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# Chapter one

## Introduction

### 1.1. What is Sharia?

The issue of Sharia and its implementation has remained a topical one in Nigeria in recent times. Sharia consists of Muslim legal codes, which spells out 'do's and 'don't's within any given Muslim society.

Generally, sharia refers to variable, but identifiable and generally agreed principles of laws and ethics accepted by Muslims as authoritative statements about Allah's will for human societies. It provides for codes of ethics, social interactions and legal systems. Sharia is often referred to as regulating the full range of human activities including religious rituals, and social manners. However, it is only the jurisprudence and legal rules in civil, commercial, criminal and family law matters, which is the subject of law – in the sense of rules which are enforced and made the subject of sanctions by institutions in society like legislatures, courts, police or prisons. It is these legal rules, enforced in society by formal institutions, that are the concern in this publication.

There are several 'schools' of Muslim legal thought or jurisprudence (*fiqh*). The four main Sunni schools that exist today were formed through the personal allegiance of legal scholars or jurists to the founders from whom each school took its name - Hanafi, Maliki, Shafi and Hanbali. Each school was influenced by its own specific circumstances of origin. For instance, both Hanafis and Malikis are the representatives of the legal tradition of a particular geographical locality - the former in Kufa, present-day Iraq, and the latter in the Arabian city of Medina. The two later schools, following Abu Hanifa and Al-Shafi developed precisely out of a controversy in jurisprudence (i.e. human reasoning about law). Consequently each school has variations according to the cultural, political and socio-economic contexts in which they were developed and the philosophy of reasoning that was accepted.

Even the oldest schools of Muslim law did not exist until many decades after the revelation of the Qu'ran and the Prophet's death (pbuh). Hence, the laws they outline (often collectively referred to as Sharia or as Islamic law) are clearly not direct divine revelations from Allah, but mediated through human judicial reasoning (*ijtihad* in Arabic). Amongst the principles to be borne in mind in *ijtihad* are *istihsan* (equity) and *istihsal* (the needs of the community). It was recognised in that 'golden period of Islam' that there were legitimate variations in Muslim laws, based on context - and therefore that Sharia must be subject to progressive development and therefore to change.

Reflecting the various and changing concerns of different societies, Muslim laws are diverse. For instance, orthodox Shia Sharia permits daughters who have no brothers to be residual heirs, while the Maliki school does not. Similarly, whereas Hanafi Sharia enables a woman to choose a husband without her father's permission, Shafi sharia does not. The schools also vary in their attitudes towards the management of fertility - some permitting family planning and/or abortion while others do not or they require differing conditions.

On polygyny (which is the marriage of a man to more than one woman at a time) there is wide variation in Muslim legal discourses. The Qu'ran permits polygyny. It does not require it. Certain conditions that should be fulfilled if polygyny is to occur are specified. Furthermore, it is also known that the surahs on polygyny were revealed after the battle of Uhud when many Muslim men were killed, so that many women and their children were suddenly without a man's contribution to their livelihood and in precarious economic straits. None of the foregoing statements are contentious. Yet, Muslim thinking and laws on polygyny varies tremendously. Yusuf Ali and others have argued that the conditions are impossible to fulfil, and therefore that polygyny should be banned. Others have argued on the basis on surah 24:32, that monogamy is clearly preferred. Hence in Tunisia and South Yemen before re-

unification, for instance, polygyny was banned or allowed only on very stringent conditions, which had to be validated by a court. At the other end of the spectrum, there is emphasis on the permission to form polygynous unions. Hence in Nigeria, for instance, not only is there fierce insistence that polygyny is allowed by immutable law, but men often go further to say that they must marry polygynously in order to be like the Prophet (although the Prophet's first marriage was wholly monogamous and ended only with the sad death of his wife). These and other variations in Muslim law and reasoning have rather significant effects on women's rights and lives.

Muslim laws and consensus of legal scholars and the community (*ijma*) also change over time. As with polygyny, slavery is permitted in the Qu'ran but not required. Yet Muslim legal thinking has now developed such that Muslim states no longer permit slavery.

Muslim laws are therefore not unchangeable law, and as such, they should not be accepted unquestioningly by all Muslims. In fact, the scholars after whom the four currently accepted schools of sunni Sharia were named, had no intention of making their views final and binding on all Muslims. Imam Hanbal urged *"do not imitate me, or Malik, or al-Shafi, or al-Thawri and derive directly from where they themselves derived"*. Imam Malik, the founder of the school of *fiqh* accepted in Nigeria, cautioned that *"I am but a human being. I may be wrong and I may be right. So first examine what I say. If it complies with the Book and the Sunnah, then you may accept it. But if it does not comply with them, then you should reject it."* So in the views of the very founders of the schools of Sharia, good Muslims were precisely those who questioned and examined and trusted their own reasoning and beliefs. Furthermore, the founders also found it acceptable that the reasoning of one legal tradition might be considered correct on one issue, but that of another more correct on a different issue.

The unthinking acceptance which dominates most Muslim societies derives from the myth of the 'closing of the doors of *ijtihad*', whereby for the last thousand years and more, legal jurisprudence has ceased to develop in favour of following established models. But it should be noted that this was a political event not a religious requirement. Abu Zahra wrote of the acceptance of *ijma* (a consensus about the schools of sharia at that time) in the 10th century that it was *"but for the maintenance of national unity and to check individual deviations, that al-ijma was legalised as an authority after the sacred texts."* Refusing further *ijtihad* and legal development is not a religious or divinely sanctioned act. It is not required in the Qu'ran or by the Sunnah (the traditions of the Prophet, pbuh). Unfortunately, both existing argumentation and the possibility of developments in Muslim law, especially as regards women's rights, are being blocked in Nigeria, by the fiction that there is only one unchangeable, uncriticisable system of Muslim laws and that this is already in effect in the 'new Sharia' states in Nigeria.

## 1.2. Sharia in Nigeria

The application of sharia law in Nigeria dates back several hundred years in the pre-colonial period when Borno and Sokoto Caliphates were administered by it. The British Indirect Rule System of government permitted Muslim laws to govern in areas they did not have a direct concern in (family law, but not taxation or most of criminal law). Even before independence in 1960, Nigeria had three systems of law in the realm of family and personal status (concerning marriage, divorce, child custody, inheritance and the like). These were general (sometimes referred to as secular or civil law), Muslim laws, and customary laws. At the approach of Independence in 1960 a statutory Penal Code was passed under the limited self-government system then in which an attempt was made develop a legal system that would take account of diverse religious and ethnic peoples in the north of Nigeria through consultation with scholars – including a panel of Islamic fiqh scholars. Amongst other things, some of the ‘harsh’ penalties associated with sharia, such as amputation and stoning to death which were commuted to imprisonment, fines, and flogging. Sharia courts over the past twenty to thirty years, have increasingly recognised and upheld women’s rights to inherit (especially to inherit land), to divorce on demand (often without, or with only token payments), to custody of their children, to being able to hold their children’s property in trust, against forced marriages, and so on.

In more recent times an expansion of Sharia code has taken place. On 27 June 2000, Zamfara State made headlines for embarking on several radical and dramatic implementations of laws that aroused public outcry. Earlier, in 1999, the state governor, Alhaji Sani Yerima, had signed the expansion of the jurisdiction of the Sharia Court of Appeal Law (Cap. 133, Laws of Sokoto State) from the family and personal status laws, to other areas, including criminal law. He alleged this was a campaign promise, although it was not party of his party’s programme and there seems to have been only one occasion on which he mentioned it. Through a combination of popular support, and Islamist vigilante riots and threats, 12 other states have passed similar Sharia Acts and enacted new criminal laws. In principle, the expansion of sharia could have included many areas in economic and social development, such as provisions for the collection and distribution of *zakat* (the charity tithe, which is one of the five pillars of Islam), or the implementation of regulations prohibiting usury (such as charging interest on loans by moneylenders or banks). In practice, however, in none of the 12 "new Sharia" states has there been much beyond elaborating punishments for offences like theft, *zina* (adultery or fornication, depending on marital status), and alcohol consumption.

The politics of the situations in which these new Acts were passed has had the unfortunate consequence of serious shortcomings in their drafting, content and implementation. Even more unfortunately, those politics have also produced claims that the new Sharia acts of 1999-2002 incorporate perfectly a universal God-given code, and that to raise any issues of possible defects (and therefore of the possibility of removing those defects) is unIslamic, anti-Sharia and tantamount to apostasy - in short a politics of intimidation and threat. However, the falsity of allegations like these is clear, when examining the nature of Muslim laws.

At this point it will be very useful to mention that there is a world of difference between laws, even religious laws and people who codify and implement them. Thus, sharia, as practiced in Nigeria, cannot be totally dissociated from political intentions. The basic emphasis in Islam is on creating a society based on justice and equity. Unfortunately, this is not the case as shown by all the cases so far. It has led to changes in the lives of people in the state particularly women and girls and an increase in the abuse of women’s human rights.

Those who have been charged under the new Sharia Penal Codes have been predominantly poor, often rural but also the urban poor, non-literate women, men, and children. It is clear that women more often than men are prosecuted for *zina*, despite the fact that adultery, fornication and “immoral gatherings” require (at least)

two people – one of each sex. Although both women and men have been found guilty of fornication and consequently whipped (and/or imprisoned, if men), only women have been convicted of adultery, with its higher penalty of stoning to death. In cases of alcohol consumption, theft and sodomy, men more often than women are prosecuted – so far only men and boys have been tried and convicted of theft and sentenced to amputation. And, regardless of sex, it is the poor and not the wealthy or powerful who have faced criminal prosecutions under the new Sharia Acts.

There are also the indirect effects of the new Penal Codes and the consequent strengthening of the voice of the Muslim religious right, which are much more widespread. Attempts to impose dress codes and attacks on women outside of their homes have been common – and the fear of attacks with consequent ‘self-imposition’ of dress codes or curtailing of activities and travel outside the home (or their imposition by concerned parents, husbands and other relatives or affines) makes their influence wider yet. The hindering of sexuality education and access to fertility management particularly affects girls and young women and men, as well as the poor more generally. Invading private homes to stop music and dancing (even in single-sex celebrations) is not uncommon. The climate of fear and intimidation cultivated by the religious right – accusing all who criticise, however mildly, of apostasy and being anti-Islam, and threatening violence against them – is also pervasive, and not limited to any one sector of society.

### **1.3 Sharia and the Nigerian Constitution**

The constitutionality of the various Sharia Acts is ambiguous. Nigeria has always had ‘general’, customary and Muslim laws – all three systems of laws administered through state controlled and maintained courts and police. It is hard to argue therefore that Muslim laws *per se* have suddenly become unconstitutional. The Muslim Right argue that since the Sharia Acts apply only to Muslims that they are not equivalent to adopting a state religion (which would be contrary to s. 10 of the Constitution), since non-Muslims continue to have general or customary laws available to them, as they chose. (It should be noted however that there are also sections of the Muslim Right who have declared the intention that the Sharia Acts should apply to all within their state boundaries, regardless of religious affiliation.) They argue further that since the Constitution guarantees the right to practise one’s religion, this permits Sharia laws in criminal as in personal status issues. Opponents argue in return that Muslim personal status laws are sufficient to enable the practise of one’s religion, without extending it to criminal or other civil matters.

The Constitution provides for the existence of parallel systems of general, customary and Sharia courts of appeal (all terminating in the Supreme Court). However the jurisdiction of the Sharia Courts is set out as personal status law. Hence it has been argued that the Constitution does not permit Sharia in Nigeria to include criminal offences. However, criminal law is not on the federal exclusive list in the constitution. In terms of federal vs. state authority this means that the states have residual powers to legislate criminal offences – including possibly Muslim criminal laws. It is clear however, that evidence is on the federal exclusive list and several of the Sharia Penal Codes do make reference to evidence requirements. Challenging the Sharia Penal Codes on these grounds however would not be helpful for rights protection, since the federal evidence requirements are broader than those in the Penal Codes (which permit only witnesses and confessions) and thus it would make prosecutions more likely to succeed and not less, if federal evidence legislation was adduced.

Before now, no one has raised the issue of whether or not Muslims can choose secular or customary laws, rather than Muslim laws. In practice some Muslims have married under the Marriage Act, rather than under Sharia or disposed of property wholly by will, rather than a maximum of 1/3 by will and the rest to stipulated heirs as in Sharia (the case of Chief M. K. O. Abiola, for instance). However, given the dominance of the Muslim right now, it seems that this is less and less likely to be possible in future, thus affecting the Muslims’ rights to freedom of religious expression and from

religious law (constitution) or the enjoyment of that Qu'ranic assurance that there shall be no compulsion in religion SII: 256.

#### **1.4. BAOBAB for Women's Human Rights – Herstory**

BAOBAB for Women's Human Rights (BAOBAB) is a non-profit, non-governmental women's human rights organization that focuses on women's legal rights issues under customary, statutory and religious laws in Nigeria. Established in 1996, BAOBAB evolved from a three-year research project on Women and Laws, coordinated by the international solidarity network Women Living Under Muslim Laws (WLUML), which started in 1993. The Women and Laws action-research team was made up of about seventy (70) people - women's rights activists, *ulema* (scholars of Islam), lawyers, social science researchers, historians, and Arabic linguists amongst them. They spent over three years researching Muslim jurisprudence, the history of Muslim laws in Nigeria, Sharia court judgments (especially at the higher levels) and daily practices in diverse Muslim communities across Nigeria, as they affect women as family members, citizens and individuals (as well as how secular and customary laws and practices interact with Muslim laws and practices).

The wealth of data generated from this research showed the need for intervention as the different manifestation of violations of women's human rights was evident in different spheres of the Nigerian society. It was clear that many women do not access their rights in Muslim laws because they do not know of them, or how to actualise them. Consequently, BAOBAB and its volunteer state outreach teams began making that knowledge available to women (and men) through legal literacy leaflets and activities, training workshops, paralegal support and so on since 1996.

