East Africa

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Islamic Law in Africa

Because of calls in northern Nigeria for the full implementation of sharia, Islamic law in Africa has received much attention recently. The spotlight usually falls on the other side of the continent – on the Sudan – since the promulgation of the 1983 'legal revolution' of Numayri and where no constitutional debate has been free of major political struggles over the question of sharia. But apart from these two sub-Saharan countries, there is very little general knowledge on or scholarship about the history, ethnography or politics of Islamic law on the continent. Yet because of the Muslim presence, in large or small numbers, in the populations of all African countries, recognition of Islamic laws in many African states has, since independence, been fraught with political controversy. In certain cases, it is part of 'customary law', in others it stands independently but always secondary to state law and maintains a curious relation to customary law. 'Muslim personal law' has been and continues to be a focus of debate in Muslim communities and often a source of tension in national politics.

A project to investigate the history, politics and current situation of Muslim personal law in Africa is underway at the Centre for Contemporary Islam at the University of Cape Town. With the support of the Ford Foundation, the project, under the direction of Professor Ebrahim Moosa, entails a series of studies on the subject. The project has begun by commissioning country surveys and thematic studies from African scholars with follow-up conferences and consultations. The first conference was held in Dar-es-Salaam in the middle of July on Islamic law in East Africa (with papers on Mozambique, Mauritius, Tanzania, Kenya, Uganda, Ethiopia, Somalia, Sudan, and a paper on Zimbabwe).[1]

Islamic law in colonial East Africa

Some common themes emerged from the papers. The heritage of British colonialism has shaped the legal regimes in each country with the exception of Mozambique, which was under Portuguese rule, and Ethiopia, which had no Western colonial power ruling it except, briefly, Italy. The British colonial experience and legacy thus features strongly in any discussion of post-colonial law in East Africa. Was there a unified British colonial policy regarding sharia and specifically Muslim personal law? There was no unified colonial approach although there were unifying elements, most prominent of which was the determination to give Islamic law as narrow a range of jurisdiction as possible. Its applicability was also defined by arbitrary geographical 'facts'. Thus, coastal Kenya and Zanzibar could have Islamic laws but not the Kenyan interior (i.e. beyond the 10 miles that defined the coast) or inland Tanganyika. In the latter, after World War I, 'Mohammedan law' was permitted as part of customary law. The methods and texts used in 'Mohammedan courts' in British India played an influential role in the way Islamic law was implemented in East Africa. There was also some cross-fertilization of colonial practices from other parts of Britain's African empire. The colony of Natal was once looked to for precedents on how to deal with South Asian Muslims in Kenya.

Islamic law in independent East Africa

The major concern of the project is Islamic law in post-colonial Africa. After independence, there was the dominant common law, passed on from the colonial powers, and in most cases customary law, in terms of which Muslim personal law was given scope and/or accepted as an independent set of laws. Tanzania adopted a single unified legal system in 1964, and after the revolution in Zanzibar, parallel secular and Islamic systems were introduced to the island. On the mainland, while there are no courts to handle Muslim issues, a magistrate is required to sit with at least two Muslim assessors. Customary law is recognized in both places and there have been cases of conflict between Muslim personal and customary laws. On the mainland, customary law takes precedence over Islamic law. The former Chief Justice of Zanzibar, Augostino Ramadanhi, reflected on the problems and prospects of what he called the 'dual trends' in the Tanzanian-Zanzibari legal systems. In Kenya, after independence in 1963, Kadhi courts were given a constitutional guarantee of continuation but the question since then has been the jurisdiction of these courts.

The locus of the practice of Islamic law was, and is, the Kadhi courts, known under British rule as 'subordinate native courts'. The history, structure and contemporary role of these courts throughout East Africa featured strongly in most of the papers and discussions. The Kadhi of Nairobi, Kadhi Hammad Qasim, was present at the conference and spoke about his experience as a Muslim judge and the challenges facing these courts. He spoke especially about the experience of dealing with Nairobi Muslim women and covered pressing issues ranging from divorce to AIDS. Susan Hirsch, author of a recent ethnography on women and the Kadhi courts,[2] presented recent work on the state bureaucracies, Islamic law and women in Kenya and Tanzania. She was particularly concerned with showing how law expresses particular concepts of gender and constructs gender identities. Yet she demonstrated how women find their own legal authority through the Kadhi courts even though these courts are run by men. While Islamic law is symbolically connected to men, in Kenya the Islamic courts are seen as places of women; the courts have been 'feminized', as Hirsch argued.

