

Konferenzbericht: Encounters and No-Go Areas in the Nigerian Debate about Sharia

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Veröffentlichungsversion / Published Version

Konferenzbeitrag / conference paper

Zur Verfügung gestellt in Kooperation mit / provided in cooperation with:

GIGA German Institute of Global and Area Studies

Empfohlene Zitierung / Suggested Citation:

Harneit-Sievers, A. (2003). Konferenzbericht: Encounters and No-Go Areas in the Nigerian Debate about Sharia. *Afrika Spectrum*, 38(3), 415-420. <https://nbn-resolving.org/urn:nbn:de:0168-ssoar-107959>

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Konferenzbericht / *Conference Report*

Encounters and No-Go Areas in the Nigerian Debate about Sharia Report on the Conference „Comparative Perspectives on Sharia in Nigeria“ Jos (Nigeria), 15-17 January 2004

The city of Jos in Plateau State, Nigeria, forms a peculiar point of encounter between world religions. In the 19th century, the Jos Plateau was situated just beyond the boundaries of the Sokoto Caliphate; its inhabitants first became victims of slave raids from the Caliphate, and later on the target of Muslim efforts at proselytization. Under British colonial rule, the newly founded city of Jos emerged not only as a focal point of tin mining and commerce, but also as a centre of Christian missionary activity in Northern Nigeria. The city continues to play this latter role until today. In recent years, however, Jos' role as inter-religious point of encounter has been marred by violent conflicts about the "ownership" of the city – including the right to control local political offices. On the two sides of the conflict are the mostly Christian indigenes of the Birom and other ethnic groups, and Muslim Hausa who settled here from the earliest years of the city, holding strong positions in its commerce and politics. Despite such conflicts, few places in Nigeria could have been more appropriate to host a conference discussing the role of religion in state, law and society in a broad perspective, and linking up these discussions to the debate and conflicts around the introduction of Sharia Penal Codes in twelve Northern Nigerian states since early 2000.

The conference "Comparative Perspectives on Sharia in Nigeria" was organised by the Department of Religious Studies and the Faculty of Law of the University of Jos, in conjunction with the Religious Studies Department of the University of Bayreuth. It constituted the final stage of a research project on "The Sharia Debate and the Shaping of Muslim and Christian Identities in Northern Nigeria", conducted jointly by the two universities and funded by the Volkswagen Foundation. Moving spirits behind the project are Umar Danfulani and Philip Ostien (Jos) as well as Frieder Ludwig and Franz Kogelmann (Bayreuth).

While the Nigerian debate about Sharia continues to be heated, much of it has become stuck over the last four years, with both sides well-positioned in their trenches. Proponents and opponents cannot agree on fundamental points – what constitutes the right to a lifestyle demanded by God for one side, is a violation of the Nigerian constitution and accepted human rights standards for the other. To expect agreement, or just rapprochement, on these issues in the foreseeable future appears futile. The current accommodation is fragile, while the Federal Government merely 'muddles through' in avoiding final decisions (eg., by the Supreme Court) that, perhaps, would favour one side and may thus provoke violent reactions from the other. Under

these circumstances, the next crisis – another religious riot in Kaduna or elsewhere, another Sharia Court death sentence against a pregnant woman accused of adultery – is just waiting to happen. It is ‘business as usual’, by Nigerian standards, and perhaps there is little alternative in such a complex country.

The Jos conference tried to bring in some fresh air into the Nigerian debate on Sharia, by allowing into the arena the views of outsiders – primarily members of the international academic community, to a lesser extent representatives of minority positions in the Sharia debate in Nigeria and elsewhere. While the conference design basically was academic in character, the organisers declared the event open to the public and even advertised it in the national media. As a result, with five to six hundred participants in the conference hall most of the time, a good amount of tension arose from the encounter between academic analyses from the ‘high table’, and popular (and sometimes populist) arguments from the audience. Especially in Kano, the conference announcement had aroused suspicions and fears of conspiracy, due to the composition of the main panellists (primarily Western academics whose papers were commented upon by Nigerian speakers), to the selection of Jos as venue, and to the fact that the travel costs of one of the speakers were paid for by the Cultural Affairs Section of the US Embassy. The Kano State government sent a bus full of members of its Sharia Implementation Advisory Committee to ‘defend Islam’ in Jos. They did their job expectedly well, resulting in a series of very lively, though not always productive discussions.

