

Sharia Implementation in Northern Nigeria

Further Documentary Materials I:

The Sharia Courts and Their Judges

Compiled and edited by Philip Ostien

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Editor's notes:

1. References in what follows to *Sourcebook* are to P. Ostien, ed., *Sharia Implementation in Northern Nigeria 1999-2006: A Sourcebook* (Ibadan: Spectrum Books Ltd., 2007, five volumes). The documentary materials presented here are further to that work.

2. The documents and other information presented here were collected in the course of numerous research visits to the Nigeria's sharia states over a number of years. The work was funded first by the Volkswagen Foundation (2002-2004), then by Cordaid (2005-2007), as described in *Sourcebook*, I, xii-xiii, where the names of the then-researchers are given. A subsequent grant from the Gerda Henkel Foundation funded another round of visits by P. Ostien and A.S. Garba in 2010. In 2016 the Nigeria Stability and Reconciliation Programme (NSRP) funded a final round of visits, to study 'Sharia Implementation in Northern Nigeria Fifteen Years On', by five principal researchers, namely, U. Bugaje, A.R. Mustapha, P. Ostien, M. Tabiu, and M.S. Umar, assisted by M.U. Abubakar, D. Aliyu, I.I. Bello, A.S. Garba, and M.H. Ismail. We are grateful for the financial support provided for this research.

3. A policy brief on Nigeria's Sharia Courts, based in part on the materials presented here, was written for NSRP in 2016 and is available at <http://www.qeh.ox.ac.uk/content/sharia-implementation-northern-nigeria-after-15-years>. A full study of 'Nigeria's Sharia Courts', by P. Ostien, A.S. Garba, and M.U. Abubakar, will be included in an edited volume entitled *Sharia Implementation in Northern Nigeria Fifteen Years On: Six Research Reports and an Overview*, forthcoming in 2018.

4. As elsewhere in the *Sourcebook*, documents presented here have been retyped, spellings have sometimes been corrected and in the cases of some words standardised, grammatical errors have been corrected, and formatting has been standardised. For further discussion of these and other editorial decisions see *Sourcebook*, I, xv-xvi.

1.

Statutory materials

A considerable volume of legislation related to the creation and management of their new Sharia Courts has been enacted by the sharia states. Subsection **a** gives a list by State of all of it (the editor believes) enacted through March 2008, with brief descriptions of what each law does or did respecting the courts. Subsection **b** gives the full text of one of the new Sharia Courts laws, that of Zamfara State, annotated to show variations between Zamfara’s law, which was the first to be enacted and which was much copied by other States, and those of other States. Subsection **c** gives in full the provisions from all the new court-related laws on two topics – appointment, discipline and dismissal of al-kalīs and minimum qualifications of al-kalīs; the variations among the laws make these provisions difficult to summarise briefly, and especially in the case of the provisions on qualifications of al-kalīs the confusion is such as to make summary almost impossible. Subsection **d** gives tables correlating the sections of the Area Courts Edicts of 1967-68 with the sections of Zamfara State’s Sharia Courts law. Finally, subsection **e** gives the text of Zamfara State’s Magistrates Courts (Restriction of Powers) Law 2002.

a. Catalogue of court-related legislation enacted by all sharia states

Note: codes of criminal procedure, enacted by the State Houses of Assembly, are included in this list; rules of civil procedure, promulgated by the Grand Kadīs of the Sharia Courts of Appeal by authority granted them in the Sharia Courts laws, are documented in section 2.

Bauchi

- (1) *Sharia Courts Commencement (Administration of Justice and Certain Consequential Changes) Law 2001*, no gazetted copy available, copy of Task Force on Sharia Implementation draft, evidently signed into law in early June 2001, in possession of editor (establishing Sharia Courts; directing appeals in all matters civil and criminal from Upper Sharia Courts to Sharia Court of Appeal and expressly expanding Sharia Court of Appeal jurisdiction to such matters; establishing Sharia Consultative Council with, among others, screening and advisory powers respecting appointment and discipline of Sharia Court judges; repealing Area Courts Law)
- (2) *Sharia Commission Law 2001*, assented to 6th June 2001, no gazetted copy available, copy as signed by Governor in the possession of the editor (creating Sharia Commission with, among others, screening and advisory powers respecting appointment and discipline of Sharia Court judges, and duty to create and maintain “awareness of the obligations of the citizen to the community under the Sharia legal system including the social and moral obligations of Sharia Court judges and other key personnel associated with the operation of Sharia legal system”)
- (3) *Sharia Courts Commencement (Administration of Justice and Certain Consequential Changes) (Amendment) Law 2001*, assented to 29th June 2001, Bauchi State of Nigeria Gazette No. 5, Vol. 26, 29th June 2001, Supplement Part B, p. B15 (eliminating powers of Sharia Consultative Council respecting appointment and discipline of Sharia Court judges, which were given instead to Sharia Commission)
- (4) *Criminal Procedure Code (Amendment) Law 2001*, no gazetted copy available, copy of Task Force on Sharia Implementation draft evidently signed into law in early June

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2001 in possession of editor (increasing the sentencing powers of Magistrate's Courts of all grades)

- (5) *District Courts Law 2001*, assented to 25th September 2001 (?), Bauchi State of Nigeria Gazette No. 15, Vol. 26, 25th Sept. 2001, pp. B169-207 (repealing and replacing old District Courts law, incorporating all amendments to date, including extensions of jurisdiction to non-Islamic law matters formerly heard in Area Courts)
- (6) *Rent Control and Recovery of Premises (Amendment) Law 2001*, assented to 29th June 2001, Bauchi State of Nigeria Gazette No. 4 Vol. 26, 20th June 2001 (transferring rent cases to District Courts)
- (7) *Sharia Criminal Procedure Code Law 2002*, assented to 15th February 2002, no gazetted copy available, copy as signed by Governor in the possession of the editor (governing criminal proceedings in Sharia Courts, documented in *Sourcebook*, IV, Chapter 5)

Borno

- (1) *Sharia Administration of Justice Law 2000*, assented 13th August, 2000, never gazetted, copy as signed by Governor in the possession of the editor (establishing Sharia Courts; expanding Sharia Court of Appeal jurisdiction to appeals in criminal matters (only) from Upper Sharia Courts; establishing Sharia Implementation Committee with power to advise Government on various Sharia-related matters including training of personnel for Sharia Courts; establishing Council of Ulama with power, among others, to screen persons for appointment as Sharia Court judges and to make rules for sittings; repealing Repugnancy Doctrine as to Sharia Courts)
- (2) *Sharia Administration of Justice (Amendment) Law 2001*, assented to 6th November, 2001, Borno State of Nigeria Gazette No. 42 Vol. 26, 18th October 2001 [sic] p. C58 (giving State Judicial Service Commission power to convert Area Court judges to Sharia Court judges)
- (3) *Number of Qadis of Sharia Court of Appeal Law 2002*, assented to 4th April 2002, no gazetted copy available, copy as signed by Governor in possession of editor (increasing number of kadis of the Sharia Court of Appeal to "at least four and not more than nine")
- (4) [still no *Sharia Criminal Procedure Code* as of March 2008¹]

Gombe²

- (1) [*Sharia Courts Establishment and Administration of Justice Law 2001*, assented to 23rd November 2001. Never gazetted; copy as signed by the Governor in the possession of the editor (establishing Sharia Courts; directing appeals from Upper Sharia

¹ In a 5th March 2008 interview with court officials in Maiduguri, P. Ostien was told that the Sharia Penal Code (SPC), finally signed into law in March 2003, has been promulgated. But the bill for the Sharia Criminal Procedure Code (SCPC), presented to the House of Assembly in March 2002, has still not been enacted. Why? "Lack of political will." Because there is no SCPC, "the SPC could not be implemented", and has never been used up to today. This is despite the fact that the Area Courts have all been transformed, theoretically at least, into Sharia Courts. The "Area/Sharia Courts", as they are called, have continued to apply the old Penal Code and Criminal Procedure Code in criminal matters brought before them. **Update 18 April 2016: the "Area/Sharia Courts" still do not apply the states SPC; they barely handle criminal matters at all, most of which go to the Magistrate and High Courts.**

² All the laws of Gombe State listed here are bracketed because none have been implemented.

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Courts in all matters civil and criminal to Sharia Court of Appeal and expressly expanding Sharia Court of Appeal jurisdiction to such matters; establishing Council of Ulama with powers, among others, respecting the appointment and discipline of Sharia Court judges and other court personnel and the making of rules of practice and procedure for the Sharia Courts; never implemented)]

- (2) [*Sharia Criminal Procedure Code Law 2001*, assented to 23rd November 2001. Never gazetted; copy as signed by the Governor in the possession of the editor (governing criminal proceedings in Sharia Courts, documented in *Sourcebook*, IV, Chapter 5; never implemented)]
- (3) [*Sharia Court of Appeal Law 2001*, assented to 23rd November 2001. Never gazetted; copy as signed by the Governor in the possession of the editor (repealing and replacing the old Sharia Court of Appeal Law, extending Sharia Court of Appeal jurisdiction to all “matters regarding Islamic law” decided by the never-established Sharia Courts; never implemented)]
- (4) [*Customary Courts Law 2001*, assented to 23rd November 2001. Never gazetted; copy as signed by the Governor in the possession of the editor (establishing Customary Courts; never implemented)]

Jigawa

- (1) *Sharia Courts (Administration of Justice and Certain Consequential Changes) Law 2000*, No. 7 of 2000, assented to 9th August 2000. Published by the State Government as a pamphlet; copy as signed by Governor in possession of the editor (establishing Sharia Courts; directing appeals in all matters civil and criminal from Upper Sharia Courts to Sharia Court of Appeal; repealing “the provisions in the following laws [Area Courts, Civil Liability, District Court, and High Court] and any other legislation applicable in the State which defines customary law to include Islamic law or Muslim law”)
- (2) *Sharia Criminal Procedure Code Law 2001*, assented to 21st November 2001, Jigawa State of Nigeria Gazette Vol. 1, No. 7, 21st November 2001 (governing criminal proceedings in Sharia Courts, documented in *Sourcebook*, IV, Chapter 5)
- (3) *Sharia Courts (Administration of Justice and Certain Consequential Changes) Law (Amendment) Law 2001*, assented to 18th December, 2001. Apparently never gazetted; unsigned copy in possession of the editor; copy of complete law as amended and as signed by the Governor, which was again published by the State Government as a pamphlet, in possession of the editor (eighteen miscellaneous amendments, including insertion of section repealing Area Courts Law)
- (4) *Council of Ulama (Establishment) Law 2004*, assented to 20th April 2004, no gazetted copy available, copy as signed by the Governor in the possession of the editor (creating Council of Ulama with advisory role in appointment of Sharia Court judges)

Kaduna

- (1) *Customary Courts Law 2001*, assented to 2nd May 2001, Kaduna State of Nigeria Gazette No. 12, Vol. 35, 28th May 2001, pp. A33-A62 (establishing Customary Courts; directing appeals from them in civil matters to the Customary Court of Appeal and in criminal matters to the High Court)
- (2) *Area Courts (Repeal) Law 2001*, assented to 2nd May 2001, Kaduna State of Nigeria Gazette No. 12, Vol. 35, 28th May 2001, pp. A63-A64

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- (3) *Sharia Courts Law 2001*, assented to 2nd May 2001, Kaduna State of Nigeria Gazette No. 12, Vol. 35, 28th May 2001, pp. A65-A90 (establishing Sharia Courts; directing appeals from them in both civil and criminal matters to Sharia Court of Appeal)
- (4) *Criminal Procedure Code (Amendment) Law 2001*, assented to 1st July 2001, Kaduna State of Nigeria Gazette No. 12, Vol. 35, 28th May 2001, pp. A91-A94 (twelve amendments adapting CPC to new Sharia and Customary Courts)³
- (5) *Sharia Court of Appeal (Amendment) Law 2001*, assented to 25th July 2001, Kaduna State of Nigeria Gazette No. 12, Vol. 35, 28th May 2001, pp. A95-A98 (fourteen amendments, most notably extending Sharia Court of Appeal jurisdiction to “any decision of a Sharia Court”)
- (6) *Customary Court of Appeal Law 2001*, assented to 1st July 2001, Kaduna State of Nigeria Gazette No. 12, Vol. 35, 28th May 2001, pp. A99-A121 (establishing Customary Court of Appeal to hear appeals from Customary Courts in civil matters)
- (7) *Judicial Service Commission (Amendment) Law 2001*, assented to 25th July 2001, Kaduna State of Nigeria Gazette No. 29, Vol. 35, 29th Nov. 2001, pp. A149-A152 (seven amendments, adapting JSC to new Sharia and Customary Courts)
- (8) *Customary Courts (Amendment) Law 2001*, assented to 1st September 2001, Kaduna State of Nigeria Gazette No. 29, Vol. 35, 29th Nov. 2001, pp. A153-A155 (six miscellaneous amendments, most notably excluding Muslims from appointment as Customary Court judges and channelling appeals to Customary Court of Appeal through Upper Customary Courts)
- (9) *Sharia Courts (Amendment) Law 2001*, assented to 1 September 2001, Kaduna State of Nigeria Gazette No. 29, Vol. 35, 29th November 2001, pp. A157-A162 (twenty miscellaneous amendments, most notably channelling appeals to Sharia Court of Appeal through Upper Sharia Courts)
- (10) *Sharia Criminal Procedure Code Law 2002*, assented to 21st June 2002, Kaduna State of Nigeria Gazette No. 17, Vol. 36, 4th July 2002 pp. A109-A289 (governing criminal proceedings in Sharia Courts, documented in *Sourcebook*, IV, Chapter 5)
- (11) *Judicial Office Holders (Salaries and Allowances) Law 2014*, assented to 27 June, 2014, Kaduna State of Nigeria Gazette No. 22, Vol. 48, 21st August 2014 pp. A65-A68 (specifying basic salaries and allowances and fringe benefits of judges of the High Court and of the Sharia and Customary Courts of Appeal)

Kano

- (1) *Sharia and Islamic Administration of Justice Reform Law 2000*, assented to 24th February 2000, Kano State of Nigeria Gazette No. 3, Vol. 33, 15th November 2001, pp. A5-A11 (establishing Sharia Courts; expanding Sharia Court of Appeal jurisdiction to appeals in criminal matters from decisions of Upper Sharia Courts; establishing Committee to advise Government on various Sharia-related matters including training of personnel for Sharia Courts; repealing “the provisions of the following Laws [Area Courts, Civil Liability, District Court, High Court] and any other legislation made by the State Assembly which define customary law to include Islamic or Muslim law”)
- (2) *Sharia Courts Law 2000*, assented to 25th November, 2000, Kano State of Nigeria Gazette No. 3, Vol. 34, 28th Feb. 2002, pp. A31-A44 (repealing *Sharia and Islamic*

³ This law and the next two, although assented to in July 2001, were published in the gazette dated 28th May, which must in fact have been published at a later date than that.

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Administration of Justice Reform Law 2000; again establishing Sharia Courts; expanding Sharia Court of Appeal jurisdiction to appeals in both civil and criminal matters from Upper Sharia Courts; establishing Advisory Committee to advise Government on various Sharia-related matters including training of personnel for Sharia Courts; repealing Area Courts Law; again repealing provisions of all State laws defining customary law to include Islamic or Muslim law; and laying down that “Islamic and Muslim laws shall be deemed to be statutory laws in all existing laws in the State”)

- (3) *Criminal Procedure Code Cap. 37 (Amendment) Law 2000*, assented to 27th November 2001, Kano State of Nigeria Gazette No. 8, Vol. 33, 27th December 2001, pp. A39-A51 (adding a new chapter to Kano’s Criminal Procedure Code, on “Trials [of criminal matters] by Sharia Courts”, documented in *Sourcebook*, IV, Chapter 5)

Katsina

- (1) *Sharia Commission Law 2000*, assented to 20th April 2000, Katsina State of Nigeria Gazette No. 4, Vol. 11, 27th July 2000, pp. A77-A80 (creating Sharia Commission with powers, among others, respecting training and appointment of Sharia Court judges, establishment and number of Sharia Courts, and rules of practice and procedure for the courts)
- (2) *Sharia Courts Law 2000*, assented to 31st July 2000, Supplement to Katsina State of Nigeria Gazette No. 5, Vol. 11, 10th August 2000, pp. A83-A95 (establishing Sharia Courts; directing appeals in all matters civil and criminal from Upper Sharia Courts to Sharia Court of Appeal and expressly expanding Sharia Court of Appeal jurisdiction to such matters; giving Sharia Commission powers to advise Judicial Service Commission and Grand Kadi on appointment and discipline of Sharia Court judges, on rules of practice and procedure for the courts, and on their general supervision; repealing Area Courts Law)
- (3) *Sharia Court of Appeal (Amendment) Law 2002*, assented to 16th September 2002, Katsina State of Nigeria Gazette No. 21, Vol. 13, 10th October 2002, pp. A24-A25 (adapting the law to new Sharia Courts and reiterating expansion of jurisdiction of Sharia Court of Appeal to “civil and criminal matters in respect of Islamic law from any decision of an Upper Sharia Court”)
- (4) [still no *Sharia Criminal Procedure Code* as at March 2016]

Kebbi

- (1) *Sharia Law 2000*, evidently enacted in June 2000 (?), never gazetted, no copy obtained (per 2003 interview: this law changed the name of the Area Courts to “Sharia Courts” and transferred control of them from the Chief Judge to the Grand Kadi. But because of some problem about the status of pending cases this was subsequently reversed, see *Sharia Courts (Amendment) Law 2000*, below, pending the coming into force of the *Sharia (Administration of Justice) Law 2000* on 1st December 2000)
- (2) *Sharia (Administration of Justice) Law 2000*, assented to 1st Aug. 2000, Kebbi State of Nigeria Gazette No. 1 of 2001, Vol. 1, undated, pp. 59-68 (establishing Sharia Courts; directing appeals in all matters civil and criminal from Upper Sharia Courts to Sharia Court of Appeal; giving Preaching Board consultative roles in appointment of Sharia Court judges and making of rules of court; repealing Area Courts Law 1968; providing that “the common law and the doctrines of equity shall not apply in the Sharia Courts”; repealing “the provisions of the following laws [Civil Liability,

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District Court, High Court] and any other legislation in force in the State which define customary law to include Islamic or Muslim law”)

- (3) *Sharia Courts (Amendment) Law 2000*, assented to 27th October 2000, Kebbi State of Nigeria Gazette No. 1 of 2001, Vol. 1, 20th May 2001, p. 69 (amending *Sharia Law 2000*: changed the name to “Area Courts Law 2000” and replaced all occurrences of “Sharia Court” with “Area Court”; see explanation above)
- (4) *Sharia Criminal Procedure Code Law 2002*, date assented to unclear, Kebbi State of Nigeria Gazette Vol. 1, No. 1, 8th August 2003⁴ (governing criminal proceedings in Sharia Courts, documented in *Sourcebook*, IV, Chapter 5)

Niger

- (1) *District Courts (Amendment) Law 2000*, assented to 22nd February 2000, Niger State of Nigeria Gazette No. 5, Vol. 25, 9th March 2000, pp. B13-B15 (increasing the monetary amounts District Courts of all grades are empowered to award)
- (2) *Sharia Court of Appeal (Amendment) Law 2000*, assented to 22nd February 2000, Niger State of Nigeria Gazette No. 6, Vol. 25, 9th March 2000, pp. B17-B19 (making somewhat cryptic amendments evidently intended to expand Sharia Court of Appeal jurisdiction to all cases, civil and criminal, decided in Area Courts)
- (3) *Area Courts (Amendment) Law 2000*, assented to 22nd February 2000, Niger State of Nigeria Gazette No. 10 Vol. 25, 9th March 2000, pp. B47-B52 (transforming the Area Courts into de facto Sharia Courts by requiring judges to have qualifications in Islamic law, limiting personal jurisdiction to Muslims (except for consenting non-Muslims), and limiting subject-matter jurisdiction in civil matters to “civil proceedings in Islamic law”; in criminal matters the *Penal Code (Amendment) Law 2000*, enacting special provisions for Muslim defendants, would have applied, see *Sourcebook*, IV, pp. 140-143)
- (4) *Criminal Procedure Code (Amendment) Law 2000*, date assented to unclear but apparently 22nd February 2000, Niger State of Nigeria Gazette No. 9. Vol. 25, 9th March 2000, pp. B37-B45 (primarily raising the limits of the sentencing powers of Magistrates and Area Court judges, but including a provision on place of trial of Muslims accused of crimes for which they are liable to special punishments, see *Sourcebook*, IV, p. 219)
- (5) *Sharia Commission Law 2001*, assented to 10th July 2001, Niger State of Nigeria Gazette No. 9, Vol. 26, 3rd September 2001, pp. B34-B38 (creating Sharia Commission with powers, among others, respecting training and appointment of Sharia Court judges and establishment and number of Sharia Courts)
- (6) *Sharia (Administration of Justice) Law 2001*, assented to 13th November 2002, Niger State of Nigeria Gazette No. 19, Vol. 28, 5th November 2002, pp. B1-B13 (establishing Sharia Courts; directing appeals in all matters civil and criminal from Upper Sharia Courts to Sharia Court of Appeal; giving Sharia Commission and Advisory Council of Ulama consultative roles in appointment of Sharia Court judges and in making of rules of practice and procedure for the courts; providing that “the statutes of general application of the Common Law and the doctrines of equity shall not apply in the Sharia Courts”; repealing the Area Courts Law; repealing “the

⁴ The year of enactment of this law is unclear: sometimes the gazetted version says 2001, sometimes it says 2002. The title page says “Law No. 5 The Sharia Criminal Procedure Code Law, 2002”, which is here assumed to be accurate.

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provisions in the following laws [Civil Liability, District Court, High Court] or any other law in force in the State which define customary law to include Islamic law or Muslim law”)

- (7) *District Courts (Amendment) Law 2011*, assented to 28 November 2013, apparently not gazetted, signed copy in possession of the editor (increasing the monetary amounts District Courts of all grades are empowered to award, and conferring jurisdiction on District Courts to exercise jurisdiction of matters under customary law involving title to or interest in land in non-urban areas and personal law matters ‘where the parties or any of them is not professing Islamic faith’.
- (8) *Sharia Penal Code Law*, assented to 18 March 2014, Niger State of Nigeria Gazette No. 13, Vol. 19, 18 March 2014, pp. A1-A121
- (9) *Sharia Criminal Procedure Code Law*, assented to 18 March 2014, Niger State of Nigeria Gazette No. 14, Vol. 19, 18 March 2014, pp. A1-A135 (governing criminal proceedings in Sharia Courts, as documented in *Sourcebook*, IV, Chapter 5)
- (10) *Sharia Administration of Justice Law 2015*, assented to 16 April 2015, apparently not gazetted, signed copy in possession of the editor (repealing and replacing the Niger State Sharia (Administration of Justice) Law 2001)

Sokoto

- (1) *Sharia Courts Law 2000*, assented to 22nd February, 2000, Sokoto State of Nigeria Gazette No. 1 Vol. 35, 21st February 2000, pp. A4-A11 (establishing Sharia Courts; directing appeals in all matters civil and criminal from Upper Sharia Courts to Sharia Court of Appeal; giving State Committee on Religious Affairs role in appointment of Wali of Sharia Courts; repealing “the provision of section 3 of the Applicable Laws (Miscellaneous Provisions Law...which allows for the continuous application of the Common Law and doctrines of equity”); repealing “the provisions in the following laws [Area Courts, Civil Liability, District Court, High Court] and any other legislation applicable to the State which defines customary law to include Islamic or Muslim law”; repealing “the provision of...[Applicable Laws (Miscellaneous Provisions) Law] which allows for the continuous application of the common law and doctrines of equity”)
- (2) *Sharia Criminal Procedure Code Law 2000*, assented to 25th January 2001, gazetted as a separate volume given no number or date (governing criminal proceedings in Sharia Courts, documented in *Sourcebook*, IV, Chapter 5)

Yobe

- (1) [*Sharia Courts*]⁵ *Law 2000*, assented to 18th October 2000, Yobe State of Nigeria Gazette No. 46, Vol. 10, 16th November 2000, pp. C31-49 (establishing Sharia Courts; directing appeals in all matters civil and criminal from Upper Sharia Courts to Sharia Court of Appeal and expressly expanding Sharia Court of Appeal jurisdiction to such matters; making the provisions of the Area Courts Law

⁵ The gazetted version of this law gives its title as “the Yobe State (Introduction of) Sharia Law 2000”. This is actually the title of a different law, No. 3 of 2000, Yobe State of Nigeria Gazette No. 44, Vol. 10, 2nd November 2000, pp. C27-C29, which was also signed into law on 18th October 2000 and came into force on 26th April 2001; that the two laws have the same name is evidently a typist’s error.

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“inapplicable to the following persons: (1) persons professing the Islamic faith; (2) any other person who voluntarily consents to the jurisdiction of Sharia Court”)

- (2) [*Sharia Criminal Procedure Code Law*⁶]
- (3) [*Sharia Courts (Amendment) Law 2004 (?)*]⁷

Zamfara

- (1) *Sharia Courts (Administration of Justice and Certain Consequential Changes) Law 1999*, assented to 8th October 1999, Zamfara State of Nigeria Gazette No. 1 Vol. 1, 15th June, 2000, pp. A1-A30 (establishing Sharia Courts; directing appeals in all matters civil and criminal from Upper Sharia Courts to Sharia Court of Appeal and expressly expanding Sharia Court of Appeal jurisdiction to such matters; establishing Council of Ulama with powers, among others, respecting appointment and discipline of Sharia Court judges and inspectors, guidelines, conditions and terms of appointment the judges, rules of practice and procedure for the courts, and power to issue opinions on questions referred by the judges)

⁶ In a 4th March 2008 interview with court officials in Damaturu, P. Ostien was told that although the Yobe Sharia Penal Code (SPC) was signed into law in March 2001, and printed and distributed to the alkalis of the Sharia Courts, the alkalis were told not to apply it, and up to March 2008 no single judge in Yobe is applying this SPC. In criminal matters they still apply the old Penal and Criminal Procedure Codes, to the extent they entertain criminal matters at all (see next note). Part of the reason is that they still have no Sharia Criminal Procedure Code (SCPC). The SCPC was before the House of Assembly for a long time, and perhaps was even enacted. But the previous Governor (Bukar Abba Ibrahim) said no hands of *talakawa* would be cut off during his regime, and for that reason he wouldn't assent to the SCPC. Finally, about two weeks before he left office on 29 May, 2007, Ibrahim signed the SCPC, backdated it, and sent it for printing, i.e. for gazetting. But it still has not yet been distributed. Even the Sharia Court of Appeal has not seen a copy. When the new governor (Mamman Ali) came into office (May 2007) he was advised not to distribute this new SCPC because the alkalis would not be able to operate it. They are not learned enough. They have got to be properly trained first, both about the SPC and the SCPC. So the next thing on the agenda is to train the judges. The new Governor has promised to do it. **Update: 19 April 2016:** interviews with the Chief Registrar of the Sharia Court of Appeal and other court officials in Damaturu confirm that the SCPC has still not been distributed to the alkalis. Some amendments to it have been proposed but not enacted. The judges have still not been trained to apply the SPC and the SCPC and are not entertaining any criminal cases at all, see next note.

⁷ In a 4th March 2008 interview with court officials and a legal practitioner in Damaturu, P. Ostien was told that perhaps in 2004 (interviewees could not agree on the date) the Yobe State House of Assembly passed a law saying that the Sharia Courts shall not apply: (1) the old Penal Code, (2) the old Criminal Procedure Code, (3) the Area Courts Law. But in the course of the interview and subsequently it proved impossible to find a copy of this law anywhere. Evidently it is an amended version of the Sharia Courts Law 2001. Has it been gazetted? Apparently so – but no one seems to have a copy. In any case the Sharia Courts have been told not to entertain any criminal matters at all. So all criminal matters in Yobe State must go to the Magistrate or High Courts. Nevertheless, some Sharia Courts are trying criminal cases illegally. As to these, whenever appeals come to the Sharia Court of Appeal, it just quashes the judgments. **Update: 19 April 2016:** The Sharia Courts are still not entertaining criminal cases. The SPC and SCPC have never been applied in Yobe.