The name of the organisation is derived from the baobab tree, a tenacious and long-lived tree found all over Africa. This tree provides shelter, food to birds and humans and can withstand adverse conditions. BAOBAB for Women's Human Rights strives to emulate these sterling qualities – a place of refuge for all women, strength, nourishment and dependence, as well as being able to stand the test of time.

Our vision is for women's human rights to become an integral part of everyday life. The mission of BAOBAB is to promote and protect women's human rights primarily by improving knowledge, exercise and development of rights under religious, customary and statutory laws in Nigeria. This has meant research to find out what rights and/or constraints exist in laws, implementation and in social practice. It meant further disseminating that knowledge and means of actually accessing those rights. But further than that, it means examining whether laws and their implementation are adequately protecting rights and devising strategies to further develop laws, implementation and social practices where they do not.

Thus, BAOBAB has undertaken research and produced reports on women's rights and laws in Nigeria, including on access to justice, women's human rights violations in Nigeria from 1966–1999 for the Human Rights Violations Investigation Commission (Opota Panel), and on Nigeria's record in fulfilling obligations under the Convention for the Elimination of All Forms of Discrimination Against Women (CEDAW) in collaboration with other NGOs), as well as a series of legal literacy leaflets. BAOBAB draws public attention to women's rights issues - for example, through co-organising with the Civil Resource Development and Documentation Centre (CIRDDOC) the first National Tribunal on Violence Against Women in Nigeria in March 2001; organizing art competitions for young people on building women's human rights cultures; as well as co-ordinating and participating in both national and international campaigns and networks in gender justice, like the current national Domestic Violence Bill, the international solidarity network of Women Living Under Muslim Laws (BAOBAB coordinates the activities of this network in Africa and the Middle East), and, the Women's Caucus for Gender Justice. BAOBAB is the Chair of the National Coalition on International Criminal Court (NCICC). BAOBAB runs training workshops for paralegals, leadership skills for women, and in gender

awareness, in project management and research, amongst others. BAOBAB also supports women and girls to fight or redress rights violations in individual cases, ranging from domestic violence, to forced marriage, to rape and sexual abuse, to achieving custody and guardianship and maintenance rights for their children.

All of these activities also serve to support the work of the scores of unpaid volunteers in states across Nigeria. These state outreach teams' activities include running legal consciousness workshops on different aspects of rights, training sessions, paralegal clinics, street theatre, mediation and counselling. They serve to interface local level work, with women and men in rural and urban areas in Nigeria, with the national and international levels and thus to make available and accessible the abilities to examine, actualize and develop rights to people at all levels and in all regions.

BAOBAB's work in defending the rights of women, men and children in Muslim, Customary and Secular laws especially under the Sharia Criminal Legislation acts passed in Nigeria since 2000, has earned the organisation an international award – the John Humphrey Freedom Award in 2002. The award was conferred on BAOBAB for Women Human Rights and Ayesha Imam, the founding Executive Directors on December 9, 2002 in recognition of our work in defending and developing women's human rights in secular, customary and Muslim religious laws in Nigeria. It is an annual award by Rights and Democracy (the International Centre for Human Rights and Democratic Development) a Canada-based organisation ([www.ichrd.org](http://www.ichrd.org)) The UN Special rapporteur on violence against women also cited BAOBAB's work as an example of best practice in defending women against violence, in her 2003 report titled: 'International, regional and national developments in the area of violence against women 1994-2003'

## Chapter Two

### Sharia Implementation and Women

The passing of the first Sharia Act in Zamfara State in 1999 was clearly an act of political opportunism. It sanctioned and encouraged both the growth and the expression of extremely conservative Islamism in much of northern Nigeria, often claiming to implement 'Sharia' by extra-legal means. In addition, there are a host of practices, with no legal basis at all, which are being imposed on society in the name of 'sharianisation'. These include the widespread imposition of dress codes on women, attempts to force women to sit at the back of public vehicles, and a midnight curfew in the state capital, Gusau. Many of these practices are enforced by extra legal groups of young men vigilantes - sometimes openly supported by the state government as in the case of Zamfara, but sometimes with attempts to control and stop them from taking the law into their own hands, as in Kano state.

The implementation of sharia is beginning to have serious consequences for women's reproductive rights. For instance, sexuality education is being removed from the school curricula. There have been attempts to prevent non-governmental organizations (NGOs) from running sexuality education workshops (on family planning and reproductive health care, for example). The father's right to control the marriage of a never-married daughter (*ijbar*) is being re-asserted, and child marriage is being advocated again.

In addition, there have been criticisms, abuse, verbal attacks and physical threats to women's rights activists – measures meant to intimidate, and which, if successful, would further hinder the implementation and advocacy of women's rights issues.

Quite apart from the texts of the laws, there has been discriminatory implementation and improper procedures that vitiate women's rights in particular. By postulating that pregnancy outside marriage is evidence of *zina* (a minority position in Sharia which is not held by the Hanafi, Hanbali and Shafi schools, nor a variant of the Maliki school), women have been held to a different standard of evidence than have men<sup>1</sup>. Non-married women are required to provide evidence to prove their innocence, but men are not. If the prosecution does not provide independent evidence, such as four eye-witnesses, men can simply walk away, unlike women. This is without respect for the prescription in the Qu'ran, which specifies that whoever brings an allegation of *zina* without four witnesses, be they male or female, will themselves be guilty of bearing false witness and subject to punishment. More women than men have been both charged and convicted of *zina*. Women who ought not to even have been charged, have been convicted of *zina* and sentenced to death, by ignoring the well-established Maliki doctrine of the "sleeping embryo" (*kwantacen ciki* in Hausa), whereby a child born to a woman within a set period after the end of her marriage (in some areas up to seven years), is assumed to be the child of that marriage. Women have also been accused and convicted of *zina* as prostitutes, for instance, with neither confession nor the testimony of four witnesses to a willing act of sexual intercourse, nor even pregnancy, for evidence.

Furthermore, the principle of *shubha* – which indicates that if there is any doubt, a conviction should not be made—has been totally ignored when it comes to women, even when the victim alleged coercion.

The political pressure for convictions has resulted in throwing up obstructions to the legal procedure. In the Bariya<sup>2</sup> case this, for example, included: refusal to accept application for appeal (i.e. physical refusal to take the papers), refusal and delays in obtaining copies of court judgements and deliberate delays and obfuscations, as well

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<sup>1</sup> Now reversed in the judgment of the State vs. Lawal (Katsina Sharia Court of Appeal, September 2003). Hopefully this case will show the way for other cases of *zina*.

<sup>2</sup> See Chapter Three for details



as bringing forward the implementation of her sentence (thankfully whipping not stoning) in order to circumvent the appeal and defy international and national protests.

Procedural problems are also a result of the lack of knowledge of lower court personnel, including judges. Judges' notions of what is proper behaviour and overarching attitudes towards gender relations colour the way in which they receive and treat pleas from women as opposed to those from men. For example if Sharia court judges (who have been so far all male) believe in men's right to marry young girls and or have themselves chosen their daughters' husbands, they are unlikely to be sympathetic to a young girl's rights or her misery in a forced marriage.

Less well-known are the effects that these new laws are having on other non-married women and/or commercial sex workers who are frequently harassed, evicted, forced to leave their states of residence and/or charged and convicted with *zina* and 'immoral behaviour' (usually in the absence of either witnesses or confessions). In addition, the mode of implementation of these laws are worsening the likely incidence of forced sex, sexual assault and rape possibilities, by requiring two male witnesses for such offences and threatening prosecutions for false witness if accused men are not convicted. This obviously violates women's rights to choose safe sexual encounters, health and personal safety.

The provisions of the Penal Codes are generally gender-neutral. However there are some exceptions – which are generally in favour of men. As in the 1960 ('secular') Penal Code, the Sharia Penal Codes continue to permit husbands to beat wives. They do not recognise marital rape (which is not recognised in general secular law in Nigeria either). Some of the Penal Codes (Niger, Kano, and Kebbi states) specify that men's testimony will be worth more than that of women. The *diya* (monetary compensation in cases of hurt, if the victim or his/her family are willing to accept this instead of the stated punishment) to be paid for Muslim men is higher than that of Muslim women (or non-Muslims), although *qisas* (retaliatory punishment) can be applied regardless of gender. In one instance, men are subject to harsher punishments than women – in Kano State, never married men convicted of *zina* may not only be lashed but also subject to one year's imprisonment (never-married women would be liable for lashing only).

In the Sharia Penal Codes, rape is treated as a form of *zina* – illicit sexual intercourse. Reporting rape is thus equivalent to confessing to *zina*. In the most probable situation of lack of two witnesses or a confession from the rapist, rape would be hard to prove. Consequently, women would find themselves not only subject to *zina* punishments, but also liable for false witness. Thus, the new Sharia Penal Codes deprive women of protection from rape and sexual assaults.

The Sharia acts also include general provisions that other issues of 'Islamic law' even if not mentioned shall be law. It is possible that this might include the revival of the issue of *ijbar* (a father's right to arrange first marriages of 'virgin' daughters – which the Sharia courts have been finding ways of discouraging over the past few decades).

There are also local bye-laws that discriminate against women. In Gusau, Zamfara state, there is a local government bye-law that prohibits Muslim women from using *achaba* (motorcycle taxis – the cheapest and most convenient form of public transport available in Gusau). In Kano state women have been banned from participation in sports and public recreation.

## **Chapter Three**

### **BAOBAB and Sharia cases: 2000 - 2003**

From inception, BAOBAB was grounded in the belief that all women's rights are human rights, that women living under Muslim laws were no less entitled to the realisation of those rights than any other woman, and that the promotion and protection of those rights, in all spaces, are an urgent priority. We are therefore committed to sharing information, skills, and expertise with women and in particular cases men, to realise that objective.

Increasingly, BAOBAB is becoming known for her defence of women who are railroaded – for political reasons - through the unfair judicial system in states where the new Sharia Acts are implemented. Consequently, we are asked for assistance with individual cases of rights abuse for such women either at the court of first instance or (more frequently) in appeals. So far, we have been involved in many cases of women and minors. As we become successful at defending such cases, we are receiving requests from families of men who have run afoul of the law in Sharia States. In such cases, we refer them to other human rights organizations as this is clearly outside our mandate. It is becoming the norm for even officers of the courts to draw cases to our attention when we visit our clients in various prisons in the northern part of the country.

Through the support of like-minded organisations and individuals who provide moral and/or financial assistance, we have been able to undertake the defence of the cases of some of these women and some minors who have been sentenced to amputation. Some of these cases are still pending. Not only do we litigate the cases in court, we also provide support, after care and welfare services to the survivors. BAOBAB engaged the services of a legal consultant who monitored the cases on behalf of the organization. We also undertake monitoring trips to see how the survivors are faring.

### **3.1. CASES OF ADULTERY AND FORNICATION**

#### **3.1.1. BARIYA IBRAHIM MAGAZU**

Bariya, a young girl who was convicted for '*zina*' under the expanded Muslim Personal laws in Zamfara state was the very first case and it is an example of women's poor access to justice in Nigeria.

Bariya Ibrahim Magazu was a 13 -year old girl (although reported as 17 years by many Nigerian and international media) who lives in the village of Magazu, on the outskirts of the small town of Tsafe, about 45 minutes drive from Gusau, the capital of Zamfara state. She used to be a hawker; selling rice and *fura* (ground millet balls) made by her mother.

When it was discovered by her uncles that she was pregnant without being married, they took her to the *Magaji* (the district head in the village) who is related to the family. The *Magaji* asked her what happened (i.e. who made her pregnant) and she named three men as possibly responsible. The District Head (*Magaji*) then summoned the three men named by Bariya, and questioned them extensively. All three men denied the charge. It was reported that all three men were married and in their twenties or thirties (although some newspapers stated that the men were middle-aged).

At this stage, *yan agadi* (Islamist vigilantes) heard about the case and proceeded to take the three men to the Police Station where they were detained for three days in Police custody. When they continued to deny the charge, they were released. The case was then referred to the Sharia Court in Tsafe. Although BAOBAB was refused access to court records, some of the court officials were willing to discuss the case.

Bariya was convicted of *zina* (fornication) in September 2000 under the Sharia Penal

Code of Zamfara State, on the evidence of pregnancy outside marriage. She was sentenced to 100 lashes to be carried out 40 days after the birth of the baby. She was sentenced to another 80 lashes for *qadhif* (false accusation) when the court decided that there was insufficient evidence (i.e. no witnesses) to identify any of the three men she named as the possible father of her baby. As is usually the case at this level of court in Nigeria, neither Bariya, nor the men she named as possible fathers of her baby, had legal representation.

Following reports of the case in Nigerian newspapers, BAOBAB for Women's Human Rights went to Zamfara State to investigate in November 2000. Following considerable persuasion of about the morality and permissibility of appeals in sharia, Bariya and her family agreed to appeal and asked BAOBAB to assist them. Since BAOBAB had been working on women's rights in religious laws before the expansion of sharia and has done a lot in the area of laws that affect women living under Muslim Laws, the case was regarded as another step towards realizing the vision of the organisation. Needless to say that it was a big challenge for us.

The team from BAOBAB met with the governor of Zamfara State in November to ask for clemency but he refused to consider executive clemency on the grounds that this would be detrimental to Islam. The governor also dismissed letters and protests from human rights groups (especially from the global North) as these are neither Muslim groups nor their protests based on Muslim laws, and therefore those groups were not qualified to comment on sharia issues. However, the governor agreed that he would be willing to consider arguments made from the point of Muslim laws.

