

THE PLACE OF AL-QISĀS AND DIYAH IN THE MANAGEMENT OF FARMERS HERDSMEN
CONFLICTS IN KWARA STATE

BY

Saad, Jamiu Abdulazeez: Department of Islamic Studies, Kwara State College of Education, Oro, Kwara State, Nigeria; E-mail: abuuabdushakur@gmail.com

Idrees Sulaiman Ajimati: Department of Islamic Studies, Kwara State College of Education, Oro, Kwara State, Nigeria; E-mail: sulajimatd@gmail.com

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Ridwan Issa Yahaya: Kwara State University, Malete, Kwara State, Nigeria;
E-mail: ridwanissa77@gmail.com

Abstract

The farmers – herders’ conflict in Nigeria in which Kwara state is inclusive is among the age-long problems confronting the peaceful co-existence of the nation which has resulted to loss of many lives, farm products and properties of citizens. The disturbance of public peace in Kwara state with reports of alleged killings by the herdsmen are indications that the present administration has not found lasting solutions to the age-long problem yet. This paper therefore examines the place of Al-Qisās and Diyah in the management of Farmers - Herdsmen Conflicts in Kwara State Nigeria. It discusses some of the incidents of farmers and herdsmen clashes in Kwara State, the aims and objectives Qur’anic legislation as well the expected roles of Qisās and Diyah in curtailing the incessant clashes between peasant farmers and herdsmen. The methodology adopted in this paper is descriptive research based on documents analysis on previous articles, journals, internet sources and literatures on the subject matter. The paper suggests that the security agencies and judiciaries should perform their official duty without preferential treatment and favourism. It also suggests that religious education should be made mandatory to students in all institutions and all levels. The study reveals that farmers-herdsmen conflicts are real and there is urgent need for alternative workable solution to the menace.

Keywords: *Al-Qisās, Diyah, Herdsmen and Farmers*

Introduction

Despite the diversity of tribes and cultures, one quality that has given Kwara state good reputation is the prevalent peace and tranquility. All the tribes have coexisted happily and cooperatively for millennia, with little conflict. The current series of attacks by Fulani herdsmen and farmers, however, puts a pall on the state's present peace. Though farmers’/herders conflicts have been a recurring theme in Nigeria, Kwara State has seen recording its occurrence. Cattle rearing has been practiced in the country for a long time. Because there were enough grazing pastures for herdsmen and acreage for farmers, the herdsmen practiced open grazing from the start and coexisted amicably with farmers. With the passage of the Grazing Reserve Act of 1964, the Federal Government built grazing routes and reserves to protect grazing lands from crop growing and to make grazing land more accessible to pastoralists. However, a number of issues such as urbanization and climate change have entirely obliterated that commendable initiative, resulting in the disaster that has spread across the country. Under the present administration, the Federal government had touted several initiatives towards curbing the problem, none of which has come to fruition following strong opposition from some sections of the country. These include a proposal to set up ranches and grazing reserves, the creation of cattle colonies and the establishment of Rural Grazing Areas (RUGA). None of these proposals got the express nod of Nigerians, leaving the government somewhat handicapped and near directionless. Meanwhile, the problem keeps festering hence the developments in Kwara state (Onyedika and Rotimi, 2021).

In Nigeria the population of Fulani tribe were estimated about 20- 25 million, they are majorly nomads, pastoral communities. A significant population of the Fulani people are pastoralists, making them the largest nomadic pastoral communities in the world. Fulani tribe are found in all countries of West Africa, northern parts of Central Africa and to the South Sudan near the Red Sea coast (Salami, Dare & Saad, 2019). Fulani people’s lifestyle, culture and cattle economy are endangered as a result of climate change so the people become more habitually migrants, they move with their cattle about towards where their cattle can get water and sufficient vegetables as food, their movement is from northern Nigeria and beyond to Niger and Mali down the southern parts of the country in search of pastures. However, in recent time, there were cases of cattle trespassing into crop farms; eating up and destroying growing farm crops as a result of herdsmen negligence if not deliberate actions. This is basically the causative

agents of most inherent bloody conflict between farmers and herdsmen in Nigeria. This study aimed at finding effective solution to the conflicts between the herdsmen and crop farmers religiously through the institution of *Al-Qisās* and *Diyah* which provide avenue for the victims or their heirs to demand for the right of their people whether alive or dead (Olugbenga, as cited in Salami, Dare & Saad, 2019).

