

Sharia Implementation in Northern Nigeria Over 15 Years.

Policy Brief No.4

Impact on Women



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Introduction



Sharia implementation was launched in Zamfara State in 1999. Eleven more states (Bauchi, Borno, Gombe, Jigawa, Kaduna, Kano, Katsina, Kebbi, Niger, Sokoto and Yobe) joined within two years. Not only did they enact wide-ranging laws, but they also established a number of Sharia institutions, such as the Hisbah Boards and Zakah and Endowment Commissions. This report examines the impact of Sharia implementation on women. It is part of a wider research project that deals with the implementation of Sharia in the twelve northern states of Nigeria over the last fifteen years.

Three questions are addressed in order to focus on some of the major issues of both interest and concern with respect to the rights of women. These are:

1. how has the implementation of sharia affected women's access to Justice?
2. to what extent have the Zakah and Endowment Boards, set up to collect and distribute funds for poverty alleviation, benefitted women; and
3. to what extent has Sharia implementation addressed and impacted on the much talked about prevalence of cultural and other practices that are harmful to women, such as early and forced marriage, arbitrary divorce, abuse of wives, and seclusion of women.

The women issues that are examined in this research relate not only to concerns that were expressed at the commencement of Sharia implementation, but also widely held hopes and expectations.

Major Findings

Impact on women's access to justice: the Sharia court, functioning as the primary forum for litigating and resolving interpersonal disputes, and the Hisbah, in its role as a mediation institution, are taken in this research as the main Sharia access to justice institutions. The two institutions are examined by reference to women as users, women representation among the management and staff, and level of user satisfaction.

1. Based on Muhammed Tabiu & Ibrahim I. Bello, 2016, 'Sharia Implementation in Nigeria: Impact on Women', Report for NSRP/dRPC/NRN Research Project on Sharia Implementation Over 15 Years.

Box 1 Women & Sharia Courts

Positive Points:

- Constitute over 70% of the complainants at some Sharia courts.
- User satisfaction levels range from 52% to 89% over a period of five years.
- Speedy, familiar, non-technical, and comparatively user friendly processes of the Sharia court, which they also respect as a religiously sanctioned institution,

Negative Points:

- Low level representation in the Sharia judiciaries. In some cases, women form less than 3% of the staff.
- No woman has been appointed a Sharia court judge in any of the Sharia states.
- Many can hardly bear the costs involved in the course of litigation.
- Face discouragement from the prevalent culture that frowns at claiming one's rights through litigation.
- Inadequate user guidance and legal assistance.
- Corrupt and abusive practices.
- Low levels of knowledge and skills among some of the judges and staff.

Sharia courts: Women are major users of the Sharia courts, where they go to resolve mainly interpersonal, marital and family disputes. They constitute over 70% of the complainants at some Sharia courts. Sharia courts are therefore a very important forum of access to justice for women. But women have low level representation in the Sharia judiciaries. In Jigawa and Kano States, for example, women form less than 3% of the staff. No woman has been appointed a Sharia court judge in any of the Sharia states. While this reflects the dominance of the Maliki view that disqualifies a woman from being a judge, it is worth noting that this is not the only acceptable view in Sharia. The contrary view is also held by some eminent Muslim jurists, including Adurrahman Ibn al-Qasim, the most important jurist of the Maliki School after Imam Malik and the main reporter of Imam Malik's juristic views.

The limited surveys that have been conducted in relation to some Sharia courts show women user satisfaction levels that range from 52% to 89% over a period of five years. Behind these figures lies the reality of the benefits that women derive as well as the challenges they face as Sharia court users.

While Muslim women benefit from the speedy, familiar, non-technical, comparatively user friendly processes of the Sharia court, which they also respect as a religiously sanctioned institution, they equally face numerous obstacles and difficulties in using the court. Many of them can hardly bear the costs involved in the course of litigation and face discouragement from the prevalent culture that frowns at claiming one's rights through litigation. Women who use the Sharia court equally bear the brunt of inadequate user guidance and legal

assistance, corrupt and abusive practices, and the low level of knowledge and skills among some of the judges and staff. Improving Muslim women's access to justice therefore requires sustaining and enhancing the benefits of Sharia courts to women, while removing or alleviating the obstacles and difficulties.

