



# *Zina*<sup>1</sup> and transgressive heterosexuality in northern Nigeria

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## Introduction

Contextualising *zina* in Nigeria post-1999 requires some attention to recent changes in Sharia, the system of Muslim laws practised in the country. This article focuses on the sexual politics of *zina* and the selective recognition by Sharia implementers of some expressions of illicit sex, and not others, as a sexual crime. *Zina* is transgressive according to Sharia criminal law. While the Sharia does not explicitly name *zina* as transgressive heterosexuality, it is clear from significant elements of its conceptualisation, that is, its status as consensual sex between a man and a woman who are not married to one another, that *zina* involves heterosexual sex and that the source of its transgression is its occurrence outside marriage.

I begin by addressing the legal and political contexts for the particular form that Sharia has taken in northern Nigeria, before proceeding to examine prevailing understandings of *zina*. Legal formulations of *zina* are juxtaposed with non-formalised, common-sense understandings, to point to the distinction between formal expressions of principles in Sharia criminal law on *zina* and popular understandings of such principles. Highlighting this distinction precedes the elaboration of a further distinction, which is that between principle and practice. In this instance, this is the distinction between Sharia and between prevailing Hausa sexual culture as lived cultural practices, engaged in by particular social categories of women and men.

Muslim women's struggles against the various controls that have been imposed on them in the name of Islam have taken diverse forms. The international solidarity network Women Living Under Muslim Laws (WLUML) provides a forum for strengthening women's struggles in diverse contexts of "the Muslim world". These include contexts in which Islam is the state religion; Muslim communities governed by minority religious laws; and secular states where an expanding political presence is manifested in the rising demand for religious laws. WLUML recognises that women within the network will have

different priorities and strategies in their resistance to specific forms of oppression. These strategies range from working within the framework of religion to transform its interpretations, to strategies defined in exclusively secular terms (Shaheed, 1998; WLUML, 1997; WLUML, 2003).

In Nigeria, the need to historicise the directions that reforms of the Sharia have taken is critical (Tabiu, 2004), particularly in view of the oppressive denial of the diversity of thought in the development of Muslim laws (Uwais, 2004). Sharia in Nigeria has been in existence for several centuries, since the pre-colonial era when the Borno and Sokoto Caliphates were administered according to Muslim laws. While the scope of Sharia included criminal law in the Caliphates of pre-colonial northern Nigeria, the available literature indicates that criminal punishments, other than the use of flagellation for the offences of *zina* and the consumption of intoxicants, were seldom applied (Christelow, 2002, cited in Sanusi, 2002a).

Under colonialism, the British system of “indirect rule” in northern Nigeria preserved Muslim Personal Law, which regulated issues concerning family life and civil matters, but not taxation or most criminal law. In the run-up to independence in 1960, legal pluralism was clearly evident in the three systems of law operating in the sphere of family and personal status – marriage, divorce, child custody, inheritance, and so on. The legal systems involved were common law, Muslim laws and customary laws. With the approach of independence, a statutory Penal Code was passed in which an attempt was made to develop a legal system that would take account of the diverse religious and ethnic groups in northern Nigeria. This was done in consultation with a panel of Islamic jurists. The fixed penalties (*hudud*) associated with criminal law in Sharia, such as amputation and lapidation, were commuted to imprisonment, fines and flogging (Richardson, 1987).

In 1999, following elections held in May, a civilian administration came into being after two decades of military rule. This administration was headed by a former military Head of State, now President Olusegun Obasanjo. By November of the same year, the governor of Zamfara State, one of the poorest of the northern states of Nigeria, had ratified the expansion of the jurisdiction of the Sharia Court of Appeal Law from family and personal status laws to other areas, including criminal law. Even before the expansion of the Sharia to include criminal law, the application of Muslim family laws in northern Nigeria was marked by several features that limited women’s access to justice (Mahdi, 2004).



On 27 June 2000, Zamfara State initiated radical implementation of the new criminal laws (Baobab, 2003), an initiative that was greeted with outcry by Christians in the north and elsewhere in the country. Since then, a combination of popular support, Islamist vigilante threats and riots has led to eleven other northern states passing similar Sharia Acts and enacting new criminal laws. The focus has been on the elaboration of punishments for offences such as theft, *zina*, and alcohol consumption. In addition, Islamist vigilante groups, who arrogate to themselves the right to oversee the “appropriate” implementation of the law without the necessary knowledge thereof, have also been actively involved in imposing dress codes on women, restricting women’s freedom of movement, chasing female sex workers out of their states, and so on.



Sanusi (2002b) analyses this latest manifestation of Sharia in the northern states of Nigeria as a neo-fundamentalist project; that is, a project that has degenerated from the overtly political religious agenda of a “return to Islam” into one that “is being replaced by a plan to implement the *sharia* and purify mores, while the political, socio-economic and social realms are challenged only in words” (Roy n.d., quoted in Sanusi, 2002b: 8). The emphasis on the Sharia is clearly evident in the determination to implement the punitive aspects of criminal law, especially the *hudud* punishments such as amputation for theft and lapidation for adultery. This is accompanied by a stress on “public morality”, as expressed through the impositions placed on Muslim women; in other words, the determination of an appropriate mode of dressing for women, their complete segregation from men, and restrictions placed on their activities in public spaces.

Historically, the Nigerian scenario may be contextualised by noting that from 1979 to 1999 every Nigerian Head of State was a Muslim northerner. The exception was Chief Ernest Shonekan, from the south, who led the country for the few months separating the military regime of General Ibrahim Babangida (1985–1993) from that of General Sani Abacha (1993–1998). The extension of the scope of Sharia in northern states may be motivated in part by a convergence of fears: fear of the forces of Westernisation and globalisation on the one hand, and political takeover by the south on the other (Ibrahim, 2002). It was clear that by the time the military handed over power to civilians in 1999, the rest of the country was committed to a “power shift” that would not allow a northern Muslim to become the next president. In this context, it has been pointed out that:

...periods of disintegration and uncertainty tend to breed totalising visions as people grope for an anchor.... If this is the case, then it is not a mere coincidence that the emergence of neo-fundamentalist politics in Nigeria is witnessed at a point when the northern Muslim elite seems to have lost control of the federal government and the lucrative posts previously held by its members from which the resources from oil exports were dispensed (Sanusi, 2002a: 1).

The application of the Penal Codes currently instated in northern states of Nigeria, in cases relating to women and sexuality, provides a lens for examining state-sponsored efforts by the Muslim religious right to reconstruct discourses of heterosexuality. Women's sexuality is increasingly being treated as a source of immorality (Imam, 2000). Baobab for Women's Human Rights has documented several cases involving women who have been charged with offences according to the new Sharia Penal Codes. Both the texts of the laws and their implementation have been discriminatory, with negative consequences for women in particular. More women than men have been charged with and convicted of *zina*. Women have had different standards of evidence applied to them, with unmarried women being required to prove their innocence while men do not have to do so. In some cases, women have been accused and convicted of *zina* as prostitutes with no evidence whatsoever – whether in the form of a confession, the testimony of four witnesses, or even pregnancy, the “appropriate” evidence of *zina* under Maliki law (Baobab, 2003).

Across the country, portrayals of sexual culture are redolent with print media stories reiterating the pervasiveness of “deviant” expressions of women's sexuality. These include worries over the spread of prostitution;<sup>3</sup> the ubiquity of young women and girls engaging in sexual transactions of diverse kinds;<sup>4</sup> the fear that hostels for secondary school students and university campuses are being turned into brothels;<sup>5</sup> the high levels of sexual harassment in secondary and tertiary institutions of education;<sup>6</sup> sexual exploitation in banks and other workplaces; and the alarm over new and increasingly revealing styles of dress among women.<sup>7</sup> This is the backdrop of predominantly urban sexual culture against which some elements of the push for Sharia criminal law, and thereby increased control over women's sexuality, have been rendered meaningful for many Muslims in northern Nigeria.