Incidents of farmers and herdsmen conflicts in Kwara State

Farmers - Herdsmen Conflict: According to Hagmann as cited in John (2018), the ‘herder-herder’ conflicts and ‘farmer-herder’ conflicts are not the same thing. He affirmed that herder-herder conflicts are generally conflicts between nomadic or transhumant animal keepers that arise between receiving groups over their territory’s resources and incoming groups attempting to find water and green pastures, and livestock raiding. Herder-herder conflict is a clash that results from stealing of cattle or other animals among the Fulani herdsmen. It is herdsmen rustling livestock of different herdsmen, or when un-skilled herders entrust their animals in the care of skilled herders under agreements, and when such agreements are breached conflict occasions within. The violent cattle raids among pastoralists in East Africa are examples of herder-herder conflicts. Hussein, Sumberg, & Seddon as cited in John (2018) view farmer-herder conflicts as comprising various types of conflicts, including ethnic conflicts, interest conflicts, resource disputes, political action, evictions, killings, cattle raiding and cattle rustling.

Moreover, there were numbers of reported cases of bloody clashes between farmers and Fulani herdsmen in the national dailies between the year 2015 and 2021. For example, on June 14, 2015 a newspaper caption by Daily Trust newspaper that many people were killed, properties destroyed in a clash between farmers and herders in Eruku and Oro-Ago communities in Kwara South and similar confrontation happened in Patigi Local Government, in Kwara North senatorial district of Kwara State. According to the report in the dailies, the recent spate of attacks by Fulani herdsmen and farmers have cast a dark shadow on the existing harmony in the State of Harmony (Daily Trust, 2015). On March 21, 2017 four people were reported dead in a clash between farmers and herdsmen; the clash happened at Yakira community, Baruten LGA of Kwara state. It was alleged that the community killed three herdsmen in retaliation to the killing of an indigene (Akinyemi, 2017). In response to this clash, on April 19, 2017, the Chairman of the Transitional Implementation Committee (TIC), Mallam Musa Buge, representing Baruten Local Government Council of Kwara, said it would start its registration of foreign herdsmen moving into the council area. According to him, this is to ascertain the identity and the free movement of herdsmen in the area, thus to ensure proper security measures for peace and to avert herdsmen clash with farmers in the area (Sunday, 2017).

However, impacts of factors that are synonymous to the unfriendly situations are many, such as tribal, political, economic, religious differences and more importantly, the climate change and the continuous expansion and encroachment of drought and desertification in Nigerian northern borders, these and many more can be adduced to have dealt serious blows on Nigerian unity, peace and stability. Nevertheless, it is paramount to deploy the necessary tool available at our disposal in fashioning a lasting solution to the present menace of bloody clashes between crop farmers and Fulani herdsmen. Here, *Al-Qisās* and *Diyah* can be adopted as a substitute or complementary effort to help in combating the ugly incidents of blood bath away from our communities

Concept of Al-Qisās and Diyah

According to Muhammad (2019), Al-Qisas is an Islamic term meaning “*retaliation in kind or revenge*”, “eye for eye” or retributive justice. Qisas Principle is available against the accused, to the victim or victim's heir when a Muslim is murdered, suffers bodily injury or property damage. Also, *Al-Qisās* literally means equal or balance. Legally it means infliction of similar hurt at same part of body of convict as he has caused to victim or causing of convict's death in case of *Qatl-amd*. (The law study, 2021). In addition, Muslima (2021) states that *Qisās* is an Arabic term it means “Legal Retaliation,” and follows the principle of an eye for an eye. This is the second type of punishment in Islamic Law. This is where the perpetrator of the crime is punished with the same injury that he caused to the victim. If the criminal killed the victim, then he is killed. If he cut off or injured a limb of the victim, then his own limb will be cut off or injured if it is possible without killing the criminal.

The obligatory condition of Qisas

The scholars according to Ahmad et al, (2012), obligated Qisas on conditions in the case of death and conditions for non-death such as injuries or destruction of certain organs from human body. The condition of death cases as follows:

- I. The offender kills intentionally.
- II. The offender is matured adult and sensible.