Hisbah: In law and practice, Hisbah performs a variety of functions that impact on women and the society at large. The focus here is on their role in mediating disputes involving women. In both Kano and Bauchi, for example, women patronise the Hisbah in large numbers, mainly to mediate matrimonial and family disputes. It is estimated that in Kano 70% of the disputes being mediated by Hisbah are family and matrimonial cases brought by women. In Kano and Bauchi, women are fairly represented in the Hisbah. The responses to perception survey questions on Hisbah show that 60% in Bauchi and 80% in Kano think that the Hisbah treats women fairly and equitably.

Like the Sharia courts, the Hisbah is an institution that women patronise in significant numbers, and from which they derive notable levels of satisfaction. Any measures that enhance the quality of the mediation services offered by Hisbah will therefore have positive impact on the quality of women's access to justice.

Zakat and Endowment Commissions: Using Zamfara and Kano as examples, the finding from this research is that women, particularly widows, receive special consideration as beneficiaries of Zakat and endowments. Zamfara has special programmes for empowering women which appear to have taken some women out of poverty, but there are no reliable figures to show their numbers. In Kano too widows receive special consideration, but Zakat funds are very limited and can make little impact. The Kano situation represents the general picture. The main challenge in most Sharia States therefore is that of improving Zakat collections so that there are reasonable

amounts of funds to positively impact on the poor, including women.

Negative Cultural and other practices affecting women:

These practices, documented in the literature, include practices relating to the girl child such as forced and early marriage, denial of education, and subjection to street hawking, along with many other practices that affect women generally like unilateral divorce by husbands, denial of maintenance, physical abuse, seclusion and exclusion of women and so on. While modest progress has been made in reducing the frequency or level of some of these practices like forced marriage and exclusion of females from education and public roles, many of the practices remain prevalent, with some like unilateral divorce, rape and other forms of violence against women escalating to near epidemic proportions across the country in recent years. No definable policy has been pursued in the Sharia States to address these problems, beyond raising public awareness on women's rights and a few ineffectual economic empowerment initiatives. Public sensitization, which has achieved some modest success in the area of female education, needs to be supplemented with effective law reform and other policy interventions, including reforms in the implementation of Islamic personal laws to curb abuses such as arbitrary use of the husband's power of *talaq* (divorce), misapplication of *khul'* (mutual divorce) and abuse of *ijbar* (father's authority to marry off his children), and strengthening the sanctions against rape and other forms of gender and sexually related violence. The real challenge lies in summoning the political will to pursue this course of action, while ensuring a positive engagement with the Muslim religious scholars, some of whom hold rigid views on some of these issues – views that do not take full account of current realities and judge them in the light of the primary goal of Islamic law, which is the protection of human wellbeing.

Box 2: Reform of Criminal & Personal Law

- Most Sharia states have reformed their Criminal Laws as they moved from the Penal Code (PC) to the Sharia Penal Code (SPC).
- There has been no reform in the implementation of Islamic Personal Laws to address pressing problems – indeed many Muslim scholars resist these reforms despite the glaring challenges facing contemporary Muslim societies in Nigeria.

POLICY RECOMMENDATIONS

1. **Investing more Government resources in the Sharia courts.** The Governments of the Sharia States should invest more resources in the Sharia courts, being the courts where vast numbers of the people, especially women, go to settle their disputes. They should in particular:

a) adopt a medium term judiciary capital development initiative so that over time all Sharia courts are housed in decent, purpose-designed court buildings, and are provided with basic facilities and conveniences, including separate waiting spaces and toilets for women; and

b) provide funds to meet the maintenance and recurrent needs of the courts, and for regular training of the judges and staff. The Governments of the Sharia States should collaborate among themselves to support one or more of the existing training institutions in the region such as the Centre for Islamic Legal Studies (CILS) ABU Zaria, and the Judicial Training Institute established by the Kano State Judiciary, to provide regular qualitative training for Sharia Judges and Kadis. This training should incorporate a special concern with the legal and jurisprudential issues of modern Nigerian society.

c) abolish payment of fees in the lower courts, as Jigawa State has done, to facilitate more access to the courts for the poor.

