



SHARI'A AND ISLAMISM IN SUDAN

CONFLICT, LAW AND SOCIAL
TRANSFORMATION

CAROLYN FLUEHR-LOBBAN

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CAROLYN FLUEHR-LOBBAN

PREFACE

From 1983 until the present day, Shari'a was, and has been, the main instrument of Sudan's Islamist social and political project. Sudanese religious roots are Sufist, and its history has mainly been one of religious tolerance. Sudan's Islamisation followed that of Iran in 1979 and preceded that of northern Nigeria after 1999, and was born in the desperate effort of military ruler Ja'afar Numeiri who sought to find a new legitimizing paradigm with which to rule, after having failed to successfully utilize communist and socialist ideologies. Its intellectual architect was Muslim Brotherhood (MB) leader Dr. Hasan al-Turabi who drafted the first Islamist laws, known as the 'September Laws' and who was also instrumental in the Islamist 'Civilization Project' institutionalized by the *Inqaz* 'Salvation' regime of al-Bashir meant to project Islamic law and social values upon the whole of Sudanese society, irrespective of their religion. The non-Muslim people of southern Sudan were in insurgency against northern governments in Khartoum since 1955 – at times imposing Arabization as well as Islamization upon them. Sudan is not a homogeneous nation, culturally, linguistically, or religiously. It was, perhaps, one of the worst places to experiment with making Shari'a state law, which it did, in effect, in 1983. This study took place in the wake of the signing of the Comprehensive Peace Agreement (CPA) in 2005 ending decades of civil war, and it continued until the year prior to the historic referendum on separation of the South in 2011. That referendum demonstrated overwhelming support for separation of the South, on 9 July 2011.

This work is not a critique of Shari'a, the noble law of the Islamic faith by which Muslims guide their lives, atone for their offenses against the faith and fellow Muslims, and resolve their differences. However, it does critique the ways in which Shari'a was politicized, misinterpreted, and eventually abused during a quarter-century of a state ideology that used Islam – now unfortunately referred to in the West as 'Islamism' – as an ideology of political repression and manipulation of both non-Muslims and Muslims in multi-confessional, multicultural state of Sudan.

Sudan is one of the major cases of contemporary Islamism in Africa and the Middle East. Islamism is the term now accepted in the West and recognized in the Muslim world as political Islam with a variety of expressions regarded as extremist, or beyond the boundaries of mainstream Islam. Islamism is a regrettable term for its use of Islam in the noun and adjective – extremist Christian activism in the West has not been referred to as 'Christianism,' although it might be. The use of the term Islamism in this book's title and its contents adopts a critical view to what '*Islamiya*' in Sudan has wrought over a quarter century, but in no way is this critique one of the faith of Islam or its holy law, the Shari'a, for which I have the greatest respect as I have come to know and admire it in the companionship of Sudanese Muslims. When Muslims oppose Islamism it is not a secular rejection either of faith or of Shari'a, but a rejection of the merging of religion and the state. Separation of the religion and the state is not only a western concept, but many Muslims join others in the world who oppose theocracy.

As Africa's once largest nation, Sudan's immense borders affect eight nations from northern to central Africa. Now with separation and division of the nation after a quarter century of Islamism, the future of Sudan hangs in the balance and with it African stability for the regions of the Nile Valley, Horn of Africa, and central Africa.

Shari'a law has been the main instrument of Sudan's Islamism since 1983 and the resistance to it comes mainly from southern Sudanese. In 2005, the CPA ended Africa's longest civil war through the compromise key to the CPA: withdrawal of the Shari'a from the South and from non-Muslims in the North. The fragile peace was threatened by

weak and slow implementation of the CPA, but national elections in 2010 and the CPA mandated referendum on separation in 2011 promise fundamentally changed the national paradigm. The past, present, and future of Shari'a are central to an understanding of events leading up to this crucial two year period of transition and its aftermath.