- III. The offender and murdered are to be equaled in term of religion and freedom.
- IV. The offender is not a descendant of the murdered.
- V. The murderer's blood is not permissible.
- VI. The tool is used in the criminal causes murdering in the most causes.
- VII. The approval of the family murdered on the Qisas of the offender and added that the offender is killed only after taking the approval of the murdered family on it and this covers expiation for his killing.

However, Abu Zahra as cited in Ahmad et al (2012) states that if the murdered family forgive him and take Diyah instead which estimated at about 4250 g of the gold then the offender's expiation is freeing a slave if he could not then fast two consecutive months. The Qisas conditions for the injuries according to Ahmad et al (2012) can be summarised as follow:

- I. Qisas is away from injustice and oppression at the interpolation of the aggressor offender.
- II. The similarity of the organ in term of name and position of the destroyed organ by the offender.
- III. There is similarity of the organ in term of healthiness, not as example of cutting the well organ of the offender while he cut the paralyzed one of the victim or taking a well eye for visually impaired eye.
- IV. No Qisas will be held only after the victim is cured. If the organ is totally cured and no changed in the original form, then no Qisas on him. If there are changes, Qisas is held according to the caused.
- V. Qisas must be possible to be established exactly as the damage that the offender did but if this is not possible then the punitive punishment is performed which the damage is estimated by to Diah.

Al-Qisās (The law of Equity in punishment) in the Qur'an and Sunnah

The Glorious Qur'an states:

(يَا أَيُّهَا الَّذِينَ ءَامَنُوا كُتِبَ عَلَيْكُمُ الْقِصَاصُ فِي الْقَتْلِ ۚ الْحُرُّ بِالْحُرِّ وَالْعَبْدُ بِالْعَبْدِ ۚ وَالْأُنثَىٰ بِالْأُنثَىٰ ۚ فَمَنْ عُفِيَ لَهُ مِنْ أَخِيهِ شَيْءٌ فَاتَّبَاعْ بِالْمَعْرُوفِ وَأَدَاءٍ إِلَيْهِ بِإِحْسَانٍ ۚ ذَٰلِكَ تَخْفِيفٌ مِّن رَّبِّكُمْ وَرَحْمَةٌ ۚ فَمَنِ اعْتَدَىٰ بَعْدَ ذَٰلِكَ فَلَهُ عَذَابٌ أَلِيمٌ)

O you who believe! *Al-Qisās* (the Law of equality) is prescribed for you in case of murder: the free for the free, the slave for the slave, and the female for the female. But if the killer is forgiven by the brother (or the relatives) of the killed (against blood money), then it should be sought in a good manner, and paid to him respectfully. This is an alleviation and a mercy from your Lord. So after this, whoever transgresses the limits (i.e. kills the killer after taking the blood money), he shall have a painful torment.) Qur'an 2:178

Prophet Muhammad (PBUH) was reported to have said:

Narrated Ibn `Abbas:

The law of *Qisās* (i.e. equality in punishment) was prescribed for the children of Israel, but the Diya (i.e. blood money was not ordained for them). So Allah said to this Nation (i.e. Muslims): "O you who believe! The law of *Al-Qisās* (i.e. equality in punishment) is prescribed for you in cases of murder: The free for the free, the slave for the slave, and the female for the female. But if the relatives (or one of them) of the killed (person) forgive their brother (i.e. the killers something of *Qisās* (i.e. not to kill the killer by accepting blood money in the case of intentional murder) ---- then the relatives (of the killed person) should demand blood-money in a reasonable manner and the killer must pay with handsome gratitude. This is an alleviation and a Mercy from your Lord, (in comparison to what was prescribed for the nations before you). So after this, whoever transgresses the limits (i.e. to kill the killer after taking the blood-money) shall have a painful torment." (2.178) Sahih al-Bukhari 4498, Vol. 6, Book 60, Hadith 25

Diyah (Blood Money)

Haneef as cited in Abdul Rahman (2012) states that *Diyah* can be defined as payment of indemnity for killing and injuring a human being. Therefore, the word *Diyah* as far as homicide is concerned denotes the amount of compensation paid to the next of kin of the deceased as a substitute in cases of murder and as the original reparation in case of quasi intentional murder and killing by mistake. *Diyah* is also a means to console the victim's family for the loss they have suffered. When someone kills another person, he doesn't only affect that person. Rather, he inflicts immense pain upon a whole family, extended relatives, and friends. If the family opts to forgive the person committing the crime, it's only fair that they get some compensation. This is why the amount is fixed in Islam. It should be a certain amount that compensates the victim's relatives, and it can't be left to the whims of others to decide. (Abdullah, 2020).