Following this, BAOBAB sent out an appeal around the Muslim world requesting information and arguments in Muslim Laws on Zina. There was a strong and extremely supportive response to this appeal. With all the information we were able to gather from our appeal and our own independent findings we were able to establish a very strong basis for appeal of Bariya's case. A team of seven lawyers, all but one working pro bono, was constituted to work on Bariya's appeal. The following circumstances are the grounds for appeal:

- Invalid consent: Section 38(c) of the Sharia Penal Code of Zamfara states that *"A consent is not such a consent as is intended by any section of this Sharia Penal Code, if the consent is given by a person who is under eighteen years of age or has not attained puberty"*.
- Punishment and Compensation: Section 95 States *"When an accused person who has completed his seventeenth but not his eighteenth year of age is convicted by a court of any offence, the court may instead of passing the sentence prescribe under this code, subject the accused to: (a) confinement in a reformatory home for a period not exceeding one year; or (b) twenty strokes of the cane, or with fine or both"*.
- Rape: Section 128(1) states that *"A man is said to commit rape who has sexual intercourse with a woman in any of the following circumstances; (ii) without her consent; (iii) with her consent, when her consent has been obtained by putting her in fear of death or hurt; (v) with or without her consent, when she is under fifteen years of age or of unsound mind"*.
- Remittance for the offence of *qadhif* (false accusation of *zina*): Section 141 states *"The offence of qadhif shall be remitted in any of the following cases (a) where the complainant (maqzu) pardons the accuser (qazif)"*

By virtue of the above-mentioned sections from the Zamfara State Sharia Penal Code, Bariya should not have been found guilty of any offence under this Act. One needs only apply section 38 {c} to nullify the whole conviction. However, even if the courts insist on a guilty verdict, they have the discretion under section 95 to dispense a lesser punishment. The provision for this is called *Ta'zir*

On the issue of statutory rape, Bariya herself told members of BAOBAB that she was only thirteen years old, even though newspaper reports claim that she was seventeen

years old. Therefore she is too young according to the Zamfara Penal Code to consent to sexual intercourse. It was also reported that she was coerced into the act. The court did not consider this.

A judicial review decided to drop the 80 lashes sentence for false accusation of zina. The trial judge stated that the sentence would not be carried out until she had finished breast-feeding (probably at least a year after the baby's birth). However, apparently in order to frustrate the appeal process, the execution of the sentence was brought forward and implemented early on January 19, 2001 (the original date of 40 days after the child's birth would have been January 27). Bariya was given notice only the night before. Despite the whipping, Bariya and her family decided to continue with the appeal.

The case of Bariya gained attention not only at the national level but also at the international level, hence the more burning desire to conclude the case. It cannot be totally ruled out that the outcry from civil society did not influence the dropping of the false accusation charge, and therefore the slashing of the first sentence from 180 to 100. Bariya was married off not long after the sentence was implemented. It is hoped that the current efforts on Bariya's appeal would yield more positive results.

### **3.1.2. HAFSATU ABUBAKAR GWIWA**

18 year-old Hafsat Abubakar Gwiwa was arrested on the 20<sup>th</sup> December 2001 at her residence for allegedly committing the offence of *zina* (adultery) contrary to section 129(b) of the Sokoto State Sharia penal code in respect of being pregnant out of wedlock. The case was reported by her brother to the Sharia authorities, who in turn directed him to the police. She was subsequently taken to the Gwiwa police Station in Sokoto, accompanied by her mother. Hafsat was arraigned before the Upper Sharia Court Sokoto II. When the case was mentioned, Hafsat denied having been once married as alleged by Police prosecutor Na Allah. The case was adjourned to January 9, 2002 for the police prosecutor to conclude his investigation on the matter.

When the case came up again for hearing, the Police prosecutor alleged that Hafsat was once married to one Muhammad Dan Jabo, and that he was ready to bring witnesses to that effect. The case was further adjourned to January 21<sup>st</sup> 2002 to enable the Police prosecutor produce his witnesses. When he still could not produce his witnesses, the case was adjourned to the following day and Hafsat Abubakar was granted bail.

When the case came up for hearing on January 22<sup>nd</sup> 2002, the Police prosecutor presented three witnesses –

- (i) Mohammadu Dan Jabo, a 38 – year old farmer and who testified that he was married to Hafsat and that they lived together for eight months but had divorced her eighteen months previously.
- (ii) Muhammadu Gidado (59 years old) who confirmed that the two were once married to each other
- (iii) Mode Daan Tonka (35 years old). He also corroborated the first two witnesses.

The prosecutor then closed his case while the case was adjourned to the following day for the defense address and ruling.

Hafsat's counsel, Abdulkadir Imam Ibrahim, whose services were engaged by BAOBAB for Women's Human Rights, addressed the court when the case came up again on January 23<sup>rd</sup> 2002 on the following:

1. Retraction of earlier confessional statement of Hafsat Abubakar that she was impregnated by Umaru Shehu. He argued with references to some authorities in Islamic law where provision is made for retraction of confessional statement before execution in capital punishments, like *Mukhtasar Vol. II, p. 285*

2. Doubts created by the evidence of the former husband, Mohammad Dan Jabo as to whether he is the father of the child or not. In principle, according to sharia, where there are doubts, a case should be decided in favour of the accused person (Fiquhu – Al- Sunnah Vol. II p. 241 and Bidayat – Almihtahid, wa ni Hayatu al – muqtasid Vol. II p. 470)
3. By virtue of the evidence given by her former husband and based on the theory of the sleeping embryo (dormant pregnancy), the pregnancy can be attributed to her former husband (Ihkamul – Ahkam, p. 118).

After the address of Hafsatu's counsel, the learned judge (Alkali) Hon. Bawa Muhammad Tambuwal ruled in her favour and Hafsatu Abubakar Gwiwa was discharged and acquitted.

### **3.1.3 AISATU MUSA**

Aisatu was about 17 years old and was charged with the offence of fornication. She was sentenced to one-year imprisonment and 100 lashes of the cane after weaning her baby. She was already serving a prison term when we found her. We sought her consent and subsequently filed a motion on notice for bail pending appeal. The bail application was successful. The appeal filed on her behalf is still pending at the Sharia Court of Appeal Sokoto.

### **3.1.4 HAUWA GARUBA**

We found Hauwa in Sokoto prison where she was remanded after been charged to court for the offence of adultery. We filed an application for bail on her behalf. The appeal filed against the judgment of the lower court was adjourned *sine dine* due to her health condition. She has however died since then.

### **3.1.5 MARYAM ABUBAKAR BODINGA**

Maryam was arraigned before the Upper Sharia Court 11 Sokoto for the offence of adultery contrary to section 129(b) of the Sharia Penal Code on 24<sup>th</sup> September 2002. She denied the allegation and was remanded in prison custody until the 8<sup>th</sup> of October 2002. On the day of the hearing, Barrister Al Mustapha, whose service BAOBAB had engaged, appeared on her behalf. The lawyer applied for bail, which was granted and subsequently asked for an adjournment to enable him study the facts of the case. The matter was further adjourned to the 31<sup>st</sup> of October 2002. On the said day, Al-Mustapha argued that Maryam did not commit any offence under section 129(b) because she gave birth to her baby less than a year of being divorced by her ex- husband. This is a principle of the Maliki school of which provides for long gestation periods of between 5-7 years after divorce. The learned Khadis of the sharia court agreed with the submissions of Al-Mustapha and discharged and acquitted Maryam.

### **3.1.6. SAFIYYATU HUSSEINI**

38 year-old Safiyyatu Hussein was arrested On December 23, 2000 and tried at the Upper Sharia Court Gwadabawa, Sokoto State for the offence of adultery, and unlawful sexual intercourse. The matter was charged to court by the Sokoto State Commissioner of Police under ss128 and 129 of Sokoto State Sharia Penal Code of 2000. Yakubu Abubakar, her partner was also arrested although he was released when he denied the charge for lack of evidence. The judge that heard her case, Mohammed Bello Sanyinawal, sentenced Safiyya to death on the grounds of her pregnancy, confessional statement, admission of having sex with Yakubu, being a Muslim and having been once married.

Safiyya's 80-year old father, Mallam Hussein Tunga Tudu, declared that *"there is no justice in this judgment. I don't want my daughter to die by stoning"*. Sheik Mohammed Mode Abubakar, Sokoto State Chairman of the Sharia Court where the death sentence was passed, opposed the use of DNA testing, a modern medical technology, to determine whether Yakubu Abubakar is indeed, the father of

Safiyyatu's daughter. This was on the grounds that sharia has no concern with blood test for the purpose of determining paternity.

When BAOBAB got wind of this case, Safiyyatu was contacted and she wanted to appeal. The appeal was heard at the Sharia Court of Appeal, Sokoto on October 26<sup>th</sup> 2001. The judges were Alhajis Muhammed Bello Silame (Grand Khadi), Bello Muhammed Rabah, Abdulkadir S. Tambulwal and Muhammed Tambari Usman.

Barrister Abdulkadir Imam Ibrahim led Ms. Ezinne N. Ekekwe (of BAOBAB), Hauwa Ibrahim, Ladiddi Abdulkadir, O. Omo-Osagie and Messers Aliyu Musa Yauri, Sadiq Abubakar, Mohammed Saidu Sifawa, Bola Odugbesan, Isah Mohammed and Victor Dadieng to appeal on the following grounds;

- o Lack of jurisdiction
- o The lower court erred in law by taking the admission of the appellant without giving her an opportunity to call witnesses or defend herself
- o The charge of zina was not explained to the appellant
- o No witness was called by the lower court to testify that the appellant was '*mushina*' and neither was sexual intercourse that could give rise to the offence of zina
- o The appellant was not given an opportunity for final address (*izari*) before passing the judgement
- o Mere pregnancy cannot be conclusive proof of zina

The appeal was allowed and judgment was given on March 25, 2002 based on the grounds of appeal, except that of constitutionality of the penal system<sup>3</sup>, which was argued on the grounds of jurisdiction. Safiyya was discharged and acquitted

### **3.1.7 AMINA LAWAL**

One of the widely celebrated cases in recent times is that of Amina Lawal, from Bakori in Katsina state. She was charged with adultery (*zina*) with Yahaya Mohammed on January 15, 2002. Yahaya was set free after swearing on oath with the Quran that he did not have sexual relations with Amina Lawal. She was convicted for adultery by the a single judge, Alhaji Nasiru B. Dayi. Amina was found guilty as charged subsequently sentenced to death by stoning by the judge of the lower sharia court in Bakori. The grounds for conviction were admission, pregnancy and the existence of Wosilat (her daughter born outside of marriage).

An appeal was filed at the Upper Sharia Court, Funtua, on 28<sup>th</sup> March 2002 before Alhaji Aliyu Abdullahi, Alhaji Umar Ibrahim, Alhaji Bello Usman and Alhaji Mamuda Suleiman. The appeal was led by Women's Rights Advancement and Protection Alternative (WRAPA) with the support of BAOBAB and other concerned organisations. BAOBAB monitored the case closely, attending several stakeholders meetings with respect to this case and attendance in court on all occasions. Mallam Musa Yawuri led Ms. Maryam Imhanobe and Ms. Hauwa Ibrahim in the appeal.

This first appeal failed on all grounds and the decision of the court of first instance was upheld by the Upper Sharia Court, Funtua on August 19, 2002. A second appeal was subsequently filed at the Sharia Court of Appeal, Katsina. This appeal suffered several adjournments before it was finally entertained on the 27<sup>th</sup> August 2003. Arguments were taken on both sides and the matter was reserved for judgment on the 25<sup>th</sup> September 2003.

### **The Judgment**

On September 25<sup>th</sup> 2003, Hon. Khadis Aminu Ibrahim Katsina, Sulaiman Mohammed Daura, Ibrahim Mai Unguwa, Shehu Mu'azu Dan Musa and Sule Sadi Kofar Bai of the Sharia Court of Appeal in Katsina considered all grounds of appeal filed and the arguments of the lead counsel, Mr Musa Yawuri.

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<sup>3</sup> This means that questions were raised as to the fact that the Sharia Penal Code is against the principles of the provisions of the constitution

The court held that the *arraignment* of the appellant before the Sharia court of Bakori was incurably defective. The appellant was arraigned before the court and charged with the offence of adultery (*zina*) solely on the basis of information received from the police. The court held that a person accused of *zina* can only be arraigned before a court on the basis of four (4) witnesses required by the Qur'an and not on the basis of information received by anybody. The court further observed that a person who alleged that another person has committed *zina* must prove it by evidence, failing which he or she should receive the mandatory hundred (100) lashes for defamation of character.

The court held that section 4 (1) of the Katsina State law No 5 of the year 2000 provides that it is properly constituted when it is presided over by a judge with two court members. The argument of the counsel that the trial Bakori Sharia court was not properly constituted when it tried the appellant and convicted her for the offence of *zina* was upheld as the court noted that throughout the trial before the lower sharia court in Bakori, only one judge sat over the case. The court held that the judgment is therefore a nullity, since it contravenes the provisions contained in section 4 (1).

On the issue of *retraction of confession*, the court held that an accused person could retract his/her confession at any point before the execution of a judgment. The court reiterated the position of Sharia law on the issue when it held that the Holy Prophet (pbuh) refused to accept Ma'iz's confession on the three occasions he made them. The Holy Prophet only accepted the confession after making enquiry about the mental status of Ma'iz when he made the first confession. The court therefore held that a court of law could not convict on the basis of a single confession. The court found that the Sharia court Bakori convicted the appellant based on a single confession she made before the court. The court therefore set aside the judgment on this ground. The court also upheld the argument of counsel that the Upper Sharia Court Funtua was wrong when it rejected the appellant's retraction of her alleged confession. The Sharia court of Appeal observed that the jurists are unanimous on the rights of a convict to retract his/ her confession at anytime before the judgment is executed. They referred to the Hadith of Ma'iz. In that Hadith the Prophet ordered Ma'iz stoned to death upon his confession of committing *zina*. When the companions of Ma'iz started pelting stones at Ma'iz he told them to take him back to the Prophet. The companions refused to do so and stoned Ma'iz to death. When the Holy Prophet was informed of this he became angry at the conduct of his companions for refusing to bring Ma'iz back to him. The court observed that based on this Hadith a convict is entitled to withdraw his/ her confession at any stage.