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- (2) *Sharia Court of Appeal Law Cap. 133 (Amendment) Law 1999*, assented to 8th October 1999, Zamfara State of Nigeria Gazette No. 1, Vol. 2, 15th June, 2000, pp. A1-A2 (expanding Sharia Court of Appeal jurisdiction to all civil and criminal matters decided in the Upper Sharia Courts)
- (3) *Sharia Criminal Procedure Code Law 2000*, assented to 27th January 2000, Zamfara State of Nigeria Gazette Vol. 4, No. 1, 27th January 2001 (governing criminal proceedings in Sharia Courts, documented in *Sourcebook*, IV, Chapter 5)
- (4) *Area Courts Law Cap. 1 (Repeal) Law 2000*, assented to 27th January 2000, Zamfara State of Nigeria Gazette No. 1, Vol. 2, 15th June, 2000, pp. B1-B2 (repealing Area Courts Law and all amendments thereto)
- (5) *Magistrate's Courts (Restriction of Powers) Law 2002*, assented to 9th August 2002, Zamfara State of Nigeria Gazette 9th August 2002, pp. 1-3 (depriving Magistrate's Courts of jurisdiction "to try any criminal offence where the accused or all the accused persons profess the Islamic faith")
- (6) *Council of Ulama (Establishment) Law 2003*, assented to 28th July 2003, Zamfara State of Nigeria Gazette, No. 3, Vol. 5, 10th October 2003, pp. A1-A5 (recreating Council of Ulama; reiterating its powers respecting appointment of Sharia Court judges and to issue opinions on questions referred by the judges, but not mentioning other powers respecting the courts granted in *Sharia Courts (Administration of Justice and Certain Consequential Changes) Law 1999*)
- (7) *Hisbah Commission (Establishment) Law 2003*, assented to 28th July 2003, Zamfara State of Nigeria Gazette, No. 3, Vol. 5, 10th October 2003, pp. A6-All (establishing Hisbah Commission with power, among others, to "monitor the daily proceedings of Sharia Courts in order to ensure proper compliance with Sharia Penal and Criminal Procedure Codes and report on all actions likely to tamper with the proper dispensation of justice from any court official or any litigant")
- (8) *Sharia Criminal Procedure Code Law 2005*, assented to 23rd November 2005, apparently never gazetted, photocopy of signed original in possession of editor (enacting the Harmonised Sharia Criminal Procedure Code drafted by the Centre for Islamic Legal Studies; documented in *Sourcebook*, IV, Chapter 5)

SHARIA IMPLEMENTATION IN NORTHERN NIGERIA:
DOCUMENTARY MATERIALS ON THE SHARIA COURTS AND THEIR JUDGES

b. Zamfara State Sharia Courts Law (1999) annotated⁸

SHARIA COURTS (ADMINISTRATION OF JUSTICE
AND CERTAIN CONSEQUENTIAL CHANGES) LAW, 1999

Arrangement of sections:⁹

Preamble

Part I – Preliminary

1. Citation and commencement
2. Interpretation

Part II – Establishment and Constitution of Sharia Courts

3. Establishment of Sharia Courts
4. Constitution

Part III – Jurisdiction of Sharia Courts

5. Jurisdiction
 - (i) [Subject-matter]
 - (a) Civil proceedings
 - (b) Criminal proceedings
 - (c) Substantive and procedural laws in criminal matters
 - (ii) Persons
 - (iii) Area
 - (iv) [Subject-matter]
6. Sittings on appeal [sic: Inquiry by High Court as to whether person is subject to jurisdiction of Sharia Court]

Part IV – Law, Practice and Procedure

7. Applicable laws and rules of procedure
 - (i) [Applicable laws and rules of procedure]
 - (ii) Practice and procedure
 - (iii) Council of choice
 - (iv) Sitting in open space
 - (v) Exclusion of the public

Part V – Sharia Court Alkalis

8. Appointment and discipline
 - (i) [Appointment and discipline]
 - (ii) Qualification
 - (iii) [Alkalis as officers in public service of State]
 - (iv) [Indemnity of alkalis]
 - (v) Disqualification
 - (vi) Remuneration

⁸ Laws included in the annotations: From the list of laws given in subsection **a**: the law whose text is given here in full is Zamfara (1). The laws annotated in the footnotes are Bauchi (1) as amended by (3), Borno (1) as amended by (2), Gombe (1), Jigawa (1) as amended by (3), Kaduna (3) as amended by (9), Kano (2), Katsina (2), Kebbi (2), Niger (6), Sokoto (1), Yobe (1).

⁹ Sources of the list of sections: Zamfara's statute often combines provisions dealing with different subjects in the same section. Evidently in recognition of this, the gazetted version, besides an official list of sections at the beginning, often gives, in the text of the statute, titles also to subsections. The following list gives both section titles as in the official list and subsection titles as in the text. Subsection titles in brackets have been supplied by the editor.

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Part VI – State Council of Ulama

9. Establishment of Council
 - (i) [Establishment of Council]
 - (ii) [Council to screen prospective al-kalis]
 - (iii) [Council may prescribe terms of appointment of al-kalis]
10. Membership and qualification
11. Meeting and quorum
12. Remuneration of members of council
13. Functions of council
14. Independence of council

Part VI [sic¹⁰] – Staff of Sharia Courts

15. Staff of the court
16. Delegation of duties
17. Bailiffs and messengers
18. Indemnity [of staff of Sharia Courts]

Part VII – Transfers by Sharia Courts

19. Transfer of cause or matter
20. Remittance of a matter
21. Transferred cause or matter

Part VIII – Ancillary Powers of Sharia Courts

22. Detention in prison
23. Summoning of persons
24. Giving of evidence
25. Evidence of a person outside jurisdiction of the court
26. Enforcement of judgment or order
27. Decrees or orders of [other] courts
28. Injunction etc. to preserve property
29. Appointment of receiver or manager
30. Inspection of property

Part IX – Control of Sharia Courts

31. Supervision and control of Sharia Courts
32. Appointment of inspectors
33. Appointment of Chief Inspector
34. Submission of report
35. Access by inspector to courts and records
36. Powers of inspector
37. Order of transfer to stay proceedings
38. Report of case of miscarriage of justice
39. Plea of res judicata etc.
40. Limit of powers of inspector

Part X – Appeals

41. Appeals [from Sharia and Higher Sharia Courts] to Upper Sharia Courts
42. Appeals [from Upper Sharia Courts] to Sharia Court of Appeal
43. Power of Sharia Court of Appeal to hear appeal
44. Appeal by prosecutor
45. Appeal against a reported case

¹⁰ In numbering the parts, the gazetted version repeats VI twice, and then continues from there.

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- 46. Leave to appeal out of time
- 47. Power to inspect records on appeal
- Part XI – Offences
 - 48. Officer failing to perform duty
 - 49. Exercise of judicial power without authority etc.
- Part XII – Miscellaneous
 - 50. Substantial justice not technicalities
 - 51. Saving

PREAMBLE¹¹

[1] WHEREAS the 1999 Constitution of Nigeria provides for a federal system of government in a federation consisting of States and the Federal Capital Territory based on the principles of democracy and social justice as guaranteed under Chapter I thereof;

[2] AND WHEREAS every person in the State is entitled to respect for the dignity of his person and is guaranteed the rights to fair hearing, freedom of thought, conscience and religion amongst other fundamental human rights enshrined under Chapter IV of the Constitution;

[3] AND WHEREAS by the provisions of S. 4(7) of the Constitution the House of Assembly of the State is vested with legislative powers to make laws for the peace, order and good government of the State or any part thereof;

[4] AND WHEREAS the House of Assembly of the State is vested with power under S. 4(7)(a), (b) and (c) of the Constitution to make laws in respect of any matter not included in the Exclusive Legislative List or any matter that is included in the Concurrent Legislative List or any matter in respect of any other matter with respect to which it is empowered to make laws in accordance with the provisions of the Constitution;

[5] AND WHEREAS by the provisions of S. 6(4)(a) of the Constitution the House of Assembly of the State is not precluded from establishing courts with subordinate jurisdiction to the High Court (other than the superior courts of record stated in S. 6(5)(a)-(j) of the Constitution);

[6] AND WHEREAS by the provisions of S. 6(5)(k) of the Constitution such other courts may be established and authorized by law to exercise jurisdiction at first instance or on

¹¹ Preambles. The “whereas” clauses of Zamfara’s preamble have been numbered by the editor for ease of reference in what follows. Five States have no preamble: Borno, Gombe, Kano, Katsina, Niger. Bauchi = Zamfara except inserts an additional paragraph reciting that the States are “vested with power under section 36(12) of the Constitution to make written laws for the punishment of persons convicted on criminal offences made by the law of the State.” Gombe = Zamfara except omits ¶ 6. Kaduna = Zamfara except omits ¶¶ 4 and 7 and all of ¶ 8 after the first occurrence of “jurisdiction”. Kebbi shortens the preamble to three paragraphs, including Zamfara’s 3 and 5 (stating ¶ 5 affirmatively rather than negatively) and adding that “The Muslim Ummah in Kebbi State are entitled to freedom of religion, including the freedom to manifest, practice and observe their religion in accordance with the teachings and injunctions of Islam, their religion, as guaranteed and entrenched under section 38(1) of the Constitution of the Federal Republic of Nigeria, 1999.” Sokoto shortens the preamble to four paragraphs, including Zamfara’s 1, 2, and 3 (with minor changes in wording) and adding that “almost one hundred percent (100%) of the people of Sokoto State are Muslims and are desirous of being governed by Sharia Law.” Yobe = Zamfara with minor changes in wording.

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appeal on matters with respect to which the House of Assembly of the State may make laws;

[7] AND WHEREAS by the combined provisions of S. 277 and S. 278 of the Constitution the House of Assembly of the State has the power to enact laws to confer additional jurisdiction to the Sharia Court of Appeal of the State;

[8] AND WHEREAS the State desires to establish Sharia Courts in the State to exercise all civil and criminal jurisdiction (subject only to the provisions of the Constitution and any other law vesting certain courts with exclusive jurisdiction over certain [causes] and matters) based on Sharia law to curb the high rate of crime, moral decadence and anti-social behaviours now increasingly on the rise in the State;

NOW THEREFORE, BE IT ENACTED by the House of Assembly of Zamfara State as follows:

PART I -- PRELIMINARY

1. This Law may be cited as the Sharia Courts (Administration of Justice and Certain Consequential Changes) Law, 1999 and shall come into operation on [the] 27th day of January, 2000.

2. [In this Law:]

“*Al-urf*” means and shall include any tradition or custom of a people which is not prohibited by any of the other sources of Islamic law or contrary to either.

“Appropriate authority or body” means and shall include any body or authority vested with power under this Law or any other law to appoint or discipline an alkali or any other staff of the Sharia Court.

“Cause” means and shall include any action, suit or original proceeding in both civil and criminal cases.

“Chief *Mufti*” means the Chief Registrar.

“Commissioner” means and shall include the Commissioner for Religious Affairs in the State.

“Companions” means and shall include the various categories of lieutenants of the Prophet Muhammad (SAW) who had kept his company or witnessed or had opportunity to directly hear or report on his sayings, teachings, practices and actions.

“Country” means and shall include the Federal Republic of Nigeria.

“Constitution” means the 1999 Constitution of the Federal Republic of Nigeria.

“Council” means and shall include the State Council of Ulama comprising knowledgeable and experienced persons appointed by the Governor under this Law to guide on the application of Sharia law in the State.

“Hadith” means and shall include the sayings and teachings of the Holy Prophet Muhammad (SAW).

“*Ijma*” means and shall include consensus of opinion of renown[ed] celebrated Muslim jurists and scholars (*mujtabids*) on principles, concepts and issues of Islamic law.

“Islamic law” means and shall include knowledge in the theory and practice of Islamic law as prescribed by the Qur’an, Hadith and Sunnah of the Prophet Muhammad (SAW), *qiyas*, *ijma* and other sources of Islamic law.

“*Istihsan*” means and shall include any accepted act, thing or conduct that is found to be useful, relevant, equitable or beneficial to the way of life notwithstanding contrary provision by any of the other sources of Islamic law.

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- “*Istisbab*” means and shall include any accepted tradition or custom or any new innovation to way of life which is not specifically prohibited or allowed to be practiced.
- “Joint Aid Monitoring Group” means and shall include any member of the group appointed to monitor the application of Sharia in the State.
- “Judicial Service Commission” means the Commission established for the State under S. 197(1)(c) and empowered under paragraph 6(c) of part II to the Third Schedule of the Constitution.
- “*Masalahab-mursalab*” means any relevant and useful act or thing on which no guidance can be found in the other sources of Islamic law.
- “*Mashabul-sababi*” means and shall include the opinions of the close companions of the Prophet Muhammad (SAW).
- “Matter” means and shall include any proceedings of the Court not in a cause.
- “Other sources of Islamic law” means and shall include *masalahab-mursalab, istisban, istisbab, al-urf, mashabul-sababi*, and *shar’u man kablana*.
- “Person” means and shall include any competent party that is before a Sharia Court whether as individual, individuals, body or authority.
- “Presiding Sharia alkali” means and shall include the head of the panel of alkalis sitting on the appellate jurisdiction of an Upper Sharia Court.
- “*Qiyas*” means and shall include analogical deductions in Islamic law.
- “Qur’an” means the divine and Holy Scripture revealed to Prophet Muhammad (SAW) by Almighty Allah and containing admonitions, injunctions, prohibitions, penalties, punishment, reward, compensation, substantive and procedural law, rights and obligations in respect of the legal, moral, spiritual, economic, political, socio-cultural and law to govern the general conduct of any believer in the religion of Islam.
- “*Shar’u man kablana*” means and shall include judicial [precedents] of earlier Prophets predating the advent of Islam which are not contrary to the other sources of Islamic law.
- “Secretary” means and shall include the person appointed by the Governor under this Law to serve as the Secretary to the Council of Ulama.
- “Sunnah” means and shall include the practice of the Holy Prophet Muhammad (SAW) as narrated by his companions.
- “Sharia law” means and shall include the Islamic legal system or Islamic law as prescribed by the Holy Qur’an, Hadith and Sunnah of the Prophet (SAW), *ijma, qiyas* and other sources of Islamic law.
- “Sharia Court” means and shall include the Courts established under this Law to administer Sharia law, and the phrase shall interchangeably refer to a Sharia Court, a Higher Sharia Court and an Upper Sharia Court as the context may permit.
- “Sharia Court alkali” means and shall include a person who is qualified under the provisions of this Law to be appointed as a judge of the Sharia Court and is so appointed.¹²

¹² Definitions. The interpretation sections of the various statutes show many variations, only some of which are noted here. (1) *Redundancies*. Only one State (Jigawa) follows Zamfara in including, apparently redundantly, definitions of both ‘Islamic law’ and ‘Sharia law’. (Kano has definitions of both terms but the definition for ‘Islamic law’ defines ‘*ijma*’ instead.) (2) *Islamic Law*.

PART II – ESTABLISHMENT AND CONSTITUTION OF SHARIA COURTS

3. (i) There are hereby established in the State the following Sharia Courts:
- (a) Sharia Court;
 - (b) Higher Sharia Court; and
 - (c) Upper Sharia Court.¹³

Most definitions of ‘Islamic law’ or ‘Sharia law’ follow Zamfara’s definition of the latter term, with some minor variations. Interesting exceptions: Bauchi defines ‘Islamic law’ as “the totality of Allah’s laws revealed to prophet Muhammad (SAW) regulating the conduct or affairs of the Muslims”, cf. Schacht 1964: 1. Borno, Kano, and Kaduna restrict their definitions of ‘Islamic law’ to the interpretations of the Maliki school; but Katsina elsewhere limits the law to be applied in its Sharia Courts to law and rules of procedure “as prescribed under the Maliki School of Islamic Law.” Gombe strangely restricts the term ‘Islamic law’ to Islamic personal law (“‘Islamic law’ has the same meaning as in the Sharia Court of Appeal Law governing the matters set out in paragraph A, B, C and D [of] section 11”), although the jurisdiction of Gombe’s Sharia Courts is not so restricted. (3) *Sources of Islamic Law*. Among the sources of Islamic law, only Bauchi and Katsina explicitly mention *ijtihad*; Katsina, however, defines it to mean “analogical deductions of an Islamic jurist”, i.e., *qiyas*, and does not include it among ‘other sources of Islamic law’. (4) *Lists of sources, whether exhaustive*. Whether the lists of sources of Islamic law are meant to be exhaustive could be an interesting question. Zamfara’s, above, arguably is, and similarly Kano’s: “‘Sharia law’ means *Al-kur’an, Sunnah, Ijma* and *Qiyas* in accordance with [the] Maliki School of Law.” But Kebbi’s arguably is not: “‘Sharia law’ means the Islamic Law as prescribed by the Qur’an, Hadith, *Ijma, Qiyas, Istihsan, Istishab* and such other sources of Islamic Law as are recognised by Muslims.” (5) *Muftis*. The term *mufti* is sometimes used, as in Zamfara, to refer to the registrars of Sharia Courts (as in Jigawa, Katsina and Sokoto; Zamfara defines “Chief *Mufti*” but doesn’t use it), and sometimes to refer to persons learned in Islamic law who serve as advisers to the alkalis (Kaduna, Kano; cf. Katsina, where such persons are called ‘members’; and see further note to §4(i)). In fact the registrars have long served as de facto advisers and alkalis-in-waiting. (6) *Alkalis or judges*. Six other States, like Zamfara, call the judges of their Sharia Courts alkalis, which is the Hausa form of ‘*al qadī*’. But Bauchi, Borno, Gombe, Kebbi, and Niger call them judges. (7) *Vernacular*. Kaduna uniquely includes a definition of the term ‘vernacular’, defined to include Arabic. This refers to §4(8) of Kaduna’s law, which provides that the languages of Sharia Courts “shall be English and vernacular.” (8) *Hisbah*. Zamfara uniquely includes a definition of ‘Joint Aid Monitoring Group’. This relates to §48(iii) of the law, which authorizes members of these so-called *hisbah* groups to perform the duties of court bailiffs and messengers. Zamfara’s Hisbah Commission Law goes farther, allowing the Commission to send *hisbah* to “monitor the daily proceedings of Sharia Courts in order to ensure proper compliance with Sharia Penal and Criminal Procedure Codes and report on all actions likely to tamper with the proper dispensation of justice from any court official or any litigant”.

¹³ **Grades of Sharia Courts:** Borno, Gombe, Kaduna, Katsina, Kebbi, Niger, Sokoto, and Yobe have two (Sharia Courts and Upper Sharia Courts); Zamfara, Bauchi, and Jigawa have three (interposing Higher Sharia Courts between Sharia Courts and Upper Sharia Courts); and Kano appears to have seven: Upper I, Upper II, Principal I, Principal II, Senior, Higher, and Sharia Court, all with different monetary limits on their jurisdiction in civil cases and different limits on offences triable to them and punishments imposable by them in criminal cases; this at least appears to be the sense of the schedules to Kano’s statute, although in the body of Kano’s statute itself only Sharia Courts and Upper Sharia Courts are provided for. Kaduna’s statute has similar schedules but they define the jurisdictional limits of only two grades of court, Sharia Courts and Upper Sharia Courts. Possibly other States, like Kano, also multiply grades of courts beyond two or three, but under the system of enabling warrants issued by their Grand Kadis, cf. Zamfara’s §

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- (ii) There may be as required such number of Sharia Courts and Higher Sharia Courts at district levels in the State.
- (iii) There may be as required such number of Upper Sharia Courts at populated areas and Local Government Headquarters of each Local Government Council in the State.
- (iv) The Grand Kadi,¹⁴ by the approval of the Governor,¹⁵ shall by warrant under his hand locate and prescribe the number of Sharia Courts in such Districts of the State as may be required; and the Grand Kadi, by approval of the Governor and by warrant under his hand, shall locate and prescribe the number of Upper Sharia Courts at populated areas and headquarters of each Local Government Area in the State as may be required.
 - (a) Only the Governor shall have power to approve the warrant for the establishment of a Sharia Court.
- (v) The jurisdiction exercisable by the Sharia Courts shall be as conferred upon it by or under this law and shall be exercised within such area and to such extent as may be specified in the enabling warrant establishing the court under S. 5(iii) of this Law; and such warrants shall be operative and effective from the commencement date specified therein.
- (vi) Such warrant referred to in subsection (iv) and (v) of section 3 to this Law may be suspended, cancelled or varied by the Governor through recommendation of the Advisory Judicial Committee to suit the requirement of the State.

3(v). In all States except Sokoto, the Upper Sharia Courts have both original and appellate jurisdiction, serving, when sitting in their appellate jurisdiction, as intermediate courts of appeal for the lower grades; but in Sokoto the Upper Sharia Courts have appellate jurisdiction only.

¹⁴ Chief Judge or Grand Kadi? The gazetted version of Zamfara's law has "Chief Judge" rather than "Grand Kadi" here and throughout. This was evidently a mistake on someone's part, which was corrected to the satisfaction of the legal establishment of Zamfara State by insertion in §4 of the enacting provisions of the Sharia Criminal Procedure Code Law of January 2000 (the Sharia Criminal Procedure Code itself is a Schedule to the enacting law) of the following definition: ' "Chief Judge" or "Judge of the High Court" shall mean the Grand Kadi or Kadi of the Sharia Court of Appeal wherever it appears in this Law.' Although the "this law" referred to is the Sharia Criminal Procedure Code Law 2000, the definition is being read to apply also to the Sharia Courts (Administration of Justice and Certain Consequential Changes) Law 1999 presented here: so all the legal establishment say, the Grand Kadi is in fact exercising all the powers the gazetted version of the law nominally assigns to the Chief Judge, and the Chief Judge is not objecting. In the presentation of the law here, it has therefore seemed best simply to put "Grand Kadi" wherever the gazetted version has "Chief Judge", with this explanation. Many thanks to Magistrate Musa Usman Abubakar of Zamfara State for his assistance with this puzzle. All other States have "Grand Kadi" throughout.

¹⁵ Establishment of Sharia Courts: The strong say of the Governor in the establishment of Sharia Courts in Zamfara is matched in Bauchi, Jigawa, and Yobe. In Borno, Gombe, Niger, and Sokoto this is a matter for the Grand Kadi alone; in Kaduna it is for the Grand Kadi in consultation with the Judicial Service Commission (JSC); in Katsina it is for the Grand Kadi in consultation with the Sharia Commission. In Kano and Kebbi Sharia Courts are automatically established in every District and Upper Sharia Courts in every Local Government Council; more can be established by the Grand Kadi only with the approval of the Governor.

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4. (i) A Sharia Court shall be properly constituted if presided over by a single Sharia Court alkali.¹⁶
- (ii) An Upper Sharia Court sitting in its original jurisdiction shall be properly constituted if presided over by a single Sharia Court alkali;¹⁷ and shall be properly constituted in its appellate jurisdiction if it is presided over by at least two Sharia Court alkalis to hear and determine appeals from the judgment or orders of the Sharia Courts.¹⁸
- (iii) The Upper Sharia Court alkalis sitting to determine appeals shall have a presiding alkali who will be the senior of the two; and where the Upper Sharia alkalis sit in appellate jurisdiction, the most senior alkali will preside. And where the presiding alkali is unable or incapable of presiding over any sitting for whatever reason, the most senior of the alkalis shall preside.
 - (a) There shall be at least two Sharia Court alkalis to sit and determine appeals from the lower Sharia Courts and decisions of the court shall be by concurrence of all the alkalis, failing concurrence, an additional Upper alkali shall be appointed to sit with them and majority decision shall be the decision of the court.

¹⁶ Constitution of lower Sharia Courts: All States agree except Kaduna and Katsina. In Kaduna, the Sharia Courts, evidently of both grades, are constituted by “an alkali sitting alone or an alkali sitting with two *muftis*”, evidently at the election of the alkali, who presides, records the proceedings, and renders the judgment; the *muftis* are only there to advise him, see §11 of the Kaduna law. In Katsina the lower Sharia Courts are “properly constituted if presided over by an alkali sitting with two members.” Katsina’s members correspond to Kaduna’s *muftis*; both correspond to what used to be called “assessors”, as in the Area Courts laws §5: “(1) An area court may sit with or without assessors. (2) Assessors for each area court shall be approved by the Chief Justice [of the State] (3) Assessors shall act in an advisory capacity and shall have no vote in the decision of the court.” The Sharia Courts laws of Bauchi and Zamfara mention assessors once each, see §8(i), “assessors referred to in this Law”; as assessors are nowhere else referred to this was evidently a draftsman’s error. Kano (§25) also provides for *muftis*, but in Kano they do not sit with alkalis to hear cases: as of 2008 there were only five of them, all retired judges, all living in Kano, charged under Kano’s Sharia Courts law to “(a) undertake research work with respect to all aspects of the Sharia legal system; (b) advise any alkali on certain procedures to be followed in the courts; (c) ensure that any directive of the Sharia Court of Appeal or any Upper Sharia Court sitting in its appellate capacity are complied with; (d) ensure that selected decisions of appellate courts are sent to the lower Sharia Courts for guidance.”

¹⁷ Constitution of Upper Sharia Courts sitting in original jurisdiction: All States having Upper Sharia Courts with original jurisdiction agree, except Kaduna (alkali + two *muftis*) and Katsina (alkali + two members).

¹⁸ Constitution of Upper Sharia Courts sitting in appellate jurisdiction: Kano and Sokoto agree with Zamfara in requiring that an Upper Sharia Court be constituted by two alkalis when it sits to hear appeals. Sokoto actually says the court is constituted by a “President and one member”, but the qualifications required of ‘members’ are the same as those of ‘Presidents’. Bauchi and Gombe only require one alkali (but in Gombe the Grand Kadi can assign two in “exceptional circumstances”); Borno and Jigawa both require three; Kebbi and Niger require two or three as determined by the Grand Kadi; Katsina requires one alkali sitting with three members; and the relevant sections are missing from the gazetted copy of the Yobe statute, which however appear to track Zamfara.

PART III – JURISDICTION OF SHARIA COURTS

5. (i) Subject to the provisions of S. 46, S. 251, S. 285, paragraphs 15(4) and 18 of Schedule 5 of the Constitution and any other provision in the Constitution vesting exclusive jurisdiction in any court or tribunal established under the Constitution, but without prejudice to the provisions of S. 272 of the Constitution and any other law vesting jurisdiction in any court that derives existence under the Constitution, and notwithstanding the provision of S. 3(1) & (2) of the Penal Code Law Cap 104 Laws of Sokoto State (as applicable in Zamfara State), the Sharia Courts shall have jurisdiction and power to hear and determine:
- (a) civil proceedings in Islamic law in which the existence or extent of a legal right, power, duty, liability, privilege, interest, obligation or claim (due to an individual or individuals or the State) is in issue, or
 - (b) criminal proceedings in Islamic law involving or relating to any offence, penalty, forfeiture, punishment or other liability in respect of an offence committed by any person against the State.¹⁹

¹⁹ Subject-matter jurisdiction: (a) *In general*. Subsections (a) and (b) of §(5)(i) lay down the subject-matter jurisdiction of Zamfara’s Sharia Courts: all civil and criminal proceedings “in Islamic law”; §7(i) then goes on to make it clear that only Islamic law is to be applied in these courts. Bauchi, Jigawa, Katsina, and Yobe include essentially the same provisions. Borno, Gombe, Kano, Kebbi, Niger and Sokoto rather define subject-matter jurisdiction (with slight variations in phrasing) as all “civil and criminal matters where the parties are Muslim” (plus where non-Muslims consent to jurisdiction, see notes to §5(ii)); but they then go on to make it clear that only Islamic law (with possible exceptions in several States, see below) is to be applied, see note to §7. Within this second sub-group Sokoto uniquely goes on to list a number of specific civil and criminal subjects a Sharia Court’s jurisdiction includes (“marriage under Islamic law (*al-nikah*); guardianship and maintenance (*al-kafala* and *nafaqa*)”, etc; “homicide (*qatlun nafi*), robbery (*al-muharaba*)” etc.); there is no need to reproduce these lists here as they are non-exclusive, and the list of crimes is overtaken by Sokoto’s Sharia Penal Code in any case. Kaduna is the only State to approach the definition of subject-matter jurisdiction differently than the two main groups. Its §22 provides that the civil and criminal jurisdiction of the Sharia Courts shall be as prescribed in the First and Second Schedules to the law, respectively. The First Schedule then lists: land matters subject to the Land Use Act, and the following, all “under Islamic law”: matrimonial causes or matters, causes or matters whether or not the value of the debt, demand including dowry or damages is liquidated, guardianship and custody of children, inheritance and grant of power to administer estate, and causes or matters including laws passed by House of Assembly. The Second Schedule (as amended) refers to Kaduna’s Sharia Penal Code. (b) *Limitations according to grade of court*. Upper Sharia Courts in all States (except Sokoto, where they have appellate jurisdiction only) can try all matters. Lower grades are limited, in civil matters by amount in controversy and in criminal matters by types of crimes they can try and types of punishments they can impose. The limits in civil matters are set in the courts’ warrants; those in criminal matters are spelled out in schedules to the Sharia Criminal Procedure Codes, except in Kaduna and Kano where limitations are in schedules to the Sharia Courts law (Kaduna: civil only; Kano: civil and criminal). Kebbi and Niger, in their §§9(3), lay down that “All capital offences shall be heard and determined by Upper Sharia Courts.” (c) *Possible exceptions to the limitation of subject-matter jurisdiction to cases arising under Islamic law*. Borno, Kano and Sokoto all explicitly contemplate that additional subject-matter jurisdiction may be conferred on their Sharia Courts by other enactments; Sokoto has this proviso: “in so far as such legislation does not conflict with the principles of Sharia”. Gombe (§24) provides that “The Governor may by order confer upon all or any Sharia Courts

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- (c) The State House of Assembly shall enact laws to establish offences and their punishments, and the procedure for trials in criminal matters.²⁰
- (ii) The Sharia Courts shall, subject to the provisions of this Law, have jurisdiction and power over the following persons:
 - (a) all persons professing the Islamic faith; and
 - (b) any other person(s) who do not profess the Islamic faith but who voluntarily consents to the exercise of the jurisdiction of the Sharia Courts under this Law.²¹
 - (c) In exercising jurisdiction over any person pursuant to the provision of S. 5(ii)(b) of this Law, the Sharia Court alkali shall ensure that the consent so given was voluntary and the person is legally competent and responsible to give it; and shall record the consent given in the proceedings.²²
- (iii) Pursuant to the provisions of S. 3(ii) and (iii) of this Law, the area and extent of the jurisdiction of any Sharia Court shall be as specified in the warrant establishing such court.
- (iv) Without prejudice to the provisions of subsection (i) of this section or any other written law or regulation, the Sharia Courts shall each have jurisdiction at first instance to hear and determine all civil and criminal causes or matters properly brought before the courts under this Law by any person, *provided* such causes or

jurisdiction to enforce in respect of State matters...all or any of the provisions of any written law specified in such order”. Whether Kaduna’s “causes or matters under Islamic law including laws passed by House of Assembly” is another case of this type is an open question.

²⁰ Codification of criminal law and procedure. This directive of the Zamfara House of Assembly to itself is copied only in Bauchi, Jigawa and Katsina.