The opening session gave little foreboding of the controversies to come, well-balanced as it was, and still within the limits of the contemporary Nigerian discourse arena. Saudatu Shehu Mahdi, the Secretary-General of Women’s Rights Advancement and Protection Alternative (WRAPA, Abuja) and as a Muslim women’s rights activist herself not uncontroversial, rather carefully stressed the need to strengthen the position of women within the legal system under Sharia, especially through the codification the personal status law. Danny McCain, a US-American Associate Professor of Biblical Theology at Jos, discussed ways to go beyond the current Sharia controversy from a Christian perspective. Ruling out the options of conversion, conflict, segregation and secularism, he pleaded to Christian and Muslim leaders to search jointly for a consensus based on the acceptance of different ways of life, taking care to avoid infringement of each other’s rights, and active co-operation on other issues.

While McCain’s argument for mutual understanding appears only reasonable and pragmatic, he combined his call for co-operation with strong attacks against what he called ‘the godless forces of political correctness and secularism’. He received much acclaim from the audience for such a statement. Religious leaders and intellectuals from both sides of the Nigerian Sharia divide can easily make ‘secularism’ the bogeyman: Muslims see it as a Western and Christian concept; Christians equate ‘secular’ with ‘anti-religious’, miss an appropriate ethical foundation of society, and want to see Nigeria defined as a ‘multi-religious’ state instead.

The very concept of the secular state became a recurring big issue at the main sessions during the two following conference days. Several of the paper presenters went at

great length to carefully explain and interpret it, stressing that secularity is about the separation of state and religion, and of public and private spheres, rather than an anti-religious stance taken by the state. Still, secularism continued to find hardly any defenders among the audience. Cole Durham (School of Law, Brigham Young University) explained the variety of existing relationships between the state and religious communities and beliefs around the world. As against simplistic dichotomies that dominate the Nigerian debate, he sketched the wide range of possibilities existing on the scale between a theocracy on the one end, and a state actively inimical to religious beliefs and its expressions, on the other. John Reitz (College of Law, University of Iowa) analysed the judicial practice of secular states such as the U.S., Canada, France and Germany (taking a case of religious objections to blood transfusion during childbirth, with fatal results for the mother of the child) in manifest conflicts between state laws and the principle of religious freedom. Both speakers stressed that giving religion a stronger role in state and society (that is, making a state less secular in character) may actually counteract the very intentions of the believers, as state involvement could distort religion, lead to the enforcement of rigid interpretations, and negatively affect the overall legitimacy of the very beliefs and morals it intends to protect.

Durham and Reitz, as well as other panellists, stressed that their job was to analyse options practised in other parts of the world, rather than giving concrete recommendations on how Nigerians should address their own problems. Still, they frequently, and in various versions, received the reply that they were addressing “exotic” issues irrelevant for Nigeria, as Jamila Nasir (Faculty of Law, University of Jos) put it, commenting on Reitz. However, Nasir herself mentioned cases of conflict between religious faith and state law in Nigeria which were structured quite like those discussed by Reitz, the major difference being merely that such cases usually do not end up in court in Nigeria. However, rather than repeating the common Nigerian discourse about Nigerian exceptionality, perhaps it would have been more appropriate to use the opportunity provided by the conference to discuss comparatively and recognize that many of the issues (and even solutions) may not be that exceptional, after all.

Two papers addressed the increasing role of religion in world society over the last one or two decades, thus giving a truly comparative perspective to the introduction of Sharia in Northern Nigeria and the resulting debates in the country. Gerrie ter Haar (Institute of Social Studies, The Hague) analysed religion as a source and instrument of conflict, but also as a resource for peace. She arrived at an ambivalent picture, stressing religion’s constructive features (on the individual and social levels) as well as instances of political manipulation. Rosalind Hackett (Joan B. Kroc Institute of International Peace Studies, Notre Dame University) reviewed recent debates about the role of religion in the public sphere. She did not simply lament a return of identity politics, but also provided examples of constructive roles of religious initiatives in international peace-making (“faith-based diplomacy”). She furthermore pointed to the growing discontentment about social and moral problems in secular societies, especially in the U.S., and attempts to reverse these processes under a religious flag. Some among the Nigerian proponents of Sharia may have been surprised to find common concerns with a growing number of critics of U.S. society.