The court also observed that there is no dispute that the appellant is a divorcee. Under Maliki Sharia, as argued by the counsel of the appellant, a divorcee can carry a pregnancy for a period of five (5) years from the period of her divorce. Therefore, the appellant's pregnancy and ultimate birth of a baby girl cannot provide a ground for which she will be tried and convicted of *zina*. The court held that the appellant is covered by this presumption of law that she was pregnant by her former husband and it is only the former husband that can refute this presumption. The court therefore set aside the judgment on this ground also.

The only dissenting voice on of the panel of five Khadis was that of Hon Khadi Shehu Mu'azu. He was convinced that Amina was guilty as charged and as such disagreed with all the grounds of appeal affirmed by the majority of Khadis.

### **3.1.8. FATIMA USMAN**

Despite the national and global outcry over the sentence of death by stoning on Amina Lawal in 2002, two lovers in Niger State, located in the North Central geopolitical zone, were convicted of adultery and sentenced to death by stoning by an Upper Sharia Court in Minna, the state capital.

The case concerning **Fatima Usman** and Ahmed Ibrahim, a local tea seller, is another case of retroactive punishment. The story began when Fatima's father married her off to another man while carrying a two months old pregnancy for which Ahmed was responsible. Before this, she and Ahmed already had a three-year-old daughter. When she informed her new husband about the pregnancy, he divorced her and insisted on being refunded all the money he expended on her since he married her. In addition to this, he demanded the sum of ten thousand naira (=N=10,000) as damages. Fatima's father had to sell his property in order to raise the required funds.

There was an agreement between Fatima's family and Ahmed Ibrahim that he would marry Fatima after she had weaned her daughter thereby taking over responsibility for her and her child financially and otherwise. Somewhere along the line, Ahmed reneged on the agreement claiming that he did not have the kind of money that Fatima's father was asking for. In a bid to make him pay up, Fatima's father took the case to court demanding the sum of one hundred and fifty thousand naira (=N=150,000) as damages for having a series of sexual encounters with his daughter resulting in the birth of a child out of wedlock. The judge told him it was a clear-cut case of adultery and referred him to the police for further investigation.

When the case came up for hearing in May 2002 at the Upper Area Court, New Gawu, Alhaji Abdulrahman Alhassan convicted Fatima and Ahmed on the grounds of admission of guilt and they were sentenced to five (5) years imprisonment with an option to pay a fine of fifteen thousand naira (=N=15,000). They could not pay the fine and were consequently remanded in prison custody. As with all the cases so far, both Fatima and Ahmed had no legal representation at this level of first conviction.

Dissatisfied with the judgment because he did not get any money still, Fatima's father took the case to the Sharia Court in Minna. The Upper Area Court judge that passed the first judgment was invited to Minna where he was told that he erred in his judgment and that S387 and S388 of the Sharia code of Niger State had been amended and punishment for adultery was now death by stoning. The Upper Area Court judge was advised to revise the judgment and reconvict the accused persons. The death sentence on the couple was then passed in absentia.

Adultery is found under S387 and S388 of the Penal Code and the punishment is: "the punishment in the case of a married convict is stoning to death and in the case of unmarried convict is 100 lashes in public." In this case, if the law is to be applied, the adultery took place when Fatima was not married, her punishment should only have been 100 lashes in public.

This was the situation when the accused persons pleaded with BAOBAB to take up the case and defend them using all the instruments that would be helpful towards discharging and acquitting them. BAOBAB took up the matter and immediately filed a notice of appeal at the Sharia Court of Appeal, Minna on the grounds that the Upper Sharia Court erred by giving two conflicting judgments in respect of one and the same offence. The second conviction was made retroactively and based on the purported admission to the offence by the appellants whereas the appellants were not given time to rethink to enable them either withdraw their admission or otherwise. The admission was made only once and no further witnesses were called to corroborate the purported admission.

It is evident that the so-called 'adulterous' relationship took place three to four years before the introduction of Sharia, therefore it is a clear-cut case of retroactive punishment. Moreover, there is no record documenting that the law has been changed between the time the first law was repealed and when the second one came into effect.

As at the time of going to press we are only waiting for the Court to fix a date for the arguing our grounds of appeal. A motion for extension of time was granted and the



convicts/ appellants are currently enjoying their freedom pending the hearing and determination of their appeal before Sharia Court of Appeal, Minna.

## **Proof**

In the course of our involvement and efforts to see that sharia is fairly implemented in Nigeria, especially where women are concerned, we have found that in addition to the grounds for appeal found in the Penal Codes of the sharia states, the argument explained below which is taken from the Qur'an, which is the main source of laws in Muslim laws is another valid ground. Whatever law is derived from the Qur'an and its implication depends on the interpretation and the circumstance of its operation.

The Qur'an requires four (4) credible witnesses to the actual act of intercourse as proof for *zina*. *Hudud* offences (those for which given punishments are mentioned in the Qur'an) do not permit circumstantial evidence. In none of the cases were any witnesses brought to testify that they saw the offence of *zina* being committed. However, some jurists (in the Maliki school only) accept pregnancy as proof of *zina* in the absence of proof of marriage. The Trial Judge in the Sharia Court in Tsafe, Zamfara State was of the same opinion and said as much during an interview with some members of BAOBAB staff. This however is a human opinion and has no support in either the Qur'an or *Hadith* and *Sunnah* (sayings and practice of the Prophet). However, the Katsina Sharia Court of Appeal in Lawal Kurami vs. State has ruled that pregnancy outside of marriage cannot be accepted as evidence requirements for *zina* (see above) – witnesses are required for proof.

Proof can also be determined by a confession. But this confession must be **voluntary**, and **based on legal counsel**; it **must be repeated on four separate occasions**, and **made by a person who is sane**. It can also be **withdrawn at any time – including after conviction and sentencing**. Again the Katsina Sharia Court of Appeal in Lawal Kurami vs. State has upheld this interpretation of Sharia in September 2003.

### **3.2. CASES INVOLVING MINORS**

BAOBAB believes that cases of minors (usually boys) sentenced under the sharia legal system affect women more than other members of the society. Thus, we have taken up their cases to bring smiles to the faces of their mothers.

#### **3.2. 1. Lawal Garba and Bashir Alkali**

In the years under reference, we were able to secure the acquittal of these two teenage boys accused of theft. They had been convicted and sentenced to amputation of their limbs. However there are eight (8) teenagers awaiting amputation for allegedly committing the offence of theft.

With the support of well-meaning and like-minded individuals and organisations, we have been able to appeal these cases. We however have several other cases pending in court and still need to successfully appeal these pending cases, organize strategy meetings, pay costs for filing court process and provide welfare for our clients who are poor and have been ostracized by their community.

Here is a catalogue of the cases of the under-aged boys awaiting amputation:

#### **3.2.2. Aminu Bello**

Aminu is 19 years old. He has been in detention since 2001. Before BAOBAB met him in Sokoto prison in 2002, he did not have a lawyer defending him. He is a first offender. His father's name is Alhaji Garba and his mother's name Hajiya Hauwa. Aminu grew up with his uncle Bello in Isa Local Government of Sokoto State. His father was a trader/farmer.

He completed his primary education at Salihu Anka Modern Primary School and passed his final examinations with flying colours. He could not proceed to secondary school due to lack of funds as there was nobody to support him. Instead he started a

small business selling a variety of items with a small amount of money given to him by his father.

Aminu claimed he is being remanded in prison custody because he was implicated in a case of theft committed by his friend. The police arrested his friend who led them to him. The Police went to pick him up and he went fearlessly because he knew he had not committed any offence. After Police investigations and court judgment, his friend was given a two-year jail term while he was sentenced to amputation

He claimed he confessed in the Police Station to stealing only because he was tortured. He did not know what happened to his friend at whose place the exhibit was recovered. While the principal actor (Aminu's friend) was jailed for only two years, he was sent in for amputation.

Aminu's case came up on the 8<sup>th</sup> of May 2003. His counsel, appointed by BAOBAB for Women's Human Rights, Barrister Al Mustapha pleaded his case and the move for appeal was granted.

Aminu Bello has graduated from the Secondary School inside the prison.

### **3.2.3 Mohammed Sulaiman**

A native of Angwan Minanata, Mohammed's age is placed between 17 and 18 years as he is not sure. His father Sulaiman Siddo, an Arabic teacher at Hafsat Bello Academy in Sokoto died seven years earlier at Birnin Kebbi. Mohammed went to school at Cement Company Primary School, completed his primary education in 1995 and completed secondary school in 2001. He had been in prison for 14 months. Before then he had gained admission at Shehu Shagari College of Education, to study Business Administration. He was in his 1<sup>st</sup> year when he was convicted.

He had a friend called Bashir who hails from Bauchi. Bashir was living with his older brother who is a nurse at Utman dan Fodio Teaching Hospital. He and the friend in question were mates at the College of Education. On the fateful, day his friend went to see him and told informed him that his older brother who had just bought a new air conditioner wanted to sell the old one.

Sulaiman collected the air-conditioner and took it to a repairer. The air-conditioner was declared missing and the case was reported at the Police. Sulaiman was accosted and taken to Angwan Rogo Police Station where he was interrogated. Police went with him to the repairer to retrieve the air-conditioner. Sulaiman's brother claimed that other things were missing from his house apart from the air-conditioner. Sulaiman denied having any other thing in his custody apart from the air conditioner and told the police so. The police did not believe him and they beat him up mercilessly. His statement was not recorded and the used the air-conditioner was tendered as an exhibit against him.

He was sentenced to amputation. His mother employed the services of the lawyer and fourteen days after the sentence, Sulaiman filed an appeal through his lawyer, Abdulkadir. He sought to be given a bail option, but he was told that there is no bail after conviction. BAOBAB took an interest in his case and employed Barrister Mustapha to take charge of his case.

Sulaiman is presently learning welding as a vocation in the prison pending his appeal.

### **3.2.4. Bawa Magaji**

20 year – old Bawa has been in prison since 2001. He hails from Maraki Village in Giddu Local Government. He is a graduate of Arabic. His father, Magaji Umaru is a herdsman and farmer. According to him, one Yusuf Kundila broke into a shop and stole some items, which were hidden in the bush just by roadside. Bawa and his friend, Altine Hassan who were on their way to the market were accosted and accused of stealing the items. They denied the allegation and said it was Yusuf that hid the

things there, but their accusers were not convinced. They were taken to the police Station and tortured. When the pains were becoming unbearable they confessed to stealing the items. They were taken to court in Binji where the *alkali* (judge) pronounced the judgment of amputation on them both. Neither of them had legal representation.

Although he wanted to appeal against the judgement, he could not do so immediately due to lack of funds until BAOBAB came to his rescue. Presently he is continuing his Arabic studies in prison while waiting for the appeal process.

### **3.2.5. Umaru Guda**

Umaru is a 20- year old driver from Shagari village. According to him, he had he just came back from a journey around 1:00 a.m. and he made for the central motor park where he normally parks his vehicle. Unfortunately for him, a man who was being pursued for theft ran and threw the things he had stolen (which were mainly personal effects) inside Umaru's car. He was accused of being the thief and was taken to the police station. His boss was called and although he vouched for Umaru, the Police were not convinced. They beat him mercilessly and he was ruthlessly tortured. He was detained for one week after which he was taken to court.

When his case was read out, he did not admit to stealing and explained that he confessed to the police only because of the beating. He was told that he could not retract his confession at that stage and he was sentenced to amputation. Umaru was given one month to appeal, failing after which execution of the judgment would be carried out. BAOBAB's lawyer has confirmed his appeal since May 2003 but his case has not come up for hearing up to the time of writing this report.

### **3.2.6. Sirajo Idris**

Sirajo hails from Argungu in Kebbi State. His father is a trader. Before going to jail he was a first year secondary school student. Narrating how he got into trouble, he explained that he had travelled and on his way back to town, he did not have any money left on him. So he went to the house of his relation at Kawo Quarters, which was close to the motor park to ask him for some money for taxi.

When he got there his uncle was not at home. Sirajo went in and sat in the living room to await his uncle's arrival. According to him, though his uncle's wives were all inside the house, they did not know he was around. While he was watching television a girl went into the sitting room and because she did know him thought he was a thief and screamed. This was around 10 a.m. A lot of people came out to see what was happening and there were guards among them. The guards arrested and interrogated him. He explained to them how he got there, but they did not believe him. When his uncle's wives came out, they informed the guards that he was a relation, but he was arrested all the same. Among the people that arrested him was a friend of his uncle who is an *alkali* (judge). He said he should be taken to the Police Station the next day and flogged.

When the incident happened he was carrying his travelling bag and when he appeared in court, the Police read out a statement that he was caught when he went to somebody's house and stole a television set and a suitcase. Sirajo admitted going to the house, but denied that he stole anything.

The *alkali* ruled that he should be remanded in prison custody for one week after which judgment would be passed. He was asked if he had anything to say. He told them that they had to bring witnesses. The witnesses were brought to testify against him in the person of a policeman and some other people. He was convicted on the grounds that he accepted that he went into the house. He was sentenced to amputation of the right hand.

Sirajo Idris has completed his secondary education in the prison. He hopes to go to a tertiary institution when freed.