This article draws on a larger study examining the controversial case of Amina Lawal, accused of *zina* in January 2002. This case is set against the backdrop of the neo-fundamentalist project(s) operating in northern states of Nigeria. At the



heart of this is a new and highly repressive discourse on women's sexuality. This discourse is played out in a context of social relations that differ considerably in terms of practice. The aim of this article is to highlight the gendered contradictions determining which actors and practices are constructed as "transgressive" according to the Sharia, and which ones are not. The first part of the article sets out the case against Amina Lawal before outlining the legal position on *zina* in Sharia and comparing this with common-sense understandings of the act. This is followed by two sections exploring diverse aspects of the prevailing heterosexual culture in northern Nigeria, foregrounding diverse categories of women's and men's sexual relations outside marriage, respectively. These two sections not only contextualise the sexual terrain in which *zina* is located, but also highlight examples of transgressive heterosexuality by men that are rendered invisible in the context of the selective implementation of the law on *zina*.



### What is *zina*?

To date, the case of Amina Lawal, of Bakori in Katsina State, has been one of the most globally publicised cases involving the charge of adultery, or *zina*. On 15 January 2002, Amina was charged with *zina* with Yahaya Mohammed. After swearing on the Qur'an that he did not have sexual relations with Amina, Yahaya was set free. Amina, however, was convicted of adultery and subsequently sentenced to death by stoning. The grounds for her conviction were her pregnancy, the fact that her daughter was born out of wedlock, and her confession that she had committed *zina*.

On 28 March 2002, an appeal was filed at the Upper Sharia Court, Funtua. The appeal was led by Women's Rights Advancement and Protection Alternative (WRAPA), with the support of Baobab for Women's Human Rights and other organisations. After this appeal failed on all grounds, a second appeal was filed, adjourned several times and finally heard on 27 August 2003. The judgment of the Sharia Court of Appeal in Katsina was that Amina's arraignment was defective. Among the grounds for successful appeal were the facts that the judgment of the lower court did not rely on the evidence of four eyewitnesses to the act of *zina*; the court that convicted Amina was not properly constituted; and the single confession by Amina was not enough to convict her.

Asma'u Joda expresses the disorientation experienced by many at the shift in interpretation and attendant implications of sexual relations outside marriage, inherent in the charge of *zina*. This shift criminalises sex outside marriage to the extent of imposing the death penalty. However, longstanding

sexual relationships between unmarried couples are widespread and tolerated, even if not always approved of, in northern Nigeria:

...this thing<sup>8</sup> happens, it's known that it happens, it's not a big deal.... So it was a big shock when all of a sudden, it's a crime that is going to be punishable. You know, that was the shock, the nation found shocking. How can you be punished for having sex?<sup>9</sup>

### *The legal position*

The Katsina State Shari'a Penal Code Law No. 2 of 2001 defines *zina* and the corresponding punishment as follows:

124. Whoever, being a man or a woman fully responsible, has sexual intercourse through the genital [sic] of a person over whom he has no sexual rights and in circumstances in which no doubt exists as to the illegality of the act, is guilty of the offence of *zina*.
125. Whoever commits the offence of *zina* shall be punished:
  - (a) with caning of one hundred lashes if unmarried and shall also be liable to imprisonment for a term of one year; or
  - (b) if married, with stoning to death (*rajm*).

EXPLANATION: Mere penetration is sufficient to constitute the sexual intercourse necessary to the offence of *zina*.

The offence of *zina* is defined above as incorporating within it two distinct crimes: fornication and adultery. Fornication, which is the lesser crime, involves consensual sexual relations with another, by an unmarried person. Adultery, the more serious offence, involves consensual sexual relations with another, by a married person. It is adultery that carries the punishment of stoning to death. The penalty for fornication is a hundred lashes, sometimes less.<sup>10</sup>

This formulation of *zina* may be contrasted with its equivalent in the legal framework that previously regulated criminal matters across states in northern Nigeria, the Penal Code. The latter does not refer to *zina* as such, but includes the offences of adultery by a man (s. 387) and adultery by a woman (s. 388). The latter section reads as follows:

388. Whoever, being a woman subject to any native law or custom in which extra-marital sexual intercourse is recognised as a criminal offence, has sexual intercourse with a person who is not and whom she knows or has reason to believe is not her husband is guilty of the offence of adultery and shall be punished with imprisonment for a term which may extend to two years or with fine [sic] or with both.



Adultery by a man is defined in a complementary manner. There are two key distinguishing features between this formulation and that of *zina* in the Katsina State Sharia Penal Code. The first is the character of the punishments – imprisonment and/or fines, but not capital punishment. The second is the lack of a distinction between the married or unmarried status of the offender, and therefore no distinction between crimes such as fornication and adultery, as there is in the Katsina State Sharia Penal Code.

Distinctions such as these resulted from the process of drawing up the Penal Code before independence. This attempted to establish a system of criminal law that would be internationally acceptable while avoiding conflict with injunctions of the Qur'an and Sunna. However, the Penal Code lacked popular Muslim support, and there were a number of subsequent agitations at constitutional conferences to reverse the consequences of colonial policy on Sharia (see, for example, Tabiu, 2004).

Against this background, the contemporary implementation of Sharia criminal law lacks recognition of the numerous conditions specifying whether or not *zina* can be said to have occurred. Maryam Uwais elaborates on this:

*Zina* is not just sex, it's willing, consensual sex. Which may not be that clear in the minds of the people that are at the grassroots, or ... people at the community level. They just think it's sex. And of course if you've had sex, you say, "Yes, I've had sex" (laughs), but you won't say it was willing and consensual! There are a lot of issues around whether it was rape, whether you were deceived, and there are several *hadith*<sup>11</sup> to show that the Prophet always asked these questions. You need to lay the grounds for whether such a judgment [of *zina*], such a penalty or such a verdict could be justified, by asking her [the woman involved] if she's rational, does she know what she was saying, was she under the influence of anything. These are the procedures that have been set out under the hadith. None of those questions were asked [in Amina Lawal's case].<sup>12</sup>

Section 1 of the Katsina State Sharia Penal Code Law 2001 states that the law would come into effect on 20 June 2001. The two police officers that arrested Amina Lawal and Yahaya Mohammed alleged, on 15 January 2002, that the couple had "conspired and committed several acts of adultery some eleven months ago". According to the police statement, therefore, the adultery would have taken place in February 2001, four months before the law came into effect. Since laws cannot be applied retroactively, this was one of the grounds for nullifying the charge of *zina* (Yawuri, 2004: 195).



Under Maliki law, the school of law applicable in northern Nigeria, pregnancy is said to be evidence of *zina*, particularly where unmarried women are concerned. Although Amina Lawal's pregnancy was used to convict her, this feature of the case was subsequently considered inadmissible, given Amina's status as a divorcee. Pregnancy as a sign of *zina* is not applicable to divorcees if the pregnancy occurs within a period of at least four years after the divorce, known as the "sleeping embryo" phase (see Yawuri, 2004; Sanusi, 2004a). A child born within this period is legitimately considered to be a child of that marriage, even though the marriage itself has ended. The length of this "gestation" period is not so much a reflection of biological mis/understanding, as it is an indication of the seriousness with which the negative effects of illegitimacy for children and uncertainty about the family line were considered (Sanusi, 2004a).

