: 270), argued that the writings of the *ṣūfīs* were written in a special language that could only be understood by people having special knowledge. The joint counterpropaganda efforts of the *ṣūfī* brotherhoods allowed Dahiru Bauchi to establish himself as the spokesman for the brotherhoods, and in particular the Tijāniyya (Loimeier 1993: 153).

In contrast, in his defence of the Tijāniyya, which was published in 1982 in Egypt under the title *al-Takfīr akḥṭar bid‘a tuḥaddid al-salām wal-waḥda bayna al-Muslimīn fī Nayjīriyā* [Declaring others unbelievers is the most dangerous innovation threatening peace and unity among Muslims

³⁹⁷ Cf., for example, Loimeier (2000b).

³⁹⁸ For a summary of *al-‘Aqīda al-saḥīḥa*, see Loimeier (1997: 186-196).

in Nigeria],³⁹⁹ Ibrahim Salih argued that none of the several existing versions of *Jawāhir al-ma‘ānī* was authentic. He even affirmed that some of the passages of the book’s version currently in circulation were not in conformity with the *sharī‘a* (Loimeier 1997: 275, Seesemann 2000: 148). This approach has brought severe criticism from the traditional Tijāniyya shaykhs.⁴⁰⁰ By questioning the authenticity of *Jawāhir al-ma‘ānī*, Ibrahim Salih certainly attempted to develop a new strategy in the religious discussion with the ‘Yan Izala. At the same time, Ibrahim Salih’s approach can be understood as the manifestation of a power struggle within the Tijāniyya. In particular, the competition between Dahiru Bauchi and Ibrahim Salih threatened to split the *ṭarīqa*. Ibrahim Salih never accepted Bauchi’s claim to leadership, and his own popularity and political backing allowed him to side against Bauchi on several occasions (Loimeier 1993: 156, 1997: 266).

In a bid to save the unity of the *ṭarīqa*, the strategy adopted by the traditionalists within the Tijāniyya in Nigeria was to ignore the existence of *al-Takfīr* (Seesemann 1998: 66-67, 2000: 145-146). This seemed to work, until eventually a reaction to Ibrahim Salih’s theses came from abroad. In 1985 a Tijāniyya shaykh of Darfur, Ibrāhīm b. Sīdī Muḥammad b. Muḥammad Salmā (1368/1948-1949 to 1420/1999), published a polemical reply, *al-Summ al-zu‘āf al-muḍamman fī kitāb al-takfīr li-ifsād al-ṭarīqa wal-itlāf* [The deadly poison secreted in the book *al-Takfīr* to corrupt and destroy the brotherhood], in which he accused Ibrahim Salih of being a “Wahhābi” trying to destroy the Tijāniyya.⁴⁰¹ Ibrahim Sidi authored at least seven works in which he attacked Ibrahim Salih and *al-Takfīr*, frequently employing offensive language and mentioning his adversary by name (Seesemann 2009: 325-326).

Ibrahim Salih responded to this attack by writing *al-Mughīr ‘alā ahl al-ahwā’ wa akādhīb al-munkir ‘alā kitāb al-Takfīr* [The attacker of the heretics and the lies of the one who rejects the book *al-Takfīr*], printed in 1986 in Lebanon (Seesemann 1998). In this 584-page book he defended his earlier line of argument, expanded his ideas, and gave an exhausting presentation of the development and the teachings of the Tijāniyya (Loimeier 1997: 273). But he also defamed Ibrahim Sidi as an “insolent liar” (Seesemann 2000: 150). The exchange of polemics illustrates that despite his modernising efforts, Ibrahim Salih still depends on his legitimacy as

³⁹⁹ This work was a response to the 1978 publication of a simplified and polemical Hausa version of Gumi’s *al-‘Aqida al-sahiha* under the title *Musulunci da abin da ke rushe shi* [Islam and the things that lead to its destruction] (Hunwick 1995: 554).

⁴⁰⁰ The polemical exchanges between members of the Tijāniyya on the issue of Ibrahim Salih’s *al-Takfīr* have been analysed in Seesemann (1998).

⁴⁰¹ Seesemann (1998: 49-57) has summarised and analysed the contents of *al-Summ al-zu‘af*. See also Seesemann (2000: 146).

a Tijāniyya shaykh as an indispensable basis for his immense influence and his claim to religious leadership.

It is beyond doubt that Ibrahim Salih has succeeded in presenting himself as a modern Muslim scholar, whose writings address themes that relate to Islam's position in the contemporary world (Seesemann 2009: 323). His reputation has earned him an increasing following among younger Tijāniyya members with Western education, and acceptance as a religious leader even outside the Tijāniyya. Apart from his rapprochement with the reform movement, his popularity among Muslim intellectuals can be explained by the fact that, like them, he emphasises the importance of the Arabic language and stresses his ties with Borno. For these reasons many Muslims consider him as standing above the parties, in spite of his known affiliation with the Tijāniyya (Loimeier 1997: 276).

Attitudes toward Islamic criminal law

Since the 1967 breakup of the Northern Region, which until then could be regarded as the political base for Islam in the Nigerian federation, Muslim religious and political leaders in northern Nigeria have at every opportunity stressed the importance of acknowledging the *sharī'a* at all levels of the judiciary and in all spheres of law, and embodying the *sharī'a* in the constitution of Nigeria (Loimeier 1997: 9). In the face of the loss of political unity, Muslims in northern Nigeria increasingly identified with the question of the status of Islamic law within the federation. The controversy over the creation of a federal *sharī'a* court of appeal dominated the deliberations of the constituent assemblies of 1977-78 and 1988 (Abun-Nasr 1988, Ostien 2006).

In addition, the restrictions on Islamic criminal law became a major issue in the north. After independence the application of uncodified Islamic law in northern Nigeria was restricted to personal and civil matters tried before native courts, which in 1967 became area courts. In criminal matters, (secular) magistrate and native/area courts applied the 1959 Penal Code for the Northern Region, which after 1967 continued in force as the law of the newly created states. The Penal Code was a compromise negotiated by the British colonial authorities in an effort to reconcile the demands of the Muslim majority and the fears of the non-Muslim minorities in the then Northern Region of being subjugated to Islamic law. The British authorities took care that northern Nigerian Muslim scholars were consulted at every stage of the discussions leading to the adoption of the Penal and Criminal Procedure Codes for the Northern Region (Ostien 2007: 1:5). Although the Penal Code was initially received with an acquiescent or even hopeful attitude by northern Nigerian Muslims, over time the judicial situation in northern Nigeria came

to be regarded by Muslim intellectuals and scholars as a consequence of the colonial power's subjugation of Islamic law.⁴⁰² Thus the introduction of Islamic criminal law after 1999 was understood by many Muslims as a step in the process of decolonisation (Last 2000).