Two panellists analysed the role and practice of Islamic law in other countries. Abdulkader Tayob (a South African, currently at the Institute for the Study of Islam in the Modern World, Nijmegen University) compared recent debates about aspects of Sharia law in South Africa, Kenya, and Nigeria. In the first two countries, with relatively small Muslim populations, debates focused around the official recognition of Islamic *family* law in the context of political reform projects (the end of Apartheid in South Africa; the constitutional debate in Kenya after the opposition's electoral victory). In Northern Nigeria, however, there was a popular base for a 'full' introduction of Sharia, including its *criminal* law dimension, fuelled by widespread poverty and discontent about the current socio-political order. Still, Tayob regretted the fact that the Sharia question in Nigeria was dragged into politics and instrumentalised, thus obscuring and often even displacing the social issues at stake that had provided its impact, first of all. Ruud Peters (Department of Arabic and Islamic Studies, University of Amsterdam) compared at the practice of Sharia in countries with strong Muslim majorities and gave an overview about the rationales provided by its proponents. However, perhaps the most provocative part of his presentation was his historical review of the processes of codification of Sharia law in the Muslim world since the 19th century. Peters showed how the Sharia – originally a multi-faceted set of rules defining an ideal Muslim way of life – underwent codification by the state (actually a colonial state, in many cases). Codifying Sharia, however, not only restricted its scope to certain themes of relevance to civil or criminal law. It also reduced the multiple interpretations and opinions developed over the centuries by Islamic legal scholars (*fiqh*) and admitted only certain versions into the new legal texts. Many among the audience were obviously disturbed by such attempt at historical critique. A Sharia Court of Appeal judge from Katsina State even went so far as to reject the idea of human agency being involved in the development of *fiqh*.

Several times, the panellists from Europe and the U.S. encountered the critique that they were interfering with Nigerian or Muslim issues which, basically, only Nigerians or Muslims, respectively, could legitimately talk about¹. However, such argument could not be made against the two most controversial panellists of the Jos conference.

Sanusi Lamido Sanusi, an economist working with the United Bank of Africa (Lagos) and at the same time a well-known writer with a thorough training in Islamic Law², presented what he called the "critical project" of Sharia in Nigeria. He reviewed aspects of the epistemological debate among Muslim scholars, stressing the need for a historically-based critique and review. To prove this, he discussed a number of *fiqh* commentaries with implications that were clearly racist against Africans. Sanusi also discussed some of the reasons for the difficulties of communication between Western and Muslim scholars. His main thrust, however, was a sharp and eloquent critique of current Nigerian mainstream interpretation of Sharia:

1 Indeed, one defender of the latter position asked how Christians would react if, for example, a workshop about the concept of the Holy Trinity would be organised by the Religious Studies Department of Kano's Bayero University (a cornerstone of Islamic scholarship in contemporary Nigeria). While I believe that such an event would make a fascinating experience, indeed, many Nigerians are unlikely to share such a view.

2 Several of Sanusi's publications, including his Jos conference paper, can be found on <http://www.gamji.com/sanusi.htm>.

Sharia, Sanusi said, is more than the law now codified by Northern states; talking about it always involves an element of human interpretation of divine law; and the current form of Sharia implementation totally fails to acknowledge that the realities of life in Northern Nigeria are far removed from the ideal social setting in which Sharia could and should be applied. Expectedly, this did not go well with parts of the audience – not only with the representatives of government-sponsored and institutionalised Sharia from Kano State, but even with some of the university-based scholars, among them Is-Haq Oloyede, Deputy Vice-Chancellor of Ilorin University, who used his role as a commentator on Sanusi's contribution to assert once more, and without any indication of critical reflection, the position of conservative institutionalised Islam.