The more substantive point about pregnancy, as Maryam Uwais points out, is that it can only be conclusive evidence of conception, not of willing, consensual sex or *zina*. Woman might get pregnant as a result of rape, deceit, artificial insemination, intoxication, and so on. All of these constitute grounds for discounting the charge of *zina*.<sup>13</sup> Yet such considerations are rarely borne in mind by those accusing women of the offence, nor do they form part of popular consciousness or "common sense" regarding *zina*.



### *Common-sense understandings*

The phrase "common sense" is used here in the Gramscian sense to refer to the generally held assumptions and beliefs common to a given society (Gramsci, 1971). I use the phrase "common-sense understandings" interchangeably with that of "popular knowledges", these being ways of knowing that are found across the broad social spectrum, as opposed to formal, institutionalised bodies of knowledge. Such ways of knowing are important, as they lay out the conceptual terrain on which *zina* is located. Common-sense understandings of *zina* highlight not only what people perceive *zina* to be, but also what they perceive it not to be. Contrasting these beliefs with the legal position makes clear the distance between provisions on *zina* in Sharia criminal law and what most people think *zina* is actually about.

When Amina's lead counsel Aliyu Musa Yawuri was asked about common-sense understandings of *zina* in Kebbi State, where he has a private practice, he responded that people tended to believe that whenever a man and woman engaged in extramarital relationships, they were committing *zina*. As he pointed out, "this is a very narrow conception of the offence of *zina*".<sup>14</sup> What

is missing is a sense of the qualifying conditions that made it possible for a sexual act to become an act of *zina*.

Amina Lawal's understanding of the term *zina* was that it meant "going to bed with someone else's husband".<sup>15</sup> Her senior brother, Auwal Bashir, understood *zina* as referring to the situation of "the woman who gets pregnant without being initially married".<sup>16</sup> Abdulmumini Lawal, Amina's junior brother, described *zina* as occurring when "an unmarried woman sleeps with a man", as well as "whoever sleeps with a woman that is not married to him".<sup>17</sup> All three respondents refer to women as active agents in the offence of *zina*. However, neither Amina Lawal nor her senior brother Auwal refer to the possibility that men may be actively involved in any wrongdoing. It is only Abdulmumini who speaks of *zina* as an offence that is carried out by men as well as women. There is also some slippage concerning whether or not the offence is one carried out by married or unmarried persons.

Members of the public in Funtua expressed a wider range of views. Aisha Abubakar, an 18-year-old secondary school student who hawks local drinks after school, described *zina* as meaning "dirt, filth ... a woman who is unmarried and goes to bed with another man".<sup>18</sup> Amina Musa, a food-seller, understood *zina* to refer to "a man having sexual intercourse with a woman that was not his wife".<sup>19</sup> Hadiza Garba, a sex worker, referred to *zina* in very broad terms, as "having sexual intercourse with a man".<sup>20</sup> Both Aisha Abubakar and Hadiza Garba point to women as responsible for the act, while remaining silent on the position of men. Aisha goes further, characterising *zina* in strongly emotive terms such as "dirt" and "filth". Only Amina Musa's understanding of *zina* identifies men as the ones carrying out the offence.

In an interview with three male students at the School of Basic and Remedial Studies (SBRS) in Funtua, they defined *zina* primarily as "a sin". One of them described *zina* as "sexual intercourse between man and woman ... before marriage".<sup>21</sup> Rashida Abdullahi, a woman student at the same establishment, was able to give a fuller explanation of *zina*:

*Zina* means sex that is not halaa<sup>22</sup> .... When you're not married, you're not permitted to have sex. And when you're married, you're not permitted to go out of your matrimonial home and have sex with another man. Or if you're a widow, you're not supposed to have sex with any other man, except you're married again.<sup>23</sup>

While Rashida includes many of the elements of *zina* in her description, a number of the technical elements of the offence, in its legal formulation, are



missing. The a priori conditions for determining whether *zina* is committed include a sound mind and informed consent, namely consent that is not predicated on deceit, intoxication or any other condition undermining rationality, or fear arising from the threat of violence (Yawuri 2004).

It is significant that Amina Lawal herself could not explain exactly what *zina* was, neither in Hausa, the language of the majority in many northern states, nor in Fulfulde, her mother tongue. In fact, very few members of the public in Bakori and Funtua understood *zina* in the strict legal sense of the term. Hadiza Garba, for example, understood *zina* to refer to any sexual contact she had with a man. This, she felt, applied to all women who had sexual relations with men. Hadiza did not understand that adultery could only be committed when the person having sexual relations, whether male or female, was already married to someone else. This example highlights the general ignorance of *zina* prevalent in the area.<sup>24</sup> The same observation, to varying degrees, applies to the views expressed by members of the public in Funtua and by the students at SBRS.

What this research clearly shows is that there is a significant hiatus between the legal definition of *zina* and people's understandings of *zina*. Moreover, while there were differences in degrees of knowledge of the *transgressive* principle of *zina* – what should not be done and therefore what constitutes the offence – none of the respondents expressed awareness of the principles of procedure, that is, the need to show that the transgression deemed to be inherent in *zina* has actually taken place. Although the number of informants here is small, the elucidation of common-sense understandings is less reliant on a sociological finding than a philosophical argument. Gramsci himself makes the point by looking at expressions in common usage, viewing language in general and the content of language as a route to understanding culture and conceptions of the world (1971: 327, 348).

That there is a distance between the legal position on *zina* and common-sense understandings of the term is made clear by the lead counsel's argument that the judge failed to explain the charge to Amina Lawal and Yahaya Muhammed. The implication, in Islam, is that a person cannot be tried for an offence they do not understand.

...a judge is expected to give notice of the essential ingredients of the offence to the accused, i.e. [that] the accused are fully responsible, that they practised the act of *zina* through genitals of each other when they have no sexual rights thereto and that they have no reason to do so. These



requirements are very important considering the fact that most of the accused appearing in Sharia Courts on charges of adultery are villagers and are uneducated. We [live] in societies in which traditional practices, norms and values have significantly intertwined with the Islamic legal tenets and produced sometimes legal results which are fundamentally outside the contemplation or import of Islamic law (Yawuri, 2004: 201).

Differences between the meaning of *zina* according to the Sharia and the understandings of *zina* held by uneducated villagers are presented above in terms of the influence of traditions that are extraneous to Islam. This perspective, to some extent, casts popular knowledges as *distortions* of the legal position. The latter is represented as the “true” position, in what may be regarded as foundational discourse, from which other positions deviate to varying degrees. This is one explanation for differences between foundational discourse and common-sense understanding or popular knowledge, but it is not the explanation that I offer here.



My argument is that differences between legal definitions in Sharia and common-sense understandings are likely to occur, regardless of whether extraneous traditions are present or not. This is partly because the content of the legal definition includes technical information that is not often available to the majority of people. It is also because common-sense understandings are grounded in experiences of daily life that are dynamic and fluctuate over time, being shaped by the balance of forces prevailing at any given time and place. Meaning is thus acquired from a range of different sources and sedimented in variable ways, depending on history, politics and the character of social relations. The multiplicity and flux characteristic of the inherently social experiences and activities giving rise to common-sense understandings is in sharp contrast to the singularity of foundational discourses, particularly neo-fundamentalist constructions of religious laws. Such discourse is presented by those whose interests it serves, as uniformly applicable under all circumstances and fundamentally unchanging, as well as unchangeable (see, for example, Imam et al., 2004).