²¹ Personal jurisdiction: The Sharia Courts of all States except Sokoto have this same personal jurisdiction: over “persons professing the Islamic faith”, or “Muslims”, plus any non-Muslims who voluntarily consent to jurisdiction. Borno, Kebbi, and Niger all go further to state explicitly that non-Muslims who do not consent to jurisdiction shall not be subject to it. Sokoto alone appears to rigidly limit jurisdiction to Muslims only, see its §§5(1), 8, and 9.

²² Consenting to personal jurisdiction: Bauchi, Gombe, Jigawa, and Yobe contain this same provision, except that Yobe requires not only that the consent of the non-Muslim be recorded, but also that it be “witnessed by two male witnesses appearing on the record of the Court.” Gombe, in addition, requires that a non-Muslim’s consent be in writing. Borno, Kaduna, Kano, Kebbi, and Niger, without explicitly imposing the duties of §5(ii)(c) on the alkali, simply require that a non-Muslim’s consent be in writing. Katsina requires only that the non-Muslim “voluntarily submit himself to the jurisdiction.” Where the consent must be in writing, must the writing form part of the record of the proceedings? –apparently not in Kaduna, whose §28 provides that “Where a Sharia Court has jurisdiction...over the parties thereto it shall not be necessary: (a) for such court to state on the face of the record...that the court has jurisdiction...; or (b) for the jurisdiction of such court...to appear on or form part of the record of its proceedings....” Curiously, Yobe, which as indicated imposes such strict evidentiary requirements as to consent, also includes in a subsequent section the same provision as Kaduna’s §28; this seems clearly to create an inconsistency. Gombe and Kaduna provide, separately from the provisions already noted, that “any person who institutes or prosecutes any cause or matter in a Sharia Court...shall in that cause or matter be subject to the jurisdiction of that Sharia Court and of any other Court exercising jurisdiction in that cause or matter”; in short, commencing the action constitutes consent to jurisdiction. Yobe states that if a non-Muslim voluntarily consents to the jurisdiction of a Sharia Court, he cannot “after judgement is delivered or appealing against the said judgement retract such consent.”

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matters shall be founded in Islamic law.

6. (i) If at any stage of the proceedings and before final judgement in any cause or matter before a Sharia Court a person disputes that he is not subject to the jurisdiction of the Sharia Court, such person shall, upon application to the High Court of the State, have the proceedings transferred to the High Court which shall inquire into and determine the correctness of the allegation.
- (a) The applicant under subsection (i) of section 6 of this Law shall give notice of his application to the High Court which notice shall serve as stay of the proceedings before the Sharia Court pending the determination by the High Court.²³

PART IV – LAW, PRACTICE AND PROCEDURE

7. (i) The applicable laws and rules of procedure for the hearing and determination of all civil and criminal proceedings before the Sharia Courts shall be as prescribed under Islamic law. For the avoidance of doubt, Islamic law comprises the following sources:
- (a) The Holy Qur’an;
 - (b) The Hadith and Sunnah of Prophet Muhammad (SAW);
 - (c) *Ijma*;
 - (d) *Qiyas*;
 - (e) *Masalabah-mursala*
 - (f) *Istihsan*;
 - (g) *Istishab*;
 - (h) *Al-urf*;
 - (i) *Mashabul-sahabi*; and
 - (j) *Shar’u man kablana*.²⁴

²³ Contesting personal jurisdiction: Bauchi, Jigawa, and Yobe have this same provision; Kaduna does also, except that in Kaduna the application must be to the Sharia Court of Appeal, which then inquires into and determines the correctness of the allegation that the person is not subject to the jurisdiction of the Sharia Court. Gombe has this curious provision: “Where there is a conflict as regards jurisdiction between a Muslim and a non-Muslim the said conflict may be resolved by: (a) appointment of trustees on both sides to settle the matter out of court; and [or?] a court of resolution to be established by the Governor on the recommendation by the Judicial Service Commission to settle such matters” – as if non-Muslims who do not consent to Sharia Court jurisdiction might after all be somehow forced to go there after all.

²⁴ Law to be applied: (1) *Definitions like Zamfara’s*. Bauchi, Gombe, Jigawa, Katsina, Sokoto, and Yobe have essentially this same provision, except that instead of “as prescribed under Islamic law” Katsina has “as prescribed under the Maliki School of Islamic Law”, and Bauchi and Katsina both have shorter lists of sources, in effect subsuming Zamfara’s sources (e)-(j) under one: *ijtihad*. (2) *Reference books*. Sokoto adds a list of “reference books to be used by the Sharia Courts” including, in the following order: *Al-Risala*, *Mukhtasar*, *Tuhfab*, *Al-Adami*, *Al-Fawakib al-Dawani*, *Ibn Ashir*, *Bidayat al-Mujtahid*, *Al-Mudawwanah*, *Muwattab Malik*, *Mayyara*, *Bahjah*, *Jawahir-al-Iklil*, *Dasuki*, *Al-Khirsbi*, *Bulgatil Salik*, and *Mawabibul Hallaq*. For further information about these works see the “Bibliography of Islamic Authorities” given at pp. 108-121 of *Sourcebook*, V. (3) *Other definitions of law to be applied*. Other definitions along different lines: Borno: “The law applicable...shall be the laws stipulated by the Holy Qur’an, Hadith, Islamic jurisprudence and interpretations adopted by the Maliki School of thought and Sharia legislation as may be enacted from time to time by the State House of Assembly.” Kaduna: “A Sharia Court shall administer

- (ii) The Grand Kadi of the State shall, in consultation with the State Council of Ulama, have power to make rules and regulations for the practice and procedure of the Sharia Courts; *provided that* the practice and procedure shall be as prescribed by and in strict compliance with Islamic law.²⁵
- (iii) Every person who is charged with a criminal offence before a Sharia Court shall be entitled to defend himself in person or by a legal practitioner of his choice.²⁶

Islamic law of the Maliki School.” Kano has no section on the law to be applied, but in its section on Practice and Procedure lays down that “The practice and procedure to be applied in criminal and civil matters...shall be in accordance with...(b) The principles of Islamic law and procedure;” perhaps this covers the matter. Kebbi and Niger state simply that “The applicable law in both civil and criminal proceedings in the Sharia Courts shall be the Sharia Law” – as defined in the Interpretation section, see above. (4) *Possible exceptions to the limitation of subject-matter jurisdiction to cases arising under Islamic law*: see discussion in note to §5(i) above. (5) *Ouster of the common law and equity*. Kebbi and Niger, in their §§30, lay down that “Notwithstanding the provision of section 3 of the Applicable Laws (Miscellaneous Provisions) Edict, 1987 [Niger says “Notwithstanding the provisions of any law”], the Common Law and the doctrines of Equity shall not apply in the Sharia Courts.” Sokoto achieves the same result by repealing the provision of section 3 of its Applicable Laws (Miscellaneous Provisions) Law “which allows for the continuous application of the Common Law and doctrines of Equity”. (6) *Ouster of the repugnancy doctrine*. Borno, in its §27, provides that “The doctrine of repugnancy shall not apply in the courts established under this Law.”

²⁵ Rules of practice and procedure: All States allow the Grand Kadi to make rules of practice and procedure for their Sharia Courts. This power relates primarily to civil matters, since all States have separate Criminal Procedure or Sharia Criminal Procedure Codes that govern criminal matters. Borno, Jigawa, Kaduna, Kano, and Sokoto allow the Grand Kadi to make rules on his own. Gombe, Katsina, Kebbi, Niger and Zamfara require consultation with the Council of Ulama (Gombe, Niger, Zamfara), the Sharia Commission (Katsina), or the Preaching Board (Kebbi). In Yobe the Governor must approve any rules made. In Bauchi rules made are explicitly “subject to any law made by the House of Assembly.” Sokoto, uniquely, provides further that “The law of evidence to be applied shall be the Islamic Law of evidence of the Maliki School.”

²⁶ Right to counsel: All States except Kaduna include essentially this same provision on right to counsel in criminal matters. Borno, Kano, and Sokoto explicitly extend the right also to civil matters; in such cases Sokoto and Kano say that a person may be represented “by a legal practitioner of his own choice or by any relation or nominee.” Kaduna states only that “A Sharia Court may permit the appearance of: (a) the husband, wife, guardian, servant, master or any inmate of the household of any party who shall give satisfactory proof that he or she has authority in that behalf; or (b) a relative of a person administering the estate of a deceased person who was subject to the jurisdiction of a Sharia Court.” These are perhaps moot points: the 1999 Constitution guarantees the right to counsel in criminal matters (§36(6)(c)), and the courts have held that under this same provision as contained in the 1979 Constitution, “even in civil trials or appeals, no Court or tribunal in this country has the power to exclude a legal practitioner from representing any person before it.” *Karimatu Yakubu v. Alb. Yakubu Tafida Paiko*, unreported, Appeal No. CA/K/80s/85 of December 11, 1985 (Court of Appeal), *quoted in* A.C. Odinkalu, *Justice Denied (The Area Courts System in the Northern States of Nigeria)*. Lagos: Civil Liberties Organisation, 1992, at 89 note 21. *Cf.* G.G.I Ojiako, ‘Judicial Administration of Customary Law in Southern Nigeria’, *in Towards a Restatement of Nigerian Customary Law*, Y. Osinbajo and A.U. Kalu, eds., 1991, at 239: “[T]he provisions of section 33(6)(c) and (d) of the 1979 Constitution that every person who is charged with a criminal offence shall be entitled to defend himself in person

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- (iv) A Sharia Court shall sit in an open place where members of the public will have access to it.
- (v) Provision may be made by rules of court under this Law for the exclusion of the public from any Sharia Court in cases:
 - (a) in which juvenile persons under Sharia law are involved; or
 - (b) where the exclusion of members of the public is necessary and will serve the interest of justice.²⁷

PART V – SHARIA COURT ALKALIS

- 8. (i) The appointment, dismissal and disciplinary control over Sharia Court alkalis and assessors referred to in this Law shall be exercised by the State Judicial Service Commission; *provided that* nothing in this section shall preclude the State Council of Ulama from screening, advising and recommending competent, qualified, fit and proper persons both in learning and in character to be appointed and/or disciplined as the case may be.²⁸
- (ii) Subject to and without prejudice to the provision of subsection (i) of section 8 of this Law, a person shall not be qualified to hold office as a Sharia Court alkali under this Law unless, in the opinion of the State Council of Ulama, he has attended and has obtained a recognized qualification in Islamic law from an institution approved by the Council²⁹ and has held the qualification for a period of not less than five years; and/or in the opinion of the Council of Ulama he either has:
 - (a) considerable experience in the knowledge of Islamic law, or
 - (b) he is a distinguished scholar of Islamic law.³⁰
- (iii) All Sharia Court alkalis so appointed shall be officers in the public service of the State.
- (iv) No alkali shall be liable for any act or omission attributable to or ordered by him to be done or omitted to be done in the discharge of his judicial duty and responsibilities whether or not within the limits of his jurisdiction, *provided that* at the time of doing or omitting to do such act or omission, he in good faith believed himself to have jurisdiction to so act, omit to act or order to be done or omitted to be done the act or omission in question.
- (v) A Sharia Court alkali shall not be competent to sit in a matter either in its original

or by a legal practitioner of his own choice have been elongated under the umbrella of fair hearing and hooked on to civil proceedings.”

²⁷ Right of the public to access to court. All States except Borno, Kebbi, Niger, and Sokoto include provisions similar to Zamfara’s §7(iv) and (v). Variations: Kano states that “ ‘Interest of justice’ in this section shall include matters of security to the State.” Katsina, on the other hand, limits exclusion of the public to cases where juveniles are involved. Kaduna spells out the rule and its exceptions at a length not necessary to reproduce here. Similar provisions are usually contained in the criminal procedure codes and the rules of civil procedure.

²⁸ Appointment, discipline, and dismissal of alkalis: The provisions of the various laws on this topic are given in full in subsection **c(1)** below.

²⁹ Recognised qualifications from approved institutions: see Sections 4 and 6 below, on “Courses for alkalis and kadis” and “Qualifications of alkalis and kadis”.

³⁰ Minimum qualifications of alkalis: The provisions of the various laws on this topic are given in full in subsection 1.c(2) below. Data on actual qualifications of alkalis and kadis are given in Section 6.

or appellate jurisdiction which he had previously tried or participated in whatsoever capacity whether personal, administrative or judicial.

- (vi) The Sharia Court alkalis shall be paid such remuneration and/or allowances as may be determined by the State House of Assembly.³¹

PART VI – STATE COUNCIL OF ULAMAS

9. (i) For the purposes of this Law there shall be established a Council to be known as the State Council of Ulamas by the State Governor.³²
- (ii) The State Council of Ulamas shall be responsible for the screening, recommendation and advising on the qualification, competence and fitness of any person, both in character and learning, to be appointed as a Sharia Court alkali under this law.
- (iii) The State Council of Ulamas may, subject to section 8(i) of this Law, prescribe the guidelines, conditions and terms of appointment of a Sharia Court alkali under this Law to the appointing authority or body.³³
10. (i) The Council shall comprise not less than 17 members appointed by the Governor and who shall be knowledgeable in Islamic law and jurisprudence and are distinguished scholars in the study of the Qur’an, Hadith and Sunnah of the Prophet, *ijma*, *qiyas* and other sources of Islamic law, and generally have considerable experience in these fields.
- (ii) The membership and composition of the Council and the conduct of its affairs shall be carried out in such a manner as to reflect the various competing Islamic sects or schools of thought in the State.
- (iii) At least not less than ten members of the State Council of Ulama may be appointed from within the State, and not more than five members of the Council shall be appointed from other States in the Federation; *provided that* nothing in this section shall be construed to preclude the Governor from appointing a member

³¹ Alkali pay: Only Bauchi, Kano, Sokoto and Yobe have provisions on alkali pay; the rest are silent on the matter. Bauchi says pay shall be determined by “the relevant authority”; Kano says “by the State Government”; Sokoto and Yobe say “by the Judicial Service Commission”. Data on actual remuneration of alkalis and kadis at various times is given in Section 7 below.

³² Creation of Councils of Ulama or related bodies: In addition to Zamfara, Bauchi, Borno, Gombe and Kano all established ulama bodies of some sort in their Sharia Courts laws: Bauchi: Sharia Consultative Council; Borno: both Sharia Implementation Committee and Council of Ulama; Gombe: Council of Ulama; Kano: Sharia Advisory Committee. Zamfara’s Council of Ulama was subsequently given its own separate statute. Other States also established similar bodies by separate statute: Bauchi, Katsina and Niger: Sharia Commissions; Jigawa: Council of Ulama; Yobe: Religious Affairs Board (subsequently converted to Ministry of Religious Affairs); Kebbi: Preaching Board (dating from 1991). Niger also has a Advisory Council of Ulama established by fiat of the Governor, and Sokoto has a Committee on Religious Affairs similarly established. Kaduna has a Bureau for Religious Affairs under the Governor. Only some of these bodies are given roles in the management of the Sharia Court systems, see below. All of them are fully documented in the ‘Documentary Materials on Councils of Ulama and Related Bodies’.

³³ Roles of Councils of Ulama and related bodies in appointment, discipline and dismissal of alkali: see note to §8(i) and subsection **c(1)** below. Zamfara’s Council of Ulama seems to have the strongest hand of any in the process of appointing alkalis, not only having a virtual veto over appointments, see § 8(ii), but also, uniquely, being authorized to “prescribe the guidelines, conditions and terms of appointment,” § 9(iii).

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- or members of the Council from outside the Federation of Nigeria.
- (iv) The members of the State Council of Ulama may elect the leaders of the Council from amongst themselves; *provided that* such leader shall be approved by the Governor who will subsequently appoint him for a period of time.
 - (v) The State Council of Ulama shall make rules and regulations for the conduct of the affairs of the Council.
 - (vi) The State Council of Ulama may co-opt any person to attend its meeting and whose advice or opinion is required in its deliberation over any matter before it.
11. (i) The Council shall meet at least once in every month or as the occasion may require.
- (ii) The quorum of the Council on any meeting to discuss any matter shall be two thirds of all the members of the Council, or by simple majority where the members present and voting are not less than two-thirds of all the members of the Council.
- (iii) At the conclusion of its meetings, the Council shall make and submit its decisions, recommendations, opinions or advice to the appropriate body for implementation.
- (iv) The Governor shall appoint a person learned in Islamic law to be the Secretary to the Council.
12. The members of the Council shall be entitled to payment of such remuneration and/or allowances as sitting or monthly allowances as may from time to time be determined by the Governor.
13. The Council shall have power to carry out its functions which may include:
- (i) meeting periodically to discuss, interpret, explain or give informed opinion on issues, matters or questions that may be referred to it by any person, group of persons or authority or the Sharia Courts in respect of questions or issues in Islamic law and jurisprudence generally;³⁴
 - (ii) to monitor and assess progress in the implementation of Islamic law in the State and where necessary, give corrective advice or measures to attain maximum result;
 - (iii) to monitor and give informed opinion on Islamic law on recent or new developments as a result of technological innovations, new trends in civilization, modern trade and commerce, contemporary social vices and diseases, etc.;
 - (iv) to advise, select and recommend fit, suitable and qualified persons to be appointed as Sharia Court alkalis;
 - (v) to advise, subject to the provisions of section 8(i) of this Law, and make recommendations for the discipline, suspension, termination, interdiction or dismissal of Sharia Court alkalis or any other to the appropriate authority,

³⁴ Referral of questions to Councils of Ulama. Zamfara is unique in explicitly authorizing its Sharia Courts to refer “questions or issues in Islamic Law and jurisprudence” to the Council of Ulama for its opinion. This appears to include questions arising in pending cases. What the procedure would be for such referrals, or what effect the Council’s opinion might have, are unclear. Borno is the only other State that perhaps would allow a similar procedure, providing in its §25(4) that its Council of Ulama may “advise any authority or person on Islamic matters referred to it.”

- body or person responsible for such disciplinary measures;³⁵
- (vi) to make available literature in print, audio or video form on the provisions of Sharia law (theory and practice), to enlighten and educate the people of the State on the said principles and practice of Sharia law;
 - (vii) the Council may, subject to the provisions of this Law, have power to codify all the Islamic penal laws and their corresponding punishments, and the rules of criminal procedure and evidence as prescribed by the Qur'an, Hadith and Sunnah of the Prophet (SAW), *ijma*, *qiyas* and other sources of Islamic law (to ease reference);³⁶
 - (viii) the Council may advise on the enactment of the rules of practice and procedure and evidence in civil and criminal proceedings in Sharia Courts as prescribed under Islamic law;³⁷
 - (ix) to perform or carry out any other function that may be necessary or incidental to the attainment of any or all of the above duties and responsibilities, and to generally do anything that will enhance the development and administration of Sharia law in the State.³⁸
14. In the discharge of its functions and responsibilities the Council shall be independent of any person or authority and shall not be subject to the direction or control of any other person or authority.

PART VI [sic³⁹]- STAFF OF SHARIA COURTS⁴⁰

³⁵ Cf. note to §9(iii). Bauchi, Gombe, and Zamfara extend the power of their ulama bodies in the matter of discipline of court staff also to other personnel, including registrars (Gombe) and inspectors (Bauchi, Gombe, Zamfara).

³⁶ The Sharia Penal and Criminal Procedure Codes were of course enacted by the State Houses of Assembly; the power given here to Zamfara's Council of Ulama was only to make drafts. As to the Sharia Penal Codes, see *Sourcebook*, IV which includes at pp. 22-32 an essay by I.N. Sada on "The Making of the Zamfara and Kano State Sharia Penal Codes"; this is also available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1464107. As to the Sharia Criminal Procedure Codes see *Sourcebook*, IV, Chapter 5, the introduction to which discusses the relations between the codes, other enacted laws, and uncodified Islamic rules of procedure and evidence; this is available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1461004 under the title "Nigeria's Sharia Criminal Procedure Codes".

³⁷ See note to §7(ii).

³⁸ Other court-related functions of Councils of Ulama and related bodies. Borno gives its Sharia Implementation Committee, and Kano and Katsina give their Sharia Commissions, the power to advise on suitable training for Sharia Court personnel. In Katsina the Commission also advises on the numbers of Sharia Courts needed.

³⁹ In numbering the parts, the gazetted version repeats VI twice, and then continues from there.

⁴⁰ Staff of Sharia Courts: All States have Parts of their statutes on this subject except Borno, which says nothing on it, and Kebbi and Niger, both of which simply state in their §§26 that "(1) There shall be such staff of the Sharia Courts as may be required for the due discharge of functions of the Sharia Courts to be appointed by the Judicial Service Commission. (2) The staff of the Sharia Courts shall be public officers in the public service of the State and shall perform such duties in the execution of the powers and authorities of the Sharia Courts as may be assigned to them by rules of Court or by any special order of the Court." Sokoto's Part on staff lists eight categories: "(a) Chief *Mufti* (Chief Registrar), (b) *Mufti* (Registrar), (c) Court Clerk (*Katib*), (d) Estate Distributor (*Qasim*), (e) Valuer (*Muqanwim*), (f) Interpreter (*Tarjuman*), (g) Messenger (*Khadim*), and (h) Bailiff (*Awn*)" without spelling out the duties of any; all are "public officers of

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15. (i) All staff of the Sharia Courts shall be public officers in the public service of the State.
- (ii) A registrar or clerk⁴¹ may be appointed to every Sharia Court and such registrar or clerk shall perform such duties in the execution of the powers and authorities of the court as may be assigned to him by rules of court or by any special order of the court and in particular he shall:
 - (a) prepare for issuance of all warrants and writs;⁴²
 - (b) assist the Sharia Court alkali in recording proceedings of the Sharia Court which are not recorded by the Sharia Court alkali or other member;⁴³
 - (c) register all orders and judgements of the Sharia Court;⁴⁴ and
 - (d) enter an account of all moneys received or paid by the Sharia Court.
16. A registrar or clerk may with the consent of the Sharia alkali delegate any of the duties assigned to him to any other official of the court subordinate to him.
17. (i) Bailiffs or messengers as may be required shall be appointed to every Sharia Court under the provisions of this Law.
- (ii) It shall be the duty of any person appointed under the provision of subsection (i):
 - (a) to effect the service and execution of all writs and other processes;
 - (b) to make all necessary returns in relation to such writs and processes;
 - (c) to carry out such other duties as may be prescribed by rules made under this Law;
 - (d) at all times when he is not engaged on duties which necessitate his absence from the Sharia Court to attend the Sharia Court and obey all the lawful directions of the court.
- (iii) A Sharia Court may authorise a police officer to perform all or any of the duties

the State to be appointed by the [JSC].” The other States’ Parts on staff are like Zamfara’s, with the variations indicated in the following notes. Note that Zamfara says nothing about who appoints staff of Sharia Courts. Besides Kebbi and Niger only two other States do so: Gombe, where the JSC appoints registrars (subject to screening by the Council of Ulama, see next note) and the Chief Registrar of the Sharia Court of Appeal appoints all others; and Sokoto, where all court staff are appointed by the JSC.

⁴¹ Registrars: Yobe: “*mufti* or clerk”. Kano: “There shall be for each court a registrar *and* a clerk...” The Kano statute spells out their duties separately; the clerk is essentially the registrar’s assistant. Only Kaduna and Gombe lay down minimum qualifications for registrars: Kaduna says they must be “Muslim, sane and possess *adalab*.” Gombe says that “Candidate[s] for court registrars shall in the opinion of the Council [of Ulama] possess not less than a Diploma from an approved institution in addition to working experience of not less than 3 years.”

⁴² Writs: Gombe, Jigawa, Kaduna, Kano and Yobe: “prepare *and* issue all warrants and writs”.

⁴³ Recording the proceedings: Yobe is the only other State that explicitly allows the registrar or clerk (Yobe says “*mufti* or clerk”) to assist the alkali with the task of recording the proceedings. Bauchi specifically excludes the registrar or clerk from doing so, making the recording of the proceedings exclusively the responsibility of the alkali; Gombe and Kaduna do the same in separate sections of their statutes, saying affirmatively that “A Sharia Court judge without any delegation shall take record of all proceedings in the court” (Gombe) and that “The alalkali shall...record all proceedings in English or vernacular under his hand” (Kaduna). The other States do not mention this matter at all; in fact in most States the registrars do assist with recording the proceedings.

⁴⁴ Jigawa: “prepare all orders and judgments of Sharia Courts.”

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mentioned in subsection (ii) in so far as they relate to any proceedings before the court including execution of the court orders and judgements.

(iv) Subject to the provisions of subsection (iii) no person other than a duly appointed bailiff or messenger shall carry out or purport or attempt to carry out any of the duties mentioned in subsection (ii).

18. No member of the staff of any Sharia Court or other person bound to execute lawful warrants or orders issued or made in the exercise of jurisdiction conferred by this Law shall be liable to be sued in any court for the performance of his lawful duties.

PART VII – TRANSFERS BY SHARIA COURTS

19. A Sharia Court may order the transfer of any cause or matter either before trial or at any stage of the proceedings before judgement to any other Sharia Court of competent jurisdiction and such other Sharia Court may take any course with regard to the cause or matter transferred to it.⁴⁵

20. An Upper Sharia Court may either on its motion or upon the application of either party to a cause or matter remit the matter to a Sharia Court of competent jurisdiction for its determination.

21. (i) Where any cause or matter is transferred to a Sharia Court under the provisions of this Part such court may take any course with regard to the cause or matter which it considers just and equitable under Islamic law.

(ii) The powers conferred by this section include the power to increase a sentence, but not the power to try a person for an offence in respect of which he has already been acquitted.

PART VIII – ANCILLARY POWERS OF SHARIA COURTS⁴⁶

22. Every person sentenced or committed by a Sharia Court to imprisonment shall be detained in a place established as a prison under any written law.

23. Every Sharia Court shall have power to summon before it for the purpose of giving evidence any person within the State.⁴⁷

⁴⁵ Transfers by Sharia Courts. All States except Borno and Sokoto contain provisions on transfers by Sharia Courts. Those of Bauchi, Gombe, Jigawa, and Katsina are the same as Zamfara's. Kano's are also the same except that Kano omits Zamfara's §21(ii). Kebbi, Niger, and Yobe all add a provision allowing a litigant in a lower Sharia Court to apply to an Upper one for transfer of the case to a different court on the ground that the case is beyond the jurisdiction of the court from which transfer is sought. Kaduna allows similar applications, evidently from both Upper and lower Sharia Courts, to the Sharia Court of Appeal, on the ground that the case "can for the purpose of convenience or otherwise be more appropriately or expeditiously dealt with by" a different court. Kaduna, Kebbi, Niger, and Yobe all also add, to their equivalents of Zamfara's §21(i), "...subject nevertheless to any directions which may be given by the court by which the order of transfer is made" – giving the transferring court some continuing control over the disposition of the litigation. See also notes to §§31(ii) and 36 below.

⁴⁶ Ancillary Powers of Sharia Courts. Most States have provisions broadly similar to Zamfara's, except that Borno, Kebbi, Niger, and Sokoto omit them entirely. Variations in the provisions of the other eight States are noted in the following.

⁴⁷ Bauchi, Jigawa, Kaduna, Katsina omit the qualification "within the State".

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24. Any person present at a Sharia Court, whether a party or not to any cause or matter before the court, may be required by the court to give evidence as if he had been summoned to attend and give evidence.⁴⁸
25. If in any cause or matter a Sharia Court considers that the interests of justice require that the evidence of a person not within the area of jurisdiction of the Sharia Court should be obtained before any other court or any office thereof, the Sharia Court may make an application to a judge of the High Court requesting that the evidence of such person may be taken before any other court or office thereof in the place in which such person is and the judge, if in his discretion he thinks fit to do so, may make such order in respect of the taking of the evidence of such person. *Provided that* the evidence shall be recorded by strictly following the Islamic procedure.⁴⁹
26. Any judgement or order given or made by a Sharia Court in a civil cause or matter may be enforced by seizure and sale of the property of the person against whom the judgement is entered therein, or by such other methods of enforcing judgements and orders as may be prescribed by Sharia Procedural Rules or rules made under this Law.⁵⁰
27. Sharia Courts shall carry into execution any decrees or orders of:⁵¹
 - (a) the Supreme Court;
 - (b) the Court of Appeal;
 - (c) the Federal High Court;
 - (d) any High Court;
 - (e) any Magistrate's Court;
 - (f) the Sharia Court of Appeal;
 - (g) any District Court;
 - (h) any Sharia Court established under or in pursuance of this Law;
 - (i) [any] tribunal established under the Constitution;
 - (j) such other courts as may be authorised by law to exercise jurisdiction on matters with respect to which the National Assembly may make laws; and
 - (k) such other courts as may be authorised by law to exercise jurisdiction at first instance or on appeal on matters with respect to which a House of Assembly

⁴⁸ Kano limits this to a power to "request any person present in Court to corroborate the evidence of any party as to what was said before the Court by that party."

⁴⁹ Gombe and Kaduna require this application to be made to a Kadi of the Sharia Court of Appeal. Bauchi allows application to a judge either of the High Court or the Sharia Court of Appeal, "to obtain leave of the court to serve that person with summons outside the jurisdiction." Kano says the Sharia Court "may make an endorsement to another court outside jurisdiction requesting that the evidence of such person be taken before such court." Kaduna omits Zamfara's proviso.

⁵⁰ Kano omits this subsection altogether.

⁵¹ Kaduna and Kano omit this subsection altogether. Katsina adds at the end this proviso: "Provided that the decree or order is in consonance with the principles of Islamic law." Yobe adds at the end "...which may be lawfully directed to them and shall execute all warrants and serve all process issued by any such courts for execution or service, and shall generally give such assistance to any of the aforesaid courts as may be required." Sokoto shortens the entire provision to this: "A Sharia Court shall carry out the orders and directions of any superior court of record when required so to do and properly within its jurisdiction."

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may make laws.