Nevertheless, when the opportunity to Islamise criminal law came, it seemed to have taken many by surprise. Neither the followers of the *ṣūfī* brotherhoods nor the 'Yan Izala seem to have believed that implementing "full *sharī'a*" was possible in the multireligious society of the secular Nigerian state. Given the enormous popular support, however, many were quick to identify with the initiative (Umar 2001: 145). Popular support for an immediate implementation of the *sharī'a* was not only the result of political considerations but was rooted in a profound anxiety in northern Nigeria over the approaching end of time and therefore the felt urgency to obtain God's favour soon (Last 2008).

The most outspoken supporters of restoring the *sharī'a*, including Islamic criminal law, were not Muslim scholars but prominent members of the northern political and economic establishment (Loimeier 2007: 66). This was the same social group that produced the initial patrons of the 'Yan Izala in the 1970s: their financial support merited them social and religious prestige that in turn enhanced their position in society (Kane 2003: 230). Similar aims can be assumed about the patrons of *sharī'a* implementation. The patrons were seconded by young and educated Muslims and university graduates in Islamic studies who participated in the "*sharī'a* project" because they saw it as an opportunity for social mobility and personal advancement (Sanusi 2007: 177). Again, this was the same group that, in the early days of the reform movement, constituted the majority of 'Yan Izala preachers who used their religious studies to achieve a position in society and a livelihood (Kane 2003: 228-229). The "*sharī'a* project" was thus driven not by the religious establishment but by social groups motivated by the chance to advance their personal position.

The introduction of Islamic criminal law began as a campaign promise by Ahmad Sani when he ran for the office of governor in Zamfara State in the 9 January 1999 elections, the first such elections after fifteen years of military rule. Sani promised to introduce "religious reforms that will make us get Allah's favour."⁴⁰³ After his election these reforms quickly came to be called "*sharī'a* implementation" (Ostien 2007: 1:viii). Part of the reforms was the introduction of Islamic criminal law. In October 1999 Zamfara State replaced its area courts with *sharī'a* courts that had the power to determine both civil and criminal proceedings "in Is-

⁴⁰² See, e.g., Yadudu (1991).

⁴⁰³ *Tell*, 15 November 1999, 19. Quoted in Ostien (2007: 1:vii).

lamic law.” The Zamfara State Sharīʿa Penal Code came into force, after revision by the Centre for Islamic Legal Studies (CILS) at Ahmadu Bello University in Zaria, on 27 January 2000 (Sada 2007: 23-24). Other northern Nigerian state governments came under enormous popular pressure to follow Zamfara’s example. By late 2001 eleven other states had established *sharīʿa* courts competent to try criminal offences, and most had introduced Islamic criminal legislation (Chapter One).⁴⁰⁴

The authors and reviewers of the draft Zamfara State Sharīʿa Penal Code were aware of the limits to introducing Islamic criminal law in the contemporary Nigerian context. They tried to ensure that at least substantial conformity with the provisions of the Nigerian Constitution of 1999 was achieved (Sada 2007: 24).⁴⁰⁵ Compromises thus had to be found. One of the CILS lecturers who participated in the review of the draft, Ibrahim Ahmed Aliyu, later remarked in an interview with a northern Nigerian newspaper⁴⁰⁶ that the type of Islamic law implemented was not the real or ideal one; rather, it was the one available at the moment. He explained that the *sharīʿa* was normally not a codified law, but it had to be codified in order for it to be accepted under the prevailing circumstances—in reference to the constitutional requirement that criminal offences and their punishments be specified in a written law enacted by the federal parliament or a state parliament (Section 36 (12), 1999 Nigerian Constitution). He added that some of the substantive rules of the *sharīʿa* had been omitted, such as the *ḥadd* offence of apostasy, which would have contradicted the constitutionally guaranteed freedom of worship and the freedom for anyone, including a Muslim, to change his religion (Section 38 (1)).

The way in which Islamic criminal law was introduced and implemented was not applauded by all Muslim leaders. However, few spoke out against it publicly. Many preferred to conserve an attitude of observant neutrality. The Sultan of Sokoto, Muhammad Maccido, remained conspicuously silent when the *sharīʿa* penal codes were introduced, limiting himself to emphasising the importance of Muslims’ enlightenment before the implementation of the *sharīʿa* (Loimeier 2007: 66). He also refrained from attending the ceremony that officially announced the commencement of *sharīʿa* implementation in the Zamfara State capital of Gusau in November 1999 (Last 2000: 142).

⁴⁰⁴ In Kaduna the *sharīʿa* penal code was promulgated in June 2002, in Borno only in March 2003.

⁴⁰⁵ The question of the constitutionality of the *sharīʿa* penal codes is discussed in Peters (2003: 31-36), Human Rights Watch (2004: 96-99), Ostien (2006), and Dekker and Ostien (2009).

⁴⁰⁶ “Don exposes defects in Shari’ah code,” *Weekend Triumph*, 20/04/2002.

One prominent Muslim critic was Ibrahim al-Zakzaki, leader of the Islamic Movement, a movement inspired by the Iranian revolution that is also known as Muslim Brothers or ‘Yan Brotha (O’Brien 2007: 52-53). Due to its revolutionary orientation and massive support received from Iran, al-Zakzaki and his movement have been labelled as *shī’īs* by their adversaries and the media. With regard to the introduction of Islamic criminal law, al-Zakzaki held that the *sharī’a* could only be implemented in an appropriate way by a just Islamic state in an Islamic society, otherwise it would become a mere instrument of oppression of the masses (O’Brien 2007: 53-54). Like al-Zakzaki, Dahiru Bauchi argued that inasmuch as it was politically motivated and not introduced in a proper Islamic way, the introduction of the *sharī’a* was illegal (Loimeier 2007: 65). Sanusi Lamido Sanusi, a member of the Fulani aristocracy of Kano and prominent banker, was one Muslim intellectual who was among the most outspoken critics of the way in which Islamic criminal law was administered.⁴⁰⁷ His economic independence allowed him to criticise political and religious leaders without fear of reprisal. In contrast, many leading Muslim scholars feared that open criticism of the implementation of Islamic criminal law would endanger the accommodation between the *ṣūfī* brotherhoods and the reform movement. The situation thus had to be remedied in more subtle ways. It is in this context that Ibrahim Salih’s contribution, including the production of *al-Ḥudūd fī al-sharī’a*, must be understood.