More specifically, popular knowledges about particular dimensions of sexuality open a window on to richly textured layers of sexual culture, in this case, heterosexual culture. The terrain on which *zina* is located is that of heterosexual relations outside marriage. By asking people how they understand specific terms relevant to extramarital relations, it has been possible to identify the outlines of particular discursive formations of cultural and sexual practice. The

following two sections each present diverse discourses of sexual relations outside marriage in northern Nigeria, which embody accepted heterosexual culture. Each section foregrounds cultural practice in heterosexual relations outside of marriage, for differing categories of women and men respectively.

## Women's sexual relations outside marriage in prevailing heterosexual culture

In this section, I focus on the space afforded to women in traditional as well as contemporary cultural practices in accepted heterosexual culture. The traditional practices include *tsarance* and *kawance*; the contemporary example is that of courtship. The sketchy nature of some of the information presented below points to the need for further research in these areas.

### *Tsarance*

The life history of Baba of Karo, a Muslim Hausa woman from Bornu born in 1890, is an invaluable source of information about Muslim women's lives in northern Nigeria prior to and during colonial rule (Smith, n.d.). Young girls would be part of the girls' association, the gender-based grouping of girls in the village, from around the ages of nine and ten until they got married, at thirteen or fourteen. Baba recalls the events associated with the appointing of chiefs for girls (called Mama) and for boys (called Sarkin Samari), and the subsequent tour of the neighbouring settlements so that all could see the new officials. At the end of the evening, the girls and boys would engage in *tsarance*, or cuddling and sleeping together, described as follows:

At night the young men would be shown a resting place in the forecourts of the houses of the hamlet, and the girls would be shown a resting place. Everyone chose the girl he liked best for *tsarance*. They stroked one another and talked and told stories, then they went to sleep. They don't do anything more until they get married (Smith, n.d.: 60).

One of the key features of *tsarance* seems to be that the practice was carried out by young, unmarried girls and boys. Secondly, it was carried out within a group, rather than among couples separated from the group. This suggests that *tsarance* was not a private affair, even if the resting place provided for the girls and boys was a place apart from the public space of the compound. Finally, *tsarance* did not involve sexual intercourse, for which a different term was used – *tsaranci*.

*Tsarance* also seems to have been common at the end of village ceremonies and night games played by girls and boys, which often included dancing. Titled



members of the boys' association had the authority to coerce untitled girls to become partners in *tsarance*, as well as to levy small fines on untitled boys (Smith, n.d.: 260). Not all parents approved of these children's associations, nor did they all allow their children to join them; Baba's own parents did not fully approve of them. At the time the fieldwork for the book was carried out (late 1949/early 1950), such associations no longer existed in villages in rural Zaria. Some older people gave practices such as *tsarance* and the levying of fines as their reasons for hostility to the associations.

Being part of a girls' association opened up a window for girls on adult heterosexual culture. When asked whether she knew anything about *tsarance*, Asma'u Joda recounted the reminiscences of older women in her state, and their memories of the ways in which women and men used to relate to one another in their villages.



There's very little of it [*tsarance*] now.... The Adamawa State Women and Law Research,<sup>25</sup> when we did it, the older women were laughing at us. They said, "You people that now have the 'real' Islam, your life has been destroyed." They [the older women] used to enjoy themselves. They were Muslim, the people that I know now have all been Muslims, I mean Islam didn't just come<sup>26</sup> .... You know, like a beautiful woman would go home ... for let's say a weekend or for some days, men in that village would come and they'd offer her kola. The one she picks is the man who's going to be with her. They know she's married. They're Muslims. I mean she'd have a good time with this man and probably she'd even have sex with him. It wasn't a big deal. But now that the "real" Islam has come, ... a lot of these things have been changed, you now have to be more respectful, you have to stay indoors because you shouldn't go out, and things like that. Things have changed.<sup>27</sup>

The sexual culture prevalent in the past afforded married women the liberty to engage in sexual relations with men who were not their husbands. Since the woman's marital status was known to all the villagers, any sexual relations she had with men outside her marriage were neither secret (within the village), nor treated as exceptional. From the perspective of the older women, the arrival of more recent, puritanical interpretations of Islam has restricted women's freedoms and pleasure in a number of domains, from the sexual to the social. While the sexual liberty described above is not strictly speaking *tsarance* itself, it appears that the culture of the time normalised freedom of this kind for women as well as men.

## *Celebrating marriage*

In addition to *tsarance*, other practices prevailed during the time of Baba of Karo that currently seem to be practised only in remote villages.

Like before, there is what we call *kawance* or *angwance*, that is, when somebody gets married, all the friends to the *amariya*, the married girl, she will send invitations, sometimes she will send *kola* to the parents that they should release her so-so friend to come and join her in celebrating her wedding. So let's assume now, if somebody in Kurami<sup>28</sup> marries, and the girl has friends as far as Funtuwa, Maska, Bakori, Malumfashi, so she will send to them. And ... they will gather in Kurami for three days ... they are far away from the eyes and ears of their parents, so they are just now like free creatures that can do whatever they want to do. That is *kawance*... And on the husband's side, it is called *angwance*. So during these days, all forms of immorality that you know, it exists there, oh. Some girls, they used to end up being pregnant before going back to their parents. And you see, our scholars have not been saying anything about it before. At least, it has been, I can say it has been approved, or at least, it has been condoned by the whole society.<sup>29</sup>

The level of sexual freedom exercised by women in this account of traditional practices runs counter to the many “inventions” of tradition (see, for example, Ranger, 1989) that have been used in male supremacist ways across Africa to control the sexuality and behaviour of women. In contemporary eyes, this liberal approach to the exercise of heterosexuality among Muslims is viewed as “all forms of immorality”, even as it is acknowledged that the celebrations inherent in *kawance* and *angwance* were socially accepted at the time.

## *Courtship*

In many northern states, the processes involved in identifying a marriage partner and leading up to marriage take the following form.

If you saw a girl that you want to marry, whether she is a widow or she is a young girl, by the time when you started communicating, you and her, and [I] actually have concluded that ... she loves me, I love her, then I will now contact my parents or my guardians ... and go to the parents or the guardians of the girl or the widow, as the case may be... by the time when I make my intention clear to my in-laws-to-be, then with their consent, with the consent of each and every member of the family, I will pay a visit



to the house and we will be kept in a separate room, I and my wife-to-be, with their full knowledge. And even if I intend to stay for three, four days, they will be responsible for feeding me, you know, all my basic needs there. And they know what is happening between the two of us. ... they know that, yes, we are having sexual intercourse.... The idea then was that it will give us an opportunity to know one another, she will be sure if I will satisfy her sexually. Myself, I will be sure of her bed manners and I will even be sure that by the time ... I marry her, maybe she will be the type of woman that ... will be able to even stop me from looking after maybe a second wife quickly.<sup>30</sup>

Apart from understanding courtship as a process that extends beyond the man and woman involved in the relationship, the above extract makes it clear that family members accept that a couple should get to know one another, including sexually, before marriage. Consent, on the part of the bride's family, to sexual relations between the couple is contingent on the intention of the man to marry the woman. Within Islam, women also have formal rights to sexual satisfaction in marriage, and the denial of such satisfaction constitutes grounds for divorce. For the man, knowing how a prospective marriage partner relates to him sexually can shape any subsequent decision to take a second wife.

The description above is that of courtship as experienced today. Around two decades ago, courtship took a less liberal form, as described below by Mohammed (1980: 8). The difference is suggestive of ongoing changes in heterosexual culture.

In the case of the young man courting a girl for marriage, there are lots of social restrictions. As much as possible, they should avoid being out of view or earshot of other people. The girl should as much as possible be shy, less talkative, and in general portray herself as highly behaved in the boy's presence. Thus in the traditional setting it is very difficult for suitors to see their prospective wives in their true colours and vice versa.