28. (i) In any cause or matter before a Sharia Court in which, pending final determination thereof, it shall be shown to the satisfaction of the Sharia Court that any property which is in dispute in the cause or matter is in danger of being wasted, damaged, alienated or otherwise wrongfully dealt with by any party to the cause or matter, the Sharia Court may cause an injunction to issue to such party commanding him to refrain from doing the particular act complained of, or alternatively, may take and keep such property in custody pending the determination of such cause or matter.
- (ii) The Sharia Court may order for the sale of perishable goods which are subject to litigation before it and shall keep the proceeds pending the determination of the case.⁵²
29. (i) A Sharia Court may, whenever it shall think it necessary so to do for the preservation, proper custody, or management of any property in dispute in a cause or matter, appoint any person as a receiver or manager to receive and take charge of the property and to deal with it in such manner as shall be directed by such Sharia Court.⁵³
- (a) Any person or persons appointed as receiver or manager under subsection (i) shall be responsible to the Sharia Court for all things done as receiver or manager, and shall account for or pay to the Sharia Court all moneys received in respect of any property referred to in subsection (i).
- (b) A Sharia Court may make such order as it shall think fit in regard to the remuneration of any person appointed as receiver or manager and shall pay to the party entitled thereto all moneys in the custody of the Sharia Court due in respect of any property referred to in subsection (i).
30. In any cause or matter it shall be lawful for a Sharia Court, on the application of either party or on its own motion:⁵⁴
- (a) to make such order as the court may think fit for the inspection by the Sharia Court in company of the parties or any witness, of any immovable or movable property the inspection of which may be material to the proper determination of the question in dispute; and
- (b) to give such direction as the court may think fit respecting such inspection.

PART IX – CONTROL OF SHARIA COURTS⁵⁵

31. (i) All Sharia Courts shall be subject to the general supervision and control of the office of the Grand Kadi.⁵⁶

⁵² Kaduna and Kano omit subsection (ii) of this section altogether.

⁵³ Jigawa calls the receiver or manager a *waly*. Kaduna calls him a *wakili*. Kano omits this section altogether.

⁵⁴ Kano omits this section altogether.

⁵⁵ Control of Sharia Courts: All States have provisions on this subject. Those of Bauchi, Gombe, Jigawa, Kaduna, and Yobe are put in separate Parts of their statutes which are substantially similar to Zamfara's; those of the other States differ in ways noted in the following notes.

⁵⁶ Supervision and control by Grand Kadi: All sharia states agree in vesting supervision and control of the Sharia Courts in the Grand Kadi or in "the office of the Grand Kadi." Kaduna

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- (ii) Without prejudice to the generality of subsection (i), if it shall appear to the office of the Grand Kadi that:
 - (a) it is necessary for the purpose of securing, as far as possible, a fair and impartial trial; or
 - (b) it is expedient in the interests of justice generally,that a particular cause or matter which is within the jurisdiction of a Sharia Court should not be tried by the said Sharia Court having jurisdiction to do so, the Grand Kadi may order that such cause or matter be transferred to another Sharia Court.⁵⁷

32. There may be appointed for this Law the following grades of inspectors:⁵⁸
- (i) Chief Inspector; Deputy Chief Inspector; Assistant Chief Inspector; [Principal Chief Inspector Grade I]; and Principal Chief Inspector Grade II.
 - (ii) All inspectors to be appointed under subsection (i) above must be learned in Islamic law;⁵⁹ *provided that* nothing in this provision shall preclude the Council of

adds a proviso: “*Provided that* no such supervision or control shall interfere with the judicial independence of the Sharia Court concerned”. Kaduna and Yobe both make clear that “The powers of the Grand Kadi under this section may be exercised by the Sharia Court of Appeal on its own motion or on the application of any party to a cause or matter in a Sharia Court.” Katsina says the Grand Kadi’s powers of supervision and control are to be exercised “...on the advice of the State Sharia Commission.” Kano, Kebbi, and Niger do not contain express provisions granting their Grand Kadis this power, but it is implicit in their provisions for inspectors who supervise and control the Sharia Courts and who themselves answer to the Grand Kadi.

⁵⁷ Grand Kadi’s power of transfer: Bauchi, Gombe, Jigawa, Kaduna, Katsina, and Yobe explicitly grant this power of transfer to the Grand Kadi; the other States do not, but see note to §34 on the powers of the inspectors who are subject to the Grand Kadi’s control.

⁵⁸ Appointment of Inspectors: All States except Katsina and Sokoto provide for the appointment of inspectors of Sharia Courts, whose function is to assist the Grand Kadi in his duties of supervision and control of these courts. Zamfara and Gombe require the appointment only of Chief Inspectors, see §33(i), leaving appointment of other grades to the discretion presumably of the JSCs; the other eight States providing for inspectors say full slates in all grades *shall* be appointed. Katsina says nothing on the subject of inspectors, evidently leaving it to the Sharia Commission to assist the Grand Kadi in the supervision and control of the Sharia Courts, see note to §31 above. Instead of inspectors, Sokoto provides for the appointment of a “*wali* of Sharia Court” who assists the Grand Kadi with this work. In addition to inspectors Kano has a small number of *mufitis* who also assist the Grand Kadi with the supervision and control of the Sharia Courts, see note to §4(i). Most States having inspectors state that they shall be appointed and if necessary disciplined by the JSC, in some cases on the advice of the Council of Ulama; only Borno and Zamfara omit this provision, although they no doubt follow it in practice. Sokoto’s *wali* too is appointed by the JSC, on the advice of the Committee on Religious Affairs.

⁵⁹ Qualifications of Inspectors: Bauchi and Yobe agree with Zamfara in requiring only that inspectors be “learned in Islamic law.” Jigawa adds to this that an inspector must “possess superior qualification to the Sharia Court alkali” he is to inspect. Gombe, Kebbi, and Niger make the qualification to be an inspector the same as that to be an alkali of the grade of court to be inspected. Kano’s requirements are higher than any other State’s: its inspectors must be “(a) of sound moral character; (b) a holder of a law/Sharia degree from recognized university or institution or a degree in Arabic and Islamic Studies; and (c) he has considerable experience in the practice of Islamic Law.” Borno: “...he is of good moral character, knowledgeable in Islamic jurisprudence or has considerable experience in the Islamic law, practice and procedure.” Kaduna: “...he is a male, Moslem, sane and of impeccable character.” Sokoto’s *wali* of Sharia Court must

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Ulama from screening the persons to be appointed inspectors to the appropriate body or authority before any appointment is made; *provided also* that nothing in this section will preclude the Council from screening the persons to the appropriate authority for any disciplinary action to be taken against an inspector.⁶⁰

33. (i) A Chief Inspector for Sharia Courts shall be appointed.
(ii) Subject to the general or special directions of the Grand Kadi, [the Chief Inspector shall be responsible for] the organization, guidance and supervision of Sharia Courts [and] such other functions as may from time to time be conferred upon him by the Grand Kadi.
(iii) [The Chief Inspector shall have] the powers of an inspector under this Law.⁶¹
34. An inspector may require a Sharia Court to submit a report to him in any case before that court.⁶²
35. An inspector shall at all times have access to all Sharia Courts within the State and to the records and proceedings of such courts: *provided that* no inspector of a grade less than that of Principal Inspector shall have access to an Upper Sharia Court or to the records and proceedings of such court.
36. (i) A Chief Inspector shall have power at any stage of the proceedings before final judgement, either on his own motion or on the application of any party to [the] cause or matter to transfer the matter to another Sharia Court and to report such decision to the Grand Kadi.
(a) If the cause or matter be one which in his opinion ought for any reason to be transferred from a Sharia Court to a Magistrate's Court or High Court, he may report the case to the Grand Kadi;
Provided that the Grand Kadi may also transfer a matter from the High Court or Magistrate's Court or District Court to the Sharia Court for its determination.
(ii) The court to which the cause or matter is transferred shall be informed in writing of the reasons for making the order of transfer and may thereafter take any course

either be a retired judge of an Upper Area Court or of the Sharia Court of Appeal, or qualified to be a judge of one of these courts or of an Upper Sharia Court, or "he is recommended by the State Committee on Religious Affairs, and found fit by the State Judicial Service Commission."

⁶⁰ Role of Councils of Ulama and related bodies in appointment and discipline of Inspectors: Only Zamfara, Gombe and Bauchi involve other bodies in the appointment and/or discipline of inspectors (in Gombe, like Zamfara, it is the Council of Ulama; in Bauchi it is the Sharia Commission). In Borno, Kano, Kebbi, and Niger these appointments, and presumably disciplinary action, are made by the JSC subject to or on the recommendation of the Grand Kadi. Jigawa, Kaduna, and Yobe involve no body except the JSC.

⁶¹ This entire section is garbled in Zamfara's statute as gazetted. It is reconstructed here according to its evident intention and the parallel provisions of the Area Courts Law and the Sharia Courts Laws of other States.

⁶² Powers of Inspectors. The powers of inspectors laid down in §§34-39 of Zamfara's law, and the limits of §40, are the same in all States with inspectors, with minor variations which we shall not note here; except that Borno and Kano spell none of this out, leaving it to their JSCs to specify the functions of their inspectors; and Kebbi and Niger go no farther than Zamfara's §35, leaving the rest to the directives of their Grand Kadis

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with regard to the cause or matter which it considers just and equitable under Islamic law principles.

- (iii) Where a cause or matter is reported to the Grand Kadi under the provisions of paragraph (a) of subsection (i) the Grand Kadi shall direct in what mode and in what court the cause or matter shall be heard and determined.
 - (iv) Where a cause or matter is transferred from a Sharia Court to any other court under the provisions of this section no summons fee shall be payable in the court to which the cause or matter is transferred if the appropriate summons fee has been paid in the Sharia Court from which the cause or matter is transferred.
37. (i) Every order of transfer shall operate as a stay of proceedings before the Sharia Court from which the proceedings are ordered to be transferred in any cause or matter to which the order extends or is applicable, and the process and proceedings in every such cause or matter, and a certified copy of the record shall be transmitted to the court to which the same shall be transferred and henceforth all proceedings in the in the cause or matters be taken in such court as if the cause or matter had been commenced therein.
- (ii) Every report made under paragraph (a) of subsection (i) of section 36 shall operate to suspend the proceedings the subject of such report until the directions of the Grand Kadi has been given under subsection (iv) [sic: (iii)] of the same section.
38. (i) An inspector, if in his opinion there has been a miscarriage of justice in any case before a Sharia Court to which he has access under the provisions of section 35, may of his own motion or in his absolute discretion on the application of any person concerned report that case to the court to which an appeal in such case would lie.
- (ii) Such report shall be made in writing and shall record the particulars of the judgement or the order or the case, and the reason for its being reported and shall be accompanied by a copy of the record of the case.
- (iii) The court to which the case has been reported shall review it, and may:
- A. (a) reverse, vary or confirm the decision given;
 - (b) make such order [or pass such sentence] in such proceedings as the lower court could have made or passed; and
 - (c) make such further order, which may include an order that a person sentenced to imprisonment therein be released on bail, as may be necessary or as the justice of the case may require: *provided that* no sentence of fine or imprisonment or other sentence in a criminal proceeding shall be increased, and no order on a civil proceeding to the prejudice of any party thereto shall be made without an opportunity being given to the convicted person or such party of being heard;
 - B. (a) set aside the conviction and sentence or judgement or other order of the lower court; and
 - (b) when it considers desirable, order the case to be retried either by the same court or any other Sharia Court of competent jurisdiction or by any Magistrate's Court or District Court, or if the case is one that appears proper to be heard by the High Court, report the case to the High Court.
- (iv) In the exercise of its powers of review under this section a court may hear such additional evidence as it considers necessary for the just disposal of the case.

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- (v) An inspector who has reported any case to a court under the provisions of this section shall have power to make an interim order suspending the operation of any sentence or order made by the lower court in such case, or admitting to bail any person sentenced to imprisonment therein by the lower court.
 - (vi) A person aggrieved by a decision of the High Court in review under this section may appeal therefrom as if it were a decision in an appeal brought to the High Court from some other court.
39. Where any proceedings are quashed and an order for rehearing is made under the provisions of this Part no plea of *res judicata* or *autrefois acquit* or *autrefois convict* shall be entertained in respect of such proceedings in any subsequent proceedings.
40. No inspector shall exercise the powers conferred upon him by this Part in any case where a party aggrieved by the decision of the Sharia Court has appealed therefrom or otherwise instituted any appeal proceedings in respect thereof.

PART X -- APPEALS⁶³

41. (i) Appeals shall lie from all the decisions or orders of the lower Sharia Courts in civil or criminal proceedings to the Upper Sharia Court sitting in its appellate jurisdiction; *provided that* both the lower Sharia Courts and the Upper Sharia Court referred to in this section shall belong to the same territorial jurisdiction.⁶⁴
- (ii) The Upper Sharia Court under this Law shall, after rehearing the whole case or not, reverse, vary or confirm the decision appealed against, or quash any proceedings brought before it and in either case where it considers it desirable, order a retrial of the case before the court of first instance or before another court of competent jurisdiction.⁶⁵

⁶³ Appeals: In all States the Sharia Court appellate systems are the same as in Zamfara: appeals in all classes of cases go from the lower to the Upper Sharia Courts sitting in their appellate jurisdiction (here, per §41); and appeals, again in all classes of cases, go from the Upper Sharia Courts, whether sitting in their original or their appellate jurisdiction, to the Sharia Court of Appeal (here, per §42). All States except Jigawa, Kaduna, and Sokoto also have a separate section (here, §43) explicitly conferring jurisdiction on the Sharia Court of Appeal to hear appeals from the inferior Sharia Courts in all matters, civil and criminal. Kaduna (and, perhaps redundantly, some other States) has done this by a separate statute; in Jigawa and Sokoto it is left to be implied from other provisions of their Sharia Courts laws. Other variations in the provisions related to appeals are noted in what follows.

⁶⁴ Where there are three grades of inferior Sharia Courts: Recall that Bauchi, Jigawa, and Zamfara each have two grades of courts below their Upper Sharia Courts. In Bauchi and Zamfara appeals from both these grades go straight to the Upper Sharia Courts. In Jigawa, appeals from the lowest grade go first to the intermediate grade, and then to the Upper Sharia Courts.

⁶⁵ Powers of appellate courts: This section of Zamfara's statute on its face applies only to its Upper Sharia Courts. Kaduna explicitly extends the powers conferred also to its Sharia Court of Appeal. Kaduna adds that "In the exercise of its powers under this section the [appellate court] may hear such additional evidence as it considers necessary for the just disposal of the case and the court shall record its reasons for exercising its power under this subsection." Bauchi, Jigawa, Katsina, and Yobe have the same provision as Zamfara. Gombe, Kebbi, and Niger go much farther, spelling out in lengthy separate sections (which we do not explore further here) the powers of "any court exercising appellate jurisdiction" in civil and criminal matters. Borno, Kano and Sokoto have no provisions relating to the powers of appellate courts. All States have

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42. Appeals shall lie from the decisions or orders of the Upper Sharia Court sitting in its original or appellate jurisdiction in all civil or criminal proceedings to the Sharia Court of Appeal of the State.
43. The Sharia Court of Appeal shall have the jurisdiction and power to hear and determine all appeals from the decisions or orders of an Upper Sharia Court sitting in its original or appellate jurisdiction in all civil or criminal proceedings as provided for in this Law.
44. For the purposes of such appeals, a party aggrieved shall include the prosecutor in a criminal cause.
45. Subject to the provisions of this Law, no appeal shall lie from a Sharia Court at the instance of any person at whose request a case has been reported to a court under this Law.
46. Leave to appeal out of time to an appellate court may be given by such court upon such terms as such court shall deem just.⁶⁶
47. Where an appeal lies from an order or decision of a Sharia Court the court to which the appeal is brought shall have power to inspect the records or books of such Sharia Court relative to the appeal.

PART XI – OFFENCES⁶⁷

48. (i) Any officer of a Sharia Court who has a duty to perform under the provisions of subsection (ii) of section 17 and who wilfully or by neglect or omission loses the opportunity of performing such duty shall be guilty of an offence and shall be liable on imprisonment for period not exceeding twelve months or to a fine of two thousand naira or both such fine and imprisonment.
- (ii) In addition or as an alternative to any penalty imposed under the provisions of

essentially identical Sharia Court of Appeal laws, which give the Sharia Courts of Appeal “all the powers, authority and jurisdiction of every [inferior] court of which the judgment, order or decision is the subject of an appeal to the Court, [including] all the powers conferred upon [inferior] courts exercising appellate jurisdiction....”

⁶⁶ Time for appeal: Zamfara, Gombe, Jigawa, Kaduna, Katsina, and Yobe do not specify any time within which an appeal must be taken; this is left for rules of court. Bauchi, Borno, Kano, Kebbi, Niger, and Sokoto all give thirty days. All States except Gombe, Kano, and Sokoto contain a provision like Zamfara’s allowing appeals out of time on such terms as the appellate court deems just. Bauchi’s statute uniquely contains the following further interesting provision: “*Provided that* whenever a husband appeals against the dissolution of his marriage his appeal shall operate as stay to any marriage to be contracted by the wife in whose favour the dissolution is effected by the lower court, pending the final determination of the appeal if the appellant serves his respondent wife with his notice of appeal before the expiration of her waiting period (*‘iddah*). *Provided also* that [if] after the expiration of 45 days the appellant fails to take any step to prosecute the appeal, the order of stay is deemed discharged.”

⁶⁷ Offences related to official duties or functions: All States except Borno, Kebbi, Niger, and Sokoto have essentially these same provisions, except that Kano omits the second, on exercise of judicial power without authority. Borno, Kebbi, Niger, and Sokoto include nothing on this subject at all. Kaduna uniquely adds (§58) that “Subject to the provisions of section 60 [on rules of court] any proceedings arising under the provisions of this Part may be brought before a Sharia Court.”

subsection (i) of this section a court may, if it thinks fit, order an officer convicted of an offence under that subsection to pay the whole or a part of any damages sustained by any person as a result of such offence, and the order shall be enforced as an order directing the payment of money.

- (iii) Any person not being a duly appointed bailiff or messenger or a police officer acting under the provisions of subsection (ii) of section 17 who shall carry out or purport or attempt to carry out any of the duties specified in subsection (ii) of section 17 shall be guilty of an offence and shall be liable on conviction to a fine not exceeding two thousand naira or to imprisonment for a period not exceeding twelve months or to both such fine and imprisonment. *Provided that* nothing in the provision of this Law shall be construed to preclude a member of the Joint Aid Monitoring Group duly appointed from performing the duties specified in section 17(ii) of this Law.
49. (i) Any person who shall exercise or attempt to exercise judicial powers within the area of the jurisdiction of a duly constituted Sharia Court, except in accordance with the provisions of any written law, or who shall sit as member of such court without due authority, shall be liable on conviction before a High Court, or the Upper Sharia Court to a fine not exceeding two thousand naira or to imprisonment for a period not exceeding twelve months or to both such fine and imprisonment.
- (ii) Nothing contained in this section shall be deemed to prohibit any person from adjudicating as an arbitrator upon any civil matter in dispute where the parties thereto have agreed to submit the dispute to his decision.
- (iii) No prosecution under this section shall be instituted without the consent in writing of the Attorney-General.

PART XII – MISCELLANEOUS⁶⁸

50. No proceedings in a Sharia Court and no summons, warrant, process, order or decree issued or made thereby shall be varied or declared void upon appeal or revision solely by reason of any defect in procedure or want of form but every court or authority established under this Law and exercising powers of appeal or revision under this Law shall decide all matters according to substantial justice under the principles of Islamic law.⁶⁹

⁶⁸ Miscellaneous provisions in other States: Instead of or in addition to the two miscellaneous provisions in Zamfara’s law, discussed in the following notes, other Sharia Courts laws have the following: (a) *Repealing Area Courts Laws*: Bauchi, Jigawa, Kano, Katsina, Kebbi, Niger. (b) *Saving cases pending in Area Courts*: Bauchi, Jigawa, Kaduna, Kano, Katsina. (c) *Saving jobs of Area Court judges and other staff*: Jigawa. (d) *Repealing “the provisions of the following Laws [Area Courts, Civil Liability, District Court, High Court] and any other legislation made by the State Assembly which define customary law [sic] to include Islamic or Muslim law”*: Jigawa, Kano, Kebbi, Niger, Sokoto (these repeals are actually aimed at definitions in the enumerated laws stating that “ ‘native law and custom’ includes Moslem law”). (e) *Making the repugnancy doctrine inapplicable in Sharia Courts*: Borno. (f) *Making common law and doctrines of equity inapplicable in Sharia Courts*: Kebbi, Niger, Sokoto. (g) *Laying down that “Islamic and Muslim laws shall be deemed to be statutory laws in all existing laws in the State”*: Kano.

⁶⁹ Substantial justice not technicalities: Bauchi, Gombe, Jigawa, Kaduna, Katsina, and Yobe contain this same provision (with minor variations in wording), sometimes in their Parts on

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51. Nothing in this Law shall be deemed to affect the powers or functions of the High Courts, Magistrate’s Courts, District Courts in the exercise of their criminal and civil jurisdictions or any right or power in any officer or person to institute criminal or civil proceedings in those courts.⁷⁰

c. Collected provisions on two subjects

This subsection gives in full the provisions from all the court-related laws enacted by the sharia states (and in one case the federal constitution) on two topics – (1) appointment, discipline and dismissal of alqadis, and (2) minimum qualifications of alqadis. Unless otherwise indicated, all quotations are from the Sharia Courts laws listed in section a, namely: Bauchi (1), Borno (1), Gombe (1), Jigawa (1), Kaduna (3), Kano (2), Katsina (2), Kebbi (2), Niger (6), Sokoto (1), Yobe (1), Zamfara (1). Amendments to the basic laws are noted separately.

(1) Appointment, discipline and dismissal of alqadis:

Federal Constitution	<p>Art. 197: (1) There shall be established for each State of the Federation the following bodies, namely— ... (c) State Judicial Service Commission. (2) The composition and powers of each body established by subsection (1) of this section are as set out in Part II of the Third Schedule to this Constitution.</p> <p>III^d Sched. Part II(C): State Judicial Service Commission</p> <p>§5: A State Judicial Service Commission shall comprise the following members—(a) the Chief Judge of the State, who shall be the Chairman; (b) the Attorney-General of the State; (c) the Grand Kadi of the Sharia Court of Appeal of the State, if any; (d) the President of the Customary Court of Appeal of the State, if any; (e) two members, who are legal practitioners, and who have been qualified to practice as legal practitioners in Nigeria for not less than ten</p>
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appeals, sometimes, as in Zamfara, in this Part on miscellaneous provisions. The other States omit this provision entirely.

⁷⁰ Jurisdiction of “English” courts, and rights of Muslims and non-Muslims to use them, not affected: Bauchi, Gombe, Jigawa, Katsina, and Yobe follow Zamfara in including this same section or its equivalent; the other six States have nothing like it. The corresponding sections in Gombe and Yobe are identical to Zamfara’s, and Jigawa’s is probably intended to be identical too but has been garbled in the typing. Bauchi puts it this way: “(i) Nothing in this Law shall be deemed to have precluded a non-Muslim(s) from instituting an action against a Muslim(s) in the High Court, Magistrate Courts or District Courts; (ii) Where a Muslim is suing a non-Muslim, such Muslim shall be free to sue the non-Muslim in a court other than a Sharia Court.” Katsina says: “Nothing in this Law shall be deemed to have precluded non-Muslims from institution [of] action in the High Court, Magistrate’s Court or District Court. *Provided that* where a Muslim is suing a non-Muslim, such a Muslim shall be free to sue the non-Muslim in a court other than Sharia Court.” Zamfara has subsequently legislated further in this area, see its “Magistrates Courts (Restriction of Powers) Law 2002”, reproduced and discussed below. Yobe has added an interesting variation. In a separate section (45) it provides that: “As from the commencement of this law the provisions of the Area Court Law are hereby rendered inapplicable to the following persons: 1. Persons professing the Islamic faith; 2. Any other person who voluntarily consents to the jurisdiction of the Sharia Court.” So evidently although Muslims can sue in the “English” courts in Yobe State, they cannot sue in any Area Courts still remaining (Yobe has not repealed its Area Courts Law).

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	<p>years; and (f) two other persons, not being legal practitioners, who in the opinion of the Governor are of unquestionable integrity.</p> <p>§6: The Commission shall have power to— ... (c) appoint, dismiss and exercise disciplinary control over...magistrates, judges and members of Area Courts and Customary Courts and all other members of the staff of the judicial service of the State not otherwise specified in this Constitution.</p>
Bauchi	<p>§8: (i) The appointment, dismissal and disciplinary control over Sharia Court judges and assessors referred to in this law shall be exercised by the Judicial Service Commission [assessors are not mentioned again in the law].</p> <p><i>Sharia Commission Law 2001</i>: §8: The functions of the [Sharia] Commission shall include: ... (k) screen and nominate names of judges to be appointed by the Judicial Service Commission; (l) advise and or recommend to the State Judicial Service Commission for the discipline, suspension, termination, interdiction or dismissal of a Sharia Court judge or inspector of Sharia Court; ...</p>
Borno	<p>§4: (1) Subject to the provision of section 5 [on qualifications], the Judicial Service Commission of the State shall on the recommendation of the Grand Kadi of the State appoint judges and presiding judges of the Sharia and Upper Sharia Courts. <i>Provided that</i> the persons recommended shall be screened by the State Council of Ulama.</p> <p>§25: The Council [of Ulama] established under section 22 hereto shall have the following powers and functions: (1) screening of persons for appointment as Sharia and Upper Sharia Court judges; ...</p> <p><i>Sharia Administration of Justice (Amendment) Law 2001</i>: §2: Notwithstanding any provision in the Sharia Administration of Justice Law 2000 or any other law, the State Judicial Service Commission may, with the approval of the Governor, convert any number of Area Court or Upper Area Court judges to Sharia Court or Upper Sharia Court judges as it deemed necessary or expedient. §3: In exercising its powers under section 2 hereof, the Judicial Service Commission shall have regard for Sharia learning, experience, integrity and conduct.</p> <p>[Nothing on discipline, dismissal]</p>
Gombe	<p>§5: (1) Subject to the provisions of any written law, the Judicial Service Commission may dismiss, suspend or exercise disciplinary control over Sharia judges, inspectors and the registrars: (a) who shall appear to have abused his power or to be unworthy or incapable of exercising the same justly, or (b) for other sufficient reason....</p> <p>§6: The function of the Council [of Ulama] shall be to screen, advise and recommend to the Judicial Service Commission such competent, qualified, fit and proper persons to be appointed as judges, inspectors and the registrars found worthy in character and in learning whose discipline, dismissal and or termination shall be recommended by the said Council.</p>
Jigawa	<p>§11: (1) The appointment, promotion [and] disciplinary control over alkalas referred to in this law shall be exercised by the State Judicial Service Commission.</p>

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	<i>Council of Ulama (Establishment) Law 2004</i> : §5: The Council shall perform the following functions: ... (c) advising the State Judicial Service Commission on suitable persons for appointment into the office of an alkali of the Sharia Court or any other similar office; ...
Kaduna	§9: The Judicial Service Commission may dismiss, suspend or exercise any disciplinary control over any alkali or member of a Sharia Court who is unable to discharge the functions of his office or appointment (whether arising from infirmity of mind or body) or for misconduct or contravention of the code of conduct. [Nothing on appointment]
Kano	Nil.
Katsina	§12: The appointment, dismissal and disciplinary control over Sharia Court alkalis and members referred to in this Law shall be exercised by the State Judicial Service Commission. <i>Provided that</i> nothing in this section shall preclude the State Sharia Commission from advising on and recommending competent, qualified, fit and proper persons both in learning and character to be appointed. <i>Sharia Commission Law</i> : §8: The Commission shall be responsible for: ... (c) advising the Judicial Service Commission on the training and employment of relevant personnel for the courts established under the Sharia Courts Law; ...
Kebbi	§6: Appointment of a person to the office of a judge of the Upper Sharia Court or Sharia Court, respectively, shall be made by the Judicial Service Commission on the recommendation of the Grand Kadi after due consultation with Preaching Board members.
Niger	§6: [as in Kebbi, except that the last clause is changed to read: “after due consultation with the Sharia Commission and the State Advisory Council of Ulama.”] <i>Sharia Commission Law</i> : §8: The Commission shall be responsible for: ... (c) advising the Judicial Service Commission on the training and employment of relevant personnel for the courts established under the Sharia Courts Law; ...
Sokoto	§3: ... (3) The appointment of a person to the post of the president and members of the Upper Sharia Court and alkali of the Lower Sharia Court shall be made by the Judicial Service Commission. §13. There shall be appointed by the Judicial Service Commission on the recommendation of the Grand Kadi, Wali of Sharia Court. §14. The functions of Wali shall include: (a) advising the Grand Kadi on the appointment, performance, and discipline of the president and members of the Upper Sharia Court and alkali of the Lower Sharia Court;
Yobe	§8: (1) The appointment, dismissal and disciplinary control over Sharia Court alkalis referred to in this Law shall be exercised by the State Judicial Service Commission.