Ibrahim Salih’s Ḥadd offences in the sharī’a

Ibrahim Salih’s *al-Ḥudūd fī al-sharī’a* [*Ḥadd offences in the sharī’a*], whose completion date is given as 10 Muḥarram 1421 / 15 April 2000, is an example of a scholarly work that formulates not only a religious but also a political vision.⁴⁰⁸ On the face of it, *al-Ḥudūd fī al-sharī’a* is a source book on the *ḥadd* offences. On a more profound level, however, the work presents an alternative concept of achieving compliance with the rules of Islamic criminal law, clearly opposed to the way in which Zamfara and other states tried to achieve it after 1999.

Ibrahim Salih begins his book with a discussion of the nature of the *sharī’a* and a historical overview of its development. According to him, Islam was established in Nigeria via Bornu in the sixth decade of the first

⁴⁰⁷ A selection of his articles is available at <<http://www.gamji.com/sanusi/sanusi.htm>>. See also Sanusi (2007). In April 2009 he was appointed governor of Nigeria’s Central Bank and embarked on an unprecedented campaign of fighting corruption and mismanagement in the Nigerian banking system.

⁴⁰⁸ I have used the text of the book available online at <<http://www.alsiyada.org/hudud.htm>> (accessed 27 August 2007). This page reproduces the table of contents of the print version, according to which the original is 108 pages long.

century AH (670 to 680 AD), when the Companion of the Prophet ‘Uqba bin Nāfi’ and his followers set foot on it. The peoples of the region recognised the divine origin, the comprehensiveness, and the justice of the *sharī‘a*. Ibrahim Salih compares the pre-Islamic societies of Nigeria, which he says were built on partisanship (*‘aṣabiyya*) based on class (*jins*) or tribal affiliation, to the Indian caste system and to the pre-Islamic Arab tribes. In the subsequent discussion of the characteristics of the *sharī‘a*, Ibrahim Salih emphasises that God has made the *sharī‘a* easy to observe. Rules that people may find hard to follow because they are linked to habits are to be implemented gradually (*tadarruj fi al-aḥkām*), such as the prohibition of drinking alcohol, fighting *jihād*, or fasting during the month of Ramaḍān. These rules were revealed in Mecca but only enforced in Medina after the *hijra*. Thus the people were already committed to the *sharī‘a* before punishments began to be enforced on those who contravened its prescriptions and violated the social order that it established.

Ibrahim Salih rejects positive law on the grounds that it does not improve the people’s situation with regard to social justice or the elimination of crime, be it in Nigeria, Africa, or the countries of the “civilised world.” He mentions examples of injustice and unequal treatment including racial discrimination in the United States of America, and religious discrimination in the United Kingdom with regard to “coloured” people and in France on the grounds that the latter country banned the head scarf and deported North-Africans and Africans. Another example of religious discrimination cited by Ibrahim Salih is the pressure exerted on Muslims with regard to “the so-called Islamic terrorism.”

Ibrahim Salih then turns to Nigeria. In an implicit reference to the Penal Code, he states that Muslims in Nigeria relinquished the *sharī‘a* entirely on their own accord, only because the colonial power requested it. As a result, in Nigeria and in most Muslim countries, the *sharī‘a* is not applied at present because of ignorance of its rules and ways of application since “very unfortunately, most of those working in the field of *sharī‘a* courts do not comply with the most basic characteristics of a Muslim judge (*qāḍī*).” Because of high levels of corruption, people began to avoid the *sharī‘a* courts and preferred to go to the civil (read magistrate) courts, which were less vulnerable to corruption but too bureaucratic to provide justice.

The solution to this problem lies in spreading Islamic knowledge, raising the level of Islamic consciousness, and educating Muslims about their religion and making them understand that each person can apply the *sharī‘a* to him/herself. Many areas of the *sharī‘a*, such as religious doctrine (*‘aqīda*), religious practice (*‘ibāda*), relations between humans (*mu‘āmalāt*), and the prohibition of homicide and bodily harm (*jināyāt*),

can be observed successfully by any individual if he or she is committed, devout and feels God's presence (*al-ḥuḍūr ma'a Allāh*). As for the *ḥadd* offences and other criminal offences, which in a society committed to Islam should occur very rarely, they have to be punished by the public authority (*sulṭa*). However, the sole existence of *sharī'a* courts is not sufficient: "With regard to having courts for the sole purpose of priding oneself on the highest levels without the rules (*nuṣūṣ*) of the *sharī'a* being applied in them, this is a matter of little use, and I do not think that Muslims demand it." After this introduction, Ibrahim Salih discusses the *ḥadd* offences and their punishments, quoting extensively from the sources. He points out that *ḥadd* offences infringe on the right of God (*ḥaqq Allāh*) and will be punished in the next world. In addition to this, the punishment in this world serves as a deterrent with the aim of purifying society. In fact, all rights concerning the public sphere (*al-ḥuqūq al-āmma*) are rights of God because God aims at the creation of a society in which every individual observes his duties and enjoys his rights. The author discusses the *ḥadd* offences in the following order: apostasy (*ridda*), illicit sexual intercourse (*zinā*), false accusation of illicit sexual intercourse (*qadhf*), theft (*sariqa*), armed robbery (*ḥirāba*), and consumption of alcohol (*shurb al-khamr*). This is followed by a section on the punishment for wilful or accidental killing.