2. **Improving the Quality of Services provided by Sharia Courts:** The Judiciaries of the Sharia States should take steps to improve the quality of services provided by Sharia courts and accommodate women better. In particular they should:

a) Set up effective Inspectorate Division, or where it already exists, improve its operation. They should also introduce a complaints system that is easily accessible to the public, and a Court user care and information service, in line with good practices that have been developed in some of the States like Kaduna and Jigawa States.

b) Recruit more women into the Sharia judiciary, thereby increasing women representation and generating more confidence by women in using the Sharia courts.

3. **Expanding and strengthening Legal Support and Assistance for Women:** The Governments of the Sharia States should improve the sources of legal support and assistance available to women by expanding the services of existing agencies that offer such services like the community law centres (CLC) in Jigawa, Mediation Centres (Kano), and citizen's rights departments in various Ministries of justice. States that do not have such agencies should establish them. Outreach and paralegal programmes should be introduced to extend the services of these agencies to rural areas; and women staff should be available to serve women clients.

4. Revival of Fatwa Commission: The Centre for Islamic Legal Studies (CILS) ABU Zaria should revive its Fatwa Commission, which will serve as a forum for raising and addressing questions of Islamic law that require *ijtihad* (juristic exertion) and provide answers in accord with the primary goal of Islamic law, which is the protection of human wellbeing, and in response to the requirement of changing times. CILS established the Fatwa Commission in the early 1990s, but it has become dormant. The CILS should ensure that the membership of the revived Commission is limited to only competent Muslim jurists and scholars, and that the Commission adopts a method of selecting the questions it addresses so that it is able to focus on only the ones that are relevant and important. Qualified members of the Sharia State Judiciaries should be included among the members to encourage respect for the Commission's decisions and facilitate the incorporation of the decisions into judicial practice. A channel should be created for the decisions of the Commission to be submitted regularly to appropriate bodies in the Sharia States such as relevant Committees of the State Legislatures and the State Sharia institutions.

5. Improvement of *Sulhu* practice by Hisbah: The Hisbah Boards should introduce measures to improve the quality of their *Sulhu* (community mediation) services and promote high ethical standards. This could be achieved through:

a) a regular training programme to improve the mediation knowledge and skill of Hisbah Mediators;

b) adoption of a code of conduct for mediators that is supervised and enforced by Hisbah Management; and

c) collaboration with other justice sector bodies to put in place an effective linkage and referral system.

Good practises are available from within and outside Nigerian on each of these suggestions

to guide the Hisbah management.

6. Legislative Reforms to protect women and children: The Sharia State Governments should introduce legislative reforms that seek to protect the rights of women and children in line with Islamic teachings. These reforms should address the current practices that negatively affect the rights of women and children, including regulating the husband's power of divorce, requiring mandatory consent for marriage, clarifying the grounds for divorce, spelling out the requirements for khul' and banning hawking by children. Achieving this will require, among other things, positive engagement with Muslim scholars and the Sharia Judiciary. The states that have not done so should amend their laws to strengthen the penal sanctions against rape and other forms of sexual violence and improve the facilities and skills that are needed for ensuring successful investigation and prosecution of such offences.

7. Sustaining the awareness campaigns and programmes on the rights of women and children: The State Governments, Sharia Institutions, International Development Organisations, relevant NGOs and concerned Muslim scholars should continue and sustain their efforts on public education, sensitization and related programmes that promote the rights of women and children in Islam. After the many years of effort in this direction, they should commission a lesson learning study with a view to identifying the strategies that have worked better.

8. Sharing of knowledge and best practices: In view of the availability of good practices that have been found and noted through this research, the Governments of the Sharia states should organise an annual forum and create other avenues for sharing best practices and learning from each other in relation to disputes resolution, collection and distribution of zakat, protecting the rights of women, and effective provision of other public services that arise from Sharia implementation.

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