### **3.2.7. Bello Garba**

Bello's age is not known but he could be between 16 and 18 years. He hails from Sabon Birnin Kwari. He was accused of stealing and taken to the Police Station where he was handcuffed in the cell for two days without any explanation. On the third day he was taken to an alkali in Kwari who said he was to be taken to Upper Sharia Court in Sokoto.

The stolen item in question was a donkey, which had broken loose and escaped. The donkey was found two days later near his farm, but not in his custody. The alkali asked them to take him away and bring him back after one week for amputation. When he went back there after one week he was told to go back for a month and appeal, failing which they will cut off his hands.

BAOBAB has appealed against this judgement and the case is still pending in court.

### **3.2.8. Malami Aliyu**

17 year old Malami hails from Rwahi. He has been in jail for almost two years. His father who is a civil servant is also a farmer in Kalambaina. He narrated that on the fateful day he was arrested he just left home and he saw a car filled with policemen. He was just walking along the road when they walked towards his direction, over-powered him and took him to the police station where he was detained. Later he was accused of stealing.

He refused to confess and he was taken to court. They tendered some exhibits including a loudspeaker and wheelbarrow. Two witnesses were brought who testified against him. They alleged that he stole those items and kept them at the point where they were found.

The Alkali convicted him under Sharia law and said his hand was to be amputated. He was given a month to appeal, but he did not. When asked why he did not appeal he explained that he didn't have anybody to support him since his relatives were ashamed of him and have all abandoned him. He commended the efforts of BAOBAB and others helping them, not minding the fact that they are not in any way related to them, yet rose to assist them.

### **3.2.9. Altine Hassan**

A trader by profession, Altine admitted to committing the offence. He said he stole textiles. He confessed this in the court as well and he was convicted and sentenced to amputation of his right hand. The last time he was in court was in May 2003 and since then no action has been taking concerning him – the sentence has not been carried out but he has not been set free either.

Altine hopes his appeal would be sped up. His case started at Binji lower Sharia court, but was later taken to Sokoto.

## **Chapter Four**

### **Our Strategies**

BAOBAB for Women's Human Rights as the leading organisation dealing specifically with women living under Muslim laws in the country, has been called upon not only to articulate the human rights of victims of the expansion of Sharia law to include criminal cases by some governors in the Northern part of Nigeria, but also to actually defend those rights in courts across the northern states.

In responding to the issues raised in the previous chapters, BAOBAB has refused to be intimidated by accusations of being anti-Islam or by threats of violence and other harm. There is a great deal of confusion and controversy about what women's human rights under religious laws are or might be right now in Nigeria. In order to explain what these are, we have a core of inter-related activities including research, documentation, capacity building, information, education and communication (IEC) and networking. Others are mobilisation, social and legislative advocacy, litigation, interpretation of laws, mediation and counselling. The interconnectedness of these activities guarantees the realisation of the vision of the organisation. In addition BAOBAB runs *ad hoc* projects which are a response to opportunities or threats in the socio-political environment and in this case, the implementation of sharia in its present form as a threat to the realisation of women's human rights.

We also raise resources to cover the costs of the appeals and support activities (legal fees and court costs, maintenance, transport, medical services and counselling, provision of 'safe' houses and so on).

#### **4.1. Collaborative efforts and Networking**

Furthering its belief that there is strength in number BAOBAB collaborates with other like-minded organisations. BAOBAB has been working in collaboration with a wide range of women's and human rights activist and organisations - the whole Nigerian human rights movement has been working in solidarity, in different ways, on this issue.

#### **4.2. Sharia Legal Defence**

BAOBAB led the way in offering support and efforts for reversal and redress to victims of the discriminatory implementation and violation of rights of the new Sharia acts, beginning with Bariya Magazu. This is aimed at ensuring that legal representation would be available to women who cannot afford to pay for cases, but wanting to appeal or institute actions in the law courts to enforce their rights. It also ensures that cases do not flounder for lack of money for court and allied costs (e.g. investigating the facts of the case(s), finding witnesses, monitoring court appearances supporting appellants). Currently there are around 20 individuals being so supported.

#### **4.3. Strategy Team**

We have put in place a strategy team made up of independent Muslim lawyers, rights activists and Muslim scholars to offer advice and information. The strategy team makes available resources and materials and case laws to the legal teams and strives to build a resource base in materials and skills to support, protect and promote women's human rights.

#### **4.4. Bridge Building Workshops**

BAOBAB has consistently worked to enable and encourage the widening of discussions, prevent the silencing and end the current climate of fearing to talk. It has raised publicly critiques of rights violations in the name of Muslim laws and Islam, and encouraged others to do so. Additionally, BAOBAB started a series of workshops in 2000 whereby members of Muslim communities -members of the *ulema* and ordinary Muslims, rights activists, conservatives and progressives from different walks of life and parts of the country- came together for several days.

During this period, they examine Quranic surahs and hadith, discuss both dominant and less well-known interpretations of these, and look at the actual constructions of Muslim laws in countries and communities around the world. They do this for each of thirty or so different issues of particular importance to women (such as choice of marriage partner, rights to inheritance, forms of divorce, witnessing, leadership, reproductive rights, bodily integrity and so on). These workshops thus examine the potential and actuality in Muslim laws and practices for establishing and promoting women's rights, as well as critiquing negative constructions and practices even when the latter are claimed to be Islamic. In so doing, they empower many of the participants with the knowledge and confidence to challenge the assertion that rights violations in the name of Islam and supporting Sharia, should be ignored, and to work instead towards progressive visions of Muslim laws. (See Appendix 6 and 7 for samples of communiqué from the workshops)

The initial reaction of many Nigerians especially non-Muslims to the injustice perpetrated in the name of Islam was to condemn the religion. However, with the bridge building meetings, some Nigerians have come to understand that it is the implementation of Sharia in its present form that is harmful to the people, especially in those cases where there have been total disregard for women's human rights.

So far BAOBAB has hosted eight meetings for Muslim and non-Muslim groups. A second stage involving a mixture of both groups has been held. This is an on-going program aimed at preventing conflict between these groups and ensuring peaceful coexistence. This program has been extended to our network in Africa and Middle East (WLUM-AME). The first part of the stage one meeting was organised for women and men from the West Africa sub region in Banjul, The Gambia in October 2003.

#### **4.5. Capacity Building**

One of BAOBAB's programmes is capacity building, with the outreach teams, other NGOs, women's groups and members of the BAOBAB team. This revolves mainly around training in the following areas:

*4.5.1. Paralegal Training* - As part of its outreach activities, BAOBAB has continued to train paralegals to do community-based legal mediation and counselling. Paralegal training concentrates on providing information in a concise form to community activists who may be a first stop for advice in the process of accessing the rather complicated and expensive legal system, but also who may be the last step – in the role of mediator and counsellor. The paralegal training programme is intended for individuals from active human rights Non Governmental Organisations (NGOs), Civil Society Based Organisations (CBOs), and/or, active individuals from different sectors of work who have a keen interest in working as paralegals voluntarily and are committed to human rights generally and women's human rights specifically as the paralegal modules have been focused on information and training relevant to women's, as well as men's concerns, situations and needs.

The training modules cover the need, functions and limitations of a paralegal; the forms of law, the court system, enforcers and the application of international instruments in Nigeria. The paralegal modules also focus on the actual exercise of theoretical rights including looking at means of accessing legal rights, plus a systematic critique of gaps and lack of protections in law and the role of paralegals and activists in developing laws. In addition, BAOBAB ensured that in personal laws there was a systematic and comparative focus on religious and customary laws, as well as statutory law. This is important since women are most affected by personal laws (marriage, divorce, inheritance, child custody etc). It is hoped that beneficiaries of the training will in addition to their work as paralegals, share their experiences with their colleagues and/or community members.

*4.5.2. Gender and leadership trainings-* BAOBAB in collaboration with the Women's Learning Partnership (WLP), the *Association Democratique des Femmes du Maroc*

(ADFM), and the Women's Affairs Technical Committee (WATC), developed a leadership handbook '*Leading to Choices: A Leadership Training Handbook for Women*'. With this handbook, BAOBAB has been organizing training programmes with diverse group of women in different sectors –such as NGO activists, domestic workers, extension workers, women in the academia, etc. The aim of the leadership training is to share the values of horizontal participatory leadership amongst others.

#### **4.6. Research and Documentation**

BAOBAB has researched and drawn upon its international links to acquire information on similar cases in other geographical jurisdictions. In year 2000 we started the process of documenting the findings from the research of women and laws (religious and common) in Nigeria by hosting a series of writing weeks to provide the space needed for intense, uninterrupted writing that cannot take place in an office setting. During these writing weeks, we focused mainly on the National and International Handbooks from the Women and Laws project. We also have a research officer who goes off regularly on fact-finding missions to the various states where sharia is practiced in Nigeria.

*4.6.1 Paralegal Training Modules* - BAOBAB has completed a set of paralegal training modules to facilitate the training for its outreach teams as well as other groups within the network that could benefit from such training. (See paralegal training under 'capacity building' for details). A comprehensive Training Manual is being produced and will be completed in the coming year.

*4.6.2 Legal Literacy Leaflets* - BAOBAB produces series of legal literacy leaflets covering various topics on women's human rights including - *Divorce in Muslim Personal Laws, Against Violence Against Women, Child custody and Guardianship in Muslim Personal Laws in Nigeria* as well as *Political Rights and Responsibilities of Women as Citizens*. The drafts on *Child Rights and Inheritance* are awaiting final editing.

#### **4.7. Outreach Activities**

As a result of the findings from the Women and Laws Project in Nigeria, the project teams in twelve states were transformed into volunteer outreach teams. At present, there are fourteen of such teams namely Adamawa, Borno, Edo, Kaduna, Kano, Katsina and Kwara. Others are Kogi, Lagos, Osun, Oyo, Plateau, Taraba and Zamfara. All the members of these teams presently volunteer their time and resources (human and material) to further the principles and objectives of BAOBAB. They network within their communities with other organizations in developing and carrying out programmes, which would ultimately promote women's human rights. Some of the thematic areas of intervention work for the outreach activities include (but are not limited to) issues on divorce, inheritance, custody and guardianship, child marriage, female genital mutilation, harmful traditional practise, etc. The activities take various forms such as schools debate, popular theatre, role-plays, interactive workshops, radio drama, workshops and seminars to name but a few.

The national outreach coordinating team makes biennial visits to the state teams. The main aim of these visits is to meet with the outreach teams and update each other on outreach activities, to plan, monitor and evaluate, and to trouble shoot where necessary. BAOBAB also organises an annual national outreach-planning workshop. This is aimed at bringing together core outreach team members from each state to exchange information, share experiences and plan ahead for the year. The workshop also includes capacity building sessions for the outreach teams.

#### **4.8. Information Sharing**

BAOBAB sends information to women's and human rights NGOs on a frequent and regular basis. This includes over 350 NGOs in Nigeria with a specific attempt to reach groups outside Lagos, as well as a solidarity list of 40 women's NGOs in Africa, including WLUM-AME networkers. Sharing information enables individuals and groups to learn from others' experiences (successes and challenges). It also enables

groups to share and develop ideas and provide support to each other. All these and more form part of BAOBAB's activities in ensuring the protection and promotion of women's human rights in Nigeria.

Apart from this, we issue statements to the press on a regular basis to clarify issues relating to sharia cases, especially where such have been reported inaccurately, to provide the facts of the case. (See Appendix 1 and 2)



## Chapter Five

### Looking Ahead: Our Challenges, Our Direction

It is encouraging that all the cases of adultery that have been handled so far by BAOBAB for Women's Human Rights have been successful. It is our hope that the judgment in the cases of the minors, which we are currently pursuing, would in like manner be retracted and the convicts discharged and acquitted. Since there is actually no limit to the number of appeals we can make on their behalf, we will continue to forge ahead.

#### 5.1. The Challenges

- o Bariya Magazu who was convicted without regard for the due processes of law has since been whipped publicly in Zamfara State. The sentence was carried out on January 19<sup>th</sup>, 2001, contrary to the earlier promise that the sentence will not be carried out until the baby is weaned. Bariya was given 100 lashes because according to the trial judge's explanation, the Upper Shariah Court reviewed the case during its monthly review of cases and reduced it to 100 from 180. According to Bariya, *'the sentence was not just painful it was very humiliating'*.

This act of the Zamfara state government is contrary to the provisions of Section 34 of the 1999 Constitution of the Federal Republic of Nigeria, which states that:

*"Every individual is entitled to respect for the dignity of his person and accordingly (a) no person shall be subjected to torture or to inhuman or degrading treatment"*

Article 5 of the African Charter on Human and Peoples' Rights which has been ratified by the Nigerian State also states that

*'Every human being shall have the respect of the dignity inherent in a human being and to the recognition of his legal status. All forms of exploitation and degradation of man particularly slavery, slave trade, torture, inhuman or degrading punishment and treatment shall be prohibited'.*

A great deal of pressure has been mounted on Bariya, her family and the lawyers. They are being accused of dealing with or being *arna* (pagans), taking foreign money to create a problem for Islam, Sharia and the North of Nigeria, trying to make Sharia unworkable etc etc. This pressure and questioning came from Islamic vigilantes, 'traditional leaders', (like the Emir of Tsafe), state agents (judicial system employees, the governor etc), as well as neighbours and others in the community. Bariya's husband has succumbed to this intimidation, and accused her uncle (Bariya's *waliyi*) of fomenting trouble. Bariya's uncle and the lawyers also feared that vigilantes may attack them physically.

Although the sentence has been carried out, we are still exploring all possibilities of redress in the form of compensation for Bariya Magazu. This is one case we earnestly hope to set precedence especially on the rights of women and girls in Muslim Laws in Nigeria.