Ibrahim Salih uses his discussion of the different offences to mention a number of points relevant to the Nigerian situation. For example, when discussing apostasy he insists that it is to be punished by the state, not in self-justice. *Ridda* can only be proven in court through detailed witness statements. Simply declaring that someone is an unbeliever (*takfīr*) cannot be the basis of an apostasy sentence. Another issue that he discusses in this context is the attitude that Muslims should adopt toward a government that fails to implement the *ḥadd* punishments, a description that, according to Ibrahim Salih, applies to most rulers and *imāms* in this age. He affirms that in such a case Muslims have the duty to implement the *ḥadd* punishments, on the condition that they have an *imām*, that is a supreme Islamic leader, or an individual who can represent the entire society. Violence is only permitted if the people have no peaceful means to change the situation, such as elections. Muslims need to choose a government that acts in accordance with the *sharī'a*, enforces the *ḥadd* punishments, and protects the order of the Muslim community (*jamā'a*). These two points seem to be a rejection of the aggressive position of Abubakar Gumi and the 'Yan Izala toward the *ṣūfī* brotherhoods on the one hand, and the revolutionary ideology of the Islamic Movement on the other. But in a subsequent passage, Ibrahim Salih equally criticises the Western concept of freedom of confession, which he claims has replaced religion under the system of "positive

law”: “The Declaration of Human Rights, for which the states of Europe call under the leadership of America, is tantamount to a veiled war against the revealed religions. Islam is the main target of this unjust war.”

When detailing the conditions for the application of the *ḥadd* punishment of amputation for theft, Ibrahim Salih insists that once the accusation of theft has been brought before a judge, no intercession (*shafā'a*) on behalf of the defendant is accepted. He explains that this will ensure that powerful people are treated in the same way as weak ones. However, he points out that the *ḥadd* punishment for theft does not apply to cases of embezzlement of public funds. Nevertheless, embezzlers need to be punished and brought to account, so that theirs will be a lesson for others. Although the punishment of amputation does not apply, this does not mean “that the impostor (*khā'in*) will be forgiven and will not be demanded to return the public money that he has misappropriated.” All necessary disciplinary measures (*ijrā'āt al-ta'dīb*) have to be taken against him.

Also in the section on theft, Ibrahim Salih discusses the question of whether the *ḥadd* punishments are to be enforced in *dār al-ḥarb* (lit. “territory of war”) or areas under non-Muslim rule in which the *sharī'a* is not applied. His understanding is that the *ḥadd* offences must be prosecuted by a person of Islamic political or spiritual authority (*man lahū al-wilāya*). Due to the absence of such an authority in *dār al-ḥarb*, someone who commits a *ḥadd* offence there is not liable to punishment, even if he returns to *dār al-Islām* or an area under Muslim rule. On the other hand, a person who commits a *ḥadd* offence in *dār al-Islām* and then flees to *dār al-ḥarb* will be prosecuted.

After the discussion of the different offences, Ibrahim Salih turns to the question of the application (*taṭbīq*) of the law. He cautions that the application of the *sharī'a* is not restricted to criminal law. Every aspect of life should be in compliance with the law; in a society of faith, utterances, deeds, or situations that are at variance with the religion and the *sharī'a* are rarely committed by believers. Therefore application of the *sharī'a* means the Islamisation of “everything in life.” He cautions that it is not permissible to adhere to some rules and omit others. Only in cases of incapacity or necessity, can some rules be omitted, but the only persons competent to determine this are Muslim jurists (*fuqahā*) who exercise Islamic jurisprudence in matters of law (*fiqh al-aḥkām*) and political issues (*siyāsa shar'iyya*).⁴⁰⁹

⁴⁰⁹ For a discussion of the doctrine of *siyāsa shar'iyya* in Mālikī law and its application in northern Nigeria, see Chapter Three.

Ibrahim Salih proposes a reform of the Nigerian judicial system, in particular an extension of the jurisdiction of the *sharī'a* courts. He claims that the Penal Code, by which, according to him, the colonial power replaced the *sharī'a* before leaving the country, does not encompass all the obligations that the *sharī'a* demands from the Muslim. In addition, for some offences it requires punishments different from those of the *sharī'a*. Therefore the jurisdiction of the *sharī'a* courts in Nigeria needs to be extended in a way so as to cover all aspects of life as ordained by God. While not explicitly referring to the application of uncodified Islamic criminal law, he demands that the higher *sharī'a* courts be given the power to judge all matters.⁴¹⁰ Lower *sharī'a* courts must be independent from the magistrate courts and be supervised by the Grand Qāḍī (*qāḍī al-quḍāt*). *Sharī'a* court judges are to be selected by a committee of Islamic legal scholars (*‘ulamā’ al-qānūn wal-sharī'a*) and religious authorities (*‘ulamā’ al-dīn*). Finally, Ibrahim Salih repeats the longstanding demands of northern Nigerian Muslims: the Nigerian constitution must be amended to allow all instances of *sharī'a* courts to try all matters of law, and a federal supreme *sharī'a* court must be created.

Apart from the reform of the judicial system, the application of the *sharī'a* must be implemented in several stages. The first stage is the application at the family level. In particular, un-Islamic innovations (*bida'*) with regard to marriage, divorce, and expenditures must be brought into line with the *sharī'a*. Certain social customs come next, such as those pertaining to funerals. The third stage is combating idleness and begging. Fourth, the markets need to be brought into conformity with the rules of the *sharī'a*. *Ḥisba* officials, chosen from among highly qualified and noble scholars, are to ensure compliance with the norms regarding weights and measures, the items sold, their quality and the prevention of fraud on the part of the merchants. This applies to both Muslim and non-Muslim traders. Fifth, *sharī'a* norms need to be applied to the slaughter of animals. Sixth, corruption and the misuse of authority must be eradicated from all government agencies. Legislation must be put in place to deter those who act fraudulently regarding these *sharī'a* rules. Seventh, the *sharī'a* must be applied in the transport sector. *Ḥisba* boards must ensure that no forbidden goods are transported and that the be-

⁴¹⁰ Before the introduction of Islamic criminal legislation, the *sharī'a* courts of appeal of the states could hear appeals only in cases of Islamic personal law, in particular those regarding marriage, inheritance, and maintenance. Other cases judged first by area (now *sharī'a*) courts, including criminal cases but also civil matters other than those pertaining to Islamic personal law, were appealed to the state's high court. Thus the application of uncodified Islamic law was restricted not only through the Penal Code but equally by the area courts' subordination in these civil cases to the secular branch of the judiciary. Cf. Ostien (2006).