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Zamfara	<p>§8: (i) The appointment, dismissal and disciplinary control over Sharia Court alkalis and assessors referred to in this Law shall be exercised by the State Judicial Service Commission [assessors are not mentioned again in the law]. <i>Provided that</i> nothing in this section shall preclude the State Council of Ulama from screening, advising and recommending competent, qualified, fit and proper persons both in learning and in character to be appointed and/or disciplined as the case may be.</p> <p><i>Council of Ulama (Establishment) Law 2003: §4: The Council shall be responsible for the screening, recommendation and advising the qualification, competence and fitness of any person, both in character and learning to be appointed as a Sharia Court alkali under the Sharia Court Establishment Law 1999.</i></p>
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(2) Minimum qualifications of alkalis:

Bauchi	Nil.
Borno	<p>§2: In this Law unless the context otherwise requires: ... “qualification” means and includes a degree in Islamic law from a recognised university, a certificate from the Mohammed Goni College of Legal and Islamic Studies or a diploma or certificate in Sharia and Civil Law from a recognised institution.</p> <p>§5: (1) A person shall be qualified to hold the office of the president or judge of the Upper Sharia Court if: (i) he is a Moslem (ii) he is not less than 40 years of age (iii) he is a retired or serving Upper Area Court judge, and (iv) he has an impeccable record of Islamic piety; or (v) he has obtained qualification in Islamic law from recognised institution and is a legal practitioner in Nigeria and has been so qualified for a period of not less than seven years. (vi) if he is an indigene of Borno State. (2) A person shall be qualified for appointment as a judge of the Sharia Court if: (i) he is a Moslem (ii) he is not less than 35 years of age (iii) he is a retired or serving Area Court judge; (iv) he has an impeccable record of Islamic piety; or (v) he has obtained qualification in Islamic law from recognised institution and is a legal practitioner in Nigeria and has been so qualified for a period of not less than five years. (vi) if he is an indigene of Borno State.</p> <p><i>Sharia Administration of Justice (Amendment) Law 2001: §2: Notwithstanding any provision in the Sharia Administration of Justice Law 2000 or any other law, the State Judicial Service Commission may, with the approval of the Governor, convert any number of Area Court or Upper Area Court judges to Sharia Court or Upper Sharia Court judges as it deemed necessary or expedient. §3: In exercising its powers under section 2 hereof, the Judicial Service Commission shall have regard for Sharia learning, experience, integrity and conduct.</i></p>
Gombe	<p>§7: As regards judges and inspectors the Council [of Ulama] shall ascertain that: (a) a candidate has obtained qualification in Islamic law from an institution approved by the Council; (b) he has held the qualification for a period of not less than five years; (c) he has considerable experience in the knowledge of Islamic law; and (d) he is a distinguished scholar in Islamic law. (e) He shall be of Muslim faith.</p>

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Jigawa	<p>§11: ... (2) A person shall not be qualified to hold the office of a judge of the Sharia Court unless: (a) he is a Moslem; (b) he is not less than 30 years of age; and (c) he is a retired or serving Upper Area Court judge with impeccable record of Islamic piety; or (d) he is a legal practitioner in Nigeria and has been so qualified for a period of not less than five (5) years and has a recognised qualification in Islamic law from an institution acceptable to the Judicial Service Commission. (3) In this Law, “recognised qualification” includes: (a) a degree in Islamic law from a recognised university; (b) a certificate from the former Kano (Islamic) Law School; (c) a diploma in Sharia and Civil Law from a recognised university, college or institution.</p> <p><i>Sharia Courts (Administration of Justice and Certain Consequential Changes) Law (Amendment) Law 2001</i> added a new §50: Notwithstanding the provisions of section 10 [sic: 11] of this Law and subject to the provisions of the Judicial Service Commission Law nothing shall be construed: (a) to affect the appointment, tenure of office, powers or status of any person holding office of an Area Court judge on the coming into force of this Law, such appointments shall be deemed to have been made under this Law, save those Area Court judges that may be assigned to other duties by the Judicial Service Commission of the State; (b) to affect the appointment, tenure of office or powers of any registrar or other office of the court appointed under the Area Courts Law, such appointment shall be deemed to have been made under the provisions of this Law.</p>
Kaduna	<p>§7: (1) Subject to the provisions of this Law, a person shall not be qualified to be appointed as alkali of a Sharia Court unless he has any of the following qualifications: (a) Bachelor of Laws degree with specialisation in Islamic law from a recognised university with at least two years practical experience; (b) Diploma in Sharia and Civil Law from a recognised university or institution with at least five years practical experience; or (c) degree in Arabic or Islamic Studies from a recognised university with at least five years practical experience. (2) A person shall not be qualified to be an alkali unless he is a Muslim, male, sane and possesses impeccable character. (3) A person shall not be qualified to be appointed as a <i>mufti</i> unless he is versed in Islamic law.</p> <p><i>Sharia Courts (Amendment) Law 2001</i> added a new subsection (4) to §7: (4) Without prejudice to the provisions of subsection (1) a person may be eligible for appointment as alkali or a <i>mufti</i> if: (i) he acquires considerable experience and knowledge of Islamic law; or (ii) he is a distinguished scholar of Islamic law. <i>Provided that</i> a person shall not be qualified for appointment as alkali or <i>mufti</i> unless he sits and passes examination and interview prepared and conducted by a competent committee set up for this purpose by the Judicial Service Commission of the State.</p>
Kano	<p>§11: (1) A person shall not be qualified to hold the office of an alkali of either a Sharia Court or an Upper Sharia Court unless: (a) he is a Muslim; (b) he is an adult, and has sound moral character, and ; or [sic] (c) any person who obtains a recognised qualification in Islamic law from an institution acceptable to the Judicial Service Commission; or (d) he is a legal practitioner in Nigeria with sound knowledge of Islamic law and has been so qualified for a period of not</p>

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	less than 7 years, in the case of an Upper Sharia Court alkali and 5 years in case of a Sharia Court alkali. (2) In this Law “recognised qualification” includes the following: (a) a degree in Islamic law from a recognised university; a diploma in Sharia and Civil Law from a recognised university, college or institution; (c) a certificate from the former Kano (Islamic) Law School.
Katsina	§13: (1) Subject to and without prejudice to the provisions of this Law, a person shall not be qualified to hold office as a Sharia Court alkali unless, in the opinion of the State Judicial Service Commission he has attended and obtained from a recognised institution of learning—(a) a Bachelors Degree (LL.B.) in Sharia; (b) a Diploma Certificate [sic] in Sharia with at least five years working experience. (2) Without prejudice to the provisions of subsection (1), a person may be eligible for appointment as an alkali if—(a) he has considerable experience in the knowledge of Islamic law; (b) he is a distinguished scholar of Islamic law; (c) he has attained the age of forty years. <i>Provided that</i> no person shall be qualified for appointment as an alkali unless he sits and passes an interview conducted by the [Sharia] Commission.
Kebbi	§7: (1) A person shall not be qualified for appointment as a judge of the Upper Sharia Court unless he is a male Muslim, with impeccable record of Islamic piety and: (a) is a suitably qualified person who has held office of a judge of Area Court for a period of not less than 7 years or is qualified to hold office of a judge of Area Court and has obtained a qualification in Islamic law from an institution recognised by the Judicial Service Commission; or (b) is a legal practitioner in Nigeria with bias in Sharia law with considerable experience in Islamic law and has been so qualified for a period of not less than 7 years; or (c) has any qualification in Islamic law recognised by the Judicial Service Commission. (2) A person shall not be qualified for appointment as a judge of Sharia Court unless he is a male Muslim, with impeccable record of Islamic piety and: (a) is a suitably qualified person who has held office of a judge of Area Court for a period of not less than 5 years or is qualified to hold office of a judge of Area Court and has obtained a qualification in Islamic law from an institution recognised by the Judicial Service Commission; or (b) is a legal practitioner with bias in Sharia law and has been so qualified for a period of not less than 5 years; or (c) has any qualification in Islamic law recognised by the Judicial Service Commission. (3) Recognised qualification as referred to in this section includes: (a) a degree in Islamic law from a recognised university; or (b) a certificate from the former Kano (Islamic) Law School; or (c) a diploma in Sharia and Civil Law from a recognised university, college or institution.
Niger	§7: [as in Kebbi, with a few minor variations, the chief of which are to require a judge of a Sharia Court to be a male Muslims “with impeccable record of Islamic <i>righteousness and piety</i> ”, and to put the number of years specified in subsection (1)(a) at 10 rather than 7.]
Sokoto	§4: (1) A person shall not be qualified to hold the office of a president or member of the Upper Sharia Court unless: (a) he is a serving or retired Upper Area Court judge, or (b) he is a legal practitioner in Nigeria and has been so qualified for a period of not less than seven (7) years and has obtained a

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	<p>recognised qualification in Islamic law from an institution acceptable to the Judicial Service Commission, or (c) he has been an alkali of the Lower Sharia Court for a period of not less than five (5) years. (2) A person shall not be qualified to hold the office of an alkali of the Lower Sharia Court unless: (a) he is a serving or retired Area Court judge, or (b) he is a legal practitioner in Nigeria and has been so qualified for a period of not less than five (5) years and has a recognised qualification in Islamic law acceptable to the Judicial Service Commission, [or] (c) any other relevant qualification acceptable to the Judicial Service Commission. (3) Recognised qualification in this Law means and includes: (a) a degree in Islamic law from a recognised University; or (b) a certificate from the former Kano (Islamic) Law School; or (c) a diploma or certificate in Sharia and Civil Law from a recognised university, college or institution; or (d) a certificate from a School for Arabic Studies or Higher Islamic Studies Certificate; and (e) sufficient knowledge of Islamic law and practical training.</p>
Yobe	<p>§8: ... (2) Subject to and without prejudice to the provision of subsection (1) of this section [saying alkalis are to be appointed by the Judicial Service Commission], a person shall not be qualified to hold office as a Sharia Court alkali under this Law unless, in the opinion of the State Judicial Service Commission, he has attended and obtained a recognised qualification in Islamic law from an institution approved by the Commission and has held the qualification for a period of not less than five years; and/or he has: (a) considerable experience in the practice of Islamic law, or (b) he is a distinguished scholar of Islamic law.</p>
Zamfara	<p>§8: ... (ii) Subject to and without prejudice to the provision of subsection (i) of section 8 of this Law [saying alkalis are to be appointed by the Judicial Service Commission], a person shall not be qualified to hold office as a Sharia Court alkali under this Law unless, in the opinion of the State Council of Ulama, he has attended and has obtained a recognized qualification in Islamic law from an institution approved by the Council and has held the qualification for a period of not less than five years; and/or in the opinion of the Council of Ulama he either has: (a) considerable experience in the knowledge of Islamic law, or (b) he is a distinguished scholar of Islamic law.</p> <p><i>Council of Ulama (Establishment) Law 2003</i>: §4: The Council shall be responsible for the screening, recommendation and advising the qualification, competence and fitness of any person, both in character and learning to be appointed as a Sharia Court alkali under the Sharia Court Establishment Law 1999.</p>

**d. Conversion tables: Area Courts Edicts of 1967-68
to Zamfara State Sharia Courts Law 1999 and vice versa**

The drafters of the Sharia Courts laws drew heavily on the Area Courts edicts promulgated in the northern States in 1967-68 (No. 2 of 1967 in each of Kwara, North-Western, North-Central, and Kano States, No. 1 of 1968 in North-Eastern State, and No. 4 of 1968 in Benue-Plateau State, all as they then were), which remain in effect in all northern States (as variously amended) except in the sharia states where they have been

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repealed. The tables in this section show the relationships between the Area Courts edicts and Zamfara State's Sharia Courts Law by correlating the sections (and in some cases subsections) of the two laws.

(1) Area Courts Edicts 1967-68 to Zamfara State Sharia Courts Law 1999 (with titles of Parts as in Area Courts Edicts):

AC §	ZSC §	Remarks
PART I – PRELIMINARY		
1	1	title and commencement
2	2	interpretation
PART II – ESTABLISHMENT AND CONSTITUTION OF AREA COURTS		
3	3	establishment, warrants, etc
4(1)-(3)	4	constitution
4(4)	8(iii)	judges are in public service of State
5	-	assessors in ACs
6	8(i)	AC: discipline of members of ACs ZSC: appointment and discipline of alikalis of SCs
7	-	sessions
8	-	revenue of ACs
9	8(iv)	indemnity of judges
PART III – STAFF OF AREA COURTS		
10	15	staff of the courts
11	16	delegation of duties
12	17	bailiffs and messengers
13	18	indemnity of staff
PART IV – JURISDICTION OF AREA COURTS		
14(1)	5(i), (iv)	subject matter jurisdiction
14(2)	-	submission to personal jurisdiction by institution of proceedings
15	5(ii)	personal jurisdiction
16	6	adjudication of disputes about personal jurisdiction
17	3(i)	grades of courts
18	5(iii)	jurisdiction as per warrant
19	-	place of trial
20	7(i)	AC: applicable law in var. classes of civil cases
21		ZSC: applicable laws and rules of procedure, all cases
22	7(i), 5(i)(c)	AC: applicable law in criminal cases ZSC: applicable laws and rules of procedure, all cases; House of Assembly to enact criminal laws
23	-	guardianship of children
24	-	jurisdiction of ACs to enforce written laws
25	-	Governor may give ACs powers and duties of other courts
PART V – PRACTICE AND PROCEDURE IN AREA COURTS		

AC §	ZSC §	Remarks
26	7(1)	AC: practice and procedure generally ZSC: applicable laws and rules of procedure
27	5(ii)(c)	AC: jurisdiction of AC need not be shown on record ZSC: consent of non-Muslim to jurisdiction must be recorded
28	7(iii)	AC: no legal practitioners in ACs, but other reps. may appear ZSC: criminal defendants entitled to rep. by legal practitioner
29	7(iv), (v)	proceedings to be in open court
PART VI – TRANSFERS BY AREA COURTS		
30	19	power of transfer
31	20	remission of cases to court of lower grade
32	-	power of AC of higher grade to order transfer from AC of lower grade
33	21	powers of court to which case transferred
PART VII – ANCILLARY POWERS OF AREA COURTS		
34	22	places of imprisonment
35	23	power to summon witnesses
36	24	person present may be required to give evidence
37	25	evidence of person not within jurisdiction
38	26	execution of judgments
39	27	execution of orders of other courts
40	28	power to grant interim injunction or impound property
41	29	power to appoint receiver or manager
42	30	inspection
PART VIII – CONTROL OF AREA COURTS		
43	31	general supervision of courts
44	33	AC: apptmt and functions of Commissioner for ACs ZSC: apptmt and functions of Chief Inspector for SCs
45	32	appointment of inspectors
46	34	reports of cases tried
47	35	inspector's right of access to courts
48	36	supervisory powers

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AC §	ZSC §	Remarks
49	37	effect of order of transfer
50	38	review by appeal court on report of inspector
51	39	special plea in bar not admissible on hearing
52	40	powers of inspector not exercisable where appeal instituted
PART IX – APPEALS		
53	41(i)	appeals from lower to Upper Area/Sharia Courts
54	42	appeals from Upper Area/Sharia Courts
55	44	definition of aggrieved party
56	45	restriction of right of appeal
57	46	appeals out of time
58	41(ii)	AC: powers of appellate courts in criminal (58) and civil (59) matters
59		ZSC: powers of Upper SCs when sitting in appellate capacity
60	47	power of appellate court to inspect records
61	50	substantial justice to be done

AC §	ZSC §	Remarks
		without undue regard to technicalities
PART X [XI] -- OFFENCES		
62	49	adjudication without authority
63	48	neglect or misconduct by court officers
64	-	jurisdiction to try offences
PART XI – RULES OF COURT		
65	7(ii)	power to make rules
PART XII -- MISCELLANEOUS		
66	-	existing Native Courts become Area Courts
67	-	savings of cases pending in Native Courts
68	-	savings of pending appeals
69	-	consequential amendments
70	-	repeal of Native Courts Law
71(1)	-	effect on subsidiary legislation under Native Courts Law
71(2)	51	effect on powers or functions of High and Magistrates' Courts
Sched. I	-	limits of civil and criminal jurisdiction by grade of court
Sched. II	-	list of laws consequentially amended

(2) Zamfara State Sharia Courts Law 1999 to Area Courts Edicts 1967-68 (with titles of Parts as in Zamfara Sharia Courts Law):

ZSC §	AC §	Remarks
Preamble	-	
PART I – PRELIMINARY		
1	1	title and commencement
2	2	interpretation
PART II – ESTABLISHMENT AND CONSTITUTION OF SHARIA COURTS		
3	3, 17	establishment; warrants; grades
4	4	constitution
PART III – JURISDICTION OF SHARIA COURTS		
5(i)(a), (b)	14(1)	subject matter jurisdiction
5(i)(c)	22	law to be applied in criminal cases
5(ii)	15	personal jurisdiction
5(iii)	18	jurisdiction as per warrant
5(iv)	14(1)	subject matter jurisdiction
6	16	adjudication of disputes about personal jurisdiction
PART IV – LAW, PRACTICE AND PROCEDURE		
7(i)	20-23, 26	ZSC: applicable law and rules of procedure, all cases AC: applicable law, various subjects
7(ii)	65	power to make rules
7(iii)	28	ZSC: criminal defendants entitled to rep. by legal practitioner AC: no legal practitioners in ACs, but other reps. may

ZSC §	AC §	Remarks
		appear
7(iv), (v)	29	proceedings to be in open court
PART V – SHARIA COURT ALKALIS		
8(i)	6	ZSC: appointment and discipline of alkalis of SCs AC: discipline of members of ACs
8(ii)	-	minimum qualifications
8(iii)	4(4)	judges are in public service of State
8(iv)	9	indemnity
8(v)	-	disqualification
8(vi)	-	remuneration
PART VI – STATE COUNCIL OF ULAMAS		
9(i)	-	establishment
9(ii), (iii)	-	role of council in appointment of alkalis
10	-	membership
11	-	meetings; quorum
12	-	remuneration
13	-	functions
14	-	independence of other authorities
PART VI – STAFF OF SHARIA COURTS		
15	10	staff of the courts
16	11	delegation of duties
17	12	bailiffs and messengers
18	13	indemnity

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ZSC §	AC §	Remarks	ZSC §	AC §	Remarks
PART VII – TRANSFERS BY SHARIA COURTS					
19	30	power of transfer	39	51	special plea in bar not admissible on hearing
20	31	remission of case to court of lower grade	40	52	powers of inspector not exercisable where appeal instituted
21	33	powers of court to which case transferred	PART X – APPEALS		
PART VIII – ANCILLARY POWERS OF SHARIA COURTS			41(i)	53	appeals from lower to Upper Sharia/Area Courts
22	34	places of imprisonment	41(ii)	58, 59	ZSC: powers of Upper SCs when sitting in appellate capacity
23	35	power to summon witnesses			AC: powers of appellate courts in criminal (58), civil (59) matters
24	36	person present may be required to give evidence	42	54	appeals from Upper Sharia/Area Courts
25	37	evidence of person not within jurisdiction	43	-	power of Sharia Court of Appeal to hear and determine appeals in civil and criminal matters
26	38	execution of judgments	44	55	definition of aggrieved party
27	39	execution of orders of other courts	45	56	restriction on right of appeal
28	40	power to grant interim injunction or impound property	46	57	appeals out of time
29	41	power to appoint receiver or manager	47	60	power of appellate court to inspect records
30	42	inspection	PART XI – OFFENCES		
PART IX – CONTROL OF SHARIA COURTS			48	63	neglect or misconduct by court officers
31	43	general supervision of courts	49	62	adjudication without authority
32	45	appointment of inspectors	PART XII – MISCELLANEOUS		
33	44	ZSC: apptmt and functions of Chief Inspector for SCs	50	61	substantial justice to be done without undue regard to technicalities
		AC: apptmt and functions of Commissioner for ACs	51	71(2)	savings of powers and functions of other courts and of persons to institute actions in them
34	46	reports of cases tried			
35	47	inspector's right of access to courts			
36	48	supervisory powers			
37	49	effect of order of transfer			
38	50	review by appeal court on report of inspector			

e. Zamfara State Magistrate's Courts (Restriction of Powers) Law (2002)⁷¹

A LAW TO PROVIDE FOR THE RESTRICTION OF POWERS OF MAGISTRATE'S COURTS
OVER CASES WHERE THE ACCUSED OR ALL THE ACCUSED PERSONS
PROFESS THE ISLAMIC FAITH

- Short title 1. This Law may be cited as the Magistrate's Courts (Restriction of Powers) Law, 2002 and shall come into operation on the 9th day of August 2002.
- Interpretation 2. In this Law unless the context otherwise requires:
 "Courts" means Magistrate's Courts of whatever grade;
 "Profess the Islamic faith" refers to where the accused or all the accused persons are Muslims or willingly subjects himself or themselves to the jurisdiction of Sharia law;
 "State" means Zamfara State of Nigeria.

⁷¹ Zamfara State of Nigeria Gazette 9th August, 2002 Law No. 7.

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| Restriction of powers over certain offences committed by certain persons | 3. | Notwithstanding any provision [to the] contrary in the Penal Code Law or the Criminal Procedure Code Law or any other law applicable in the State, Magistrate's Courts of whatever grade shall cease to have jurisdiction to try any criminal offence where the accused or all the accused persons profess the Islamic faith. |
| Saving pending proceedings | 4. | The provision of section 3 of this Law is without prejudice to existing cases on holding charge, arraignment or being heard before the courts as at the commencement date of this Law. |
| Transfer of case to appropriate Sharia Court | 5. | All other cases not within the exceptions provided for under section 4 of this Law shall be transferred by the Magistrate's Court to the appropriate Sharia court with jurisdiction to try the offence under the provisions of the Sharia Criminal Procedure Code Law, 2000 and the Sharia Penal Code Law, 2000. |

2.

Civil Procedure in the Sharia Courts

a. Draft rules of Islamic civil procedure for Sokoto State

from the

FINAL REPORT OF THE COMMITTEE SET UP
TO ADVISE THE STATE GOVERNMENT
ON THE IMPLEMENTATION OF SHARIA IN SOKOTO STATE

Submitted to

His Excellency, Alhaji Attahiru Dalhatu Bafarawa (Garkuwan Sokoto)
Governor of Sokoto State

16th December 1999

* * *

2.0 [Specific Recommendations]

The Committee carefully reviewed the reports of its sub-committees, State Elders Consultative and Advisory Consultative Committees and unanimously recommended the following to the State Government for adoption:

* * *

b. Sharia Courts (Civil Procedure) Rules 1999

The proposed Sharia Courts (Civil Procedure) Rules 1999 were carefully drafted and recommended by the committee to the State Government for adoption. Refer to Annex A for detailed rules.

* * *

Annex A

Sharia Courts (Civil Procedure) Rules 1999

1. When the parties appear before the court the judge must treat them on equal terms in seating, talking hearing and paying attention to them. There must be no discrimination regarding religion or position in life. The judge shall ask the plaintiff to state his claim. The claim must be realistic and unambiguous. If the subject matter of the claims is land, the plaintiff must mention its boundaries and its location. If it is money, he must tell the amount. If it involves animals he must mention them numerically and their descriptions. If it is something of money value he must mention the estimated value and if possible the object should be brought before the court. If the claim is not realistic in nature and if without substance, the judge should dismiss the case. If the claim, however, is not explanatory, the judge shall require the defendant to state what he knows about it. If afterwards it becomes clear that there is no definite claim to answer, the judge shall dismiss the plaintiff's claim.

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2. When the plaintiff states his claim, the judge shall ask the defendant to give a reply to the plaintiff's claim. The defendant may admit either in whole or in part that he is civilly liable in the action. The defendant may also deny liability.
3. (a) If the defendant admits liability, the judge shall enter judgment in favour of the plaintiff; provided that the defendant is an adult person whose admission is acceptable under the Islamic law i.e. he is not subject to any disqualification.
(b) If the defendant keeps mute, the judge may try to get him to say something in answer to the claim. If the judge fails to get him to talk his silence may be construed as an admission of the claim and judgment shall be entered against him. The plaintiff shall not be made to take an oath in such circumstances.
4. Where the defendant denies the plaintiff's claim the judge shall determine the type of claim brought before him in order to decide who in fact is the plaintiff (*mudda'*) and who is the defendant (*mudda'an alahi*) between the parties, so as to know on who the burden of proof lies. A party who cannot be helped by nature of his originality or custom is normally regarded as the plaintiff. Provided that in claims having connection with property or valuables; a house or a farm land; consummation of marriage so that a wife could qualify for full dowry; a divorce suit and dispute on child affinity which does not involve inheritance, the judge shall consider the nature of such claims, in order to assess which right may be established and which may not be by taking an oath.
5. In cases where the defendant denies liability, after the judge has determined who is a plaintiff and who is a defendant between the parties, the judge shall ask the plaintiff to produce evidence in support of his claim. If the plaintiff produces his witnesses the judge shall order them to be brought into open court one by one. He shall ask the first witness to state what he knows about the dispute between the two parties. If he does not testify anything the judge may discharge him. But if the witness gives evidence which supports the plaintiff's claim the defendant shall be allowed to cross-examine him. The judge shall allow a witness to defend himself against a challenge which may result in discrediting him or his evidence. If the defendant succeeds in discrediting the evidence given that evidence shall be discarded. But if he fails to succeed in discrediting the evidence that evidence shall stand. The judge shall allow witnesses in all cases to be cross-examined. Any judgment obtained in which a witness's evidence is not cross-examined shall be void. Provided the witnesses called to discredit evidence given by another witnesses shall not be subject to cross examination.

Examples of grounds for discrediting evidence are family affinity of the witness with the party on behalf of whom the testimony is given; marriage connections; allegation that a witness may as a result of giving evidence obtain some benefit or that he may remove some defects or loss from himself or that the witness is an enemy to a person against whom he has given the testimony; and such other instances that can disqualify a witness from giving evidence under the Islamic law.

Two witnesses shall be produced to discredit the testimony given by another witness. In the same way as a witness called to discredit the evidence of another

CIVIL PROCEDURE IN THE SHARIA COURTS

witness shall not be cross examined, so also are the witnesses summoned by the judge himself to witness a confession made by the parties in open court not to be cross examined. The witnesses sent by the judge to witness the actual oath taking and the witnesses sent by the judge to ascertain the boundaries of a piece of land on which evidence has been given by some other witness or witnesses and the like shall also not be cross examined.

6. If an expert gives evidence in support of a claim either about a document or a thing the evidence shall be admissible under the Islamic law. Such a piece of evidence if given on a document the document itself must be produced before the court. No evidence can be given on a document without the production of the document before the court. The expert can give evidence on any matter orally before the court. Two experts may be produced to give evidence on a subject matter in dispute. The general accepted procedure, however, is to call one expert. Any fit and proper person including a non-Muslim may be called to give expert evidence. Where the expert cannot present himself physically before the court due to either ill health or for any strong reason which would make it impossible for him to appear in person the report on the matter shall be admitted in evidence by the court. The evidence of an expert can be challenged through cross-examination as to the extent of the expert's knowledge on the matter he has reported on. The expert can also be impeached that he has not given truthful testimony.
7. The judge shall give judgment in favour of the plaintiff if the judge is satisfied that the plaintiff has furnished him with sufficient evidence to support his claim, that is to say, he has produced two unimpeachable male witnesses or one male and two female witnesses or only two female witnesses in a matter which women have peculiar knowledge, for example, evidence on a child alleged to have been born alive. As a general rule no court shall base its decision on the evidence of one single female witness.
8. If the evidence in favour of the plaintiff does not satisfy the full requirements of the Islamic law, for example, in cases of dispute on a property where two witnesses are required, but only one gives evidence, the judge shall require him to take an oath in order to satisfy the requirement of the law. If the plaintiff agrees and takes an oath the judge shall enter judgment in his favour.

If he refuses to take an oath, the judge shall request the defendant to do so. If the defendant takes the oath the plaintiff's claim shall be dismissed. If however, the defendant himself refuses to take oath the judge shall enter judgment in the plaintiff's favour. (According to a maxim in Islamic civil procedure, whenever a litigant is asked to take an oath and if he refuses, the judge shall ask his opponent to take the oath in order to establish his case or absolve himself. If he too declines to take the oath the act of refusal by the opponent shall be construed as an admission by him of the first litigant's claim).

9. If the plaintiff produces no credible witness to support his claim or he informs the court that he has no witnesses to produce in order to testify on his behalf, the judge shall ask the defendant to take an oath in order to rebut the claim. If he takes an oath he will be discharged and the claim of the plaintiff shall be dismissed. If

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however, the defendant refused to take an oath the judge shall offer the oath taking to the plaintiff and if the plaintiff takes the oath, judgment shall be entered in his favour. If the plaintiff declines to take the oath after it has been ordered to him that will be the end of his case and the claim shall be dismissed.

10. (a) Where the judge observes that each one of the opposing parties can be taken to be a plaintiff by the nature of the litigation e.g. where each one of them claims that he owns the subject matter in dispute e.g. a house, a farm, a piece of land, animals, clothing and house belongings which are suitable for the use of both male and female, in such situation, the judge shall look and see in whose possession is the subject matter in dispute, [if] it is in the parties' possession jointly, or in the possession of an independent person or in the possession of one of them. In all these circumstances the judge shall require each one of the litigants to produce his evidence. Anyone of them who can support his claim by evidence shall be given judgment in his favour and the whole subject matter in dispute shall be given to him. The judge shall dismiss the claim of any party who fails to support his claim with evidence.
- (b) Where both litigants support their claim with satisfactory evidence, the judge shall test the weight to be given to the evidence of each witness by finding which one of the parties' witnesses have given a more credible evidence. The judge will require that party to take an oath, as to the truth of his claim and then give judgment in his favour. A factor which is determined in establishing the evidence which carries more weight, is the consideration of length of history in which a witness knows the subject matter. The number of witnesses has no bearing to the weight to be attached to the evidence.
- (c) Where the judge tests the weight to be given to the evidence of each party and finds the weights of their evidence to be equal and none has more weight than the other in terms of credibility, in such a case their evidence will have to be discarded completely. They will be regarded as if they have told the judge at the beginning that they could not produce witnesses. In these two situations where the weight of evidence is proportionately the same and where from the start each one of the parties cannot produce a witness, the judge shall find out which of the parties in dispute is in possession of the subject matter, and give more consideration to that party. It can serve as cogent evidence for a party according to Islamic principles of law, if at the time of the dispute he is in possession of the subject matter. For this reason the judge shall require him to take an oath. If he takes an oath the judge gives judgment in his favour and dismiss the claim of the other party. If he fails to take an oath the judge then shifts the burden to the other party who is not in possession of the subject matter in dispute. If he takes the oath the judge shall give judgment in his favour. But if he fails to take an oath he forfeits his right, the judge will then give judgment in favour of the first party who refuses to take an oath and who is in possession of the subject matter in dispute (See Order 8 of these rules).
- (d) Where the judge finds that the subject matter in dispute is in the possession of both parties or that it is not in their possession [but] of someone else or that it is

not in the possession of anybody, if the weight given to the parties' respective evidence in terms of credibility are on an equal basis or that none of the parties can produce any evidence, then, in these circumstance the judge will require each one of them to take an oath to support his claim. If all of them take an oath or all of them fail to take an oath the judge shall give judgment in their favour jointly and share out the subject matter in dispute between them. If, however, one of the parties declines to take an oath his right of claim is forfeited; the judge shall dismiss his claim and enter judgment in favour of the party who takes an oath.