- o On the basis of what happened to Bariya, and the categorization of rape as *zina* by the various Penal Codes, it seems the new version of 'Islamic law' does not protect women from possible sexual assault and coercion. Instead it is willing to punish the victims of such assault. There were allegations that Bariya Magazu was coerced. The court decided not to pursue these allegations. The clear implication of this decision is that men may violate and rape girls and women with impunity in Zamfara and other places, as they will be acquitted by the courts, so long as they make sure there are no witnesses to their crime. On the other hand, women and girls who are the victims of rape or coercion will have further insult and injury added to their misfortunes. They will be subjected to charges of *zina* and false accusation. This clearly violates women's rights to justice and security, while protecting the men who violate women's rights.

The court invoked the rule of requiring at least four witnesses to testify in order to protect the accused men from punishment. The same court did not even consider invoking the same rule on Bariya Magazu's behalf. Obviously a different, unequal and discriminatory standard was used against her – despite the fact that males and females are equal before Allah, and in punishments of zina in the Qu'ran and in Muslim jurisprudence.

- o It is baffling to note that adulthood is established on physical criteria like onset of menstruation, development of breasts, appearance of pubic hair, as in the case of Bariya Magazu. This means that precocious children, or children of about twelve can be subjected to Hudud punishments. This clearly violates the provisions of the Convention on the Rights of the Child (CRC).
- o It is curious that the cases involve mostly the hewers of wood and the drawers of water in the society. Our question is that why are the rich not also targets of this system? The overall profile that emerged is one that validates the argument that women do not constitute a homogenous group and that gender remains one of, if not the major factor to be considered when discussing the issue of women's human rights in Nigeria. This puts some strain on BAOBAB in the process of trying to empower different categories of women thus improving their quality of life. This involves an intensification of our capacity building, outreach, research and information sharing.
- o There is also the challenge of sensitisation of the general public to the issues involved in sharia implementation in Nigeria as they relate to the rights of the citizens, male or female, so that there would be a reduction in the incidence of injustice. This is crucial because while on a welfare visit to the minors sentenced to amputation in Sokoto earlier in the year 2003, our researcher reported that there was a news item on the local television about a youth of about seventeen years who was convicted for consuming alcohol and sentenced to eighty lashes on his bare back. The sentence was carried out in the full glare of an enthusiastically cheering public without the people condemning the action.
- o State agents, especially the men and women of the Nigeria Police Force working in the northern part of the country lack an understanding of the Nigerian Constitution, international human rights instrument and basic gender training will go a long way to ensuring that the rights of women are respected.
- o Sometimes we experience delay in the appeals due to problems beyond our control. For instance, in Sokoto one of the *khadis* handling the cases of the minors awaiting amputation died recently and shortly after that, the son of the Sokoto State Grand Khadi died. Three days after this incident, another Khadi lost his son. As a result of chain of calamities that befell the Appeal Court judges, the appeals have been stalled. Another explanation for the delay is that there is only one Sharia Court of Appeal in the state and it is the only court that hears all appeals both in criminal and civil cases. This is done on a first come first served basis. There are cases of appeals pending since 1999, but our lawyers, no matter how difficult it may be, try to press for quicker hearing dates. The implication of these delays is that we really cannot be sure of when a particular case will be laid to rest.

## **5.2. What Next?**

From the analysis of the implementation of sharia presently in Nigeria, it would not be far from the truth to assert that some of the stipulations of the current versions of the Sharia legal codes violate both Islamic principles of justice and basic human rights. Being a new legal code that was hurriedly put together, one cannot emphasize enough that the local population is often ignorant of the exact provisions of the sharia and their rights if tried by a Sharia court. It would also not be far from the truth to assert that though there is little gender bias in the texts, there are grounds to believe there is a great deal of gender discrimination in their enforcement.

That the invocation of religion is only for political ends is becoming increasingly clear. Consequently, there is increasing resistance to these practices and therefore,

more agitation for rights. Examples of resistance in recent times include fellow villagers trying to hide women accused of *zina* from investigators, as well as village heads warning off local vigilante groups from trying anything in their areas. There is an increased willingness of those charged to appeal against their conviction, as well as an increased willingness of northern and Muslim citizens and NGOs to support these appeals. More and more women are publicly complaining about dress codes and movement restrictions and other religious right's attempts to control women and women's sexuality. Indeed more and more women, especially, have been participating in workshops that analyse women's rights in law and the historically specific, gender, class and culture orientations that imbricate in given laws – including Muslim laws, with a view to using that knowledge for legal rights advocacy and development.

BAOBAB has not rested on her oars in defending the victims of Sharia and we are not going to relent in making progress towards this direction regardless of the challenges. The only way, as far as women's human rights issues are concerned is to go forward and not look back until the efforts of BAOBAB for Women's Human Rights and those of similar NGOs ensure that there is a difference on these issues in Nigeria. We are making and we will continue to make use of all instruments at our disposal to see that justice is given to the deprived, hope restored to the hopeless and help to the helpless, such that women's human rights become an integral part of everyday life.

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- ❖ Acceptance Speech- John Humphrey Freedom Award 2002 by Ayesha Imam and BAOBAB for Women's Human Rights, December 9, 2002. Montreal, Canada.
- ❖ Public Lecture on Women, Muslim Laws and Human Rights in Nigeria. Given by Ayesha Imam at the Woodrow Wilson International Centre. September 17, 2003. Washington DC

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## **Appendix 1: Press release September 2003**

### **Amina Lawal's Appeal is Won!**

Today (September 25, 2003) the Katsina State Sharia Court of Appeal has vindicated Ms. Amina Lawal's appeal against her conviction for adultery and sentence of stoning to death. A four to one majority of the full five-judge panel upheld every single one of the grounds of the appeal. The Sharia court held that pregnancy outside of marriage is not proof of adultery, that Ms. Lawal's alleged confession was no confession in law, and, that her rights of defence had not been properly recognised in the lower courts.

This sweeping judgement of the state Sharia Court of Appeal thus indicates that Ms. Lawal should not have been charged, much less convicted. Ms. Lawal is now free to continue with her life, after eighteen months of appeals supported by a coalition of Nigerian women's and human rights groups.

Added to the other appeals that have also been won, a judgement of this scope offers strong support for the several other cases still in the appeal process. More generally, it has demonstrated that victims of rights abuses in sharia can successfully fight appeals in the sharia courts, which therefore strengthens the local cultures of respect for rights and resistance of potential abuses. The widespread attention given to this case means the judgement should also deter similar charges from being brought in the future.

We would like particularly to thank all those who aided this appeal by: sharing lessons of experiences and legal argumentation; donating resources in kind or cash; and, making the effort to understand and support our strategy and the nuances of working on rights in the context of Nigeria's religious and ethnic identity politics.

This victory also encourages us to continue with the longer-term work of ensuring that all laws (religious, secular or customary) are drafted, reformed and implemented so as to protect women's and human rights. We hope we can count on your cooperation and solidarity for this too.

## **Appendix 2: Press release April 2003**

### Please Stop the Amina Lawal Protest Letter Campaigns

Dear friends,

There has been a whole host of petitions and letter writing campaigns about Amina Lawal (one of the Nigerian women sentenced to stoning to death for adultery). Many of these are inaccurate and ineffective and may even be damaging to her case and those of others in similar situations. BAOBAB for Women's Human Rights, which is responsible for initiating and continues to support the defences of cases like Ms. Lawal's, thanks the world for its support and concern. However, we request that you please stop the Amina Lawal Protest Letter campaigns for now (April 2003).

#### *Clarification of Facts*

First, we would like to pass on some facts that hopefully will clarify the situation somewhat. Contrary to information being widely circulated in email petitions, Amina Lawal's conviction has NOT upheld by Nigeria's Supreme Court. Ms. Lawal was originally convicted by an Upper Area Court in Katsina State. Her appeal is currently before the Katsina State Sharia Court of Appeal. The appeal had been several times postponed, however the next appeal hearing has now been set for June 3, 2003. Should this appeal not succeed, Ms. Lawal would appeal to the (Nigerian Federal) Sharia Court of Appeal. Only if unsuccessful at the federal appeal court also would Ms. Lawal's case go to the Supreme Court of Nigeria. In other words, the process is a long way from immediate stoning to death. Although the stress on Ms. Lawal is obviously considerable and awful, she is not in immediate danger of a judicial execution.

Furthermore, so far, not one appeal that has been taken up by BAOBAB and supporting local NGOs in Nigeria has been lost. All the completed appeals processes have been successful, with the sentences (and sometimes the convictions) quashed. Again, so far, all these appeals have been won in local state Sharia courts - none have yet needed to go up to the Federal Sharia Court of Appeal, from whence appeals would go to the Supreme Court. (We do note, however, that there is still work to be done here, as sometimes the judges have chosen to quash on technicalities, thus avoiding the substantive grounds of the appeals. However, we note also that historically, the State Sharia Courts of Appeal, and especially the Federal Sharia Court of Appeal, have passed judgements that are more gender-fair – in marked contrast to the lower courts where all of these convictions were passed).

Contrary to the statements in many of the internationally originated appeals for petitions and protest letters, none of the victims received a pardon as a result of international pressure. None of them has received a pardon at all – or needed to, so far.

None of the sentences of stoning to death have been carried out. Either the appeals were successful or those convicted are still in the appeals process.

#### *Dangers of Letter Writing Campaigns?*

However, if there is an immediate physical danger to Ms. Lawal and others, it is from vigilante and political further (over) reaction to international attempts at pressure. This has happened already in the case of Bariya Magazu (the unmarried teenager convicted of zina and sentenced to flogging in Zamfara in 1999). Ms. Magazu's sentence was quite illegally brought forward with no notice, despite the earlier assurances of the trial judge that the sentence would not be carried out for at least a year. She was told the night before that it would be carried out very early the next morning (and thus had no way of contacting anyone for help even if this unschooled and poor rural teenager had access to a telephone or organizing knowledge and experience), whilst the state bureaucracy had been instructed to obstruct and was physically refusing to take the appeal papers from BAOBAB's lawyers. The extra-legal carrying out of the sentence was not despite national and international pressure;

it was deliberately to defy it and 'spit in its eye'. The Governor of Zamfara State boasted of his resistance to "these letters from infidels" – even to sniggering over how many letters he had received. Thus, we would like you to recognise that a protest letter campaign is not necessarily the best way to act in every situation.

#### *Problems with Petitions based on Inaccurate Information*

Even when protests are appropriate forms of action, when they are obviously based on inaccuracies of fact they are easier to ignore. Circulating protests and writing letters based on inaccurate information may further damage the situation instead of helping. **They** certainly damage the credibility of the local activists, who are assumed to have supplied this information. If we remember that it is local activists who most facilitate turning rights principles into everyday reality for people, then reducing the ability and potential of local activists to carry out women's and human rights promotion and defence is a counter-productive mode of proceeding. **Please check the accuracy of the information with local activists, before further circulating petitions or responding to them.**

#### *Re-Presenting negative stereotypes of Islam and Muslims*

Furthermore, when protest letters re-present negative stereotypes of Islam and Muslims, they inflame sentiments rather than helping reflection and progressive movement. They may result in behaviour such as that of the Zamfara State governor over Bariya, or even more threatening, hostile and violent behaviour by vigilantes (in extra-legal acts by non-state actors like the hordes of young unemployed men who are the bulk of the vigilantes). Consequently, such letters can put in further danger both the victims who are easily reachable in their home communities, and, the activists and lawyers supporting them (who are particularly vulnerable when they have to walk through hostile crowds on their way to court, for instance). Such letters may be splendid means of venting heartfelt indignation, but insults and displays of ignorance do little to move us forward.

Muslim discourses and the invocation of Islam have been used both to vindicate and protect women's rights in some places and times, and to violate and restrict them in other places and times - as in the present case. The same can be said of many, many other religions and discourses (for example, Christianity, capitalism, socialism, modernization...). Wholesale negativity and condemnation of peoples' beliefs and cultures is seldom accurate (or effective in changing the views of the believers). **Dominant Western discourses and media have loved to present Islam (and Africa) as the barbaric and savage Other, please do not buy into this.**

#### *Appeals vis-à-vis Pardons?*

International letter writing campaigns have specific potential which are not appropriate in this campaign at this time. For one thing, not all the cases of conviction have made the international headlines or even the national media. They do not all become international cause célèbres and subjects for letter-writing protests. Very few people outside Nigeria know the name of Hafsat Abubakar, the first woman to be acquitted after appealing a stoning to death sentence, nor any of the other 8 women and 10 youths whose current cases BAOBAB is also dealing with. We need to support modes of rights support with wider and more general use also. In Nigeria the political Islamists and vigilantes threaten (and carry out) acts of violence against those who criticise them – but they have also been promoting the view that any criticism or appeal of conviction is anti-Islam and tantamount to apostasy. One of the means of countering this was our choice to pursue the appeals in the Sharia system, and thereby demonstrate that people have a right to appeal and to challenge injustices, including those made in the name of Islam.

Every appeal in the sharia courts strengthens this process. Since the first cases, that of Bariya Magazu, (where BAOBAB had to convince her family and various opinion-leaders in the village to agree to an appeal) and the Jangedi case (where he refused to appeal and had his hand amputated), many victims have no longer acquiesced to

injustices, but actively sought help. Furthermore, in both Safiya Husseini Tungar-Tudu's and Amina Lawal's cases, members of their community have spoken about the abuse of Sharia and taken actions to protect them from local vigilantes. These are actions that would not have happened when BAOBAB first started this work in 1999. At that time, even finding a lawyer from the Muslim community willing to represent the victim was not easy.

Winning appeals in the Sharia courts, as others and we have done, establishes that convictions should not have been made. A pardon means that people are guilty but the state is forgiving them for it. It does not have the same moral and political resonance. A pardon that is perceived as occurring as a result of outside pressure is even less likely to convince the community of its rightness. If we don't want such abuses to go on and on, then we have to convince the community not to accept injustices even when perpetrated in the name of strongly held beliefs.