longings of the people are not destroyed as a result of negligence or lack of compliance with traffic rules. Eighth, the *sharī'a* must be applied in Muslim cities and quarters by means of Islamic legislation banning prostitution as well as consumption, production, and import of alcohol. Ninth, deterring punishments must be defined for deception, trickery, magic, and other acts that are incompatible with Islam, morals, and the foundations of a civilisation based on religious knowledge (*usus ḥaḍāriyya 'ilmiyya*). Only then can the tenth stage be implemented, which consists of establishing a commission of Islamic scholars and legal experts with a view to reviewing all existing laws in the country that are applicable to Muslims, including the Penal Code, to introduce the necessary modifications, to formulate rules in accordance with the Mālikī school of law and to identify unnecessary or unacceptable rules that are at variance with the *sharī'a*. This will increase the acceptance of these laws “that were forced upon the Muslims of the north for the first time at independence without asking the scholars for their opinion,” a statement that discredits the consultations of northern Nigerian scholars by the British authorities in the preparation of the Penal Code.

In the following sections Ibrahim Salih extensively discusses the office of the judge (*qāḍī*), which he describes as a burden, not a position for which people should apply. He details the competency, possible reasons for wrong judgments (*naqḍ al-qāḍā*), qualities, and manners of the judge. In the conclusion Ibrahim Salih emphasises that enforcement of the *ḥadd* offences is the duty of the public authorities. In all Muslim countries there is an urgent need for the application of the *sharī'a* “within a wise framework consistent with the wisdom of the Great Legislator in gradual application and carefulness.”

There are two types of Muslims in this era. One type is Muslims whose commitment to Islam is formalistic (*shaklī*) and “with whom the enthusiasm for this religion can reach the level of calling for *jihād*.” This applies to most of the Islamists, who believe that Islam is nothing but the commitment to the rules of the *sharī'a* enforced by an authority that has been established in the name of Islam. Their religiosity is based on Islamist political thought (*al-fikr al-Islāmī al-siyāsī*). Its adherents call for the application of the *sharī'a* without addressing the educational and dogmatic side. These attempts sometimes end in failure because they try to bring the people to the truth in one shove without gradual application of the rules. The second type of Muslims are those who believe that the application of the *sharī'a* is conditional on receiving education on the religion of Islam. This type of Islam will eradicate all contradictions, customs, and traditions incompatible with the will of God and the society. Education will create a society in which those that violate God's regime and the society's regime will be few in number.

In Ibrahim Salih's view, Nigeria today is at a turning point. With the country's transition from a military regime to a Western-style democracy, "the Muslims in Nigeria felt for the first time that they were losing the battle and that the carpet was pulled away from under their feet by the non-Muslims." Although they form the majority of the population, Muslims have been marginalised in the army and the federal institutions. Moral decay, heretic tendencies, and unrealistic ideas have caused stagnation among the Muslims, who now seek relief through anything, be it true or false, as long as it is presented as Islamic.

However, even if among the increasing number of people active in the propagation of Islam (*da'wa*) there were some who acted wrongly, the movement has contributed to the fact that many Nigerian Muslims are joining the global Islamic awakening (*al-ṣaḥwa al-Islāmiyya al-ālamīyya*). One of the positive results of this awakening was the call for the application of the *sharī'a*. A negative consequence, however, was that it led to internal conflict and fragmentation of Muslims. This was caused by "uneducated sermons" (*al-wa'z ghayr al-muhadhdhab*), whose authors did not respect the ways in which *da'wa* should be practiced, as mentioned in Qur'ān 16:125: "Call unto the way of thy Lord with wisdom and fair exhortation (*maw'iza ḥasana*), and reason with them in the better way (*aḥsan*)."⁴¹¹

The heightened Islamic awareness has given "the brothers politicians" no choice, if they were to maintain the loyalty of their religiously motivated voters, than to comply with the demands "to fill the void in their hearts and to open the hope for them to return the lost glory, [the loss of] which was caused by the West's pressures continuously aiming at giving preponderance to the non-Muslims in the country." Most of the Muslim activists were influenced, in one way or the other, by Islam as understood by the "brothers Islamists" (*al-ikhwa al-Islāmiyyūn*), whose aim traditionally has been the establishment of an Islamic political system and the commitment to Islam in appearance and conduct. In this situation their attention was only directed to the application of the rules of the *sharī'a*, believing that the Muslims' lost glory could be restored at the necessary pace by immediate adoption of a plan for applying the rules of the *sharī'a*, at least in states with a Muslim majority population.

Ibrahim Salih points out that the announcement by some states of the application of the *sharī'a* was natural and commendable. The noise made by the Christian citizens was astonishing, particularly in the light

⁴¹¹ Ibrahim Salih interprets *aḥsan* as a comparative in the sense of "reason with them in a better way than they reason with you." Cf. Paret (2001: 295). This criticism is probably not only directed to the 'Yan Izala for their polemics against the brotherhoods but also to Ibrahim Salih's adversaries within the Tijaniyya, such as Ibrahim Sidi.

of assurances that the rules of the *sharī'a* would not be applied to non-Muslims, except in cases related to the prevention of spreading corruption on earth (*man' intishār al-fasād fil-arḍ*), which in Ibrahim Salih's view comprises the offences of armed robbery and theft.⁴¹² He adds that Christian-owned print media continued to publicise opinions that were detrimental to relations with Muslims and ridiculed Islam and the *sharī'a*. For Ibrahim Salih, this triggered the riots in Kaduna and the Igbo-dominated states of south-eastern Nigeria.⁴¹³