Yahaya Muhammed's courtship of Amina Lawal lasted eleven months, a period long enough to give rise to an expectation of marriage on the part of the woman involved in such a relationship. That prolonged courtship generally leads to such expectations was sufficiently recognised socially for this argument to be deployed by the lead counsel in Amina Lawal's defence:

Marriage legitimises sexual relations and vests legal rights thereto. Persistent promises of marriage accompanied by the normal traditional gifts lasting over a period of eleven months is enough to raise sufficient



impression in the minds of ordinary people, Amina Lawal inclusive, that subsequent sexual relations are not altogether illegal (Yawuri, 2004: 196).

Both the length of the courtship and the legitimate expectation that marriage would subsequently follow, formed the basis of Yawuri's defence that sexual relations under such circumstances were not illegal. This argument contributed to a successful overturning of the legality of the charge of *zina*.

\* \* \*

Traditional practices, such as *tsarance* and those surrounding the celebration of marriage, embodied a degree of sexual freedom for women that is being increasingly restricted and reconstructed as immoral. While such practices were acceptable in the past, now they are more likely to be treated as transgressive in the sexual culture of contemporary northern Nigeria. The transgression here would be against male dominance in sexual culture. Since *tsarance* has now virtually died out, practices associated with it are more or less invisible today. *Angwance* is also hardly visible, given the likelihood that by now it is practised primarily in remote areas only. Such practices are therefore not available for targeting by Sharia as transgressive acts of *zina*. It is the more visible, contemporary practice of courtship that has been targeted as *zina* by the implementers of Sharia – as in the case of Amina Lawal.



## Prevailing heterosexual culture – increasing men's sexual partners

This section addresses three domains of heterosexual activity that, according to Sharia criminal law, clearly amount to offences of *zina*. These are: the keeping of mistresses; *daduro*; and *karuwanci*, often referred to as prostitution. What these three domains of heterosexuality share is the maintenance of sexual partners for men in excess of those justified by polygyny. Keeping mistresses and engaging the services of sex workers are common practices in northern states. Yet, to date, virtually no man engaged in these practices has been charged with *zina* and taken to a Sharia court. This section also surveys a fourth domain of heterosexual activity whose transgressive character as *zina* is contested, namely concubinage.

The first three domains – keeping mistresses, *daduro* and *karuwanci* – constitute examples of transgressive sexuality whose existence is ignored or rendered invisible by state authorities. The transgression here is against provisions concerning *zina* in Sharia criminal law, as opposed to transgression against the dominant sexual culture. I do not wish to suggest that charging the male actors involved in *zina* is the most appropriate line of action. Instead, this analysis

is intended to highlight the gendered contradictions and inconsistencies in the application of Sharia criminal law where male and female heterosexuality are concerned.

### *The keeping of mistresses*

Many Muslim and non-Muslim Nigerian men keep mistresses in addition to their wives. The prevailing interpretation of Islam in Nigeria is that Muslim men are entitled to a maximum of four wives. A Muslim man who has a mistress, therefore, would be keeping her in addition to his legally married wife or wives, however many these may be. The existence and identity of the mistress would usually be kept secret from the wife or wives. In the course of my interview with Yawuri (AMY), he agreed that this was a long-standing practice:

AMY: ... It is a practice, particularly in the Hausaland. Well, I say in the Hausaland because in the Hausaland, they are mostly Muslims. Yeah, it has been a practice and I think it continues to be a practice, particularly within the senior government officials.

CP: OK.... Is it likely that any of those men might be charged with *zina*?

AMY: I don't think it is, I don't think it is. I don't think it is. Because largely you find out that they don't do it in their states. They have the where-withal, they travel to neighbouring states, probably Kaduna state, etc. People have been observing those things, yeah. During the weekends, they leave their states, come to neighbouring states and spend the weekend there.<sup>31</sup>

The improbability of Muslim men who keep mistresses being charged with *zina* is clear from Yawuri's emphatic responses to this question in the negative. His certainty is based on the practice of senior government officials, who are known to keep mistresses but do so in the safety of spaces beyond the application of their own state laws. Their actions not only highlight the level of impunity of those exercising state power, but also a cynical exercise of that power to satisfy their own sexual appetites. Double standards are thus evident in the exercise of power on the basis of class and social status – the laws regulating the sexual activity of the poor clearly do not need to be applied to the behaviour of senior office-holders in government.

The following exchange with Maryam Uwais highlights double standards on the basis of gender:

CP: Many men, whether they're Muslim or not, have mistresses.

MU: Pure lust.



CP (*laughs*): So how is that justified, or is it not justified in any way?

MU: It's not justified, but we close our eyes to it. Because it's convenient for them [the men].

CP: Right. So the men who can afford to have the mistresses are not put on trial –

MU: No-oh! Because there are no four witnesses and they don't get pregnant.

CP: OK. That's interesting.

MU: But the woman that's unfortunate enough to get pregnant is the one that's put on trial.<sup>32</sup>

The critical point here is that men who keep mistresses are unlikely to be charged with *zina* because their bodies do not generate the “evidence” – pregnancy – that is often used to accuse women of *zina* under Maliki law. Moreover, the difficulty of finding four independent witnesses to the sexual act, as stipulated in the Qur'an, is also likely to be used to protect the man, rather than the accused woman (Iman, 2001).



### *Daduro*

Overlapping the keeping of mistresses and the domain of *karuwanci* is the practice of *daduro*. This is a Hausa term that is used flexibly to refer to a relationship that has embedded within it a number of different but interlinked elements. One of these elements is that of courtship between unmarried sexual partners. Sometimes there is an understanding that the relationship will be formalised by marriage. At other times, the relationship shades into courtesanship, or a relatively long-term sexual and emotional relationship between a man and a woman.<sup>33</sup> Because *daduro* is not strictly speaking synonymous with the keeping of mistresses, neither is it simply prostitution, it is treated here in a category of its own.

The courtship procedures of *daduro* and those preceding marriage have been compared in the following way:

...there is great similarity between the relationship of the man and the prostitute, and that of a young man and a girl he is courting for marriage. In both cases the man goes through a long period of manoeuvres before he is accepted as one of the suitors. In both cases the man must on no occasion hint that he has other females as friends and finally, in both cases the woman and the girl could be befriended by any number of males, though they must not be related. The difference is that in the case of the

prostitute, the man is more relaxed, has sexual relationship [sic] and in general maintains a relationship that is not fettered by social prescriptions and proscriptions (Mohammed, 1980: 8).

In those instances where the man is already married, the status of the woman with whom he has the *daduro* relationship is more akin to that of a mistress than a wife-to-be, particularly as her existence is likely to be kept secret from the man's wife or wives. The woman in the *daduro* relationship is often a sex worker, the signs of which are her engagement in sexual exchanges with other men, her unmarried status, and her living in a brothel. As such, *daduro* has been categorised as a sub-institution within prostitution (Mohammed, 1980). In all its variations, *daduro* is said to be common in northern states.<sup>34</sup>

The economic dimension of *daduro* is such that the man attempts to meet the material needs of the woman in an effort to ensure her loyalty. At the same time, the emotional tenor of *daduro* is somewhat ambivalent, simultaneously allowing and rejecting the possibility of other liaisons.

### *Karuwanci*<sup>35</sup>

If, following the Sharia criminal law, consensual sex outside marriage constitutes adultery, then according to that same law, any transaction with a commercial sex worker should also be considered an act of *zina*. However, this interpretation of sex work is rarely applied with regard to the male customers of sex workers. Instead, the approach taken to sex work in the states implementing Sharia criminal law is selective and uneven.

