

Syria: Sharia Courts Impose Justice in Rebel-Held Idlib

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Rebel factions say they support court but want their own men on it.

In January, diesel merchant Jamal al-Mahmoud, 36, turned to Kfar Nabel's Sharia court in an effort to dissolve his business partnership following a disagreement. Mahmoud trusts the court, believing it imposes both discipline and order in equal measure.

"In court, I felt like the revolution had succeeded, as if I were in the country we have been fighting for," he said.

The Sharia court was established in November 2012, three months after regime forces withdrew from the town, at a meeting led by five elders and lawyers and attended by local notables together with leaders of various military factions.

Kfar Nabel, which lies in northwestern Syria and has a population of approximately 30,000, is now controlled by the Fursan al-Haq Brigade, allied with the Free Syrian Army, and the Suqur al-Sham brigade, allied with the Islamic Front.

Mohammad Khayro al-Khatib, the chief justice at the court, holds a degree in Sharia law and has been a preacher in Kfar Nabel's mosques for over 15 years.

"This court is the nucleus of a free, independent, and honest judiciary derived from Islamic Sharia," he said.

The court has no written internal bylaws or legal texts to define its scope of work, nor are punishments determined through any specific law.

"Islamic Sharia forms our constitution, laws, and system," Khatib said. "Sharia determines crimes and the appropriate punishments. Our references are scholarly texts on Islamic jurisprudence. We do not adhere to any one school. We are bound by the consensus of Islamic judicial scholars. In case of disagreement between them, we then decide which opinion seems most appropriate."

The books the sheikhs rely on for their juridical decisions include Al-Haq by Abu Jafar al-Shafii, the Mudawana of Malik bin Anas, Fatwas by Taqiaddin Ahmad ibn Taymiyyah of the Hanbali school, and the Mabsut of Muhammad al-Sarakhsi, from the Hanafi school.

The court does not apply all the forms of punishment specified in the texts, such as amputating hands for theft, flogging unmarried adulterers or stoning married adulterers.

"The principle of punishment in Islamic Sharia applies to all periods, but we do not apply them today because we are in a state of war," Khatib explained. "Instead, we replace them with prison, fines, or both." He added that fines are paid to the court.

Eight people work in the court, which consists of a criminal chamber, a civil chamber, and a personal status chamber. These three chambers adjudicated in over 350 cases in 2013, more than 150 of which were criminal cases such as theft or fraud. Court sessions are open to the public and defendants are allowed lawyers. The court's decisions can be appealed at a Sharia appeal court in the neighbouring town of Binnish.

The court relies on Kfar Nabel's security battalion to implement its decisions. The battalion was established by the town's local committee and consists of 20 officers. During the past three months, the security battalion arrested more than 50 people, mostly for theft, according to the unit's records which battalion commander Maher al-Alayyo showed to Damascus Bureau.

An example of how the court deals with cases of theft according to Sharia is demonstrated by the case of a Kfar Nabel resident who was accused of stealing four motorcycles and was arrested by the battalion.

Damascus Bureau was able to access the court files for this case. The court ordered the defendant to return the stolen goods and sentenced him to a year-and-a-half in prison. It did not apply the Islamic sentence of limb amputation, because of the state of war and also because the motorcycles were not stolen from their owners' homes but from the street.

Before the armed opposition took control of Kfar Nabel, the city had one government-affiliated court that

dealt primarily with personal status issues, in addition to some civil and criminal cases. The rebels disapproved of this court which they saw as loyal to the regime. Today, it only adjudicates on issues like marriage because personal status-related documents issued by the Syrian government in Damascus are still used both inside and outside the country.

Local officials say the biggest obstacles facing Kfar Nabel's Sharia court are lack of funding and the absence of a suitable prison.

"In cases where prison sentences exceed 15 days, individuals are sent to prisons in nearby towns and villages such as Binnish, Khan al-Sabal and Iblin," said the chief justice. "We collect fees from plaintiffs that are no more than 500 Syria pounds [three US dollars] for each case and place them in the court's fund," he added.

He added that this fund is used to pay a modest salary to judges, 100 dollars a month at best, in addition to purchasing stationary for the court.

Khatib says a greater challenge is lack of cooperation from the military factions, despite their recognition of the court.

The chief justice and a security battalion commander named Alayo both told Damascus Bureau that the factions' leniency towards rogue elements in their ranks has led to a breakdown of security and a proliferation of weapons in the town. The court and the security battalion cannot take any action because they are unable to confront the military factions.

Lieutenant-Colonel Jamal al-Allush, who commands the Squir Al-Sham battalion, and Abdel Qader al-Sallun, head of the Fursan al-Haq battalion, both deny that their soldiers lack discipline. They say that any past problems were resolved when rogue members were dismissed from their ranks, and that they want to use their military strength to support the court.

The commanders added that they would also like to see two trusted sheikhs attached to their battalions - Abdallah al-Saadi and Ibrahim al-Qassem - included in the court so as to provide more legitimacy. The two sheikhs are regarded as moderate Salafis.

There are currently no civil courts in areas outside government control in the suburbs of Idlib, where Sharia courts have been established, as in Kfar Nabel.

Mariam, 42, is a lawyer from the suburbs of Idlib who preferred not to give her real name. She is critical of these courts and advocates implementation of Syrian laws that have been in effect since the 1950s.

"This uprising is for the overthrow of al-Assad, not of Syrian law," she said.

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