At the end of his "study," Ibrahim Salih makes a number of proposals with a view, as he puts it, to facilitating the task of the *'ulamā'* to ensure an adequate and comprehensive application of the *sharī'a* in all Muslim states of the country. There should be a serious effort to unite all Muslim scholars from the north and the south of Nigeria to set up a single plan for preaching, religious sensitising and orientation to be executed in a fixed period of time. In order to formulate this plan scholars must survey all sectors of the population, in particular young people of all schools of thought and intellectual orientation, intellectuals (*muthaqqafūn*), businessmen, and certain politicians. After these meetings the plan should be extended to cover all Muslims in all parts of Nigeria "until every Muslim feels part of the Muslim community (*jamā'a*)." Muslims must be trained psychologically for taking responsibility. All remnants of past mutual low opinions and hatred must be eliminated. Priority must be given to economic development in order to combat unemployment and idleness. The aversion toward marriage and having children must be examined because it is an issue that conflicts with the general interest of Muslims. Related to this is the issue of standardising the amount of dowry to be paid (*tanzīm al-muhūr*). All un-Islamic customs (*al-'ādāt al-mubtadi'a*) must be condemned. Non-Muslims should be invited to join Islam, and the people responsible for teaching them must be specified. The policies of past Nigerian governments that did not respect

⁴¹² Under the *sharī'a* penal codes in place in northern Nigeria, non-Muslims cannot be tried by *sharī'a* courts unless they consent to it in writing. Ibrahim Salih seems to deliberately overlook this legal provision, which is due to the multireligious character of Nigeria. Whereas the promise to apply the punishments for armed robbery and theft to non-Muslims would certainly appeal to a Muslim audience, it is inconceivable that Ibrahim Salih is unaware of the impracticability of such a position. It may be a subtle way of suggesting that the *sharī'a* penal codes are incomplete.

⁴¹³ In several states the announcement or the fear that Islamic criminal law would be implemented triggered violent clashes between Muslims and non-Muslims, which became known as "*sharī'a* riots." With at least 2,000 people killed in clashes in February and May 2000, Kaduna State was particularly hard hit (Human Rights Watch 2003: 4), but violence also erupted in Bauchi, Plateau, and Gombe (Chapter One). Islamic criminal law was not introduced in Plateau State. These clashes provoked anti-Muslim riots in some southern home states of Christian victims, the majority of whom were Igbos.

the rights of the Muslims must be reviewed. Muslims must establish media equal to or surpassing the media owned by non-Muslims. Muslim members of the federal government are to be counselled on areas of interest and priorities from an Islamic perspective without asking them to do things they cannot or should not do. Finally, every state needs to apply the *sharī'a* in a way that is in agreement with its particular circumstances, the state of the country, and the situation of the Muslims locally and internationally. Only this last point needs the intervention of the public authorities, for example with regard to the enforcement of the *ḥadd* punishments. All the other issues can be implemented instantaneously.

One of the final sentences of the book again stresses the issue of unity: “Our means to achieve these goals is to work for mutual acquaintance of Muslims in the north and Muslims in the south, just like the politicians did in the different parties. They are united through worldly interest, so we should be united through religious interest.”

In *al-Ḥudūd fī al-sharī'a*, Ibrahim Salih provides the religious foundations for Islamic criminal law in the manner of a source book. The publication of the book a few months after Zamfara State began implementing Islamic criminal law indicates that it is a direct response to the introduction of Islamic criminal legislation in northern Nigeria. The emphasis put on the office of the judge can be seen as a reaction to inappropriate sentences in criminal matters issued by *sharī'a* courts immediately after the introduction of *sharī'a* penal codes. In addition to the discussion of the substance of the law, Ibrahim Salih presents an alternative approach for the application of the *sharī'a*. In his understanding, the application (*taṭbīq*) of the *sharī'a* refers first and foremost to the compliance of the individual believer with the norms set out by the Islamic religion on the basis of personal conviction, not so much to the enforcement of a set of legal rules by the courts and the public authorities. Compliance with the law is achieved through religious education; the enforcement of Islamic criminal law is the last step of a comprehensive campaign for an Islamisation of the society. Consequently, he condemns the overhasty enforcement of the *ḥadd* offences but welcomes the states' announcement of the application of the *sharī'a*. In this regard, Ibrahim Salih's position resembles that of the Egyptian Muslim Brothers in the 1940s,⁴¹⁴ who believed that Islamic law can be applied to the full extent only in a “truly Muslim society.” The Muslim Brothers strongly criticised the implementation of the punishment of amputation of the hand in Saudi Arabia “while the rulers swim in the gold stolen from the state treasury and the wealth of the people” (Mitchell 1969: 240-241). In Nige-

⁴¹⁴ I thank Rudolph Peters for this remark.

ria, the faction that, with regard to the implementation of the *sharī'a*, is closest to the intellectual heritage of the Muslim Brothers is Ibrahim al-Zakzaki's Islamic Movement, as expressed in his open criticism of the implementation of Islamic criminal law.

Despite this intellectual proximity to the Muslim Brothers with regard to the enforcement of Islamic criminal law, Ibrahim Salih explicitly blames "Islamists" and "Islamist political thought" for being behind the demands for the immediate implementation of Islamic criminal law. This apparent contradiction must be seen as an attempt by the author to safeguard the fragile unity between the main Muslim rival factions in Nigeria, the *ṣūfīs* and the reformists. As a representative of a *ṣūfī* order, putting the responsibility for the inadequate implementation of Islamic criminal law on radical members of the reform movement would have inevitably revived the old antagonism. In general, Ibrahim Salih is careful to not accuse Muslim scholars or activists of acting with evil or selfish intentions. He rejects as premature and precipitate the approach of forcing *sharī'a*-compliant behaviour on the population through implementation of the *ḥadd* punishments. But instead of accusing the protagonists of the *sharī'a* project of acting in a way that is incompatible with Islam, he prefers to put the blame for the inadequate enforcement of the *ḥadd* punishments on Muslim politicians, who used the topic of the *sharī'a* for their personal advancement.

Another concession to the reform movement may be Ibrahim Salih's affirmation of the idea of a global conspiracy of the West against Islam and the Muslims. It serves to emphasise the need for unity: non-Muslims in Nigeria are the main adversaries of the Muslims, and Muslims in Nigeria must be united against the alleged attempts by non-Muslims to dominate the state. Ibrahim Salih thus tries to strike a difficult balance between criticising different groups and currents in Nigerian Islam and advocating the unity of Muslims in Nigeria. He criticises the hostile attitude of the 'Yan Izala and the revolutionary project of the Islamic Movement, but he also includes central topics of the criticism levelled against the traditional *ṣūfī* brotherhoods, including un-Islamic marriage customs and expenditures. At times his efforts for Muslim unity seem to put the consistency of his arguments at risk. For instance, he states that certain Muslim activists have acted wrongly and that diverging opinions have led to a fragmentation of Muslims, but in general he evaluates the heightened awareness created for Islamic issues as positive. What he criticises is the lack of manners in the confrontation.