When asked whether *karuwanci* continues to exist in those states applying criminal Sharia law, Yawuri pointed to differences in the extent to which space has been made for sex work in different northern states. Sokoto, Gusau and Birnin Kebbi, as the capitals of states in the northwest, have taken a more prohibitive approach to sex work. This is in keeping with the history of *jihad*<sup>36</sup> in the northwest, as well as a stricter interpretation of Sharia in this part of the north.

Asma'u Joda refers to the way in which sex work was treated in one of the states in the northwest, Zamfara (the first state in Nigeria to sign the criminal aspect of Sharia into law in 1999).

I remember in the case of Zamfara, because that's the one that was really loud and on the [case] ... Commercial sex workers had to go to neutral areas, like the army barracks.... The army barracks were allowed to sell alcohol and things like that, so they could go into those places. And I think what's important is they could not come out ... They probably hide behind



the fact that non-Muslims can be prostitutes.... It's not as if Muslim sex workers would cover up. So actually, how do you identify them?... And I'm really not sure they want to touch that area because they are the customers. They're the ones who patronise them.<sup>37</sup>

Neutral areas are those areas that are not specific to any particular region or sub-region of the country, such as domains associated with the federal state. The army falls into this category and here, Sharia criminal law is suspended, as it were. The Sharia state effectively defers to the military arm of the federal state in meeting their shared interests in “keep[ing] prostitutes quite literally in their place” (see Enloe, 1993:146). This suggests that the keeping of brothels in the army barracks is simultaneously a sign of military privilege as well as military dependency on sexual access to women. Militarised sexuality, as Cynthia Enloe points out above, is a key feature of shoring up militarised masculinity.

The approach taken in the northeast seems to afford more space for sex work in the society at large. Nevertheless, there is ambivalence here surrounding the existence of sex work, and men and women's engagement in the practice. The discretion surrounding the spaces made for sex work in Bauchi, particularly for those privileged by class, is revealed in the incident recounted below:

Like I know Bauchi local government council, the local government has four guesthouses within Bauchi metropolis and I know even during these Sallah festivities ... I met somebody who is very respected in the society, with his woman. He pretended as if he didn't see me. Now just to prove to him that I saw him, I said, “*Ah, Mallam, inna wunni? An yi sallah?*” He said, “Oh, Abdulkadir!” He was *absolutely* disturbed, plus the woman also.<sup>38</sup>

The situation in Katsina, by way of contrast, was characterised for me as follows:

...Katsina is a very, very rough town, oh. The Women Affairs Commissioner confessed this to me. It's only in Katsina that you will see Muslims that ... have nothing to do with fasting, taking drinks in daytime, going to enjoy themselves with women.... the amazing thing is [this is happening] during Ramadan! And this is a place where Sharia is supposed to have been working. Fully ... if you go to Lunar, Lunar Hotel ... they used to call it *Kofan Utar*, that is, A Door to Hell.... There is nothing that is not being done there, nothing! At least I used to see the women, some of the women ... going there with only pants and brassiere.... These are Muslim women!<sup>39</sup>

The shocking character, for Muslims, of activities such as eating, drinking and engaging in sexual relations during the day, instead of fasting and abstaining



from sex, is clearly conveyed. Not only were these transgressions taking place in the holy month of Ramadan, but they were being carried out *publicly*. Similarly, Muslim women, who would be expected to dress modestly at any time of the year, were walking around in public during Ramadan wearing only their underwear. No attempt was made to hide these activities, as might have been the case elsewhere in the country, even if those involved were not in states implementing Sharia criminal law.

The failure of those Sharia states whose political leaders see it as their mission to eliminate prostitution is a systemic problem inherent in their very dependency on prostitution. This becomes clear when we examine the political campaigns of key office-holders. Ahmed Sani, the Zamfara State governor, was alleged to have used sex workers in his campaign tour, for a number of reasons. One of these was that these women were considered particularly suited to singing praise songs to public office-holders, being more skilled than men in this regard. Secondly, and probably more importantly, political office-seekers in general regularly use thugs to intimidate the opposition, in their campaigns:

And these thugs, most of them, they don't have – to get married is not in their agenda in life ... most of these governors, they used to sponsor these harlots and their political thugs to Mecca, to Saudi Arabia ... they need the harlots to satisfy their political thugs.... In order for them [the thugs] maybe to go and harass an opponent or to do what ... their godfathers want them to do, they need to be satisfied with everything that they want, like Indian hemp, women, what-have-you ... two years [ago], there was a harlot who was caught in Saudi Arabia, with an authority from a P8, a particular ... Sharia-implementing governor in the north. And now, at the end of the day, the whole thing died naturally, it just ended up like that.<sup>40</sup>

So it is not only militarised masculinity that is dependent on sexual access to women for its production and reproduction. At least two other categories of men appear also to have their masculinities predicated on the availability of sex workers. There are the political thugs – young, mostly uneducated and unemployed youth – who carry out their patrons' bidding by using intimidation and violence, and whose sexual appetites "need" to be satisfied. There are also the patrons – older, affluent men who are linked in a network to other such men in positions of authority. These patrons are male political aspirants who want to become governors, for example, and for whom the thugs as well as the sex workers are simply a means to an end. Sex and violence thus combine to form the necessary ingredients for the realisation of political ambitions.



Although sex work involves sexual exchange between men and women, it is the actions of the women concerned (not the men) that are popularly constructed as transgressive. This is only partly because sex is thus commodified. More disturbing to the status quo is the fact that women are the sellers, exchanging in the “public” space of the open market (even if this is in private) what women are expected to give freely in the privacy of the home to their husbands. As a consequence of the threat that sex workers are perceived to pose to the “sanctity” of the family, and thereby the social order, they are often treated as responsible for all manner of social ills. Men who engage the services of sex workers, on the other hand, suffer neither blame nor potential loss of social status. More fundamentally, however, any responsibility such men bear for the sexual exchanges inherent in sex work is simply erased, as is any recognition of the transgressive aspects of men’s sexual activity.

There are, nevertheless, local forms of resistance to the dominant discourse of prostitution. An example is provided below by Maryam Uwais:

I'll tell you a story. The former Sultan, before this one, apparently there was a year that the rains were late in coming to Sokoto. And the people came and the advisors in court now said to him, “Oh, it was because there were too many prostitutes in town. That was why God was upset and that was why the rains were not forthcoming.” I understand this man [the Sultan] got up, did the ablutions and pressed his hand on the Qur'an in front of all of them and said, “Apart from my wives, I have known no other woman.” And he passed the Qur'an round and said, “All of you should do the same thing because prostitutes don't exist in isolation.” And only one of them could [do so]. And that put paid to the argument. That was a practical Sultan.<sup>41</sup>

The people appealing to the Sultan wanted him to banish prostitutes from the town, a practice resorted to in the past when moral and other panics had ensued (see Pittin, 1991; Dennis, 1987). The Sultan’s response demonstrates a more equitable reading of heterosexual and gender relations in the society than those of the men seeking his intervention, an apparently counterintuitive scenario. At the same time, and very importantly, the Sultan’s response involved the use of religion in a liberatory manner, forcing men to confront their own involvement in the “transgressive” heterosexuality of prostitution.