***Diyah* in light of Qur'an and Sunnah**

The proof on the concept of *Diyah* could be found in the Glorious Qur'an and Sunnah of Prophet Muhammad (PBOH). The Qur'an says:

And never is it for a believer to kill a believer except by mistake. And whoever kills a believer by mistake - then the freeing of a believing slave and a compensation payment presented to the deceased's family [is required] unless they give [up their right as] charity. But if the deceased was from a people at war with you and he was a believer - then [only] the freeing of a believing slave; and if he was from a people with whom you have a treaty - then a compensation payment presented to his family and the freeing of a believing slave. And whoever does not find [one or cannot afford to buy one] - then [instead], a fast for two months consecutively, [seeking] acceptance of repentance from Allah and Allah is ever Knowing and Wise. (Qur'an 3: 92)

Also, the Prophet (PBOH) was reported to have said:

It was narrated that Mujahid said:

"*Al-Qisās* (the Law of Equality in punishment) is prescribed for you in case of murder: the free for the free ... The rule for the Children of Israel was *Qisās*, and not *Diyah*. Then Allah, the Mighty and Sublime, revealed the *Diyah* to them, and He revealed this ruling to this *Ummah* as an alleviation of the ruling that applied to the Children of Israel." Vol. 5, Book 45, Hadith 4786

The place of *Al-Qisās* and *Diyah* in the management of farmers - herdsmen conflicts in Kwara state

The law of *Qisas* is drawn from the Quran, which is the basic source of Islamic law. The term '*Qisas*' is used in the Quran to mean 'equality'. The Qur'an give honour and respect to the soul as it cannot be any away unjustly. Life, on the other hand, can be taken in the name of justice: "...Take not life that Allah has made sacred save in the name of justice and law...." (6:151). In circumstances of murder and injury, equality is the primary rule in the Islamic judicial system. The Qur'an (2:178) allows *Qisas*: "O you who believe, *Qisas* has been prescribed for you in cases of murder... However, if the slain's brother requests forgiveness, grant any reasonable demand and compensate him handsomely; this is a concession and kindness from your Lord. After that, everyone who crosses the boundaries will be punished.

The essence of the principle of *Qisas* according to Niaz (2013), is human equality (affirmed in the Qur'an, 5:45 as shown below) and security of life in society. The context of revelation (*Sababun-Nuzul*) sheds ample light on the objectives of *Qisas*: the aim was to curb the pre-Islamic practice whereby the blood of some influential tribes and individuals was considered more precious than the blood of poor and weaker segments of society. The Qur'an offers two choices for dealing with someone found guilty of intentional murder: *Qisas* (i.e., that he or she be slain in the same manner as the victim) or forgiveness by the victim's heirs. The prerequisites for the second alternative are that the victim's heirs must seek for 'fair' *Diyah* (blood money) and that the guilty person must pay *Diyah* in a 'good' manner. Jurists agreed on court monitoring over the question of requesting and paying *Diyah* to ensure that it is fair and paid 'in a proper way,' as leaving it as a private concern was hazardous.

And We ordained for them therein a life for a life, an eye for an eye, a nose for a nose, an ear for an ear, a tooth for a tooth, and for wounds is legal retribution. But whoever gives [up his right as] charity, it is an expiation for him. And whoever does not judge by what Allah has revealed - then it is those who are the wrongdoers. Qur'an 5:45

Muhammad (2016) also observes that the primary objective of the *Shari'ah* is the realisation of benefit to the people, concerning their affairs both in this world and the hereafter. It is generally held that the *Shari'ah* in all its parts aims at securing benefits for the people or protecting them against corruption and evil. The Glorious Qur'an explains the main objectives of *Shari'ah* when it declares:

And We have sent you (O Muhammad SAW) not but as a mercy for the '*Alamin* (mankind, *Jinns* and all that exists) (Qur'an 21: 107).

