

Sharia Implementation in Northern Nigeria Over 15 Years.

Policy Brief No.5

The Roles of Ulama



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Background



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It has now been more than fifteen years since the implementation of what was termed “full Sharia,” began in twelve states in northern Nigeria. Beginning with the reorganization of the existing area courts, the implementation of full Sharia meant replacing the old penal and criminal procedure codes with new Sharia codes that, among other things, restored the application of hudud penalties.

Next came the expansion of the implementation of Sharia beyond the courts, reflected in the creation of several agencies to tackle issues such as poverty

and the control of vice. The ulama (Muslim clerics), who possess expert knowledge of Islamic law, religious authority and influence in their communities, were recruited to serve on the newly created Sharia agencies.

The questions that arise are: how have the Sharia agencies performed since their creation? What roles have the ulama played in the activities of these Sharia agencies? What changes have taken place in the institutional arrangements for extending the implementation of Sharia beyond the courts? Have the goals for establishing these institutions been achieved? What challenges were encountered, and how were they handled? What successes were achieved?

The study examined the roles of the ulama as well as the practical problems faced in different states due to a number of challenges including ineffective institutions and the influence of political interests. The study suggests a more nuanced understanding of the ways in which ulama are being used at the community and state levels. It also highlights the ways in which the ulama are serving the community in the fields of conflict resolution.

Context:

Several changes and developments have taken place over the last fifteen years of Sharia implementation, with particular focus on the roles of the ulama in the Sharia institutions and agencies. At the beginning of the implementing of “full Sharia” in 1999, the initial focus was on the transformation of the existing area courts to become Sharia courts, and the replacement of the old *Penal Code* and *Criminal Procedure Code* that used to be applied by the area courts with new *Sharia Penal and Criminal Procedure Codes*. The new Sharia codes include, among other things, the restoration of hudud penalties. Then came the enactment of several legislations extending the application of Sharia beyond the courts, and the establishment of several institutions for the purpose. These new institutions include statutory agencies, departments within the cabinet offices, ministries of religious affairs, or departments within existing ministries, and advisory councils of ulama. In some states, the ulama were organized as non-governmental associations or independent committees enjoying the patronage of the state governors but without any formal affiliation with the state governments. In some other states, the Ulama were appointed into various offices within the sharia institutions, and assigned specific roles that include participation in the appointment of Sharia courts judges, review of Sharia courts’ judgments, and rendering religious advice to the state governments. In some cases, the Ulama were given responsibilities over the collection and distribution of zakat, and the monitoring of the functions of hisbah.

1. Based on Muhammed Sani Umar, 2016, ‘The Roles of Ulama in Sharia Implementation, 1999-2016’. The research for this report was conducted by the dRPC and NRN with the support of the Nigeria Stability and Reconciliation Programme (NSRP).

Main Findings

Ambiguities surround the actual roles of the ulama in the Sharia implementation agencies:

- These ambiguities have led to the ulama being a minority not only in the Sharia agencies, but ironically, also in the councils of ulama where they would normally have been expected to constitute the bulk of the members.

The Ulama are generally not utilized appropriately.

- Ulama are not concentrated in a specific Sharia agency where they can make the most contribution based on their expertise, but spread out in various agencies, where their voices are diffused. As a result of this dispersal, the valuable expertise of the ulama are not appropriately utilized. In addition, advisory functions assigned to the ulama in the various bodies have not been fully employed.

Sharia court judges and judgments curtailed in certain states

- Participation in the appointment of Sharia court judges and the review of Sharia court judgments assigned to the ulama in the various statutes for Sharia implementation have been effectively curtailed by the Judicial Service Commissions of the various states.

Broadened Ulama duties include conflict resolution

- Ulama have been performing other functions, especially preaching and public enlightenment, as well as functions that were not assigned to them in the Sharia implementation laws, such as alternative dispute resolution.
- Though this conflict resolution role by the Ulama was not anticipated in the process of establishing any of the Sharia implementation agencies, it is an important contribution to maintaining public peace.

Sharia Implementation ineffective due to weak Institutions:

- In many states, the statutory agencies and other institutions established for Sharia implementation are weak, or non-functional, and their enabling laws have virtually fallen into abeyance. Because of weak institutions, the functioning of the Sharia implementation agencies has become largely dependent on the presence or absence of capable individuals.
- However, Zamfara State stands out as the notable exception in the sense that all the Sharia implementation institutions in the state, particularly the Zakat and Endowment Board, Sharia Research and Development Council, and the Councils of Ulama, are performing reasonably well.

Sharia effectiveness influenced by State Politics:

- The political commitment of state governors toward supporting or neglecting Sharia implementation has been quite significant for the success or failure of the Sharia agencies to discharge their statutory functions.

Box 1: Ulama & Governors in Sharia Implementation

- Ulama are a minority not only in the Sharia agencies, but ironically also in the Councils of Ulama! Their specialist knowledge not is being adequately used.
- Contrary to what the laws expect them to do, such as supervising the Sharia courts, the Ulama have drifted towards other functions, such as preaching, public enlightenment, as well as alternative dispute resolution.
- The political commitment of state governors towards Sharia implementation has been quite significant for the success or failure of the Sharia agencies.

Policy Recommendations

To address the challenges facing the Ulama in Sharia implementing states, it is recommended that:

The governments of Sharia-implementing states should:

- Streamline the agencies for Sharia implementation to make them more effective is the performance of clearly specified tasks. Their enabling laws should be amended to eliminate redundancies, overlap in jurisdictions, and check the undesirable situation of existing laws falling into disuse and governmental agencies becoming comatose.
- Properly utilize the expertise, authority, and influence of the ulama by eliminating the ambiguities surrounding their roles in Sharia agencies, and by concentrating them in a specific agency so that their collective contributions are not diluted.
- Reconstitute the Council of Ulama such that the Ulama should always have a majority on it.

The Judicial Service Commissions of the Sharia-implementing states should:

- Formalize the roles of ulama in alternative dispute resolution, which has emerged as a popular and important service performed by the Ulama. There should be better co-ordination with the courts and the provision of sufficient funding.

The Executive and Legislative bodies of Sharia implementing States should:

- Collaborate to bring the Sharia agencies under the supervision of the Judicial Service Commissions in order to shield them from the vagaries of politics, so that their effective functioning is not dependent on the goodwill of elected politicians, or the lack thereof.

The leadership of Sharia implementing agencies in the various states should:

- Provide platforms for regular knowledge and experience sharing meetings of the staff of the Sharia agencies from the different states to identify best practices, and lessons that need to be learned from the work done in the different states.

FIND OUT MORE

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