### *Concubinage*

Among most Sunni groups in Nigeria and in classical interpretations of Muslim laws, concubinage is regarded as legitimate on religious grounds and as



acceptable sexual practice. However, this position is contested in Nigeria by the Izala<sup>42</sup> movement, led by the former Grand Qadi of northern Nigeria, the late Sheikh Abubakar Gumi. The Izala have generally attacked Muslim Sufi groups for “innovation” and “apostasy”, challenging practices such as the keeping of concubines by traditional rulers, and the denial of women’s rights to a proper education (Sanusi, 2004b). In one of his *tafsirs*,<sup>43</sup> Sheikh Gumi dismissed concubinage as *zina*.<sup>44</sup>

Historically, concubinage arose out of experiences of war and conquest, with the practice of the victors taking women from vanquished groups. Given the religious injunctions limiting the number of legally married wives a man could have, any other women who joined a household as a man’s sexual partner was not a free woman and did not have the same rights as a wife (Boudhiba, 1998). Concubines were slaves whose presence in a household was known to all. Little is known about concubinage in Nigeria, but the general view seems to be that it has virtually died out and is no longer practised overtly, except by Emirs.<sup>45</sup>

In spite of the Izala’s contestation of concubinage, in the prevailing circumstances it is extremely unlikely, indeed virtually unthinkable, that any *hizba*<sup>46</sup> group should view this practice as a basis for accusing an Emir of *zina*. The unlikelihood of such a charge rests less on the question of the inaccessibility of palace occupants and the difficulties of proving that *zina* actually did take place, than it does on the power relations surrounding important religious authorities such as Emirs. Those who exercise power in the community, whether on the basis of religion, class or gender, are likely to be shielded from any accusation of sexual impropriety for a long time to come.

### Concluding thoughts

The analytical approach taken here involves distinguishing between different levels and understandings of principle (legal formulations of *zina* and common-sense understandings) as well as between principle and practice (the neo-fundamentalist project of Sharia and accepted cultural practice). The analysis is grounded in a discussion of specific contexts, social categories and the power relations texturing heterosexual culture. While expressions of transgressive heterosexuality are diverse in northern Nigeria, the selective character of visibility and denial in the recognition of transgression points to an interweaving of gender, class and other dimensions of power in the exercise of male supremacy.

This article has shown that the recent developments in Sharia criminal law, as they affect *zina*, constitute a radical break with the prevailing heterosexual



culture in northern Nigeria. Not only are common-sense understandings of *zina* at odds with the legal provisions, but the general lack of awareness of such provisions points to the inappropriateness of charging people with offences that are not comprehensible within the prevailing sexual culture. This sexual culture is one whose contradictions the Sharia implementers themselves actively participate in producing and reproducing. This raises the broader question of how effective laws, including those tied to religion, can be in bringing about change at the levels of culture and sexuality.

The article highlights the reconstructed discourse of heterosexuality that the offence of *zina* ushers in, by juxtaposing the implementation of Sharia criminal law, as in the case of Amina Lawal, with traditional and contemporary discourses of heterosexuality in everyday life. The process of mapping these discourses, preliminary as it is in some instances, makes clear the sharp discontinuity represented by the implementation of Sharia criminal law, with existing and accepted configurations of heterosexuality. This is evident even in the context of differences within the north, arising from the interplay of gender and class with sexuality in different sub-regions.

The existence of differing traditional and contemporary discourses of heterosexuality, overlapping and shifting as they are, also points to the diversity of cultural contexts within which Islam has taken root and Muslim peoples are to be found. This runs contrary to stereotypical notions of the uniformity of “Islamic” societies. At the same time, the content of the traditional practices outlined, such as *tsarance* and *kawance*, point to the existence of traditions that embody greater sexual freedom for women than those inherent in male-dominated and reified constructions of “Culture” and “Tradition”.

While some dimensions of sexuality may always remain private, it is clear that sexuality is not, in its entirety, a private affair. Sexual politics are played out as much in the exercise of political authority as they are in intimate relations. Indeed, the intertwining of sex, violence and masculinity in the exercise of power by public office-holders is evident even (perhaps especially) among those who feel free to use religion for political ends. The present analysis underscores the significance of history and politics in the interpretation of cultural practice, including practices integral to heterosexual culture.

The state-implemented process of reconstructing heterosexuality in northern Nigeria has entailed considerable selectivity in casting some sexual actors and practices as “transgressive”, and hence visible, through criminalisation under Sharia law. In the case of *zina*, those charged have been predominantly



women living in poverty. While this process has been unfolding, sexual actors and practices that ought to be considered transgressive under the same Sharia code are normalised in practice. Wealthy and influential men who keep mistresses and/or engage the services of sex workers are thus placed above the law. The glaring injustice of such selective action has yet to provoke the widespread resistance it deserves.

## References

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- Baobab. 2003. *BAOBAB for Women's Human Rights and Sharia Implementation in Nigeria: The Journey So Far*. Lagos: Baobab for Women's Human Rights.
- Boudhiba, A. 1998. *Sexuality in Islam*, trans. Alan Sheridan. London: Saqi Books.
- Christelow, A. 2002. "The Persistence and Transformation in the Politics of Sharia – Nigeria, 1958–2002: In Search of an Explanatory Framework." Paper presented at the Third Symposium of the Islamic Law in Africa Project, Cape Town, South Africa, 11–14 March 2002.
- Dennis, C. 1987. "Women and the State in Nigeria: The Case of the Federal Military Government 1984–85", in Afshar, H. ed. *Women, State and Ideology: Studies from Africa and Asia*. London: Macmillan Press.
- Enloe, C. 1993. *The Morning After: Sexual Politics at the End of the Cold War*. Berkeley: University of California Press.
- Gramsci, A. 1971. *Selections from the Prison Notebooks of Antonio Gramsci* (ed. and trans. Q. Hoare and G. Nowell Smith). London: Lawrence and Wishart.
- Ibrahim, J. 2002. "Democracy and Minority Rights in Nigeria: Religion, Sharia and the 1999 Constitution." Revised paper for the Politics of Development Group (PODSU), Department of Political Science, University of Stockholm book on *The Rights of Groups and Differentiated Citizenship*.
- Imam, A., Morgan, J. and Yuval-Davis, N. eds. 2004. *Warning Signs of Fundamentalisms*. London: Women Living Under Muslim Laws.
- Imam, A. 2000. "The Muslim Religious Right ('Fundamentalists') and Sexuality", in Ilkcaracan, P. ed. *Women and Sexuality in Muslim Societies*. Istanbul: Women for Women's Human Rights (WWHR)/Kadın İnsan Hakları Projesi (KIHP).
- Iman, A. 2001. "Citizen Bariya: Between Sharia and Justice," *This Day*, 18 February.
- Mahdi, S. 2004. "Women's Rights and Access to Justice", in Ibrahim, J. ed. *Sharia Penal and Family Laws in Nigeria and in the Muslim World*. Zaria: Ahmadu Bello University Press.
- Mohammed, A. 1980. "Home Outside the Home: Prostitution in Kano." Paper presented at a Social and Management Sciences Seminar, Bayero University, Kano, 27 May.
- Pittin, R. 1991. "Women, Work and Ideology in Nigeria", *Review of African Political Economy* 52.