Islamic law is an issue of great importance in East Africa, both within the Muslim communities and in the relations between these communities and their governments. It has always been and will remain an issue that politicians and social movements can use to mobilize Muslim constituencies. This occurred in Tanzania in 1998 when a Member of Parliament from the opposition party introduced a motion for the introduction of Kadhi courts. This has been an issue for manipulation in the Tanzanian elections this year.

The experience of the Muslim communities of Kenya, Tanzania and Zanzibar are strikingly different to those of Mozambique, where both under Portuguese colonialism and Frelimo rule only state law was recognized. However, in March 2000 a draft of the family law recognized 'traditional' and 'religious' marriages. In Ethiopia, Muslim personal law operates under a system of Federal Shariat Courts, which are currently being re-organized. In the Sudan, the state has effectively nationalized Islamic law.

While the statutory acceptance of Muslim personal law has always been part of the broader political process, Muslims themselves have not all been equally concerned with its recognition by the state. In Mauritius, Muslims had their personal laws recognized in 1981 but this was repealed in 1987, causing widespread Muslim reaction. Yet, only 10% of Muslim marriages were sanctified in terms of official Muslim personal law. In Zimbabwe, the Muslim minority has not raised the issued – unlike their counterparts in South Africa, where the question has been subject to heated debate among Muslim organizations since the early 1980s, without much consensus. Indeed, in South Africa, the newest government-appointed commission recently issued its report and awaits the responses from the community. Furthermore, in East Africa, ethnic and sectarian divisions have determined various attitudes. Muslims from South Asian backgrounds, and who are Ismaili or Ithna Ashari, generally do not use the Kadhi courts and have informal structures for their communities while also using the state law.

Conceptual questions

The structural effect of colonialism on the substance, practice and institutions of Islamic law was a recurring theme throughout the conference. Professor Issa Shivji suggested that notions such as 'Muslim personal law' were inventions of a dominant colonial discourse foisted onto Muslim subjects. He called for greater suspicion of the terms of the debates about law. In a similar vein, Professor Mahmood Mamdani suggested that just as 'customary law' was largely a construct of colonialism, so too did British colonial authorities aim to freeze Islamic law into narrowly defined areas minus its autonomous logic. The role and corpus of the legal and missionary scholars who produced the standard works on Islam and Islamic law in Africa, such as Anderson, Coulson, Fitzgerald, and Trimingham, need critical study – as suggested Professor Bruce Lawrence. These authors were present in the contents or footnotes of virtually every paper, yet there was no discussion of the way in which they constructed the field of 'Islamic law in Africa'.

The state and law are closely connected spheres. The contraction and weakening of the African state also witnesses growing claims for more recognition of cultural difference and its inscription into law. Muslims have come to voice their grievances loudly and energetically against a perceived unsympathetic state, often recreating an imagined idyllic African Islamic past as was clear in the papers on Uganda which dealt with the Domestic Relations Bill of 1998. Attempting to exit from the established order is another option. Implicit in many papers was the growth of an 'anti-state' discourse among various sectors of the Muslim public, and calling for 'Islamic law' expressed this desire.

The second conference of the project will be held early in 2001 in Senegal and will focus on Islamic law in post-colonial West Africa. The various conference proceedings will be edited and published. ◆▶

ANNOUNCEMENT

ISIM Online

The ISIM website (www.isim.nl) is in the process of establishing itself online in the field of the study of Islam and Muslim societies. One of the main functions of the ISIM website is to provide a 'cyber-secretariat' offering the latest on ISIM activities and programmes. This means that, even more so than the *ISIM Newsletter*, the ISIM website offers update information on calls for papers and application deadlines, as well as specific and more elaborate information on workshops and conferences. Moreover, after such events have taken place, the ISIM publishes the outcome and papers on the website so as to further disseminate results and follow-up activities.

Application forms for all ISIM activities can be downloaded from the site so as to facilitate the application process. Furthermore, the ISIM questionnaire, which serves as the basis for the ISIM database and mailing list, can be printed out from the site and sent into the ISIM. The ISIM aims at offering its Internet services to all relevant institutes world-wide. In order to do so, we ask that you send any relevant hyperlinks to the following e-mail: isim@rullet.leidenuniv.nl

Notes

1. For more information on the project contact the administrator at the Centre, Ms Nazrina Teladia at cci@humanities.uct.ac.za.
2. Hirsch, Susan F. (1998), *Pronouncing and persevering: gender and the discourse of disputing in an African Islamic court*, Chicago: The University of Chicago Press.

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