During the decades of its Islamism, Sudan not only waged civil war in the South but dealt with the domestic and international crises in Darfur and in its eastern and Nuba Mountains regions. But after 1999 it also became a major African exporter of oil to China and eastern emerging markets. Likewise, during this period, where a politicized Islam defined its 'national' identity, massive urbanization and social transformation occurred, especially concentrated in its capital city of Khartoum, which swelled to nearly 8 million. In this major African city the 'new Sudan' is emerging, for better and for worse. With the pariah status that western politics has engendered, few researchers from outside the country have documented the substantial changes that have shaped the emerging 'new' Sudan, and with an informal boycott contacts with Sudanese researchers were difficult to maintain. Thanks to a grant from the United States Institute of Peace (2007–09) and other sources of support, I was able to resume research in order to document the role that Shari'a has played in Sudan's Islamism; to analyze the ways in which it was deployed; and to attempt to comprehend the magnitude of the social change that has taken place since 1983 when Shari'a was made national law, and after 1989, when the al-Bashir *Inqaz* government institutionalized state Islamism. Essentially, this book resumes the story of Shari'a in Sudan that I began with my 1987 book, *Islamic Law and Society in the Sudan*, which detailed colonial and post-independence Shari'a until the eve of its Islamization in 1983.

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INTRODUCTION

I began to research in Sudan as a graduate student in 1970 and continued to return regularly until 1988. In 1981 my husband and fellow anthropologist, Richard Lobban, and I organized the Sudan Studies Association (SSA) with five other colleagues and together with other Sudanist colleagues, held annual meetings every year since 1981 and international conferences every three years. The first and last international conference held in Khartoum was in 1988. The SSA has facilitated continuous contact and critical discourse with Sudanese during the years of war and extremist Islamism especially between 1989 and 2004. Fifteen years passed before I resumed research in Sudan in 2004. Along with many western-based Sudanist scholars I had stayed away from the country after the 1989 Islamist coup launched a program of political repression that resulted in the detention, imprisonment, and, in some cases, the torture of colleagues with whom we had worked for decades. Eventually a large number of Sudan's best and brightest chose or were forced into exile. Now, their children have formed a new organization in the Diaspora, Sudanese American Youth Affirmation Project (SAYAP), to create a vehicle to engage with the country they know only through their parents' experience and longing.

In 2004 I returned to a transformed country. Decades of civil war and chronic conflict had internally displaced millions of its marginalized citizens who are now living in and around the capital city. The three towns known as Khartoum – that comprised about a half-million souls when we first conducted research in the early 1970s – had grown to perhaps 7–8 million, making it one of Africa's largest conurbations. No longer a 'northern' city, its streets, informal markets,

public transport and parks are filled with multiple ethnic groups from the South and Nuba Mountains, western Sudanese from Darfur and Kordofan, and there is easy movement between the main twin cities of Khartoum and the Blue Nile capital Wad Medani. Politics aside, the 'new Sudan' is actively under construction alongside the dereks and cranes that mark the new skyline of Khartoum, and the capital city now contains over a third of the nation's population.

With the flow of oil after 1999 – presently a half-million barrels a day – the Sudanese economy became one of Africa's strongest and fastest growing. Oil investment dramatically shifted from West to East as Chinese, Indian and Malaysian investment replaced French, British, American, and Canadian oil companies. Western oil interests left or were driven out in the 1990s shamed by an outcry from human rights organizations at the abuses and ethnic cleansing that occurred during the civil war, especially in and around the oil fields in the South. Into this investment vacuum flowed Chinese capital and aid, that – along with a substantial infusion of capital for construction of new buildings from the oil rich Gulf states – turned the capital city center along the Niles into a glistening gem at the confluence of the two Niles. The proprietors of Khartoum's tourist shops began to negotiate in Mandarin with Chinese buying up their stocks of ivory. One of these owners of a well-known dry goods store described to me his surprise in meeting with his Chinese supplier who spoke to him in perfect modern standard Arabic.