- Ranger, T. 1989. "The Invention of Tradition in Colonial Africa", in Hobsbaum, E. and Ranger, T. eds. *The Invention of Tradition*. Cambridge: Cambridge University Press.
- Richardson, S. S. 1987. "Notes on the Penal Code Law," *Cap. 89 [Caption 89 of the Laws of the Federation of Nigeria] Laws of Northern Nigeria*, 1963. Fourth edition. Zaria: Ahmadu Bello University Press.
- Roy, O. n.d. *The Failure of Political Islam* (cited in Sanusi 2002b).
- Sanusi, S. L. 2002a. "The *Hudood* Punishments in Northern Nigeria: A Muslim Criticism." Prepared for publication in *ISIM News*, the quarterly publication of the Institute for the Study of Islam in Modernity, Leiden, Holland.
- Sanusi, S. L. 2002b. "The Politicisation of Ontological Questions: Discourses, Subjectivities and Family Law in Nigeria." Paper presented at the International Conference on Muslim Family Law in sub-Saharan Africa, organised by the Centre for Contemporary Islam, University of Cape Town, South Africa, 11–14 March 2002.
- Sanusi, S. L. 2004a. "Origins of the Sharia and Review of Contemporary Implementation in Nigeria." Paper presented at the National Workshop on Sharia and Women's Rights in Nigeria, organised by the Federation of Muslim Women's Associations in Nigeria (FOMWAN), Gubabi Hotel, Abuja, 23–24 July.
- Sanusi, S. L. 2004b. "Fundamentalist Groups and the Nigerian Legal System: Some Reflections", in Imam, A., Morgan, J. and Yuval-Davis, N. eds. *Warning Signs of Fundamentalisms*. London: Women Living Under Muslim Laws.
- Shaheed, F. 1998. "Constructing Identities: Culture, Women's Agency and the Muslim World", *Dossier 26*.
- Smith, M. F. n.d. *Baba of Karo: A Woman of the Muslim Hausa*. London: Faber and Faber.
- Tabiu, M. 2004. "An Overview of Sharia Law and Practice in Nigeria" in Ibrahim, J. ed. *Sharia Penal and Family Laws in Nigeria and in the Muslim World*. Zaria: Ahmadu Bello University Press.
- Uwais, M. 2004. "Diversity of Thought in the Development of Sharia" in Ibrahim, J. ed. *Sharia Penal and Family Laws in Nigeria and in the Muslim World*. Zaria: Ahmadu Bello University Press.
- WLUML. 1997. *For Ourselves: Women Reading the Qur'an*. London: Women Living Under Muslim Laws.
- WLUML. 2003. *Knowing Our Rights: Women, Family, Laws and Customs in the Muslim World*. London: Women Living Under Muslim Laws.
- Yawuri, A. M. 2004. "Issues in Defending Safiyatu Husseini and Amina Lawal", in Ibrahim, J. ed. *Sharia Penal and Family Laws in Nigeria and in the Muslim World*. Zaria: Ahmadu Bello University Press.



## Footnotes

- 1 Arabic term, signifying extramarital sex. *Zina* is a crime under Sharia criminal law.
- 2 I am grateful to Abdulkadir Musa for research assistance on this project and to Jibrin Ibrahim, my spouse, for his insightful comments and helpful feedback. I would like to thank Amina Mama and Takiwaa Manuh for their support and co-ordination of the “Mapping Sexualities in Africa” Research Project, and all the members of the research team for their generous engagement in the workshops and beyond.
- 3 W. Ogbobo, “Prostitution: New times, new trends...”, *Leadership*, 7 November 2004.[4] S. Abubakar, “Ministers and governors encourage prostitution”, *Weekly Trust*, July 3–9 2004.
- 5 C. Odocha, “Campus call girls”, *The Punch*, 18 January 2005.
- 6 B. Nazeephy, “Sexual harassment at BUK?” *Leadership*, 7 November 2004.
- 7 S. Olugbile, “Winning the war against indecent dressing on campus”, *The Punch*, Higher Education, 14 September 2004; M. Ukachuma, “Anglican communion launches campaign against indecent dress”, *New Nigerian*, 13 January 2005.
- 8 Sex outside marriage.
- 9 Asma’u Joda, in an interview with Sindi Medar-Gould and Asma’u Joda, Abuja, 3 February 2005.
- 10 Interviews with Aliyu Musa Yawuri, lead counsel in the defence of Amina Lawal, Abuja, 2 December 2004, and Maryam Uwais, member of the Stakeholders’ Group convened by WRAPA, Abuja, 3 December 2004.
- 11 Sayings attributed to the Prophet Mohammed.
- 12 Interview with Maryam Uwais, Abuja, 3 December 2004.
- 13 Interview with Maryam Uwais, Abuja, 3 December 2004.
- 14 Interview with Aliyu Musa Yawuri, Abuja, 2 December 2004.
- 15 Interview with Amina Lawal, Kurami, 18 December 2004.
- 16 Interview with Auwal Bashir, Kurami, 18 December 2004.
- 17 Interview with Abdulmumini Lawal, Kurami, 18 December 2004.
- 18 Interview with Aisha Abubakar, Funtuwa, 23 November 2004.
- 19 Interview with Amina Musa, Funtuwa, 23 November 2004.
- 20 Interview with Hadiza Garba, Funtuwa, 23 November 2004.
- 21 Interview with Nurudeen Ahmed, Mohammed Hussain and Bashir Sani, students at the School of Basic and Remedial Studies, Funtua, 23 November 2004.
- 22 Permissible (Arabic).
- 23 Interview with Rashida Abdullahi, School of Basic and Remedial Studies, Funtua, 23 November 2004.
- 24 Interview of Abdulkadir Musa by Charmaine Pereira, Abuja, 10 February 2005.
- 25 The Women and Laws Research formed part of a 26-country action research project carried out under the auspices of the international solidarity group Women Living



- Under Muslim Laws (WLUML). The aim was to identify the application of Muslim personal laws as they affected women in different parts of the country.
- 26 This is a reference to the longstanding existence of Islam, since the 15th century, in northern Nigeria.
  - 27 Asma'u Joda, in interview with Sindi Medar-Gould and Asma'u Joda, Abuja, 3 February 2005.
  - 28 Amina Lawal's village.
  - 29 Interview of Abdulkadir Musa by Charmaine Pereira, Abuja, 10 February 2005.
  - 30 Interview of Abdulkadir Musa by Charmaine Pereira, Abuja, 10 February 2005.
  - 31 Interview with Aliyu Musa Yawuri, Abuja, 2 December 2004.
  - 32 Interview with Maryam Uwais, Abuja, 3 December 2004.
  - 33 Discussions with Jibrin Ibrahim, January to August 2005.
  - 34 Discussions with Jibrin Ibrahim, January to August 2005.
  - 35 Often interpreted as prostitution, *karuwanci* used to take the form of courtesanship as opposed to street-walking. Courtesanship involves relatively long-term relationships between the woman – a *karuwai* – and a relatively restricted number of male partners. Recently, shorter-term sexual transactions seem to have become more common. Here, Yawuri is interpreting the term *karuwanci* to mean commercial sex work.
  - 36 Religiously-based war against practices and beliefs considered unIslamic, led by Usman dan Fodio of Sokoto at the start of the 19th century.
  - 37 Asma'u Joda, in an interview with Sindi Medar-Gould and Asma'u Joda, Abuja, 3 February 2005.
  - 38 Interview of Abdulkadir Musa by Charmaine Pereira, Abuja, 10 February 2005.
  - 39 Interview of Abdulkadir Musa by Charmaine Pereira, Abuja, 10 February 2005.
  - 40 Interview of Abdulkadir Musa by Charmaine Pereira, Abuja, 10 February 2005.
  - 41 Interview with Maryam Uwais, Abuja, 3 December 2004.
  - 42 *Jamaatu Izalat al-Bid'ah wa Iqamat al-Sunnah* (Arabic), or Group for the Eradication of Innovation and Establishment of Tradition (Sanusi, 2004b).
  - 43 Reading and interpretation of the Qur'an.
  - 44 Interview with A. B. Mahmoud, member of the Stakeholders' Group convened by WRAPA, Abuja, 19 March 2005.
  - 45 Discussions with Jibrin Ibrahim, January to August 2005.
  - 46 Officially constituted committee or group entrusted with the implementation of Sharia.



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