Nonetheless, there is a place for international pressure and campaigns. We would not risk anyone's life by insisting on never having an international campaign. But, we feel that this should be if the culmination of the appeal process (still some time away) has not been successful. We are concerned that should this happen, the moral energy and indignation of the world may already have been spent, (been there, done that already)... thereby reducing its usefulness as an advocacy tool.

#### *Insiders or Outsiders to Decide on Strategies?*

There is yet another issue to be considered. The local groups in Nigeria directly representing victims (in the lead of whom are BAOBAB for Women's Human Rights and WRAPA – Women's Rights Advancement and Protection Agency) have specifically asked that there NOT be international letter writing campaigns. When victims of human rights abuses are held incommunicado, then clearly all anyone can do is act on our own beliefs to try and help them. This is not such a situation. The victims are not in detention (and indeed give press interviews). They have chosen to appeal and accepted the assistance of NGOs like BAOBAB, WRAPA and the networks of Nigerian women's and human rights NGOs that support them. There is an unbecoming arrogance in assuming that international human rights organisations or other outsiders always know better than those directly involved, and therefore can take actions that fly in the face of their express wishes. Of course, there is always the possibility that 'the locals' are wrong but surely the course of action is to persuade them of the correctness of one's analysis and strategies, rather than ignore their wishes. They at least have to live directly with the consequences of any wrong decisions that they take. **Please do liaise with those whose rights have been violated and/or local groups directly involved to discuss strategies of solidarity and support before launching campaigns.**

#### So how can people and other organisations help?

In the immediate, resources (money but not only money) are needed to support both the victims directly and the appeal processes. The victims – almost all of them poor, and most also rural dwellers - have found that their lives and work and those of their families are disrupted. They are economically hard hit, as well as under considerable social pressure. Often their health (physical and psychological) suffers as a result of stress. Sometimes a safe house is needed in the face of threats from vigilantes - there are no institutional ones in northern Nigeria. Resources are needed for living expenses for victims, their dependents and families, and to deal with stress-related consequences (counselling support, medical treatments and drugs amongst them), and to deal with safety and security. Experience and strategy sharing with other groups who have dealt with similar situations supporting victims through an appeals process and campaign would also be most welcome.

Then there are the costs of fighting the appeals. Obviously there are legal costs. These include court fees and lawyers' fees. (Not all lawyers are willing or financially able to work completely *pro bono*. Even when they donate their expertise, they may have to be paid for court appearances, travel and subsistence expenses). They also



include costs in document preparation especially in multiple copies and so on. There are also a whole series of associated costs. Fighting appeals is person and time-intensive. It is people who have to do this work, including; check media and local networks to find victims; travel to offer support to victims; draw on networks to find lawyers willing to represent victims; convene and participate in strategy sessions (yet more travel as these are often national); prepare the arguments and documentation; travel to the court with the victims; engage in victim support (discuss their situations and the possible options and ramifications, deal with consequential issues like loss of land, or ill-health, provide emotional support); liaise with and service the local and international networks supporting such work; not to mention write the reports and analyses constantly required. Resources to support all this work are needed.

Women's rights activists working on these issues very early on received support from lawyers, Islamic scholars and rights activists from throughout Nigeria, the Muslim world and elsewhere, in the form of legal and religious argumentation (fiqh), case law examples and strategies which were generously shared. We would like to acknowledge this help and support - it has been extremely useful and we can probably never have enough of it.

For the long-term, there are two needs to work on: constructing the cultures of recognizing rights and fighting violations and the local and national levels; and, to develop argumentation and advocacy to change the laws, evidence requirements and procedures.

**In sum, funding for credible organizations doing both immediate and long-term work is urgently needed**, as well as exchanges of information, experiences and knowledge (sadly, we have to stress credible, because unfortunately, there are organizations – both national and international - which are battering off the situation).

Finally, do please circulate this message widely – including to all the list-servs and networks where petitions based on inaccurate information have been circulated.

Respectfully  
Ayesha Imam (Board Member)  
Sindi Medar-Gould (Executive Director)  
BAOBAB for Women's Human Rights

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BAOBAB for Women's Human Rights has been closely involved with defending the rights of women, men and children in Muslim, customary and secular laws – and in particular of those convicted under the new Sharia Criminal legislation acts passed in Nigeria since 2000. In fact, BAOBAB was the first (and for several months the only) NGO with members from the Muslim community, who were willing to speak publicly against retrogressive versions of Muslim laws and to work on changing the dominant conservative understanding of the rights of women in enacted Sharia (Muslim religious laws), as well as in customary and secular laws. BOABAB was also the first, and again for some time the only NGO to actually find the victims and support their appeals, raising funds for the costs and putting together a strategy team of women's and human rights activists, lawyers and Islamic scholars contributing their expertise and time voluntarily. BAOBAB for Women's Human Rights was the 2002 recipient of the John Humphrey Freedom Award for this work. BAOBAB's work was also cited by the Special Rapporteur on Violence Against Women as an example of best practice.

If you would like to support BAOBAB for Women's Human Rights work, please send a check/cheque or international money order (preferably in Nigerian Naira, US\$ or UK sterling) made out to:

- a) BAOBAB / WLUML-AME Legal Defence Fund (supports the immediate costs victims and appeals process); and/or
- b) BAOBAB / WLUML-AME Rights Advocacy Fund (supports the long-term work in enabling the critique of the rights in Muslim laws, as in customary and secular laws, and to work on the reconstruction of rights in law and practice); and/or
- c) BAOBAB / WLUML-AME Core Funding (enables flexibility in usage – it must still be accounted for and reported on)

These should be sent to:  
BAOBAB for Women's Human Rights  
P O Box 73630  
Victoria Island  
Lagos,  
Nigeria

### **Appendix 3: Press Statement January 2001**

#### **NGOs support Bariya's right to Appeal and the Legal Process Currently in Motion**

The NGO Coalition for the protection of Women's rights in Religious, Customary and Statutory Laws has stated its support for the appeal against her conviction being made for Bariya Ibrahim- Magazu. Bariya Magazu is the teenage mother who had been sentenced September 2000 to 180 lashes for pre-marital sex and being unable to prove the identity of the father, under the new Zamfara Sharia Penal Code.

The NGO coalition, which consists of thirty-five women's and human rights organizations across Nigeria, fully supports the process of filling an appeal for Bariya Magazu in the upper Sharia court in Gusau, Zamfara state.

The appeal is in consonance with her constitutional rights and is provided for in Sharia law. It is the normal first step in dealing sentences, which appear to be unjust and to violate a person's right. Bariya Magazu and her family have chosen to exercise this right of appeal. We fully support this and the process of making appeals in a democratic civilian regime. We will be hoping and watching to see the court exercising their powers to review the case and protect Bariya Magazu's human and citizen's rights.

For the NGO Coalition for the Protection of Women's Rights- Thursday 18, January 2001

Ayesha Imam - BAOBAB for Women's Human Rights ( BAOBAB), Lagos and 12 other states.

Saudatu Mahdi - Women's Right Advancement and Protection Alternatives ( WRAPA), Abuja and several other states.

Tunde Kuboye - Jazz 38, Lagos

Asma'u Joda - Women Living Under Muslim Laws Africa and Middle East ( WLUML-AME)

Turai Maiyine - Center for Women and Adolescent's Empowerment (CWAE), Yola

Josephine Effah-Chukwuma - Project Alert ( Lagos)

Chinoye Obiagwu - Legal Defense and Assistance Project ( LEDAP), Lagos

Joy Ngwakwe - Social Economic Rights Action ( SERAC), Lagos

Naomi Akpan - Constitutional Rights Project (CPR) , Lagos

Ada Agina- Ude - Gender and Development Action ( GADA), Lagos

Limota Goroso-Giwa - International Women's Communication Center ( IWCC), Ilorin

Fatimah Kamfut - Women for Independence, Self-Sufficiency and Economic Advancement (WISSEA), Kano

Dorothy Amah - Human Rights Law Service ( HURI-Laws), Lagos

Feyi Koya - Civil Liberty Organization ( CLO), Lagos and 6 regional offices

Chinyere Opara - Women Law and Development Center Nigeria (WLDCN), Lagos

Kayode Fayemi - Center for Democracy and Development (CDD), Lagos

Charmaine Pereira - Individual, Abuja

Chom Bagu - Individual, Lagos

## **Appendix 4: Press release 2000**

BAOBAB for Women's Human Rights is concerned at the recent moves in some states to compulsorily introduce laws purporting to be 'Islamic' or 'Christian'. We note that in Zamfara state the so-called 'Islamic law' has been instituted. We also note that in Cross River state there are threats to introduce 'Christian laws'.

These moves to introduce restrictive laws in the name of religion are completely unconstitutional and their provisions violate our rights ( see s. 13 –24 and s. 33 –43 of the 1999 Constitution). They violate women's basic human rights and those of non-Muslims (in Zamfara) or non-Christians (in Cross-River) where indigenes of each of these states or other Nigerians.

Laws,- whether religious or otherwise – are too serious in their effects and implications to be passed without the opportunity for full discussion and debate. The texts of bills should be published. The public must have an opportunity to consider the actual provisions, discuss them and their long – term implications, suggest amendments or rejection and to communicate their concerns to their elected representatives. In a largely non-literate country with poor communications such as Nigeria, a democratic debate cannot be done by announcement and fiat in a couple of weeks. This is a military-like and authoritarian "decree". It is not the democratic society that Nigerians have been fighting for during the past decade and more.

Rather than engaging in promulgating diverse and restrictive laws in the name of religion, why are state governments not focusing on the tasks for which they were elected? State governments should ensure above all that social welfare provisions are instituted – free and compulsory education, a decent minimum wage, health care services, potable water, reliable electricity and telephone services in every part of every state in Nigeria.

In Zamfara, women are to be prohibited from travelling in the same public transport as men. This is a denial of women's rights to movement and, as a consequence, women's rights to freedom of association.

In addition, it will mean that only women wealthy enough to have private cars will be able to travel and move. Poor women – urban and rural- will be unable to travel with their families (whether husbands, fathers, brothers)

Women not only contribute to family income in many households but women are the sole income – earner in the household very often. This provision means that women will be unable to get to their jobs and thus women's rights to earn a livelihood will also be comprised. It would adversely affect women's ability to contribute to the sustenance of their families and themselves, and in some households, lead to even further poverty.

The Governor of Zamfara is quoted as stating that he is instituting these draconian so – called 'Islamic' laws in order to fight prostitution, gambling and other social vices (Post Express October 28, 1999). Violating women's rights will not achieve that. Furthermore, the existing constitutional provisions for Sharia courts already cater for those Muslims who wish to have Muslim personal law applied to their marriages, inheritance and other family issues (see Chapter VII of the 1999 Constitution). In addition, the long-term consequence of such unconstitutional restrictions on women's movements will mean that any woman (Muslim, Christian or other) working, trading or simply being in the public sphere will be accused of being a prostitute or a gambler. This is totally unjust.

Not all the whims of conservatives are really Muslim laws or Christian laws. If Zamfara state wishes to learn from laws from other Muslim countries and communities, there are other laws to consider which promotes rights, rather than violate. Why do we not learn from the law in Iran whereby a man who wishes for a

divorce must compensate his wife economically for the years of housework and domestic responsibilities she has put in during the marriage, before he can divorce her or marry another wife??? Why not consider the law in Tunisia, which prohibits men from marrying more than one wife and safeguards the rights of wives? Why not duplicate the laws in Turkey, which protect women from domestic violence? Why not appropriate the *nikanama* of Muslim communities in India and Egypt, where the marriage contract is written so that husbands cannot renege on promises that their wives may go to school or work?

BAOBAB for Women's Human Rights is shocked that those who have the responsibility of ensuring that our constitutional rights are not violated have not taken action to protect our rights. We call on the President, state governors and federal and state ministers or commissioners of justice and attorney- generals to speak out and take action against these unconstitutional acts.

We also urge that the public not be intimidated into accepting retrograde decrees simply because they are done under the guise of religion, whether Muslim or Christian. If we do not all protest now, we may find ourselves in the midst of another bloody civil war as well as having our rights violated.

## **Appendix 5: Women NGOs Criticize the Introduction of so-called 'Religious Laws' which Abuse Women's Rights (2000)**

We, Nigerian NGOs concerned with women's rights are aghast at the recent moves in some states to compulsorily introduce laws purporting to be "Islamic" or "Christian". We note that in Zamfara state so-called "Islamic Law" has been instituted. We also note that in Cross River State there are threats to introduce "Christian laws", while in Kano state and other states there are suggestions that "Islamic law" will again be introduced.

These moves to restrictive laws in the name of religion are completely unconstitutional and their provisions violate our rights (see ss. 13-24 and ss33-43 of the 1999 Constitution). They violate women's basic human rights, and those of non-Muslims (in Zamfara) or non-Christians (in Cross River) whether indigenes of these states or other Nigerians.

Laws- whether religious or otherwise – are too serious in their effects and implications to be passed without the opportunity for full discussion and debate. The text of bills should be published. The public must have an opportunity to consider the actual provisions, discuss them and their long-term implications, and suggest amendments or rejection and to communicate their concerns to their elected representatives. In a largely non-literate country with poor communications - such as Nigeria – a democratic debate cannot be done by announcement and fiat in a couple of weeks. This is a military-like and authoritarian "decree". It is not the democratic society that Nigerians have been fighting for during the past decade and more.

Rather than engaging in promulgating divisive and restrictive laws in the name of religion, why are state governments not focusing on the tasks for which they were elected? State governments should ensure above all that social welfare provisions are instituted – free and compulsory education, a decent minimum wage, health care services, potable water, reliable electricity and telephone services in every part of every state in Nigeria.