11. If the claim brought before a judge is a suit against a deceased person's estate, or against someone who is away and his presence is impracticable, or is an infant or a lunatic, or the matter concerns an endowment right on the claimant, even if he can establish his claim by producing evidence without the judge directing the claimant to take an oath in addition to the usual practice. This is what is known as *yaminul kada'l*, the oath of payment. Once he takes an oath the judge shall give judgment in his favour. But if he declines to take this oath his claim is forfeited.

A judgment debtor who is unable to settle his judgment debt whose poverty is proved by evidence, the judge will ask him to take an oath of *yaminul kada'l* before discharging him. The judgment debtor takes an oath that he has no means whatsoever to settle the debt and that whenever he acquires the means he will settle the judgment debt.

12. If the complaint brought before the judge is a matter concerning a claim based on strong suspicion made by the plaintiff against the defendant demanding some rights, the judge shall require the defendant to take an oath. If he takes an oath he is absolved. If he refuses to take an oath judgment shall be entered in the plaintiff's favour. The procedure of offering the oath to the plaintiff shall be exercised here. An example of such a case is where a suit is brought against a person entrusted with property like a shepherd or a businessman or a safe-keeper or storekeeper or a messenger, and the trustee reports that the entrusted property has got lost, but the owner of the property strongly suspected the trustees of negligence, mischief or misappropriation in causing loss. Such persons as are mentioned above are required to take what is called an oath of accusation before they are absolved. If such persons refuse to take oath the judge shall order them to settle the claim.
13. If a case becomes complicated or is a dispute between relatives or between important personalities which in the observation of the judge may result in disturbances of the peace or enmity the judge shall call upon the parties to submit to arbitration. If they agree to settle their matter out of court the judge will confirm such a settlement as agreed upon by the parties. None of the parties afterward can undo the settlement reached. Because it has already become a court judgment. But if they are unable to settle the matter out of court the judge shall continue with the case between them in the normal way and in accordance with the provisions of Islamic Law.
14. If the claim brought before a judge is not a claim for money or money value; for example, a marriage suit (not relating to inheritance) or divorce or *kebul'* or on cruelty

to a wife or affinity (not relating to inheritance) or on manumission, in all these cases a claim cannot be substantiated unless male witnesses are produced. If the plaintiff fails to produce two male witnesses his claim cannot stand and the judge shall dismiss his claim. The defendant shall not be required to take an oath for this purpose.

15. In claims concerning matters in which males normally have no dealing or concern with, such as an allegation that a baby is born alive and that he cries after birth or an allegation that the period of menstruation has been observed or child delivery or a claim on conception or miscarriage or vaginal defect and the like, the evidence of two female witnesses are sufficient to establish the claim. And if the plaintiff produces two female witnesses who gave evidence on his behalf, judgment shall be given in his favour.

Prescription (*huzi*)

16. (1) If the claim brought before the judge is in respect of land ownership and the defendant has already been in possession of the land, for example a farmland or a house, the judge shall first take into consideration the rules governing prescription. If the party in possession of the land deals with it in all manners just like the owner for example, he demolishes it and rebuilds it or plants and harvests in it showing complete ownership like his personal property, the judge shall not entertain the claim of the other party if the judge is of the opinion that the period of prescription required by law has expired, provided that the original owner is present and has remained passive, making no claims and has not shown any reasonable cause which prevented him from doing so throughout the period of prescription.

The rule governing prescription is detailed below:

- (2) As a general rule the period of prescription under Islamic law is ten years. However, there are exceptions to the above rule as follows:
 - (a) Parties who are related through affinity or who are in-laws through marriage or who have joint ownership over the land in dispute, the period of prescription is forty years.
 - (b) In a situation where the parties are made up of men and women, a woman's right will not be forfeited however long her male relatives have been in possession of the jointly owned land.
 - (c) Relatives who are not on good terms with one another, the limited period of prescription for each one of them is ten years. This is an exception to the rule in (1) above.
 - (d) A party made up of a son and his father. The period of prescription will continue for a very long period of time up to sixty years (60).
- (3) If a party is silent over his right and does not ask for it until the period of prescription expires and later claims that the party in possession of the land is holding it on loan or for *iskani* (lodging) or for tenancy for life (*ta'amiri*) or on

tenancy, his right of claim is not forfeited. The judge will investigate the claim and require proof from him by producing evidence. If he can establish his claim by adducing evidence the judge will enter judgment in his favour; but if he fails to establish the claim the judge shall require the defendant to take an oath in order to absolve himself.

- (4) If a party in possession of the land makes a counter-claim that he has bought it from the plaintiff or that he obtained it as a gift from the plaintiff the counter-claim shall be considered as proof provided that he takes an oath. The plaintiff shall not be allowed to call evidence in order to establish that the defendant has obtained possession through a loan or a tenancy once the period of prescription has expired. The expiration of the period of prescription is regarded as evidence for the party in possession of the land.
- (5) If the period of prescription has not expired as in the situations mentioned above, the plaintiff is still within time and can claim his rights. In these situations the judge will take cognisance of his claim and make an investigation accordingly. The judge shall give judgment either in favour or against the plaintiff depending on the provision of the rules of Islamic Law.
- (6) If the party in possession of the subject matter in dispute acquires it through confiscation or through the influence of any person in authority he can [sic: cannot] obtain ownership through prescription however long the period of possession. The other party is at liberty to seek his right from him at any time. If he can establish his claim with evidence the judge can give judgment in his favour. If on the other hand the other party cannot establish the claims, the party in possession shall be required to take an oath in order to absolve himself. Whoever knowingly buys a property or obtains it as a gift from someone whose property has been acquired through confiscation, the decision on his case shall be the same as that of confiscator. Likewise whoever knowing that the property in his possession, in fact belongs to the plaintiff at the time he acquires [it cannot (?) later claim its ownership through prescription.
- (7) If a claim before the judge is in respect of animals or clothes the judge is to take into account the duration or the extent of the prescriptive period imposed by Islamic law on them. The prescriptive limitation between parties who are unrelated through blood in respect of used clothes is one year. If the clothes are unused the limitation period is two years. The limitation period is two years in respect of animals. The limitation period in respect of animals or durable goods like carpets in cases where the parties involved are related by blood shall be ten years.
- (8) If a person sells, or gives out as a present or on charity any property belonging to the claimant while the claimant is present and has the knowledge that the property is being interfered with but keeps silent, the judge will not entertain his claim should he afterwards sue on the property. The law will regard him as having slept on his right. Before if he claims for the proceeds of sale the judge shall take cognisance of his claim.

17. If a complaint brought before the judge concerns a dispute on pregnancy or child legitimacy, it is necessary for a judge to pay attention to the provision of the law about the minimum and maximum periods of pregnancy. The minimum period of gestation is six months while maximum period is five years. For the above reasons:
- (i) If a husband divorces his wife and if she does not remarry after the completion of the *iddah* period, and then gives birth to a child within five years of the divorce and she attributes the child to her former husband who had earlier divorced her, the judge would declare the child to be that of the former husband.
 - (ii) If a husband divorces his wife and she completes her *iddah* period after which she contracts another marriage with a second husband who has co-habited with her and after which she gives birth to a child before the completion of six months from date of her second marriage, the court would declare the child to belong to the first husband. The marriage of the second husband shall be dissolved, as it would appear that it was during the pregnancy period that the second marriage was contracted. But if she delivers after six months or more, the child would be declared to be that of the second husband and the marriage valid.

Li'an

18. (1) If a person finds his wife in a state of pregnancy or finds that she has delivered a child or finds her in the act of committing adultery and intends to disown the pregnancy or the child or intends to make a case that she has committed adultery the law will allow him to dispute the ownership of the pregnancy or of the child or of defamation of adultery against his wife by taking an oath of *li'ani* and that the oath must be based on good reasons. A person can at any time be allowed to take an oath of *li'ani* in order to disown a child or pregnancy: whether the marriage is still in existence or not; whether the wife is passing her *iddah* or not, whether she is alive or dead and whether the child is alive or dead. But the law will not allow a husband to take the oath of *li'ani* in order to disown a pregnancy until he proves that after the wife's delivery he has had no sexual intercourse with her; or that after she has observed her menstruation period after which he finds her with pregnancy or a child he has had no sexual intercourse with her. However, if the second child is delivered within six months after the delivery of the first child the former shall be regarded as a twin of the latter, and the father could not disown him.
- (2) If a person marries a woman and she delivers a child within five months and twenty four days after consummation, the child could be disowned by the husband automatically, without undergoing any *li'ani* oath. This is because the child has been born within the period of gestation.
 - (3) If a person divorces his wife and she remains unmarried and then after the lapse of five years she gives birth to a child such an issue could be disowned by the husband without necessary taking an oath of *li'ani*.

- (4) If the husband of a wife is a young person who has not reached the age of puberty or is a person whose penis has been cut off or when the marriage was contracted both the husband and the wife living in different places far away from each other and that there is no possibility of their getting together at all even secretly, and yet the wife becomes pregnant and claimed that the pregnancy belongs to the husband such pregnancy can be disowned without resorting to the *li'ani* oath.
- (5) If a wife delivers a child becomes pregnant or commits adultery with the knowledge of the husband and yet he afterwards has sexual intercourse with her; his right for *li'ani* has been forfeited. His right for *li'ani* shall also be forfeited if he delays an application for *li'ani* without any justifiable reasons for two days after his knowledge of the disputed delivery or conception.
- (6) The case of *li'ani* cannot be entertained anywhere except in an open court before a judge who will adjudicate in the matter. Thus if a wife and her husband agree to settle a case of *li'ani* out of court such an act is regarded as illegal and void.
- (7) When a judge passes judgment of *li'ani* on a husband and wife they will be required to take an oath at Juma'at Mosque if the couple are both Muslims. But if the wife is a Christian or Jew, she will be taken to a place she regards as sacred to take her oath there. It is essential that the *li'ani* oath is taken in the presence of people of unquestionable integrity whose number should not be less than four persons. It is desirable that the *li'ani* oath should be taken in the late afternoon. It is also desirable that prior to the administration of the oath of *li'ani* those who are to take it should be admonished to cause them fear of Allah so that they may decline from taking the *li'ani* oath.

When the husband and the wife agree on taking the oath, each one of the couple will swear five times. As regard to eye witnessing an act of committing adultery the husband will testify saying, "I bear witness and swear by Allah that I indeed saw her committing adultery." He repeats this four times. As regards to disowning pregnancy he will also testify saying "I bear witness and swear by Allah that I have not put her in a family way". He repeats this four times and then concludes with the fifth oath saying, "Allah's curse be upon me if I am a liar." The wife then takes an oath in respect of an allegation labelled against her for committing adultery saying, "I bear witness and swear by Allah that he has not seen me committing adultery". She repeats this four times. As regards to disowning pregnancy she will testify also saying, "I bear witness and swear by Allah that he has put me in a family way". She repeats this four times and then concludes with the fifth oath saying, "Allah's wrath be upon me if my husband is truthful".

- (8) The husband shall be asked to take the oath first and if he declines to do so the pregnancy will conclusively be attributed to him, and he will be given eighty lashes as *hadd* punishment for imputation of adultery to his wife. If he takes the oath he will be absolved against defamation and the pregnancy of the child will not be attributed to him. The wife will then be liable for punishment for adultery if she refused to take an oath. After the husband has taken the oath the

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wife will be requested to take the oath. If she takes the oath she will be absolved from the allegation of committing adultery and her marriage with the husband will be declared dissolved and she will be prohibited from marrying him forever. If at the beginning the husband refuses to take the oath but later comes back and says he agrees to take it he will not in that circumstance be allowed to do so. But if it is the wife who refuses to take the oath but later agrees to take it she will be allowed to take it so as to clear herself from the allegation of committing adultery, as her first refusal is regarded as an admission made by her that she has committed adultery. This is because whoever makes a confession for committing adultery but later decides to withdraw his confession the law will allow him to do so.

19. (1) The mode of taking the oath for confirming a right or for refuting an allegation is given in the words *Billabil lazi la ilaha illa huma*. No matter of the faith swearer whether a Muslim, Christian, Jew or Pagan. If a civil claim amounts to a quarter of a dinar or three dirhams or an estimated value of one of them it is necessary that the person taking the oath must take it in the Juma'at Mosque and at the time of taking it he must be standing and facing *al-kibla*. If one of those conditions is missing the oath is incomplete and must be repeated[. The person] against whom the oath is to be taken can allow it to be taken outside the mosque (in court). While taking the oath Muslims hold the Holy Qur'an. Christians and Jews hold their Holy Books, Pagans hold the objects they respect as holy. Any swearer takes the oath in the place of worship which he regards as sacred. A Jew will have in addition to the above-mentioned mode of oath, the following words, "The Lord who revealed the Old Testament to the Prophet Moses (may peace be upon him)". The Christian will also add the following words: "The Lord who revealed the New Testament to Jesus (may peace be upon Him)". If a civil claim does not amount to a quarter of a dinar or three dirhams, the judge can order a person to take the oath anywhere, without necessarily going to a place of worship.
 - (2) If a judge orders one of the parties to take an oath, that party takes the oath in the presence of the other party against whom the oath is to be taken. If the party against whom the oath is to be taken refuses to be present at the place of taking the oath to witness its performance the judge shall appoint two male witnesses who will watch the oath taking and the witnesses will be required later to testify in open court that the oath was in fact taken. Any reason or ground forwarded by the other party to reject the oath later will not be accepted.
20. In Islamic law for the court to accept the evidence of a witness he must have the following qualifications: He must be of unquestionable integrity, Muslim, adult, sane not a slave and not one who is heretical of the accepted doctrines of Islam and he must be a conscious man.
 21. If a cause of action brought before a judge is a matter regarding inheritance (distribution of estate), it is necessary for a judge to make a full inquiry [into] five matters before he starts to distribute the estate. These are:

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- (i) He must confirm the death of the deceased person whose estate is going to be distributed;
- (ii) He must inquire into affinity of each of the legal heirs in relation to the deceased;
- (iii) He must confirm the deceased's exclusive ownership over the estate;
- (iv) He must inquire whether the deceased owes any debt; and
- (v) He must inquire whether the deceased made any will.

Debt settlement comes first before the distribution of the estate. If any will is made by the deceased it will be complied with. But if the will is in respect of property it must be satisfied from one third of the whole estate only. A will cannot be made on the estate in favour of a person who is himself a legal heir.

22. After the judge has taken all the proceedings i.e. the parties have been heard and witnesses have given evidence and they have been cross-examined, it is necessary for the judge to give a chance to the party against whom judgment is to be passed by asking him whether he has something more to say for his defence before judgment is passed. If he says he has nothing more to add for his defence the judge calls one or two persons to testify that a chance of defence has been given to that party. Then the judge can pass his judgment.

But if the party says that he has something more to say, the judge shall allow him to say more and shall continue with the proceedings. After the hearing the judge will again request that party to state any thing more in his defence as before, and then the judge gives judgment.

23. If a judge finds that the aforementioned rules do not cover or adequately cover any Islamic procedure in any particular case, such judge shall be at liberty to apply any other rule of Islamic procedure which he considers appropriate to the case before him.

b. Correlation table: Rules of Civil Procedure for Area Courts, the Sharia Courts of Kano, Zamfara and Jigawa States, and the Customary Courts of Kaduna State

The following table correlates the provisions of five sets of formal Rules of Civil Procedure:

- Column 1: Area Courts: the Area Courts (Civil Procedure) Rules promulgated by the Chief Justice of the Northern Region in the early 1970s, for use in the Area Courts of all States carved out of the Region.⁷²
- Column 2: Kano State Sharia Courts: the Sharia Courts (Civil Procedure) Rules, 2000 promulgated on 27th November 2000 by the Grand Kadi of Kano State.⁷³

⁷² The rules were promulgated at different times in the different States. See e.g. Kwara State Legal Notice 3 of 1971, Benue-Plateau State Legal Notice 5 of 1972, Kano State Legal Notice 6 of 1974. In States where there still are Area Courts these rules still govern civil proceedings in them.

⁷³ Spiral-bound copy of rules signed by the Grand Kadi in the possession of the editor; it is not known whether these rules have been gazetted.

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- Column 3: Zamfara State Sharia Courts: the Sharia Courts Civil Procedure Rules promulgated in 2003 by the Grand Kadi of Zamfara State.⁷⁴
- Column 4: Jigawa State Sharia Courts: Jigawa State Sharia Courts Civil Procedure Rules promulgated in 2005 by the Grand Kadi of Jigawa State.⁷⁵
- Column 5: Kaduna State Customary Courts: Kaduna State Customary Courts and Upper Customary Courts (Civil Procedure) Rules promulgated in 2002 by the President of the Customary Court of Appeal of Kaduna State.⁷⁶

It is obvious from the table that all five sets of rules are substantially identical. In sum, the Sharia Court and Customary Court rules have been substantially copied from the old Area Court rules. Significant variations are flagged by asterisks and discussed in subsection c.

Correlation Table

1 AC §	2 KSC §	3 ZSC §	4 JSC §	5 KCC §	Section titles
ORDER 1: CITATION, APPLICATION AND INTERPRETATION					
1	1*	1*	1*	1	Title, commencement and application
2	2	2	2	2	Interpretation
ORDER 2: INSTITUTION OF CAUSES					
1	1	1	1	1	Refusal of cases where no jurisdiction
2	2	2	2	2	Commencement of a cause
3	3	3	3	3	Entries in case or cause book
4	4	4	4	4	Refusal of case which discloses no cause of action
5	5	5	5	5	Power of court to dispense with rules if all parties present
6	6	6	6	6	Issue of summons
7	7	7	7	7	Fees to be entered on summons
8	8	8	8	8	Complaint may be heard before return date of summons
9	9	9	9	9	Form of summons: Form 1
ORDER 3: SERVICE OF PROCESS					
1	1	1	1	1	Service of process
2	2	2	2	2	Method of service
3	3	3	3	3	Service on local government authority
4	4	4	4	4	Service on government officer or corporation servant
5	5	5	5	5	Substituted service: Forms 2 and 3
6	6	6	6	6	Time of service
7	7	7	7	7	Proof of service
8	8	8	8	8	Proof of service before action proceeds
9	9	9	9	9	Record of service
10	10	10	10	10	Arrest of defendant: Form 4
ORDER 4: SERVICE AND EXECUTION OUT OF THE JURISDICTION OF AN AREA/SHARIA/CUSTOMARY COURT					
1	1	1	1	1	Process to be forwarded
2	2	2	2	2	Service of process
3	3	3	3	3	Enforcement of orders

⁷⁴ As contained in a separate bound volume of the Zamfara State of Nigeria Gazette captioned “Law No. 25 of 2005”, undated.

⁷⁵ As contained in a separate bound volume of the Jigawa State of Nigeria Gazette captioned “14th February, 2006 – Rules”. The rules “shall be deemed to have come into operation on the 18th day of December, 2000”, the same day the Jigawa State Sharia Courts Law came into operation.

⁷⁶ As contained in a separate bound volume, captioned K.D.S.L.N. No. 5 of 2002, which also includes the Customary Court of Appeal (Appeal from Customary Courts and Upper Customary Courts) Rules, 2002.

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1 AC §	2 KSC §	3 ZSC §	4 JSC §	5 KCC §	Section titles
4	4	4	4	4	Particulars to be stated in process
ORDER 5: INTERLOCUTORY APPLICATIONS					
1	1	1	1	1	Interlocutory applications
2	2	2	2	2	Form of motion
3	3	3	3	3	Notice of motion
4	4	4	4	4	Oral evidence may be heard
5	5	5	5	5	Orders not to be made if applicant absent
-	6*	-	-	-	Power of Upper Sharia Court to stay proceeding or transfer any cause or matter
6	7	6	6	6	Adjournment
ORDER 6: TRANSFERS					
1	1	1	1	1	Procedure on transfer under Area/Sharia/Customary Courts laws
2	.*	2	.*	.*	Procedure on transfer by Inspector
3	2	3	.*	2	Duty of Area/Sharia/Customary Court on transfer
4	3	4	2	3	Duty of Area/Sharia/Customary Court to which cause or matter transferred or returned
ORDER 7: CONSTITUTION OF THE COURT					
1	1	.*	1	1	Assessors
2	2*	.*	2*	2	When court is to sit with assessors
ORDER 8: POWER OF AREA/SHARIA/CUSTOMARY COURTS TO EXCLUDE MEMBERS OF THE PUBLIC					
1	1	1	1	1	Exclusion of public from court where administration of justice impracticable
2	2	2	2	2	Power of arrest and ejection
ORDER 9: NON-ATTENDANCE OF PARTIES AT HEARING OF CAUSE					
1	1	1	1	1	Non-appearance of both parties
2	2	2	2	2	Non-appearance of plaintiff
3	3	3	3	3	Non-appearance of defendant in civil cause
4	4	4	.*	4	Setting aside of judgment made in absence of party
5	5	5	5	5	Relisting of causes struck out
ORDER 10: PRESENTATION OF CASE TO DEFENDANT					
1	1	1	1	1	Reading of claim or complaint
2	2	2	2	2	Defendant's reply
ORDER 11: PROCEEDINGS AT THE HEARING SUBSEQUENT TO PRESENTATION					
Pt I	*	1	*	-	AC: heading is "Moslem cases"; rule is to continue hearing in accordance with Moslem practice and procedure Zamfara: Continuance of hearing in accordance with Islamic law of practice and procedure
Pt II		-			AC: heading is "Non-Moslem cases"
1	*	-	*	*	AC: Continuation of hearing in accordance with Part II Kaduna: unnumbered paragraph: continuation of hearing in accordance with following rules
2	*	2	*	1	Amendment of the claim
3	*	3	*	2	Plea to the jurisdiction etc.
4	*	4	*	3	Order on plea to the jurisdiction etc.
5	*	5	*	4	Admission of liability
6	*	6	*	5	Case for plaintiff
7	*	7	*	-	No case to answer
8	*	8	*	6	Case for defendant
9	*	-	*	7	Native law and custom to prevail
10	*	9	*	8	The order
11	*	10	*	9	Adjournment
ORDER 12: REFERENCE TO ARBITRATION					
1	1	1	1	1	Order of reference
2	2	2	2	2	Powers of court on consideration of report or award
ORDER 13: EVIDENCE AND WITNESSES					
1	1	1	1	1	Witness summons: Form 5
2	2	2	2	2	Default of appearance of witness
3	3	3	3	3	Ordering witnesses out of court
4	4	4	4	4	Evidence before courts

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1 AC §	2 KSC §	3 ZSC §	4 JSC §	5 KCC §	Section titles
5	5	5	5	5	Recording of evidence
6	6	6	6	6	Exhibits
ORDER 14: ORDERS					
1	1	1	1	1	Delivery and recording of order
2	2	2	2	2	Compliance with order and instalments
3	3	3	3	3	Formal order: Form 6
ORDER 15: INJUNCTIONS AND THEIR ENFORCEMENT					
1	1	1	1	1	Injunctions
2	2*	2*	2*	2*	Enforcement of injunctions
3	.*	3	3	3	Sum recoverable as a debt
ORDER 16: COSTS					
1	1	1	1	1	Definition of costs
2	2	2	2	2	Costs at discretion of court
3	3	3	3	3	Determination of costs
4	4	4	4	4	Detailed determination of costs
ORDER 17: EXECUTION GENERALLY					
1	1	1	1	1	Application for execution
2	2	2	2	2	Time of issue
3	3	3	3	3	Execution not to issue after two years without leave
4	4	4	4	4	Death of person against whom execution issued
5	5	5	5	5	Execution against joint property
ORDER 18: EXECUTION AGAINST THE PERSON					
1	*	1	*	1	Execution against the person
2	*	2	*	2	Summons to show cause: Form 7
3	*	3	*	3	Non-appearance to the summons: Form 8
4	*	4	*	4	Subsistence of judgment debtor between arrest and hearing
5	*	5	*	5	Discovery of property and production of books and documents
6	*	6	*	6	Detention or release during investigation
7	*	7	*	7	Interim order for protection of property
8	*	8	*	8	Orders at close of investigation
9	*	9	*	9	Matters relevant to inquiry
10	*	10	*	10	Committal of judgment debtor: Form 9
11	*	11	*	11	Limitation of terms of imprisonment
12	*	12	*	12*	Release of debtor
13	*	13	*	13	Imprisonment not satisfaction of debt
14	*	14	*	14	Saving [of powers of court under Order 15/[14]]
ORDER 19: EXECUTION AGAINST PROPERTY					
1	1	1	1	1	Execution against property
2	2	2	2	2	Attachment of movable property: Form 10
3	3	3	3	3	Seizure of movable property
4	4	4	4	4	Sale of attached movable property
5	5	5	5	5	Delivery of movable property
6	6	6	6	6	Proceeds of sale
7	7*	7	7*	7	Attachment of immovable property: Form 11
8	8	8	8	8	Method of attachment of immovable property: Form 12
9	9	9	9	9	Sale of attached immovable property
10	10	10	10	10	Setting aside sale for irregularity
11	11	11	11	11	Effect of setting aside
12	12	12	12	12	Absolute sale
13	13	13	13	13	Certificate of purchase: Form 13
14	14	14	14	14	Proceeds of sale of immovable property
15	15	15	15	15	Costs of execution
ORDER 20: GARNISHEE PROCEEDINGS					
1	1	1	1	1	Debts may be garnisheed
2	2	2	2	2	Procedure on application for a garnishee order
3	3	3	3	3	Service of garnishee order: Form 14
4	4	4	4	4	Order for attachment to bind debt
5	5	5	5	5	Payment into court by garnishee

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1 AC §	2 KSC §	3 ZSC §	4 JSC §	5 KCC §	Section titles
6	6	6	6	6	Execution against garnishee: Form 15
7	7	7	7	7	Trial of liability of garnishee
8	8	8	8	8	Lien or claim of third person on debt
9	9	9	9	9	Non-appearance of third person
10	10	10	10	10	Procedure upon appearance of claimants
11	11	11	11	11	Garnishee discharged
12	12	12	12	12	Alienation of immovable property and payment of debts void during attachment
13	13	13	13	13	Venue
14	14	14	14	14	Court may refuse order
ORDER 21: INTERPLEADER PROCEEDINGS					
1	1	1	1	1	Interpleader summons: Form 16
2	2	2	2	2	Proceedings at the hearing
3	3	3	3	3	Time for making claims
4	4	4	4	4	Evidence in support of claim
5	5	5	5	5	Procedure where damages are claimed
6	6	6	6	6	Payment into court where damages are claimed
7	7	7	7	7	Costs
ORDER 22: WRIT OF POSSESSION					
1	1	1	1	1	Writ of possession: Form 17
2	2	2	2	2	Claims to possession by a third party
3	3	3	3	3	Effect of order on a claim to possession
ORDER 23: ALTERATION OF PARTIES					
1	1	1	1	1	Order to carry on proceedings
2	2*	2	2*	2	Application to discharge order
3	3	3	3	3	Misjoinder and non-joinder
ORDER 24: FORMS					
1	1	1	1	1	Completion of forms
2	2	2	2	2	Record of issue of forms
3	3	3	3	3	Forms in First Schedule
ORDER 25: FEES					
1	1*	1*	1*	1*	Scale of fees: Second Schedule
2	2	2	2	2	Multiplicity of defendants not to increase fees
3	3	3	3	3	Exhibition of list of fees
4	4	4	4	4	Fees to be paid to clerk
5	5	5	5	5	Process not to issue unless fees first paid
6	6	6	6	6	Waiver, reduction or remission of fees
7	7	-*	7	7	No fees payable by local government authority or public officers
ORDER 26: ACCOUNTS					
1	1	1	1	1	Cash books and receipt books
2	2	2	2	2	Judge[Registrar] responsible for all moneys
3	3	3	3	3	Entries in cash books and issue of receipts
4	4	4	4	4	Area/Sharia/Customary Court to comply with financial instructions
5	5	5	5	5	Inspection and audit of cash books and receipt books
ORDER 27: RECORDS					
1	1	1	1	1	Records to be kept by Area/Sharia/Customary Court: Form 18
2	2	2	2	2	Recording of proceedings to be in English or the vernacular [or Hausa]
3	3	3	3	3	Maintenance and authentication of records
4	4	4	4	4	Copies of records
5	5	5	5	5	Preservation of records
ORDER 28: REVOCATION					
		*	*	*	[of earlier Native/Area Court rules]
FIRST SCHEDULE: FORMS					
1	*	1	1	1	Civil summons
2	*	2	2	2	Order for substituted service
3	*	3	3	3	Service endorsement of substituted service
4	*	4	4	4	Warrant for arrest of defendant who has disobeyed summons

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1 AC §	2 KSC §	3 ZSC §	4 JSC §	5 KCC §	Section titles
5	*	5	5	5	Summons to witness
6	*	6	6	6	Formal order
7	*	7	7	7	Judgment debtor summons
8	*	8	8	8	Warrant to arrest a judgment debtor
9	*	9	9	9	Warrant of imprisonment on a judgment debtor
10	*	10	10	10	Writ of attachment and sale (moveable property)
11	*	11	11	11	Writ of attachment and sale (immoveable property)
12	*	12	12	12	Attachment notice
13	*	13	13	13	Certificate of purchase
14	*	14	14	14	Garnishee order
15	*	15	15	15	Execution against a garnishee
16	*	16	16	16	Interpleader summons
17	*	17	17	17	Writ of possession
18	*	18	18	18	Area/Sharia/Customary Court Civil Cause Book
19	*	19	19	19	Certificate of divorce
SECOND SCHEDULE: FEES					
Pt I					General:
1	*	1	1	*	Issue of summons, claim for recovery of money or goods
2	*	2	2	*	Issue of summons, other claims
3	*	3	3	*	Filing petition for divorce
4	*	4	4	*	Filing or making any other application
5	*	5	5	*	Claims over 5 years old: doubling of fees
6	*	6	6	*	Service fees
7	*	7	7	*	Issue of interpleader summons
8	*	8	8	*	Issue of judgment summons
9	*	9	9	*	Issue of order to attach property
10	*	10	10	*	Issue of order to imprison judgment debtor
11	*	11	11	*	Issue of garnishee order
12	*	12	12	*	Adjournment, by party applying therefor
13	*	13	13	*	Issue of summons for witness
14	*	14	14	*	For every copy of proceedings per 100 words or part thereof
15	*	15	15	*	For inspection of court records
16	*	17	16	*	For inspection of land
17	*	16	17	*	For certificate of divorce
Pt II					Estates:
1	*	1	1	*	Estate not exceeding [specified] value
2	*	2	*	*	Estate exceeding [specified] value
3	*	3	*	*	For ascertaining address or abode of next of kin etc.

