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DEMOCRATIZATION AND ISLAMIC LAW

The Sharia Conflict in Nigeria



campus

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Introduction

»This Sharia crisis is just a question of [...] who owns the country.«¹

The Return of Religion into Politics

The transition to democracy, in early 1999, had unexpected consequences. In some states of Northern Nigeria, dominated by Islamic ethnic groups, especially the Hausa-Fulani, the newly-elected parliaments introduced an Islamic penal code and other Sharia laws. Supporters of Sharia, apparently a large majority among Muslims, argued that they were only asserting their right to self-determination. They simply wanted to organize their lives according to the tenets of their faith, without forcing their beliefs on others. This is why Christians and so-called Traditionalists were expressly exempted from the harsh penalties for theft and adultery. When non-Muslims are involved in a legal dispute, whether civil or criminal, they have the right to be heard before a secular court.

Nonetheless, the Muslims' call for autonomy flies in the face of Nigeria's moderately secular tradition. The constitution makes provision for Sharia courts where Muslims can settle family affairs, but only if all parties to a dispute agree to have their case decided by Islamic law. Such courts have operated in most states of the Muslim North for decades. However, no state government has introduced »full Sharia«, which includes Islamic criminal law and a strict gender separation. The constitution does not allow elevating any religion to a state religion. Yet this principle is violated when governors in the North use state authority to Islamize public life. In Zamfara, the first state to introduce a strict form of Sharia, the government claimed that its religious reform was bringing about major changes: »all spheres of public life are being transformed into Islamic oriented institu-

¹ Ex-Brigadier Benjamin Adekunle, in *Tell*, 27 March 2000, p. 17.

tions.«² This state-sponsored Islamization affected non-Muslims as well, as they were subjected to some Sharia proscriptions like the ban on alcohol and gender separation in hotels and restaurants, in buses and taxis. In Zamfara's state schools, boys and girls were separated without regard to their faith. In addition, all girls and young women were forced to conform to the Islamic dress code.

Critics of Sharia accused the new legislation of violating basic human rights: Muslims and non-Muslims, men and women are not treated equally, even though Nigeria's Western-oriented constitution forbids discrimination on the basis of religion or gender. Moreover, punishments such as flogging, stoning and amputation are to be regarded as torture or at least as »inhuman or degrading treatment«, which is prohibited by the constitution.³ Representatives of Christian churches and human rights organizations have thus called for Sharia to be banned. Yet in the South of Nigeria, where Christians are in the majority, human dignity is not always respected, either. In most states, the authorities have supported ethnic militias or vigilantes that hunt down criminals. Anyone suspected of having committed a violent crime must reckon with a quick trial. The militiamen drag the condemned to some street corner and execute them with machetes, gasoline and car tires. Given this widespread use of summary justice, one cannot accuse the Sharia courts of being particularly cruel.⁴ In any event, the harsh *hudud* punishments have only been applied very hesitantly. In the first three years of Sharia, the courts sentenced more than 60 thieves to amputation, but only three cases became known in which the sentence was actually carried out.⁵ A more dangerous aspect of Sharia, in my opinion, is that it contributes to the decline of the state:

- By declaring the will of God the highest authority, Sharia politicians have given believers permission to disregard all man-made laws and agreements that are at variance with Islam. This undermined the legitimacy of the Christian president, and it also threatens the authority of the emirs and other representatives of the Islamic establishment.

2 From a government press statement, in *Hotline*, 4 June 2000, p. 24. – In an interview with *The News* (25 October 1999, p. 27), the Governor of Zamfara claimed: »we are a Muslim state.«

3 Federal Republic of Nigeria, *Constitution 1999*, Section 34 (1).

4 Walles, *Shari'a*, p. 653; Human Rights Watch, *Political Shari'a?*, p. 6; Pérouse de Montclos, *Nigeria*, p. 161.

5 Human Rights Watch, *Political Shari'a?*, pp. 36–37.

- The call to shape state and society through the rules of Islam has increased antagonism between Muslims and members of other faiths. Christians and Traditionalists are worried that Islamic law may spread to other parts of Nigeria and that it may pervade more spheres of social life. Where Sharia becomes dominant, non-Muslims are excluded, to a large extent, from political participation, and their social environment is determined by the laws of an alien religion.