In Zamfara women are to be prohibited from travelling in the same public transport as men. The practical implication of this is a denial of women's rights to movement and, as a consequence, women's rights to freedom of association.

Already, women are being refused access to public transport in Zamfara state. Taxis and bus drivers are deciding whether or not women (both Muslim and Christian) are dressed according to their idea of what a woman in purdah should wear. This is also being policed by some so-called 'Islamic' organizations (Guardian November 3, 1999). Purdah itself is not compulsory in law or in religion. Again, this is a violation of basic human rights to impose on women what kind of clothes they must wear. It is completely unconstitutional.

The governor of Zamfara state is quoted as stating that he is instituting these draconian so-called Islamic laws in order to fight prostitution, gambling and other social vices (*Post Express* October 28, 1999). Violating women's rights will not do that. Furthermore the existing constitutional provisions for Sharia courts already cater for those Muslims who wish to have Muslim personal law applied to their marriages, inheritance and other family issues (see Chapter VII of the 1999 Constitution).

In addition, the long-term consequence of such unconstitutional restrictions on women's movements will mean that any woman (Muslim, Christian or other) working, trading or simply being in the public sphere will be accused of being a prostitute or a gambler. This is totally unjust.

Not all the whims of conservative are really Muslim laws or Christian laws. If Zamfara state wishes to learn from laws of other Muslim countries and communities, there are other laws to consider which promotes rights, rather than violate them. Why do we not learn from the law in Iran whereby a man who wishes for divorce must compensate his wife economically for the years of housework and domestic responsibilities she has put in during the marriage, before he can divorce her or marry another wife? Why not consider the law in Tunisia, which prohibits men from marrying more than one wife and safeguards the rights of wives? Why not duplicate the laws in Turkey, which protects women from domestic violence? Why not appreciate the nikanama of Muslim communities in India and Egypt, where the marriage contract is written so that husbands cannot renege on promises that their wives may go to school or work?

We, women's NGOs are shocked that those who have the responsibility of ensuring that our constitutional rights are not violated have not taken action to protect our rights. Why has the national commission on human rights not criticized what is happening? We call on the President, state governors, and federal and state ministers or commissioners of justice and attorney- generals to speak out and take action against these unconstitutional acts.

We also urge that the public not be intimidated into accepting retrograde decrees simply because they are done under the guise of religion, whether Muslim or Christian. If we do not all protest now, we may find ourselves in the midst of another bloody civil war, as well as having our rights violated.

Agreed by the following NGOs:

EMPARC – Empowerment, Action and Research Committee (Lagos)

CLO – Civil Liberties Organization (Lagos)

CECODEC – (Lagos)

WISSEA – Women for Self– Sufficiency and Economic Advancement (Kano, Adamawa)

CWAE – Centre for Women and Adolescent Empowerment (Adamawa)

BAOBAB for Women's Human Rights (Kano, Katsina, Kaduna, Adamawa, Taraba, Edo, Oyo)

WHON – Women's Health Organization of Nigeria (Lagos)

IRRRAG – International Reproductive Rights Research and Action Group- Nigeria (Kaduna, Edo)

WJP – Women, Justice, Peace (Lagos)

LRRDC – Legal Research and Resource Development Centre (Lagos)

## **Appendix 6: At the Bridge Building Meeting on Women's Rights in Muslim Laws, Abuja 19-23 August, 2000.**

The bridge building meeting on women's rights Muslim laws, held in Abuja 19-23, August 2000, the women and men of the Muslim communities in Nigeria ( Kwara, Kano, Bauchi, Adamawa, Sokoto, Lagos, Kaduna, Borno, FCT, Plateau, Gombe, Zamfara) and Malaysia, from many different backgrounds and organization, discussed and deliberated upon women's rights in Islam and their implementation in Muslim laws in Nigeria.

The following agreement were reached:-

We are concerned about the abuses that may be committed in the name of Islam – and thereby falsely bringing the religion into disrepute, because of the excesses of some groups of Muslims

We have grave concern for women's rights under the Sharia Acts, as they are being presently implemented in Nigeria.

We are worried about the context and ways in which some of the initiatives for Sharia Acts have occurred in particular the violence and intimidation that has too often been part of the process.

We are concerned about the lack of clarity and as to what the content of Sharia laws should be in Nigeria.

We welcome and commend the initiative of Bauchi state government in including women in the Sharia committee and increasing the number of women there, so that women's interest and religious understanding as well as men's would be factor in shaping the Sharia acts and implementation in Bauchi.

We welcome and commend the inclusion of non-Muslims in some Sharia state committees and hope that this invitations will be taken up and that dialogue can take place.

We will ask for and work towards a dialogue and frank open discussion on how Sharia will be codified and implemented in various parts of Nigeria.

We will ask that other states considering Sharia including 50% of women in Sharia committees or other bodies drafting the laws and policies- just as prophet said to take half of the knowledge of the religion ( of Islam) from Aisha

We will pass on the information and discussion that we have developed here to other Muslim women

We will dialogue with non- Muslim women also- recognizing that in some cases they may also be directly or indirectly affected by Muslim laws, and that some of their fears about Sharia may be based on stereotypes and information about women's rights in Islam.

We will organize more meetings of this nature for larger groups of people- women scholars, policy makers, members of the legal profession, young people etc.

Ayesha M Imam ( BAOBAB for Women's Human Rights), Kano/ Lagos  
Saudatu Mahdi, ( WRAPA-Women's Rights Advancement and Protection Alternative), Abuja.

Asma'u Joda ( CWAE- Center for Women and Adolescent Empowerment), Yola  
Tola Adegbite, Lagos

Amina Ladan-Baki Mohammed ( BAOBAB-Kano), Kano.

Suweiba Y. Jibrin (DEC-Development Exchange Centre), Bauchi

Hauwa Mustapha( WIN-Women in Nigeria), Zaria



Jummai Bappa, , Bauchi

Zainah Anwar ( SIS, Sisters in Islam), Kuala Lumpur

D.J Shehu, ( WOSDI-Women's Support Development Initiatives), Sokoto

Mairo Bello ( AHIP- Adolescent Health Information Project), Kano.

## **Appendix 7: At the Second Bridge Building Meeting on Women's Rights in Religious Laws, Abuja, 23-26 August, 2000.**

At the second bridge building meeting on women's rights in Muslim laws, held in Abuja 23-26 August 2000, the twenty-nine women of Christian and other non-Muslim communities in Nigeria (from Kano, Enugu, Adamawa, Oyo, Lagos, Kaduna, Edo, FCT, Plateau, Rivers, Delta, Kogi) from many different backgrounds and organizations, discussed and deliberated upon women's rights and their implementation in Muslim Laws in Nigeria.

The following agreements were reached:

We recognize that abuses committed in the name of Islam (or Christianity or any religion) may be due to the excesses of some groups of believers, and not inherent in the religion. Hence we are concerned and call upon religious and traditional authorities, leaders, scholars and teachers to use their influence to ensure that peace and tolerance prevails and are taught to and valued by all.

We have grave concern for Women's Rights under the sharia Acts, as they are being presently implemented in Nigeria and as they affect both non-Muslim and Muslim women. We understand that religious text (in both Islam and Christianity) can be misconstrued when they are made into social laws and thus restrict women's rights, instead of protecting and promoting them.

We are seriously worried about the context of and ways in which some of the initiatives for sharia Acts have occurred- in particular the violence and intimidation that has too often been part of a part of the process. We call upon the state authorities to fulfil their responsibility of maintaining law and order and protecting the rights of all citizens regardless of any religious, ethnic, gender, class, status or other differences.

Recognizing that much of the violence was carried out largely by disaffected young men (of all communities), we also remind the government and states authorities that they have a responsibility to ensure that young people ( children, young men and women) have access to schooling, job training and decent means of earning a livelihood, instead of being left on the street unschooled and unemployed.

We are concerned about the lack of clarity as to what the content of sharia laws should be in Nigeria. We will ask for and work towards a dialogue and frank open discussion on how sharia will be codified and implemented in various parts of Nigeria.

We also have grave fears that religious right wings act the part of one community will spark off an increasing spiral of religious right wing acts from other communities, leading to more and more problems for us all.

We will dialogue with Muslim women- recognizing that we may be directly or indirectly affected by Muslims women- recognizing that we may be directly or indirectly affected by Muslim laws, that we have common interests as women and as Nigerian citizens, and that some of our possibilities for women's rights in Muslim laws.

We will share the knowledge and discussion that we have developed here with other non-Muslim women and men. We will organize more of meetings of this nature for larger groups of people- women, religious, religious leaders, policy makers, members of the legal profession, young people etc.

Sindi Medar-Gould (BAOBAB for Women's Human Rights) -  
Kano/ Lagos  
Joy Ezeilo (WACOL Women's Aid Collective)-Enugu

<p>Caroline Nagbo-Ogwu (MOSOP/FOWA-Movement for the Survival of Ogoni people/ Federation of Women), Ogoni, Rivers State.</p> <p>Habiba Vongtau, FCT</p> <p>Feyi Koya, (CLO-Civil Liberties Organization)- Lagos</p> <p>Oby Nwankwo (CIRDDOC- Civil Resource Development and Documentation Centre) - Enugu</p> <p>Rahila Plangnan Gowon, Plateau</p> <p>Fibi N Nadah, (Forum for Nigerian Women in politics and Christian Association of Nigeria), Yola</p> <p>Bose Shaba, (Ifanet), Ibadan</p> <p>Amina Ester Sambo, (GHON Grassroot Health Organization of Nigeria)</p> <p>Irene Ogbogu (WHED Women's health Education and Development), Abuja</p> <p>Bridget Osakwe, Project Alert, Lagos</p> <p>Bunmi Dipo-Salami, BAOBAB for Women's Human Rights, Lagos</p> <p>Rouel Judith Ambe, Adamawa State</p> <p>Chibogu Obinwa, Anambra State</p> <p>Charmaine Pereira, Abuja</p> <p>Peju Osunkoya, Lagos</p> <p>Naomi Akpan, AkwaIbom / Lagos</p> <p>Christy Onyekachi, (GRP-Gender Right Project) - Lagos/ Ebonyi</p> <p>N.A Jaja, Zaria, Kaduna State</p>	<p>Ogoni</p>
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## **Appendix 8: Women from Muslim Countries Communities Speak on Islamization of Zamfara State (1999)**

We women from Muslim countries and communities across the world (including Afghanistan, Algeria, The Arab communities in Israel, Bangladesh, Cameroon, The Caribbean, The Gambia, India, Iran, Kenya, Malaysia, Mali, Nigeria, Pakistan, Palestine, Senegal, South Africa, Sri Lanka, Sudan) gathered here in Nigeria, are worried at the potential consequences of measures that support to be Sharia or Muslim laws in Zamfara state, in northern Nigeria.

We are deeply concerned at the apparent disregard of the due process of law, and women's rights as enshrined in the constitution. We would like to point out that prohibiting men and women from travelling in the same public conveyance will deny women's rights to movement and mobility, particularly poor women in rural and urban areas. Will this measure mean that wives will not be allowed to travel with their husbands, mother will not be allowed to travel with their sons? It will certainly prevent women from getting to their jobs every day. Thus the proposed measures will therefore make it even harder for women to feed and care for their families.

We fear that the proposed policy in Zamfara state may be the first step towards abusing women's human and constitutional rights. We have already seen this happen in Afghanistan, where in the name of Islam and segregation of the sexes, women and girls no longer have access to education, health care services, jobs and other means of gaining economic livelihood, or the right to freedom of movement. Similarly, those who claim to be flag-bearers have attacked girls' rights to education and women's rights to mobility in Algeria, Bangladesh and elsewhere.

We are alarmed that these abuses are being implemented under the guise of Islam. Sani, the governor of Zamfara state correctly said (as reported in Vanguard, October 28<sup>th</sup> 1999, page 2), "there is no compulsion in religion". Why then is segregation in transport compulsorily introduced? When women and men are expected to fulfil the 5<sup>th</sup> Islamic principle of pilgrimage by together and without segregation, how is it Islamic for women to be removed from the public sphere?

It is even more worrying that in so many places of our countries and communities, the very mention of the word Sharia, silences all comments or criticism about even so grave a denial of rights. We believe that focusing attention on issues such as segregation of sexes diverts attention from the real issues- such as, for example, combating poverty, and ignorance, providing basic amenities such as water, electricity, health care, education, and sewage disposal.

Clearly, the compulsory introduction of the so-called Sharia, whilst failing to discharge the above duties, would not address the social vices that governor Sani mentions (Post Express, 28<sup>th</sup> October 1999, page 1). The problem of prostitution, gambling, theft, drug addiction and armed robbery cannot be solved by removing women from the public sphere. Denying women their freedom of mobility is an abuse of women's human rights as human beings.

In view of the seriousness of the situation, we urge the government of Nigeria to immediately protect the rights of women in Zamfara state and in every other state of the country, as guaranteed under the constitution without delay.

Finally, we call all our governments, including the Nigerian government to fulfil their state obligation to ensure the well-being, security and full rights of all their citizens.

This book is a potpourri of materials derived from our reports, public lectures, seminar papers and materials from fact-finding missions since 2000 as well as newspaper reports, court records and so on. It aims at clarifying and explaining the circumstances and background to some of the cases involving women in Sharia in the Northern part of Nigeria since 2000. It is an **update** on sharia implementation so far and the role BAOBAB for Women's Human Rights has played in the emancipation of the survivors and victims of a 'politicized' implementation of sharia in Nigeria. The goal is to draw attention to the abuse of women's human rights and the inequality between men and women before the law. Our experiences and strategies, as well as the efforts of other organisations, individuals and the Nigerian media are also highlighted in this document.