**c. Significant variations among the Rules of Civil Procedure for Area Courts,
the Sharia Courts of Kano, Zamfara and Jigawa States,
and the Customary Courts of Kaduna State**

The entries below explain significant variations among the sets of Rules of Civil Procedure correlated in the table in subsection **b** above. Asterisks in the table signal variations explained here.

Order 1: Citation, application and interpretation

In rule 1 of Order 1, the Area Courts and Kaduna Customary Courts rules have a subsection (3) omitted in all the Sharia Courts rules. It provides as follows:

The principles of any native law and custom shall be abrogated or varied to the extent only (if at all) to which any Order or rule may make specific provision in a sense contrary to any particular part of such native law and custom and subject thereto such native law and custom shall remain in full force and effect.

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Order 5: Interlocutory applications

Kano uniquely inserts an extra rule in this Order, rule 6 in its numbering, as follows:

An Upper Sharia Court shall have power to stay the proceeding before final judgment in any cause or matter before a Sharia Court on motion or oral application by any party in the case, and may transfer such cause or matter to any other Sharia Court with competent jurisdiction where it appears to the Upper Sharia Court that there is apparent miscarriage of justice.

This gives the Upper Sharia Courts in Kano a power given to them, in other States, in the Sharia Courts laws themselves, but omitted in Kano's Sharia Courts Law.

Order 6: Transfers

This Order deals with procedure on transfer of a case from one court to another, a possibility provided for in the Sharia Courts laws and, in Kano, in Order 5 rule 6.. The Area Courts and Zamfara Sharia Courts rules include a rule 2 on "Procedure on transfer by Inspector", which requires an inspector, upon making an order of transfer or reporting a case to a higher court, to transmit a copy of his order to the court of origin and the court of transfer or report; this rule is omitted in Kano, Jigawa and Kaduna States. Jigawa also omits the probably redundant rule on "Duty of Area/Sharia/Customary Court on transfer", requiring the court of transfer "to hear and adjudicate afresh upon any cause or matter transferred to it"; this is covered again in the next rule.

Order 7: Constitution of the court

The Area Courts and Kaduna Customary Courts rules both have two rules here:

1. The Chief Registrar [of the High Court] [Kaduna: the President of the Customary Court of Appeal] may approve assessors for each court.
2. The court shall sit with assessors in cases involving any native law and custom with which the judge and members, if any, are not fully conversant and may sit with or without assessors in all other cases.

Zamfara omits these rules, and in fact this entire Order; Zamfara's succeeding Orders are renumbered accordingly, a fact not indicated in the table above.

Kano and Jigawa copy rule 1 from the Area Courts rules: the Chief Registrar – in this case of the Sharia Court of Appeal – may approve assessors for each court. But rule 2 is different:

2. The court may sit with assessors in cases it needs expert opinion.

Order 9: Non-attendance of parties at hearing of cause

Jigawa, probably inadvertently, omits rule 4.

Order 11: Proceedings at the hearing subsequent to presentation

(a) The Area Courts rules divide this Order into two Parts. Part I, entitled "Moslem Cases", lays down this unnumbered rule:

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After the provisions of Order 10 have been complied with, then, if the case is one in which Moslem law is to be administered or applied, the court shall continue the hearing in accordance with Moslem practice and procedure.

What Moslem practice and procedure might be, is not further specified. Part II then goes on to lay down the procedure to be applied in “Non-Moslem Cases” as per the rules whose titles are given in the table.

(b) Zamfara State, as its rule 1, states that:

After the provisions of Order 10 have been complied with, the court shall continue the hearing in accordance with the practice and procedure under Islamic law.

But then Zamfara State also goes on to repeat, apparently as statements of what Islamic practice and procedure are, all of the rules for “Non-Moslem Cases” given in Part II of the Area Courts rules. The only rule omitted is AC 9:

If anything contained in the preceding rules of this Order shall conflict with the native law and custom applicable to the case under consideration the said native law and custom shall prevail.

Why Zamfara omits this rule – which might easily and properly have been amended by substituting “Islamic law” for “native law and custom” – is not clear.

(c) Kaduna State, for its Customary Courts, essentially copies Part II of the Area Court rules, except for unaccountably omitting AC rule 7.

(d) Kano and Jigawa, for their Sharia Courts, have completely redrafted this Order. Here are Kano’s Order 11 rules, with significant Jigawa variations noted in the text:

1. After the parties have appeared in the court the judge shall ask the plaintiff to make a statement of his claim. The statement shall be a definite, clear averment, which must clearly state the subject matter of the claim. If the subject matter is land or landed interest the statement of claim shall give a full address of the land and its boundaries.
2. When the plaintiff has made the statement of his claim the judge shall ask the defendant to reply to the plaintiff’s statement of claim.
3. The defendant, in his reply, may admit liability in respect of the whole claim or part of the claim made by the plaintiff, or he may totally deny liability or remain silent [Jigawa omits the last three words].
4. Where the defendant admits liability then the judge shall enter judgment in favour of the plaintiff after administering the procedure of *i’iz̄ar*.
5. Where the defendant has denied the plaintiff’s claim the judge shall examine the statement of claim before him and decide as to who among the parties shall be the *mudda’i* (the plaintiff) and who shall be *mudda’a alaibi* (the respondent) [Jigawa: “... decide as to who amongst the parties the burden of proof lies”]. The judge shall then call upon the *mudda’i* [Jigawa: “such person”] to bring evidence to prove his case.
6. If the *mudda’i* [Jigawa here and elsewhere: “plaintiff”] brings witnesses then the judge shall admit them into court one by one. If a witness testifies and his testimony

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agrees with the statement of claim the judge shall give the *mudda'a alaihi* [Jigawa here and elsewhere: “defendant”] the opportunity to cross-examine him. Where the defendant discredits the testimony of a witness such evidence shall be rejected. But if he fails either to impeach the witness or to rebut his testimony then the evidence shall be admitted. The alkali [sic: here and in some other places the Kano rules use this name for the judge] shall apply the same procedure to all witnesses; every witness of the *mudda'i* shall be cross-examined except that witness who testifies as to the credibility of another witness shall not be cross-examined. The *mudda'i* shall be allowed to examine his own witnesses and the judge [sic] shall allow every witness to defend himself in reply to the cross-examination.

7. Where the plaintiff *mudda'i* tenders any document in evidence, the judge shall admit [it in] evidence and may require the proof of authenticity of each document [Jigawa: “... the alkali shall record it and may require the proof of its authenticity”].

8. Where the alkali is satisfied that the *mudda'i* has proved his case the alkali shall enter judgment and make the appropriate order in favour of the *mudda'i* [Jigawa: “...the alkali shall apply the *i'izar* procedure before entering judgment for the plaintiff and make the appropriate order in his favour”].

9. In any case where the evidence of at least two witnesses is required and the plaintiff only produces one witness the court shall ask the plaintiff to take an oath to complement the evidence of the only witness. To complete the require[ment] of the law [Jigawa adds: “in which oath complements the evidence”].

10. Where the *mudda'i* fails to produce any witnesses or where he tells the court of his inability to bring any witness to testify in favour of his claim, the judge shall request the defendant to swear the oath of denial to free himself from liability [Jigawa adds: “in causes and at the stages the law permits so doing”]. If he swears he shall be adjudged free from liability, and the claim shall be dismissed. If he refuses to swear then the oath shall be returned to the *mudda'i* who shall be required to swear in support of his claim. If the *mudda'i* swears, judgment shall be entered in his favour [Jigawa omits this sentence]. If he refuses to swear then his claim fails and it shall be dismissed.

11. Where the judge finds that each of the litigants is a *mudda'i* he shall request each of them to adduce evidence and whoever adduces sufficient evidence judgment shall be entered in his favour. If each of the two has adduced sufficient evidence then the alkali shall weigh the evidence from each and enter judgment in favour of the one whose evidence is more credible. If the credibility of the two sides appears the same judgment shall be entered in favour of both and the right claimed shall be equally divided between them. [Jigawa omits all the following.] If either [or] both of them can produce no witness then the judge shall ask both of them to swear an oath. If one of them swears and the other refuses to swear, judgment shall be entered against the one who refuses to swear. If both parties refuse to swear judgment shall be entered for both and the right claimed shall be divided equally between them.

12. Where the parties to an action are relatives of each other, or where they are important personalities, the judge may first request them to agree to arbitration or reconciliation rather than litigation. If they refuse to accept a reconciliation or

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arbitration the judge shall proceed to hear the matter in accordance with Islamic law.

13. Where the matter is a mixed cause (criminal and civil) but is more of civil nature than criminal, and it is a matter the ultimate result of which shall be [a] civil judgment, the judge shall, (where the defendant is known to be either a vexatious or frivolous litigant or a notorious criminal), request him to swear an oath that he is innocent. If he swears he shall be absolved from liability. If he refuses to swear he shall be liable for the civil aspect of the claim. In such case the oath shall not be directed to the plaintiff in the event of the defendant refusing to swear.

14. In cases of debt against a deceased person, absent person (*qaiib*), minor, or lunatic where the evidence of at least two persons and an oath are required, if the plaintiff brings only one witness he shall be required to take two different oaths, one [Jigawa: “(*shahadatul-yamin*)”] to fulfil the requirement of two witness, the other is called *yaminul qada’i* [Jigawa adds: “to complement the evidence of the only witness”].

15. After the judge has passed judgment he shall cause it to be executed in accordance with the provisions of these rules and the principles of Sharia.

[Jigawa adds: 16. The alkali shall record the court’s proceedings personally but where he is unable to record the proceedings immediately for any reason he shall adjourn the proceeding to such date to enable him do so.]

Order 15: Injunctions and their enforcement

Rule 2(a) allows imposition of a fine for each day of default in failure to comply with an injunction. The maximum amounts per day: AC: £1; Kano: ₦100; Zamfara: ₦1000; Jigawa: ₦1000; Kaduna: ₦100.

Rule 2(b) allows, in the alternative, for imprisonment of the defaulter until the default is remedied. The periods: AC: indefinite period; Kano: not exceeding three months; Zamfara: indefinite period; Jigawa: not exceeding 30 days; Kaduna: indefinite period.

Kano, perhaps inadvertently, omits rule 3, providing that the sum of any fine imposed under rule 2(a) is recoverable as a civil debt.

Order 18: Execution against the person

The Zamfara Sharia Court rules and Kaduna Customary Court rules copy the Area Court rules, except that in rule 12, on release of an imprisoned judgment debtor, the AC and Zamfara rules give only two grounds: the judgment being fully satisfied, or at the request of the judgment creditor. Kaduna adds a third: “at the discretion of the court on reasonable grounds”.

Kano and Jigawa, for their Sharia Courts, have completely redrafted this Order. Here are the Kano/Jigawa Order 18 rules:

1. Against a person of means.

Kano: Where execution is against a person with means he shall be ordered to pay the judgment debt there and then or attach his properties e.g. movable property. He

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may ask for time of payment within a period of time is two weeks, or he has to produce a surety. At the expiry of two weeks, where he does not pay then his property will be attached. The surety can discharge himself by bringing the judgment before debtor to court [sic].

Jigawa: Where execution is against a person with means he shall be ordered to pay the judgment creditor there and then or the court shall attach his properties especially movable property for the period of two weeks after the expiration of which it shall be sold to settle the liabilities and give him the balance or look for other of his properties for sourcing the balance. But he may ask for time for payment within a period of two weeks, if he does not pay then his property will be attached and sold as above.

2. Against a person without means. Where execution is against a person without means, the court shall after due investigation allow him time within which he will pay at the discretion of the court [Jigawa: "... within which to pay after swearing to an oath"].

3. Against a person with doubtful means.

Kano: Where execution is against a person with doubtful means, the court may detain him for a period not exceeding two weeks unless he brings a surety who will stand for him.

Jigawa: Where execution is against a person with doubtful means, the court may detain him for a renewable period of two weeks to two months but if he brings a surety who will stand for him the court can grant him time to source the money. The surety can discharge himself by bringing the judgment debtor to court or settling the liabilities of the debtor in the case before the court.

4. [Jigawa only]: A judgment or order of a court for the payment of money in a civil cause or matter is enforced by making a summons, arrest, trial, attachment, remand or imprisonment as the court shall deem fit.

Order 19: Execution against property

Kano and Jigawa have done some renumbering of the rules in this Order, without affecting the substance of the rules.

The one change of substance, introduced by both Kano and Jigawa, is in rule 7, on attachment of immovable property. The rule allows attachment of immovable property if the proceeds of sale of the debtor's movable property are insufficient to satisfy the judgment. Kano adds: "Provided that such immovable property shall not include any one being used by judgment debtor personally for dwelling purposes"; Jigawa says "... other than the ones being used by the debtor personally for dwelling purposes".

Order 23: Alteration of parties

Kano and Jigawa omit rule 2 allowing any person served with an order under rule 1, within fourteen days after service, to apply to the court for discharge of the order. Evidently they would allow such application to be filed at any time.

Order 25: Fees

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In the Area Court rules, rule 1 has a subsection (2) as follows:

(2) In the administration of an estate the court, instead of charging any fees which but for this paragraph would have been chargeable, may order that ten per cent of the value of the estate be retained by or paid to the court as a court fee: *provided that* this paragraph shall not apply to estates where by Moslem law fees or dues or a portion of the estate are payable to the court or to the treasury.

Kano and Zamfara omit this subsection (2) entirely. Jigawa and Kaduna include the main provision of subsection (2), but omit the proviso.

Zamfara, uniquely, omits rule 7, waiving fees for public officers or local authorities or officers or servants acting in their official capacities.

Order 28: Revocation

This Order revokes earlier civil procedure rules that may have been or been deemed applicable in the respective courts. Zamfara and Kaduna omit it. Jigawa puts it in an Order 29. Jigawa's Order 28 is entitled "Savings", and provides as follows:

1. All civil proceedings instituted, commenced or taken in accordance with the rules of practice of Area Courts established under Area Court Law in respect of cause or matter pending at the date of coming into force of these rules shall be valid, effectual as though the proceedings had been instituted, commenced or taken in accordance with these rules, and the proceedings shall continue before the court in accordance with the provision of these rules.
2. Notwithstanding the provisions of subparagraph (1) of this Order, causes or matters where the parties involved are non-Muslim, shall only be continued upon written consent of the parties otherwise such causes or matters shall be transferred to the appropriate courts for determination.

First Schedule: Forms

Although Kano's rules refer to numbered forms, there are no forms in the copy of the rules obtained by this project. Presumably however the forms are as in the Area Court rules, as they are in the Zamfara and Jigawa Sharia Court rules and the Kaduna Customary Court rules.

Second Schedule: Fees

Zamfara and Jigawa follow the Area Court rules in their fee structures; obviously the amounts vary in ways we shall not detail further. Kano and Kaduna adopt different fee structures, which we shall also not detail further.

d. New Rules of Civil Procedure promulgated since 2010

Fieldwork in the first half of 2016 turned up two new sets of formal Rules of Civil Procedure for Sharia Courts, namely:

- Kaduna State: *Sharia Courts (Civil Procedure) Rules 2010*, made by the Grand Kadi on 12th July 2010
- Bauchi State: *Sharia Courts Civil Procedure (Amendment) Rules, 2013*, made by the Grand Kadi on 2nd October 2013 (amending Sharia Courts Civil Procedure Rules 2001)

CIVIL PROCEDURE IN THE SHARIA COURTS

In Zamfara State the Chief Judge of the High Court also promulgated new Rules of Civil Procedure for the High Court (3 February 2014), providing among other things, for the first time in Zamfara State, in Order 55, for a 'Multi-Door Court House' dedicated to mediation, arbitration, and other forms of out-of-court settlements of disputes.

3.

Cases on the Sharia Courts and Sharia Courts of Appeal

a. Summary of issues decided and cases deciding them

[Note: bold type, in the list below, indicates that the decisions in the cases in question are included, in whole or in part, in the selected cases reproduced in subsection b below.]

- (1) Whether the Sharia Courts of Borno State and Niger State were duly established and existing in law. Holdings: They were.
 - **Maina vs. Wakil (2004), CA, unreported, Appeal No. CA/J/194S/2003 (re Borno)**
 - *Kuta vs. Galadima* (2004), HC Niger State, LRNN 2004, 398, aff'd, *Kuta vs. Galadima* (2006), CA, Appeal No. CA/A/151/2004, available at <http://unnlawdocs.com/index.php/index/read/3926> (re Niger)
- (2) Whether the Sharia Courts of Niger State could apply the state's Penal Code Law. Holding: They could not.
 - **Mohammed vs. Commissioner of Police (2007), HC Niger State, unreported, Appeal No. NSHC/KG/9CA/2004**
- (3) Whether the High Court of Kano State could apply the state's Sharia Penal Code Law. Holding: it could.
 - **Kano State vs. Lami Adamu (2010), HC Kano State, unreported, Suit No. K/42C/2010**
- (4) Whether state High Courts in sharia states have jurisdiction to entertain appeals from Sharia Courts, notwithstanding state statutes directing appeals from Sharia Courts to Sharia Courts of Appeal. Holdings of all courts considering the issue: they do.
 - *Kankara v. Da'awah Committee* (2001), HC Katsina State, unreported, Appeal No. KTH/MF/6CA/2001 (re Katsina)
 - **Mai Tangaram vs. Mai Taxi (2002), HC Borno State, unreported, Appeal No. BOM/5A/2002 (re Borno)**
 - *Kuta vs. Galadima* (2004), HC Niger State, LRNN 2004, 398 (re Niger)
 - *Tavo v. Butoko* (2011), HC Niger State, LRNN 2010, 66 (re Niger)
 - *Malam Kasimu Muhammad Umar and 111 others and Commissioner of Police, Sokoto State* (2015), CA unreported, Appeal No. CA/S/71/2014 (re Sokoto)
- (5) Whether sharia states could by statute expand the jurisdiction of their Sharia Courts of Appeal, beyond questions of Islamic personal law only, to all questions decided in their Sharia Courts under Islamic law. Holdings of all courts considering the issue: they could not.
 - **Mai Tangaram vs. Mai Taxi (2002), HC Borno State, unreported, Appeal No. BOM/5A/2002 (re Borno)**

CASES ON THE SHARIA COURTS AND SHARIA COURTS OF APPEAL

- *Kuta vs. Galadima* (2004), HC Niger State, LRNN 2004, 398, **and** *Tawo v. Butoko*, HC Niger State (2011), LRNN 2010, 66 (re Niger)
- *Mai Da Ura vs. Tudun-Iya* (2007) CA, unreported, Appeal No. CA/K/320/S/2003 (re Katsina)
- *Faransi vs. Noma* (2007), CA, 10 NWLR (Pt. 1041) 202 (re Kebbi)
- *Kanawa vs. Maikaset* (2007), CA, 10 NWLR (Pt. 1042) 283 (re Sokoto)
- *Maishanu vs. Manu* (2007), CA, 7 NWLR (PT 1032) 42 (re Gombe)
- *Nayaya v. Kaka* (2008), CA, unreported, Appeal No. CA/J/16S/97 (re Bauchi)
- *Haruna & Anr vs. Tambaya* (2012), CA, unreported, CA/S/104^s/2011 (re Zamfara)
- ***Haruna & Anr vs. Suleiman & Attorney General Zamfara State* (2014), Vol. 2, SQLR Part IV, pp. 521-542 (re Zamfara)**
- *Fada vs. Ibrahim* (2015), CA, Appeal No. CA/S/73S/2012, available on LPELR-24449 (re Kebbi again)

b. Selected cases

(1) *Maina vs. Wakil* (2004), CA, unreported, Appeal No. CA/J/194S/2003⁷⁷

[Ed. note: Question decided: whether the Sharia Courts of Borno State were duly established and existed in law. Holding: They were.

This issue arose out the early struggles in Borno State between the Chief Judge of the High Court and the Grand Kadi of the Sharia Court of Appeal over control of the new inferior Sharia Courts. The Sharia Courts were just the old Area Courts ‘converted’ to Sharia Courts. The Chief Judge had controlled the Area Courts, and although the new Sharia Courts Law put control of the Sharia Courts in the hands of the Grand Kadi, including the power to establish them, the Chief Judge refused to hand over to the Grand Kadi (and still had not in 2016), and the new Sharia Courts were ‘established’ by ‘conversion’ by the Judicial Service Commission. In the ruling appealed from here, the Sharia Court of Appeal had therefore held that the Sharia Courts had not been duly established. The Court of Appeal held otherwise.]

IN THE COURT OF APPEAL

HOLDEN AT JOS ON THURSDAY, THE 15TH DAY OF APRIL, 2004

Before their lordships:

Muhammad S. Muntaka Coomassie	Justice, Court of Appeal
Dalhatu Adamu	Justice, Court of Appeal
Amiru Sanusi	Justice, Court of Appeal

Appeal No. CA/J/194S/2003

Between:

Zarami Maina)Appellant
and

⁷⁷ Photocopy of certified true copy of the judgment in the possession of the editor.

SHARIA IMPLEMENTATION IN NORTHERN NIGERIA:
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1. Ya Mairam Wakil
2. Wakil Fannami).....Respondents

JUDGMENT

(Delivered by Dalhatu Adamu, JCA)

The appellant sued the respondents before the Sharia Court, Gubio [in Borno State] on 17/12/2002 claiming to be the father of a child born by the 1st respondent who had been his wife but who upon their separation (on divorce) married another man without observing the three [month] *iddah* period and gave birth to the child now claimed by the second husband. The appellant also claimed that before their divorce, he had been taking his wife (1st respondent) to the hospital for pre-natal treatment on the pregnancy. The 2nd respondent is the father of the 1st respondent.

On the above claim, the Sharia Court, Gubio (hereafter called “the trial court”) heard the parties and after confirming or finding that the 1st respondent only observed a two months *iddah* period before contracting the second marriage after leaving the appellant and her refusal to subscribe to an oath that the child in dispute actually belonged to the second (or new) husband, decided in its judgment (dated 7/1/2003) that the child belonged to the appellant (i.e. the 1st or old husband) who was consequently declared and vested with the paternity of the said child. The respondents who were aggrieved by the judgment of the trial court appealed against it at the Upper Sharia Court, Gubio (hereinafter called “the intermediate appellate court”). This court heard the parties on 23/1/03 and on hearing the evidence of the new husband by name Alhaji Ligali Kyaribe, in its judgment dated 27/1/03 reversed the judgment of the trial court and declared the child in question or dispute to the new husband. The appellant who was dissatisfied with the judgment of the intermediate appellate court lodged an appeal against it at the Sharia Court of Appeal of Borno State sitting at Maiduguri (hereinafter called “the lower court”). When the appeal came up for hearing on 26/5/03, the lower court summarily disposed of the appeal by striking it out on the ground that it had no jurisdiction to hear appeals from courts that do not exist in law (see page 10 of the record of proceedings). It held that both the trial and the intermediate Sharia Courts were not in existence by law (as they were not established) and consequently the judges who were not given any authority or warrant to preside over such courts and hear cases had no required jurisdiction to hear and determine the case as they did. The appellant who was aggrieved with the lower court’s decision appealed against it in this court.

In his notice of appeal at page 11 of the record, the appellant filed only one ground of appeal with its two particulars. The appeal was heard without brief of argument filed by either of the parties. Therefore the only material to refer to in the determination of the appeal are the record of proceedings and the notice of appeal. In the light of this, it is pertinent to reproduce the only ground of appeal filed by the appellant in his notice of appeal which with its particulars reads as follows:

GROUND OF APPEAL

The learned Kadis of the Sharia Court of Appeal erred in law by striking out the appeal on the grounds that the Sharia Court and Upper Sharia Court in Borno State were not legally constituted courts.

PARTICULARS OF ERROR

CASES ON THE SHARIA COURTS AND SHARIA COURTS OF APPEAL

- (a) Area Courts in Borno State were converted and named Sharia Courts by the Borno State Government sequel to the introduction of Sharia Court legal system in the State in the year 2000.
- (b) The Borno State Government has enacted and passed into law the Sharia Courts Administration of Justice Law 2000 which empowered the State Grand Kadi to appoint and convert the Area Courts to Sharia Courts in the State.

From my above exposition of the facts of the present case and its antecedents, it is pertinent to observe that the learned Kadis of the lower court raised the issue of the non-existence of both the trial and intermediate courts *suo motu* and without calling upon the parties to address it on it or making effort to find an answer, it simply terminated the appeal *in limine*. Thus the substance and merit of the case were not considered by the lower court which struck out the appeal before it on the ground it stated in its decision or judgment of 26/5/03. It is rather unfortunate that the learned Grand Kadi of Borno State was amongst the panel who heard the present appeal and struck it out without hearing its merits on the ground that the Sharia Courts were non-existent. It seems that the learned Kadis and the Grand Kadi were not aware of the law establishing the Sharia administration in Borno State which was actually promulgated in or under the Borno State Sharia Administration of Justice Law (No. 11) of 2000. Under section 3 of the said law Sharia Courts and Upper Sharia Courts were established in place of the Area Courts and Upper Area Courts which were converted for the purpose of introducing Sharia legal system in Borno State. It is expressly provided under section 11 of the law (*supra*) – as follows:

The courts established under the Law shall be under the supervision of the Grand Kadi.

It is my humble view that it is incredible for the learned Grand Kadi under whose supervision the new Sharia Courts were placed and who played a vital and promotional role in their creation to be amongst the panel which decided on their non-existence. It is therefore clear that the decision or judgment of the lower court was arrived at *per incuriam* and in total and unjustified disregard of an existing and applicable law. This has resulted in a denial of hearing or fair hearing against the appellant [citations omitted]. It is also important to observe that from the facts of the case before the trial and intermediate court, the case raised a very substantial and triable issue in an area where Sharia law is *recondite* (i.e. paternity of a child) making it desirable to hear the appeal and decide it on its merit rather than terminating it *in limine* on a technical ground or reason which was also wrong in law. It is trite that the proceedings of Area, Customary or Sharia Courts as in the instant case are treated by or regarded by an appellate court with a liberal attitude and the avoidance of technicalities with the aim of seeing that substantial justice is achieved [citations omitted].

Apart from denying the appellant his constitutional right to fair hearing the lower court also in its decision made an error amounting to substantial or gross miscarriage of justice in its decision of 26/5/03. Such a decision should not therefore be allowed to stand by this court as an appellate court but should be reversed. Consequently and in view of my above consideration I hereby allow the appellant's appeal under his single or lone ground of appeal. The decision of the lower court dated 26/5/03 is hereby set aside. It is hereby ordered that the case should be remitted to the lower court (the Sharia Court of Appeal of Borno State) for it to rehear the appeal before it from the Upper

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Sharia Court on its merit. Under the circumstances of the case I make no order as to costs.

(sgd) Dalhatu Adamu, Justice, Court of Appeal

[Concurring opinion by Muhammad Saifullahi Muntaka-Coomassie, JCA:]

I have had the privilege of reading the lead judgment just delivered by my learned brother Adamu, JCA. I am quite satisfied that my Lord has thrashed out the live issues presented to us for our consideration. I adopt his reasoning and conclusions as mine. I have nothing more useful to add. The appeal in my view is pregnant with merit same is hereby allowed. I abide by the consequential order made by my learned brother Adamu, JCA in the lead judgment. I make no order as to costs.

(sgd) Muntaka-Coomassie, Justice, Court of Appeal

[Concurring opinion by Amiru Sanusi, JCA:]

I had the opportunity of reading before now the judgment just delivered by my learned brother, Adamu JCA. I agree entirely with his reasoning and conclusion. By way of emphasis, I wish to add a few words of mine.