Therefore, the main purpose of the *Qisās* according to the above explanation is that nobody shall be punished more than the offense committed. As for *Qisās* crime and its punishment there are three categories i.e. intentional murder, quasi-intentional murder and murder by mistake. As regard to the intentional murder, the heirs of the victim have been given three choices whether they want killing in retaliation, blood money or pardon. As for quasi-intentional murder, the available punishments are blood money or pardon. The same goes to murder by mistake. Another aspect of *Qisās* punishment is for the cases of causing bodily injury. The punishment is also

retaliation based on proportionality according to the seriousness of the injury such as tooth with tooth, eye with eye and so on (Abdul Rahman, 2012)

The main type of punishment for intentional murder or homicide is *Qisās*. This is capital punishment. The application is that of a life for a life, as mentioned in the verse above. If the heirs of the murdered victim prefer this, then it is mandatory to carry out. However, we must note here that, as always, the punishment has to be carried out by the authorities or the state. Vigilante killings to avenge other killings are not permissible in a civilized land with laws. The *Qisās* method leaves the door open for legal retribution. Hence, if the family members wish to exact vengeance, that is their right. However, it has to be within the frame of the law. It should also be noted here that *Qisās* can only be applied for deliberate and intentional murder. If the authorities find that it was semi-intentional or an accident, *Qisās* is not a permissible option. Instead, the aggrieved party, i.e., the victim's family, should get blood money or *Diyah* (Abdullah, 2020).

Diyah (blood money) was considered as a peaceful alternative to revenge. However, the amount of *Diyaah* varied according to the status of the murderer and his or her tribe. Among the Quraysh the customary blood money was a hundred camels, although for the nobles it was one thousand. It was very common, on the other hand, for the blood money of some tribes to be half that of other tribes, a rule which was due largely to the difference in strength and prestige between one tribe and another (Masuma, 2016). Kwara state *Shariah* court of Appeal (2021) presents the new amount of *Diyah* (blood money for a life taken by mistake) as one hundred and eight million, one hundred and eight thousand, one hundred and forty-three naira and thirty-eight kobo only (₦108,108,143:38) as at October 7, 2021, which is equivalent to (1st *Rabul-Awwal*, 1443 AH).

Muhammad (2019) observes that some of the significance and benefits of *Al-Qisās* and *Diyah* is that people fear these punishments as well as money compensation and they will abstain from destroying the property and life of another individual. It will help in the development of peace in the society and chaos can be avoided. Those involved in murder can be punished according to the pre-established punishments prescribed by Islam, such people have no right to live in a Muslim society as they are a continuous threat to people living around them. Also, with the implementation of this law, one will have no courage to violate the human dignity by killing another individual keeping in mind the consequences they will have to face and thus the precious human life can be protected. Years long disputes among the families of the victim and the accused can be avoided if justice is provided to the victim's family by punishing the accused according to *Shariah* law. The destruction of farm land and killing of farmers as well as innocent people shall be curtailed if the institution of *Qisās* and *Diyah* are effectively applied.

Suggestions

1. There should be more enlightenment on the application of institution of *Al-Qisās* and *Diyah* in Kwara state as well as the whole Nigeria.
2. Provision of grazing reserve, nomadic education should be well funded and monitored.
3. The Muslims on the position of authority should be ready to serve Islam in this direction.
4. State and Federal house of assembly should give recognition to the institution of *Al-Qisās* and *Diyah* if they are truly representing their constituency.
5. The security agencies and judiciaries should perform their duties without any preferential treatment of among their clients.

Conclusion

Islamic legislation never attempted to remove all existing laws of a society, rather than to remove the evils of those laws and to make them beneficial for all without preferential treatment. Indeed, it should be noted here that the concept of punishments in Islamic law needs to be understood for the betterment of our society. The Islamic legislation aimed at establishing peaceful co-existence and a crime-free society. The theory of punishment is not only to prevent criminals in involving in criminal acts in the society but also to reform them. The benefits in application of *Al-Qisās* and *Diyah* shall extend more than farmers and herdsman conflicts because if the two are well implemented there shall be reduction on the crimes rate in Nigeria drastically.

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