Probably not unconnected to his criticism of the style in which dogmatic confrontations have been carried out in the past, Ibrahim Salih rejects by implicit means the claim of Hausa scholars in the tradition of the Sokoto Caliphate to leadership in Nigerian Islam. He affirms that

Islam was brought to Nigeria by ‘Uqba bin Nāfi’ through his home region of Borno. Historical sources indicate that ‘Uqba bin Nāfi’ conquered the oasis of Kawar, halfway between Fezzan and Lake Chad, in 46/666-7 (Vikør 1999: 148-153). However, there are no historical records to indicate that he subsequently continued to Borno. Therefore, rather than a historical comment, the reference to the Companion of the Prophet is intended to give particular authority to the author himself and relativises the Sokoto *jihād* and its intellectual legacy. In this way Ibrahim Salih portrays himself as an “honest broker” among Nigeria’s Muslims. His repeated references to Muslims from the north and the south of the country need to be understood within this context.

In addition to the advocacy of Muslim unity, Ibrahim Salih also presents a political vision. He recognises the political reality: Nigeria will not be an Islamic state. His ideas about *dār al-ḥarb* and *dār al-Islām* seem to point to a concept of legal systems running in parallel in separate legal jurisdictions. The territorial jurisdiction of Islamic law proposed by Ibrahim Salih justifies the application of Islamic criminal law in certain states of the country that have an Islamic government. With regard to the legal system, Ibrahim Salih rejects positive laws and the procedure followed by magistrate courts on the grounds that the judicial system inherited from British colonialism does not deliver justice. Nevertheless, he does not advocate a return to the application of uncodified Islamic law but suggests a revision of the existing legislation, including the Penal Code, to bring it in line with Islam. Instead of an Islamic state, Ibrahim Salih advocates a concerted effort by Muslims to elect governments that apply the *sharī’a* and to influence the federal policies in their interest using all legal means.

Changing attitudes

Ibrahim Salih’s strategy of blaming the politicians for what went wrong in the implementation of Islamic criminal law is also quite apparent in subsequent statements. In an interview with IslamOnline.net on 29 September 2003,⁴¹⁵ Ibrahim Salih stated that the criticism of the way in which the *sharī’a* was implemented was due to “the hastiness of some in implementing it without thinking.” Once again emphasising a gradual approach in the implementation of the *sharī’a*, he affirmed that Nigeria was determined to implement the *sharī’a* in spite of external and internal pressures. The contentious issue was the implementation of Islamic criminal law (*‘uqūbāt*). This, however, was but one part (*rukṅ*) of the *sharī’a*. Even Muslims differed on the implementation of the *ḥadd* penal-

⁴¹⁵ “Muftī Nayjīriyā: nu’ayyid al-taṭbīq al-muta’annī lil-sharī’a” [Muftī of Nigeria: We support a thoughtful application of the *sharī’a*], IslamOnline.net, 01/10/2003.

ties, such as stoning to death and amputation of the hand. Again, he blamed the rush in implementing these penalties on the politicians:

Some of the brothers among the state governors who implemented the *sharī'a* wanted to mix a good and pious deed with an evil one: the implementation of the *sharī'a* is a pious deed; the evil one is their wish to achieve a reputation by creating noise around them, so they did not look at the issue from all its angles.⁴¹⁶

This interview took place at a time when first steps to remedy the situation had already been taken. Shortly after introducing separated *sharī'a* penal codes, the twelve *sharī'a*-implementing states commissioned and funded the CILS to draft a Harmonised Sharī'a Penal Code. The plan was to produce a draft code that would be enacted by all twelve states to replace the diverging legislation in place. This also provided the chance to improve the often poor legislative quality of the codes (Ostien 2007: 4:20-21).⁴¹⁷ In the interview with IslamOnline.net, Ibrahim Salih stated—probably in reference to the Harmonised Sharī'a Penal Code—that a great number of scholars and intellectuals from the different Nigerian states came together to correct the errors in the application of the *sharī'a*. A committee was formed to select the *sharī'a* rules to be applied (*intiḡā' al-aḡkām*) and to formulate them in the style of a legal code (*ṣiyāgha qānūniyya*) that was consistent with the modern spirit (*rūḡ al-ʿaṣr*). A “white paper” (*kitāb abyad*), designed to be an alternative for the Penal Code, was finalised in August 2002, and printed and distributed in all states that wished to have it, including states that had no Muslim majority.

Notwithstanding this effort, it appears that at present only Zamfara State has adopted the Harmonised Sharī'a Penal Code—in a photocopied version still bearing the header of the CILS—in November 2005 (Ostien 2007: 4:34). By the time of the publication of the Harmonised Sharī'a Penal Code in August 2002, the euphoria about the implementation of Islamic criminal law seemed to have already subsided. Disillusionment was widespread as a result of the new legislation's incapacity to end non-Islamic activities (consumption of alcohol, prostitution) and its alleged political instrumentalisation (Human Rights Watch 2004: 90). Nevertheless, a majority of people still believed that a better application of Islamic law—emphasising education, social protection, and maintenance of order—could radically improve the living conditions of Muslims in the north (O'Brien 2007: 57). Public opinion polls show that support for the

⁴¹⁶ Ibid.

⁴¹⁷ For an annotated version of the Harmonised Sharī'a Penal Code, see Ostien (2007: 4:33-139).

sharī'a in general actually increased between 2001 and 2007 in the states implementing it, particularly strongly in the lower- and middle-level economic segments of the population (Kirwin 2009: 144-146). This may be indicative of changing attitudes toward the *sharī'a*: previously the prevailing opinion all but identified it with the implementation of Islamic criminal law, whereas now a majority of the Muslim population seem to understand it as a broader Islamisation of society with a focus on alleviating physical and spiritual penury. If this interpretation of the situation is correct, it amounts to the population's rejection of the politicisation of religion.