Naturally, Sharia advocates have a different assessment of the consequences of their religious commitment. Their aim was to purge the corrupt state of all immoral practices and, in so doing, to imbue it with new legitimacy: »Shari'a is [...] bringing absolute sanity over the decadent land.«⁶ Moreover, Sharia activists denied that their reform policy endangered the peaceful coexistence between the religious communities. They justified the return to their own separate laws by invoking, vis-à-vis non-Muslims, the model of multi-culturalism: »the stability of this country is going to be derived from [...] recognising our cultural diversity.«⁷ They maintained that Christians and Traditionalists should recognize that Nigeria is a pluralist society in which every religious community has the right to live according to its own rules. As a means of »cultural self-determination«, Sharia helps to preserve Northern Nigeria's »authentic« culture.⁸ In addition, it contributes to legal pluralism, providing an alternative to Western, secular ideas of law, which had been forced on Africans by the colonial power: »Shariacracry [is] a defense against unwanted cultural globalization [...] an alternative to the Western constitutional and legal inheritance.«⁹ However, Muslim citizens who are now subject to the draconian Islamic punishments for theft and adultery have not won additional options for self-determination. In case of legal disputes, they cannot choose whether they will stand before a religious or a secular judge. At the behest of the authorities, they are subject to the laws of God in all legal matters. Muslim self-determination does not strengthen the rights of the individual, but empowers the Islamic community, or more accurately, its leaders, who decide in the name of Islam how their brothers in faith have to live: »Muslims have been able to

⁶ *Hotline*, 19 March 2000, p. 25.

⁷ Ahmed Sani Yerima, Governor of Zamfara State, in *Tell*, 8 September 2003, p. 39; cf. Tabiu, *Sharia*, p. 2; Supreme Council for Sharia, *Plot*, p. 27.

⁸ Mazrui, *Shariacracry*, pp. 2, 4, 8.

⁹ *Ibid.*, p. 8; Mazrui, *Two Africas*, pp. 152–154, 164.

take their destiny in their own hands. [...] They are content to submit totally to the Will of Allah.«¹⁰

Sharia politicians who try to enforce an orthodox way of life are not sincerely interested in cultural diversity. The Sharia Penal Code, which was adopted in Zamfara and other states, contains the death penalty for Muslims who participate in »pagan« rites.¹¹ It is unlikely that Islamic judges will resort to such drastic punishments, but there are clear tendencies to restrict non-Islamic forms of worship. Non-Muslims have reason to fear that they will become »second-class citizens.«¹² So they observed with trepidation how the Sharia campaign took hold of more and more states. Right at the beginning, in September 1999, when the parliament of Zamfara passed a Sharia law, it had met with little protest, because more than 90 percent of the local population in the far North, on the edge of the Sahel, are Muslims. But then eleven more states followed suit, some of which are home to large Christian minorities. When the Governor of Kaduna announced the introduction of Sharia, although non-Muslims form almost half of the population, violence erupted, leaving more than 1,000 people dead.¹³ Following these first »Sharia clashes«, Nigeria's president, a Christian Yoruba from the Southwest, invited the governors of the North to the capital city, Abuja, and tried to persuade them to suspend their Sharia plans. But they would not be moved, and so new conflicts broke out in Kaduna, Kano and Jos, claiming the lives of about 5,000 citizens.¹⁴ Since then, non-Muslims have resigned themselves to the fact that Sharia remains in force, at least officially. To rebel against it would only endanger the position of the Christian minority: »the more non-Muslims react negatively to the Sharia, the worse the situation is likely to get.«¹⁵ Christians and Muslims are far from reaching an amicable solution. They may negotiate arrangements on a local level, but as the local balance of power is constantly shifting, the rival parties cannot reach a stable compromise. The constant striving for dominance generates tensions and anxieties, which often erupt in violence. In most cases, religious antagonisms are interwoven with ethnic conflicts, with disputes over scarce land resources, and with rivalries in local markets.

10 Yadudu, *Benefits of Shari'ah*, p. 11.

11 Zamfara State of Nigeria, *Shari'ah Penal Code*, Section 405, 406.

12 Ilesanmi, *Constitutional Treatment*, p. 547; An-Na'im, *Future of Shari'ah*, p. 329.

13 Danfulani, *Sharia Issue*, pp. 15–22, Boer, *Nigeria*, pp. 62–79; *The News*, 13 March 2000, p. 15.

14 Danfulani/Fwatshak, *Jos*, p. 243; Higazi, *Violence*, p. 83; *Tell*, 18 September 2000, p. 40.

15 Kukah, *Human Rights*, p. 27.