In the West the term 'Islamism' has gradually replaced others in use after the Iranian Islamic revolution in 1979, such as 'resurgent Islam,' or 'Islamic fundamentalism.' After 11 September 2001 (9/11) in the US, the 7 July 2005 attacks in the UK and the subsequent wars in Afghanistan and Iraq, the term 'insurgent Islam' gained currency. After the secular democratic revolutions that swept North Africa and the Middle East in early 2011, the long term viability of Islamism is itself in question. Together with the cases of Iran and Afghanistan under the Taliban, Sudan is a major example of state Islamism, and, like Iran, one that has sustained decades of legal change, institution building and social transformation under the banner of a politicized Islam. Sudanese Islamism has exerted influence upon Muslim Africa,

especially Nigeria and Somalia, both as a source of inspiration and of caution.

During the extremist period of the Taliban in Afghanistan the following cultural and social practices were enacted: the application of the *hadd* criminal penalties of amputation for theft; the introduction of capital offenses for adultery and homosexuality; the curtailing of female employment and education; bans on the following: female exposure with mandatory wearing of the *burqa*; shaving; secular music on the radio, only Qur'anic reading and *madiyah* chanting; the rearing of pigeons, bird fighting and kite flying; the reproduction of pictures; gambling; British and American hairstyles; *riba*, interest-bearing loans and transactions; public exposure of women, such as washing clothes on river banks, male tailors sewing women's clothes; music and dancing at weddings, playing drums and witchcraft.¹

In Sudan during its most intense period of extremism, 1983–99, there were similar formal bans and social pressures to conform to Islamist standards including: similar application of *hadd* criminal penalties, head covering with no visible hair became informal practice with similar bans on female public employment. A public morals police enforced the regime's idea of modest Islamic dress and regulated male/female public behavior; the wearing of beards increased; music was restricted to Qur'anic chanting, and comparable bans on reproduction of certain images was introduced, gambling and *riba*, interest-bearing loans and transactions, with a monopoly of Islamic banking and finance institutions imposed; music and dancing at weddings was restrained; restriction were imposed on male tailors sewing women's clothes along with sale of women's shoes in public informal markets. There are numerous examples of the degrees to which extremism was able to affect policy and behavior during these years. One story related to me was of the arrival of an Indian Sikh at the Khartoum airport who was denied a visa to enter the country because he was not a *Kitabi* (a 'person of the Book,' that is a Muslim, Christian, or Jew), thus he could not enter a Muslim state (*dawla*).

During the early years of the National Islamic Front (NIF) backed military regime after 1989, all political parties were banned and internal opposition was crushed thus attracting the attention of international human rights organizations. University of Khartoum professors,

trade unionists, and real or potential oppositionists, were detained and some tortured in 'ghost houses' that became emblematic of the era. Courageous indigenous human rights activists, like Sudan's preeminent northern scholar of the South, Professor Mohamed Omer Beshir, were subjected to public beatings and had their homes searched for literature critical of the NIF and their MB predecessors.

The Shari'a criminal, civil, and family law was codified for the first time in the nation's history, while the *badd* amputations of previous years all but ceased. From 1991 to 1996 Osama bin Laden was welcomed in Sudan by the regime and the Islamist project's acknowledged architect, al-Turabi. During the Sudan years, bin Laden operated various businesses, laid 'the base' for al-Qaeda and likely planned the first attack on the World Trade Center in 1993, the Somalia Islamist initiative, and the attempted assassination of the then Egyptian president Hosni Mubarak.

With the signing of the Comprehensive Peace Agreement (CPA) under intense pressure from western nations, including the US, Shari'a law was formally withdrawn from the South and from the considerable number of non-Muslims residing in the North, thus signaling the formal end of Sudan's Islamism. The beginning of a post-Islamist Sudan could be observed, albeit neither in smooth, even, nor predictable fashion. Implementation of the CPA was slow and demonstrated a lack of political will on the part of the Government of Sudan. Mixed messages promised full legal autonomy free of Shari'a for Southerners living in the North even as prosecutions, lashing, and imprisonment for alcohol use by Southerners in the Internally Displaced Persons (IDP) camps around the capital continued. Although much reduced, *badd* sentences of lashing for morals offenses and of amputation and stoning for offenses of theft and adultery under the Shari'a criminal code continued to be applied sporadically throughout the North. And in an embarrassing display of continuing extremism in 2007, a British schoolteacher in Khartoum was arrested, summarily tried under the criminal code, and sentenced to 15 days in prison for an 'offense against Islam' because her primary school students named a class teddy bear 'Muhammad.' After the intervention of two British Muslim parliamentarians President al-Bashir pardoned the teacher who, after only four months in Sudan, apologized for her unintentional offense (*The New York Times*, 4 December 2007).