A number of governors who followed Zamfara's example in introducing Islamic criminal law only reluctantly under strong popular pressure appear to be ready to accept the blame of acting prematurely. Despite the adoption of Islamic criminal legislation in their states, they relied on the idea of a gradual implementation of the *sharī'a*, as promoted by Ibrahim Salih, to counter accusations that they were not sincere about the implementation of the *sharī'a*.⁴¹⁸ Even governors who owed their election to the promise to implement the *ḥadd* penalties and initially defied non-Muslim protests by assenting to amputation sentences soon grew reluctant to continue in this way. This indicates that they had come under pressure not only from Christian and secular quarters, but also from the Muslim side.

The gubernatorial elections of April 2003 provided the first opportunity to see whether the governors had been able to retain popular support within their state with their respective stances on the *sharī'a*.⁴¹⁹ Only in Kano State was the electoral campaign clearly centred on the issue of the *sharī'a*. The gubernatorial candidate and eventual winner of the elections, Ibrahim Shekarau, promised to implement the *sharī'a* in a way that seemed to be close to that promoted by Ibrahim Salih. His campaign promise to extend the application of the *sharī'a* in the state was translated into a societal reorientation programme termed "A Daidata Sahu" (Hausa for "close the ranks [in prayer]"). The focus of this programme was not placed on the prosecution of *ḥadd* offences but on social change through education, social protection measures, and moral "purification" (O'Brien 2007: 64-65). Remarkably, in Kano the implementation of the *sharī'a* has not been dominated by the 'Yan Izala or the *ṣūfī* brotherhoods. In fact, important positions in the *sharī'a* and *ḥisba* commissions and the state judiciary have been occupied by representatives of each camp (O'Brien 2007: 68). Thus it seems that the flawed implementation of Islamic criminal law, which was unacceptable to many

⁴¹⁸ For examples, see Chapter One: Jigawa (p. 37), Kano (p. 39), and Borno (p. 42).

⁴¹⁹ On the role of *sharī'a* in the 2003 elections, see Kogelmann (2006).

Muslims in northern Nigeria, has stimulated a response toward greater cooperation and pragmatism in a broadly defined project to Islamise northern Nigerian society from below through Islamic education and the creation of Muslim awareness among the population.

Conclusion

The analysis of Ibrahim Salih's *al-Ḥudūd fī al-sharī'a* and subsequent developments shows that the remarkable change in judicial practice in Islamic criminal law in northern Nigeria within a few years following its introduction in 1999 paralleled the emergence of a scholarly Muslim discourse that replaced the emphasis on implementing the *ḥadd* punishments with a call for Muslim unity and increased cooperation, with a view to strengthening the Muslim community in Nigeria in their perceived confrontation with non-Muslims. Outside observers of the implementation of Islamic criminal law in northern Nigeria often had the impression of a near-homogeneous Muslim front advocating the implementation of Islamic criminal law on a national level. This view overlooks the fact that verbal support for the implementation of the *sharī'a* was an almost desperate attempt to save the appearance of unity in the Nigerian Muslim community, which continues to experience internal divisions and even conflict. By endangering Muslim unity, Islamic criminal law challenged the mutual tolerance between the reform movement and the *ṣūfī* brotherhoods, and thus the authority of those who stood for this agreement.

The religious establishment had to react to a development that they had not predicted but that rapidly gained unexpected popular support. Among Muslims in northern Nigeria, the opinion prevailed that under the new civil dispensation the non-Muslims were attempting to dominate the country. The "restoration of the *sharī'a*" quickly became a popular mark of Muslim identity; anyone openly criticising it risked being accused of harming the interests of the Muslims. In addition, the social mobility created by the introduction of the *sharī'a* challenged the influence of established Muslim scholars in society and politics; they feared losing control over part of their constituencies. Ibrahim Salih's alternative vision for the implementation of the *sharī'a* was also an attempt to reclaim leadership in northern Nigerian Islam.

The work can be read as a position paper by Ibrahim Salih. The ideas expressed in it have almost certainly served as a guideline in oral statements during sermons and seminars given by him or his adepts. Ibrahim Salih attempts to present a sustainable vision of the application of Islamic criminal law in northern Nigeria, adapted to the Nigerian realities. Such a vision must reconcile the fact that Nigeria is a multireligious

state with an essentially secular constitutional order on the one hand, and the demand of implementing a religious law on the other. In addition, it had to be based on a concept of Islam broad enough to accommodate both the mysticism of the *ṣūfī* brotherhoods and the legal positivism of the reform movement. The answer found by Ibrahim Salih was to postpone the state's enforcement of the *ḥadd* penalties to a utopian time when society would be fully Islamised. In this way, Islamic criminal law remains the symbol of an ideal Muslim community in which Islamic law is almost completely respected, rather than a practical possibility.

An additional strategy to preserve Muslim unity was to put the blame for the flawed implementation of Islamic criminal law almost exclusively on politicians rather than Muslim scholars and activists. This avoided accusing any Muslim faction of wrongdoing, which in turn would have invariably led to a counterattack and further fragmentation. The criticism of politicians in *al-Ḥudūd fī al-sharī'a* is probably a response to the ideas and emotions of a considerable portion of Nigerian Muslims, which generally remain unexpressed. One element of these popular sentiments is the feeling that politicians are intrinsically liars and that the political processes are flawed to an extent that so-called democracy only leads to more disorder, falsehood, and corruption. In such a situation, the *sharī'a* in the hands of the religious scholars acts as a corrective of the politicians' abuses of their authority.

Many Muslims in northern Nigeria now seem to agree that instead of the enforcement of Islamic criminal law, priority should be given to a comprehensive Islamisation of society, starting at the grassroots level with concrete measures, such as the segregation of men and women in public places and transport, combating prostitution and the consumption of alcohol, but also improving the population's health and living conditions and access to education. Cooperation between rival Muslim factions may be easier on this level than on the highly politicised level of enforcing Islamic criminal law on all Muslims. This agreement is based on the assessment that the Muslim population of Nigeria must counter non-Muslim attempts to control them and deprive them of their rights. The change in attitude toward the implementation of Islamic criminal law is not a concession to non-Muslim protests or an effort to appease tensions in Muslim-Christian relations. Its aim is to conserve Muslim unity in a bid to avoid succumbing to the enemy due to internal fragmentation.