While Sanusi – despite all criticism received – still appeared as part of the admissible spectrum within the Nigerian Sharia debate, standing on its 'leftist' end, the final panellist of the conference clearly fell out of this range. A respected scholar of Islamic law since decades, Abdullahi Ahmed An-Na'im (Sudanese-born Professor at the School of Law, Emory University) received a very rough reception. In his paper on "The Future of Sharia", he questioned two cardinal foundations of the philosophy behind the current implementation of Sharia in Nigeria. Firstly, even without discussing the Sudanese example in any detail, he argued that a 'full' implementation of Sharia, based on the ideals of 7th century Islamic society, would not only be unrealistic, but lead to civil war. Secondly, he fundamentally questioned the capability and legitimacy of any Sharia enforced by the state. This last point contributed to the somewhat spectacular final phase of the conference, in what a participant ironically termed a *hijra*: a walkout by Sheikh Umar Kabo, the head of Kano State's Sharia Implementation Advisory Committee, together with two or three hundred followers, at a point in time when An-Na'im was still replying to comments and questions. Still, An-Na'im remains respected enough within Islamic Studies in Nigeria to present his position again at a seminar at Bayero University in Kano, a few days later.

To put matters into perspective, the Jos conference did not constitute the first instance of a high-level public debate about Sharia in Nigeria. Various events in the last two years brought together exponents of the 'Sharia camp', among them judges and academics in the fields of Public or Islamic Law, with representatives of the human and women's rights community, sometimes with some input by legal experts from other Islamic countries. Among these efforts were a series of conferences and seminars since late 2002, organised by Nigerian women's rights organisations and the Department of Law at Ahmadu Bello University, Zaria, with support by the Heinrich Böll Foundation³. Another major conference organised by the International Human Rights Law Group took place in Abuja in August 2003, supported by the German Embassy. All these events focused on the human rights implications in the ad-

3 Some of the conference proceedings have been published as: Joy Ngozi Ezeilo, Muhammed Tawfiq Ladan & Abiola Afolabi-Akiyode (eds.): *Sharia Implementation in Nigeria. Issues & Challenges on Women's Rights and Access to Justice*. Enugu: Women's Aid Collective (WACOL) / Lagos: Women's Advocates Research and Documentation Centre (WARDC) 2003; and Joy Ngozi Ezeilo & Abiola Afolabi (eds.): *Sharia and Women's Human Rights in Nigeria. Strategies for Action*. Lagos: WARDC / WACOL, 2003. More information and full text documents are available at <http://www.boellnigeria.org>.

ministration of Sharia justice. Naturally, discussions included the *hudud* death sentences against pregnant women for alleged adultery (*zina*), rescinded by higher Sharia courts later on. But they went much beyond these well-known cases by exploring ways to improve access to justice at Nigerian Sharia and other courts in general. These events created forums for representatives of both sides of the Nigerian Sharia divide who rarely talk to each other, to arrive at a better understanding and appreciation of each other's concerns. In such setting, the improvement of access to justice for common people turns out to be an objective about which virtually everybody can agree. Starting from such consensus, it becomes possible to identify and agree about ways to achieve the objective: for example, by improving public awareness about rights within Sharia and by making sure that defendants get qualified legal support. There is a broad consensus that especially lower Sharia Court judges – many of them merely transferred from the old Area Courts – need proper training in Sharia law and, especially, its complex procedural regulations. If those rules are properly applied, the passing of *hudud* sentences for *zina* and similar unacceptable judgements should become practically impossible. By focusing on practical issues of access to justice, these events tried to redirect the often acrimonious Nigerian Sharia debate: away from 'politicking' about issues that Nigerians today cannot agree about, such as the political and constitutional suitability of Sharia criminal law in Nigeria, towards themes that really matter, because of their immediate impact on the lives of common Nigerians.

However, in contrast to these earlier events, the Jos conference constituted the very first instance giving a wider, and even global, dimension to the on-going Nigerian Sharia debate – and doing so in Nigeria itself. Not all participants appreciated this venture. But assuming that the loudest protesting voices raised by the audience do not necessarily represent the thinking of quieter participants, there is hope that some of the views and arguments which this conference brought into the Nigerian debate may actually have fallen on fertile ground. For the sake of intellectual life in Nigeria, where a number of no-go areas need to be opened up, it was clearly worth the effort and the heat of arguments provoked.⁴

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⁴ The debate continues, see Ibrahim Ado-Kurawa, *Review of the International Conference on Comparative Perspective on Shari'ah in Nigeria*, <http://www.gamji.com/NEWS3239.htm>.