In Iran, comparable formal and informal constraints on public behavior heated and cooled as the country moved to intensify or relax Islamist decrees. As other, more recent cases of Islamism emerge – such as in northern Nigeria, Somalia, and Palestine – elements of the above check list are repeated as features of their Islamist agendas. The challenge for western researchers is to record accurately and assess objectively current and historical events in countries undergoing various stages of Islamism. Campaigns in the West have condemned Islamist regimes that oppose them as part of their own political agendas; scholars have a different agenda. American commentators who condemn the *hudud* (plural of *hadd*) criminal penalties may remain silent on the persistence of the widespread use of the death penalty in their own country, by electric chair or lethal injection, including its application upon women, minorities, minors, and the mentally challenged. This obvious double standard is untenable in an era of increasingly global standards of what constitutes human rights and which nations violate them. The US and the West's *special* relationship with Israel continues virtually unquestioned at the expense of the majority of Muslim and Arab calls for justice and balance.

Western condemnation of Islamist regimes has unfortunately led to a generalized demonizing of Islam and Muslims, leading to further polarization of relations and confrontation rather than dialogue. Western researchers have been avoiding, or are no longer welcome, in areas currently undergoing or emerging from periods of Islamism. This growing mutual avoidance serves to widen the gaps in knowledge and communication that could be improved by engaged and informed dialogue. Dialogue based on mutual interest, and bilateral or multi-lateral translation of ideas; that acknowledges and is respectful of differences; and that presumes equality of the dialoging parties is what is needed in the present moment. Scholars who are engaging in research in these 'hot spots' have a special knowledge, role and responsibility in the current dialogue and debates.

Challenges of Research: From US and Sudanese Sides

From 2007–08, as a recipient of a research grant from the United States Institute of Peace (USIP), I was required to comply with the

sanctions levied upon the Sudan by the US government, as the US Congress funds the USIP. Previous research in 2005 was funded by a European Union grant to two Universities, Bordeaux in France and Leiden in Holland, and was not subjected to the same restrictions. Fear of legal complications and potential sanctions violations with the US Office of Foreign Assets Control (OFAC that manages the sanctions) by the attorney for the Rhode Island Department of Higher Education led her to advise my home institution, Rhode Island College, not to administer the USIP grant. For a time I was fearful that the perceived pariah status of Sudan would prevent me from carrying out the proposed research. The US Institute of Peace was patient and advised that any non-profit organization might administer the grant. The Sudan Studies Association (SSA), founded at Rhode Island College 26 years earlier, decided to accept the grant administration responsibility. This unusual problem of locating a grant administrator was just the first challenge.

In order to accept the grant and have it administered by a US non-profit institution, I had to agree to the conditions set out by OFAC, which was actually implementing an 'exemption' as a research scholar from the full measure of sanctions. According to the terms outlined in a formal letter of understanding between me and OFAC, I was not permitted to take with me to Sudan any electronic equipment, including my PC laptop, digital camera, cell phone, or other electronic device. I was likewise prevented from contracting with any Sudanese for any service while in Sudan, and I agreed not to have contact with or interview specified government individuals. In the field, these limitations were challenging, but forced creative response. I coped by borrowing laptops from generous acquaintances who became friends,² by using public internet cafes, by bringing mechanical, disposable cameras, and by seeking collaborators willing to assist me without formal contractual compensation.

I was questioned about my travel to Sudan at US and European airports, and was searched once in Boston Logan airport because I was carrying on my person all of the money I needed for my research due to the ban on the use of credit cards as part of an official no-interest Islamic banking and finance system. The majority of my entries and