The learned Kadis of the lower court i.e. Sharia Court of Appeal, Borno State *suo moto* raised the issue of constitutionality of the creation of the new courts namely the Sharia Court and Upper Sharia in Borno State. This is a very fundamental issue bordering on constitutionality and therefore the Sharia Court of Appeal should have invited counsel to the parties in the appeal before it to address it on the competence or otherwise of the State government to create them or on the validity of the law creating the said courts as promulgated by the House of Assembly of Borno State. Had that been done by the lower court, the learned counsel for the parties would have aired their views on such a vital constitutional matter which would no doubt assist the lower court in its determination on the constitutionality or otherwise of the establishment of the said courts, rather than jumping unto conclusion that the creation of the said courts was unconstitutional. The issue of the creation of the courts was not raised and also none of the issues canvassed by the parties' counsel in the appeal before the lower court touched on that, similarly the competence of the House of Assembly, Borno State to promulgate the law creating the courts was also never raised by the parties. The Sharia Court of Appeal (i.e. lower court) was therefore wrong in *suo moto* striking out the appeal on the ground of alleged non-existence of the law establishing the courts without affording the parties the opportunity to address it on the issue. By so doing the parties are denied their constitutional right to fair hearing by the lower court as enshrined in section 36(1) of the 1999 Constitution of the Federal Republic of Nigeria [citation omitted]. Definitely the action of the lower court as stated above must have occasioned substantial or gross miscarriage of justice to the parties especially the appellant.

Thus, for the fuller and more detailed reasoning contained in the lead judgment of my learned brother, I too adjudge the appeal meritorious. It ought to be allowed and I accordingly do the same. I set aside the decision of the lower court and order that the appeal be remitted to the lower court i.e. Sharia Court of Appeal, so that it be heard on the merits. I shall also decline to award any cost.

(sgd) Amiru Sanusi, Justice, Court of Appeal

(2) *Mohammed vs. Commissioner of Police (2007)*, HC Niger State, unreported, Appeal No. NSHC/KG/9CA/2004⁷⁸

[Ed. note: Question decided: whether the Sharia Courts of Niger State can lawfully apply the State's Penal Code Law. Holding: They cannot.

This issue arose from the way in which Niger State initially attempted to reinstate Islamic criminal law. Instead of adopting a whole new Sharia Penal Code, for application in the Sharia Courts, Niger simply amended its old Penal Code, adding a new section 68A specifying *hudud* or *qisas* punishments for specified crimes if the defendant was a Muslim and the evidence was of certain sorts. The entire Niger State Penal Code (Amendment) Law 2000 is reprinted in *Sourcebook*, IV, pp. 140-143. The ruling reprinted here held that the Sharia Courts, being empowered to apply Islamic law only, could not apply the Penal Code even as amended, since it was not Islamic law. This problem was fixed in 2014 when Niger State enacted new Sharia Penal and Criminal Procedure Codes, bringing Niger into line with the other sharia states.]

IN THE HIGH COURT OF JUSTICE OF NIGER STATE, APPELLATE DIVISION
HOLDEN AT MINNA ON THE 27TH DAY OF MARCH, 2007

Before their lordships:

The Honourable Justice, Jibrin Ndatsu Ndajiwo (OFR): Chief Judge
The Honourable Justice, Aliyu M. Mayaki: High Court Judge

Appeal No. NSHC/KG/9CA/2004

Between:

Musa Mohammed).....Appellant

vs.

Commissioner of Police).....Respondent

(Delivered by Honourable Justice Aliyu M. Mayaki)

JUDGMENT

This is an appeal against the decision of the Sharia Court, Mariga delivered on 20th September, 2004. One ground of appeal was filed on 2/12/2004 and with the leave of the court following two applications filed by the appellant on 21/7/2006 and 20/3/2007 respectively five additional grounds were filed. In arguing the appeal, learned counsel to the appellant, Ahmed S.T., formulated three issues for determination. These are:

- 1) whether or not the trial judge was right to have convicted and sentenced the appellant based on the Penal Code which is a common law principle;
- 2) whether or not the trial judge was right to have convicted and sentenced the appellant despite the fact that the prosecution has failed to prove its case; and
- 3) whether or not the trial judge was right to have awarded the sum of ₦36,000.00 for the destruction of the complainants' items, ₦5,000.00 as expenses for the complainant and ₦3,000.00 as police expenses.

⁷⁸ Photocopy of certified true copy of the judgment in the possession of the editor.

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On the first issue appellant's counsel submitted that from the First Information Report (FIR) on which the appellant was arraigned and tried, it is clear that the offences are contrary to sections 79, 349 and 288 of the Penal Code respectively and that since the applicable law in all the Sharia Courts is Islamic law by virtue of the provisions of the Sharia (Administration of Justice) Law 2001 applicable in Niger State, the trial, conviction and sentence of the appellant is a nullity. He therefore urged the court to discharge and acquit the appellant.

* * *

Adamu Panti (DDCL)⁷⁹ made an unambiguous submission on the first issue. He contended that there is no law precluding the Sharia Courts from applying the Penal Code. Consequently, the appellant in his view was properly arraigned before the trial court, convicted and sentenced under the Penal Code, the provisions of the Sharia (Administration of Justice) Law 2001 notwithstanding. * * *

* * *

We have carefully examined all the grounds of appeal filed by the appellant and found that from the arguments canvassed by the appellant's counsel ground two, which is the first ground of the additional grounds filed on 21/7/2006, is concerned with whether or not the whole trial conducted by the trial Sharia Court judges was a nullity. This is a very important ground because if the appeal succeeds on this ground it may not be necessary to consider all the other grounds. It is for this reason of its fundamental and jurisdictional nature that we will take the first issue first which is based on this ground. Although the issue was formulated by the appellant's counsel as whether or not the trial judge was right to have convicted and sentenced the appellant based on the Penal Code, he made a broad submission that the Sharia Court was supposed to conduct the trial under Islamic law principles and that where this was not done, the whole trial would be a nullity. The law the learned counsel relies on is the Niger State Sharia (Administration of Justice) Law 2001 (hereinafter referred to as the Sharia Law 2001) which came into force on the 5th day of November 2002. The appellant was arraigned before the trial court sometime in September 2004, so it is safe to assume that the Sharia Law 2001 had come into force nearly two years earlier. It has not been contended that both the complainant whose property was stolen and the appellant are not Muslims. It is therefore safe to assume that they are Muslims. In the definition section of this law (section 2) "Sharia Court" is said to mean "a court established under or in pursuance of this law or deemed to have been so established." By virtue of the aforesaid Sharia Law 2001 all Sharia Courts in Niger State can be said to have been established by the Grand Kadi or deemed to have been established in pursuance of the law. See *Haruna Ibrahim Kuta vs. Ahmadu Galadima*, Appeal No. NSHC/MN/6A/2003 (unreported). Again, by virtue of §9(1) the Sharia Courts are competent to hear and determine civil and criminal causes and matters where the parties involved are all Muslims, like in the present case. Because of the importance and relevance of sections 10 and 11 of the Sharia Law 2001 they are reproduced as follows:

⁷⁹ DDCL: Deputy Director, Civil Litigation, in the Niger State Attorney-General's office.

10. The applicable law in both civil and criminal proceedings in the Sharia Courts shall be the Sharia law.
11. The practice and procedure to be applied by the Sharia Courts shall be:
 - (a) the principles and practice of Islamic law procedure; and
 - (b) such other rules of practice and procedure as may be made by the Grand Kadi.

Having regard to sections 10 and 11 of the Sharia Law 2001 in both substantive and procedural law the Sharia Courts have no option other than to apply Islamic law or Sharia law. Under section 2 of the law “Sharia law” means “the Islamic law as prescribed by Qur’an, Hadith, Ijma, Qiyas, Istihsan, Istihab and other such sources of Islamic law as are recognized by Muslims.” The words of the statute must be given their ordinary meaning. *Adisa vs. Oymwola* (2000) 10 NWLR (Pt. 674) 116.

The pertinent questions at this juncture are: Are the provisions of the Penal Code and the Criminal Procedure Code such Islamic law and procedure as are contemplated under the Sharia Law 2001? If they are not, will the Sharia Courts be competent to apply them? And finally, if the Sharia Courts do not have the power to try any person or matter under the two codes, what will be the effect of such trial conducted under the codes? In other words, is the trial null and void?

Before the foregoing questions are answered it must be appreciated that the necessary intendment of the legislature by passing into law the bill for the administration of Sharia law is to abolish the Area Courts which were established under the Area Court Law 1968 and replace them with Sharia Courts which are to be manned by men learned in Islamic law and to which Islamic law therefore strictly applies. See sections 7 and 31 of the Sharia Law 2001. Under section 31(1) of the Law the Area Court Law 1968 was repealed. Similarly, section 30 of the law provides:

Notwithstanding the provisions of any law, the statutes of general application of the common law and the doctrines of equity shall not apply in the Sharia Courts.

Suffice it to say that by the provisions of the Sharia Law 2001 the Sharia Courts and the Sharia Court of Appeal as the apex court in the hierarchy of Sharia Courts in the State are expected to strictly apply Islamic law as defined in section 2 of the law such that all authorities parties or their counsel and the Sharia Courts may rely on should be derived from principles of Islamic law not common law or equity, as is always the case, as if this law does not exist or apply.

Going back to the questions posed earlier on, the answers are simple and straightforward. Although it cannot be denied that certain provisions of the Penal Code have some elements of Islamic law, the provisions are not generally and strictly Islamic law in terms of the ingredients of the offences, procedure and proof as well as punishments as are known and prevalent under Islamic law. In particular, the offences of joint act, house trespass and theft contrary to sections 79, 349 and 288 of the Penal Code for which the appellant was arraigned respectively cannot be tried under the Penal Code by the Sharia Court, Mariga or any other Sharia Court as the Penal Code cannot by any stretch of imagination be said to be the Sharia law the Sharia Courts are by law empowered and restricted to apply. What we have said about the non-applicability of the Penal Code in Sharia Courts also applies to the Criminal Procedure Code and the Evidence Act. Under the Sharia law there are ways and means of proof in both civil and

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criminal matters which may not necessarily be the same as under the CPC and the Evidence Act. This is a grave error into which both trial judges and counsel often fall. Having found that the Sharia Court cannot apply the Penal Code and the Criminal Procedure Code, both of which were applicable in the then Area Courts, it automatically follows that the trial Sharia Court judge fell into a fundamental error when he tried the appellant under a law other than Islamic law contrary to the law under which the court itself was established, with the effect that the trial must be held to be null and void *ab initio*, since as far as the Sharia Courts and the appellant are concerned the Penal Code, Criminal Procedure Code and common law principles bear no relevance to the proceedings. The error thus committed by the trial court is incurable. This ground of appeal should be allowed. The trial judge lacked jurisdiction to apply the two laws.

We have already observed at the beginning of this judgment that if this appeal succeeds on the ground we have just considered, there might be no need to go into the other grounds of appeal. We are satisfied that because of the fundamental nature of this ground of appeal under which this appeal should be allowed, we need not delve into the remaining grounds. Consequently, the conviction and sentence of the appellant are set aside; so are the awards of compensation. On this ground alone the appeal succeeds.

(SGD)

(Aliyu M. Mayaki)
Judge
26/03/07

(SGD)

(Jibrin N. Ndajiwo) (OFR)
Chief Judge
26/03/07

(3) *Kano State vs. Lami Adamu (2010)*, HC Kano State, unreported, Suit No. K/42C/2010⁸⁰

[Ed. note: issue decided: Whether the High Court of Kano State could apply the state's Sharia Penal Code Law. Holding: it could.

This issue arose from the decision of Kano State's Attorney General to charge the defendant, in the High Court, but under the state's Sharia Penal Code. Normally the Sharia Penal Codes have been applied exclusively in the Sharia Courts, while in the Magistrate and High Courts the old Penal Codes, dating from 1960 and still in effect in all sharia states, are applied. In this case the Attorney-General of Kano State chose to charge the defendant under the state's Sharia Penal Code, but in the High Court. The High Court held that this was proper and that it could apply the Sharia Penal Code. This is the only case in which this is known to have happened.]

IN THE HIGH COURT OF JUSTICE OF KANO STATE OF NIGERIA
IN THE HIGH COURT OF KANO JUDICIAL DIVISION
HOLDEN AT KANO

Suit No K/42C/2010

Before: -Hon. Justice Shehu Atiku ----- Chief Judge

Dated: - 20th day of April, 2010

⁸⁰ Scan of certified true copy of the ruling in the possession of the editor.

CASES ON THE SHARIA COURTS AND SHARIA COURTS OF APPEAL

Between: -

Kano State ----- Complainant
and
Lami Adamu ----- Respondent

RULING

On 05/03/10, the Hon. Attorney General of Kano State filed a charge against one Lami Adamu (F) of Turmusawa village in Sumaila Local Government Area of Kano State.

In this charge the said Lami Adamu is being accused of committing the offence of intentional culpable homicide contrary to S. 143(a) of the Kano State Sharia Penal Code Law 2000 in that she is alleged to have stabbed one Abdullahi Wawu at Turmusawa Village with a broken bottle as a result of which the victim i.e. Abdullahi Wawu lost his life.

Under S. 143(a) of the Sharia Penal Code (SPC) this offence is called Qatl-al-amd and if this accused is found guilty, the punishment is nothing but death sentence....⁸¹

Then on 30/03/10, the Hon. Attorney General made a move before this court to move his application to prefer a charge against the accused for trial of the said accused (Lami Adamu) under the (SPC) for intentional homicide under S/ 143(a) of the (SPC).

However, Mr. Ishola the Legal Aid counsel and who is acting as a defence counsel for the accused raised an objection against the application...to prefer a charge against the accused for trial before this court.

The main contention of Mr. Ishola, learned defence counsel is that [the defendant could not be tried under the Sharia Penal Code in the High Court, that the High Court should dismiss the case, and that the Attorney General should be required to refile it in a Sharia Court if he wished to charge it under the Sharia Penal Code].

[T]he [1999 Constitution of the Federal Republic of Nigeria] in S. 272(1) gives the High Court an unlimited jurisdiction. Section 272(1) provides:

Subject to the provisions of section 251 and other provisions of this Constitution, the High Court of a State shall have jurisdiction to hear and determine any civil proceedings in which the existence or extent of a legal right, power, duty, liability, privilege, interest, obligation or claim is in issue or to hear and determine any criminal proceedings involving or relating to any penalty, forfeiture, punishment or other liability in respect of an offence committed by any person.

Also, under the provisions of the Kano State High Court Law (Cap 57) Laws of Kano State 1991, the High Court is obligated to observe and enforce the observance of

⁸¹ There is no defence of provocation under the Sharia Penal Codes, see *Sourcebook*, IV, 11-12. Whether this is why the Attorney-General chose to charge the defendant under the Sharia Penal Code is not known.

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customary law which is not repugnant to natural justice, equity and good conscience. This is spelt out in S. 34 of the High Court Law...which reads:

34(1) The High Court shall observe and enforce the observance of customary law which is not repugnant to natural justice, equity, and good conscience, nor incompatible either directly or by implication with any law for the time being in force, and nothing in this law shall deprive any person of the benefit of any such customary law.

Looking at the charge against the accused, it is for an offence of intentional homicide under S. 143(a) of the (SPC) and such an offence under the Penal Code (S. 221) is exclusively triable by a High Court.

Moreover, the SPC is a law promulgated by the Kano State House of Assembly and S. 211 of the Constitution empowers the Hon. Attorney General of Kano State to institute and undertake criminal proceedings against any person before any court of law in Nigeria other than a court martial in respect of any offence created by or under any law of the House of Assembly. S. 211(1) of the Constitution says:

The Attorney General of a State shall have power –

- a) To institute and undertake criminal proceedings against any person before any court of law in Nigeria other than a court martial in respect of any offence created by or under any law of the House of Assembly.
- b) To take over and continue any such criminal proceeding that may have been instituted by any other authority or person; and
- c) To discontinue at any state before judgment is delivered any such criminal proceedings instituted or undertaken by him or any other authority or person.

So, having regard to the foregoing reasons, this case, instead of striking it out and thereby allowing this accused to go back to her village scot-free, will be transferred to any judge of the High Court, Kano, who is knowledgeable in Sharia and who is even fit and proper to be a Kadi of the Sharia Court of Appeal in line with the provisions of S. 276(2) and (3) of the 1999 Constitution....

Signed, HON. CHIEF JUDGE, 20/04/10

Court Registrar's Comment

As a result of the above ruling the case was eventually transferred to High Court No. 8 on 22nd day of April, 2010, presided over by Hon. Justice Nuhu Yahaya Galadanchi. He is one of the early students of faculty of law, Bayero University Kano, who graduated with LL.B. Sharia. Though he is a High Court Judge he is knowledgeable in Sharia, in that, his classmates are now sitting as Sharia Court judges in different States in the Federation.

(Signed)

(Barrister Fauziyya Isa Sheshe)

(4) *Mai Tangaram vs. Mai Taxi* (2002), HC Borno State, unreported, Appeal No. BOM/5A/2002 ⁸²

[Ed. note: This was the first case, as far as the editor can determine, to decide two important questions raised by the Sharia Courts Laws: (1) Whether state High Courts in sharia states still had jurisdiction to entertain appeals from Sharia Courts, notwithstanding the new statutes directing all appeals from Sharia Courts to Sharia Courts of Appeal; and (2) Whether, in any event, the sharia states could by statute expand the jurisdiction of their Sharia Courts of Appeal, beyond questions of Islamic personal law only, to all questions decided in their Sharia Courts under Islamic law. Like all other High Courts and divisions of the Court of Appeal that have considered these questions, the High Court of Borno State held that (1) it did have jurisdiction to entertain appeals directly to it from Sharia Courts, and (2) the House of Assembly of Borno State could not constitutionally expand the jurisdiction of the state Sharia Court of Appeal beyond questions of Islamic personal law.]

IN THE HIGH COURT OF JUSTICE OF BORNO STATE OF NIGERIA
 IN THE HIGH COURT OF MAIDUGURI JUDICIAL DIVISION
 HOLDEN AT MAIDUGURI

Before Their Lordships:

Hon. Justice K.M. Kolo, Chief Judge	Presiding
Hon. Justice A.G. Kwajaffa	Assisting

This Friday, the 28th day of June, 2002

Between:

Garba Mai Tangaram	)	.....Appellant
vs.		
Abdullahi Mai Taxi	)	.....Respondent

RULING

(Delivered by Kolo, C.J.)

Effective from 1st January, 2002 the existing Area Court judges and Upper Area Court judges were respectively converted Sharia Court judges and Upper Sharia Court judges. They were accordingly sworn in on 2nd January, 2002. The Appellate Registry of the High Court at the request of the litigants or their lawyers filed notice and grounds of appeal at the High Court challenging certain decisions of the Upper Sharia Court judges. Ordinarily one would have thought that appeals challenging the decisions of the Upper Sharia Court judges lie to the Sharia Court of Appeal but the lawyers' insistence in filing certain appeals at the High Court prompted this panel to look into the issue of jurisdiction. When this appeal, where the decision of the Upper Sharia Court No. 2, Maiduguri is being challenged, came up for hearing this panel thought it wise to invite the two counsel to address the court on the issue of jurisdiction at the onset before

⁸² Apparently unreported. Photocopy of certified true copy of the ruling in the possession of the editor. No case number is given.

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delving into the merit or demerit of the appeal. That was on 6th June, 2002. The two counsel sought and obtained adjournment to 7th June, 2002 to enable them to prepare their submissions.

First to address the court was the counsel for the appellant Mr. M.B. Usman. He referred us to the suit No. BUAC 11/CUS/148/2001 dated 3rd October, 2001 and the nature of the claim which was seeking an order to set aside the sale of a house. The suit was disposed of on 6th February, 2002 and the presiding judge being Alkali Lawan Gana Musa signed the judgment as Judge Upper Sharia Court No. 2, Maiduguri. The learned counsel for the appellant referred the court to the case of *Tumfaji v. Meroson* (1993) 1 N.W.L.R. (Part 269) 378 at 383 and submitted that it is the plaintiff's claim before the trial court that determines the jurisdiction of the court. He submitted that the claim of the plaintiff did not fall under section 277 of the 1999 Constitution which is in respect of the jurisdiction of the Sharia Court of Appeal.⁸³ He referred us to section 8(1), (2) and (3) of the Borno State Sharia Administration of Justice Law 2000⁸⁴ and submitted that subsection 3 does not add any jurisdiction in civil matters to the Sharia Court of Appeal rather it followed the provisions of section 277 of the 1999 Constitution. He, therefore, submitted that this court has jurisdiction to hear and dispose of this appeal.

Mr. A.A. Sani, the learned counsel for the respondent, on the other hand, submitted that this court has no jurisdiction and hence urged the court to strike out the appeal. He referred the court to section 6(1) and (2)⁸⁵ and section 8(3) of the Borno State Sharia Administration of Justice Law 2000 and submitted that by virtue of section 8(3) appeals from Upper Sharia Courts both in criminal and civil matters lie to the Sharia Court of Appeal in addition to the jurisdiction stated under section 277 of the 1999 Constitution.

Mr. A.M. Aji of Kanem Chambers who was present when the arguments were canvassed as a Friend of the Court wrote and submitted that it is wrong in law for the Borno State House of Assembly to enact a law which is in conflict with the provisions of the 1999 Constitution of the Federal Republic of Nigeria and that if any law is inconsistent with the provisions of the Constitution, the Constitution shall prevail and that other law shall to the extent of the inconsistency be void. Mr. Aji further submitted that by the combined effect of section 272⁸⁶ and section 277 of the 1999 Constitution, the Sharia Court of Appeal shall only exercise jurisdiction over matters involving questions of Islamic personal law while matters not involving Islamic personal law can only be entertained by the State High Court. He cited the case of *Efunwape Okulate & 4*

⁸³ §277 is quoted in full later in the judgment.

⁸⁴ §8: "(1) Appeals in all matters from the decision of the Sharia Courts established under this law shall be filed within 30 days of the decision of the Upper Sharia Court. (2) The time allowed may be extended upon oral application or by motion on notice. (3) In addition to the powers conferred by Section 277 of the Constitution, the Sharia Court of Appeal shall have the jurisdiction and power to hear and determine appeals in criminal matters from the decisions of the Upper Sharia Courts."

⁸⁵ §6: "(1) The courts established under this Law shall have, in addition to any other jurisdiction conferred by other enactment, original jurisdiction in civil and criminal matters where the parties are Moslem. (2) In any civil or criminal matter before the courts where any of the parties or one of the accused is a non-Moslem, and such party or accused consents to jurisdiction, such consent shall be given to the court in writing."

⁸⁶ §272 is quoted in full later in the judgment.

others vs. Gbadamosi Amosanya & 2 others (2000) 1 SCNQR 149 at 162 to 164 and (2000) 1 SCNJ 75 at 86 to 87. He submitted, therefore, that the State High Court has jurisdiction over appeals emanating from the Upper Sharia Court if it does not involve questions of Islamic personal law.

In *Okulate vs. Amosanya* cited supra it was held as follows:

An examination of the provisions of the 1999 Constitution reveals that the Constitution has been positive and clear, and loud not silent or secretive in the language used in granting jurisdiction to the courts it has created and the courts to be enacted by law passed by a State House of Assembly.... It is the people of the Federal Republic of Nigeria who granted unlimited jurisdiction to the High Court they established for the State and not the people of the State.

In conclusion the Supreme Court held as follows:

The Federal Revenue Act, 1973 having lost the pre-eminence it had...was incapable of excluding the jurisdiction of the State High Courts, and therefore to the extent that it still purported to do so was in conflict with the 1979 Constitution and void.

It must be appreciated that both the High Court and the Sharia Court of Appeal are creatures of the 1999 Constitution of the Federal Republic of Nigeria and their jurisdictions are clearly without any ambiguity spelt out respectively under sections 272 and 277 of the said 1999 Constitution. Section 272 of the 1999 Constitution reads as follows:

- (1) Subject to the provisions of section 251 [on the jurisdiction of the Federal High Court] and other provisions of this Constitution, the High Court of a State shall have jurisdiction to hear and determine any civil proceedings in which the existence or extent of a legal right, power, duty, liability, privilege, interest, obligation or claim is in issue or to hear and determine any criminal proceedings involving or relating to any penalty, forfeiture, punishment or other liability in respect of an offence committed by any person.
- (2) The reference to civil or criminal proceedings in this section includes a reference to the proceedings which originate in the High Court of a State and those which are brought before the High Court to be dealt with by the court in the exercise of its appellate or supervisory jurisdiction.

From the foregoing provisions it can safely be stated that the High Court of a State is conferred with both original and appellate jurisdictions in all matters within its competence save cases within the exclusive jurisdiction of the Federal High Court and within the exclusive jurisdiction of the Sharia Court of Appeal. But can it be said that the Sharia Court of Appeal equally enjoys wide unlimited jurisdiction in all matters as an appellate court provided the parties are Muslims? Has the 1999 Constitution made provisions conferring original jurisdiction in the Sharia Court of Appeal? The answer in both cases is in the negative. To start with, the Sharia Court of Appeal per the provisions of section 277 of the 1999 Constitution is basically an appellate court and its jurisdiction is limited to civil appeals as spelt out under subsection (2) of section 277 of the said 1999 Constitution. It has no original jurisdiction and it has no powers to exercise jurisdiction on criminal appeals. In civil appeals its powers are limited to matters which involve questions of Islamic personal law.

Section 277 reads as follows:

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- (1) The Sharia Court of Appeal of a State shall in addition to such other jurisdiction as may be conferred upon it by the law of the State, exercise such appellate and supervisory jurisdiction in civil proceedings involving questions of Islamic personal law which the court is competent to decide in accordance with the provisions of subsection (2) of this section.
- (2) For the purposes of subsection (1) of this section, the Sharia Court of Appeal shall be competent to decide—
 - (a) any question of Islamic personal law regarding a marriage concluded in accordance with that law, including a question relating to the validity or dissolution of such a marriage or a question that depends on such a marriage and relating to family relationship or the guardianship of an infant;
 - (b) where all the parties to the proceedings are Muslims, any question of Islamic personal law regarding a marriage, including the validity or dissolution of that marriage, or regarding family relationship, a foundling or the guardianship of an infant;
 - (c) any question of Islamic personal law regarding a *waqf*, gift, will or succession where the endower, donor, testator or deceased person is a Muslim;
 - (d) any question of Islamic personal law regarding an infant, prodigal or person of unsound mind who is a Muslim or the maintenance or the guardianship of a Muslim who is physically or mentally infirm; or
 - (e) where all the parties to the proceedings, being Muslims, have requested the court that hears the case in the first instance to determine that case in accordance with Islamic personal law, any other question.

From the foregoing provisions it can be safely argued that the jurisdiction of the Sharia Court of Appeal is appellate in nature and is limited to Islamic personal law as listed under subsection (2) of section 277 of the 1999 Constitution save under paragraph (e) even if the question for determination is not Islamic personal law provided at the court of first instance the parties to the suit being all Muslims requested the court to adjudge their case in accordance with Islamic personal law.

Now the question is can a State House of Assembly banking on the words “in addition” enact a law and confer jurisdiction on the Sharia Court of Appeal outside the provision of sections 272 and 277 of the 1999 Constitution? Evidently, when the Borno State House of Assembly enacted the Borno State Sharia Administration of Justice Law 2000 and made a provision under section 8(3) the House of Assembly was banking on the words “in addition” stated under section 277 of the 1999 Constitution.

Subsection (3) of section 8 of the said Borno State Sharia Administration of Justice Law 2000 reads as follows:

- (3) In addition to the powers conferred by Section 277 of the Constitution, the Sharia Court of Appeal shall have the jurisdiction and power to hear and determine appeals in criminal matters from the decisions of the Upper Sharia Courts.

While we cannot question the power of the House of Assembly to enact a law and establish or convert the existing Area Courts and Upper Area Courts to Sharia Courts as per section 6(4)(a) of the 1999 Constitution (“nothing in the foregoing provisions of this section shall be construed as precluding the National Assembly or any House of

Assembly from establishing courts other than those to which this section relates with subordinate jurisdiction to that of a High Court”), we would, however, in line with the decision of the Supreme Court in *Okulate vs. Awosanya* supra question the propriety of the provisions under subsection (3) of section 8 of the Borno State Administration of Justice Law 2000. In our view the said subsection (3) is in conflict with the provisions of sections 272 and 277 of the 1999 Constitution. The words “in addition” stated under section 277 of the 1999 Constitution, in our view, do not give a blanket or blank cheque to the State House of Assembly to confer jurisdiction which [was] not envisaged or provided for by the 1999 Constitution. The words “in addition” are tied down and subjected to the provisions of section 277(2) of the 1999 Constitution. In giving effect to section 277 of the 1999 Constitution regard must be had to other sections of the Constitution and more especially to section 272 which deals with the jurisdiction of the State High Courts and section 251 which deals with the jurisdiction of the Federal High Court. Section 277 ought not to be read in isolation.

In our view, the State House of Assembly cannot vary, add or take away directly or indirectly jurisdiction already conferred on superior courts of record as listed under section 6(5) of the 1999 Constitution. Such jurisdictions can only be tampered with when the 1999 Constitution is duly amended. So amendment of the Constitution and not legislation is the answer.

So in our view, the State House of Assembly cannot enact a law and confer an appellate jurisdiction in criminal matters on the Sharia Court of Appeal. When it comes to civil matters the Sharia Court of Appeal in exercising its appellate jurisdiction cannot go outside section 277(2) of the 1999 Constitution. There is no law which empowers it to do that. So viewed in that light we come to the conclusion that section 8(3) of the Sharia Administration of Justice Law 2000 is void and therefore of no effect as it is in conflict with the provisions of section 272 and 277 of the 1999 Constitution. The State House of Assembly did not add and in our view, cannot add to the jurisdiction of the Sharia Court of Appeal provided for by the 1999 Constitution under section 277.

Now the question is whether it is proper for this court to assume jurisdiction when the parties to the suit are evidently Muslims. We agree with the submission made by Mr. M.B. Usman that the determinant factor is the nature of the claim and in the instant appeal the nature of the claim is not touching or pertaining to Muslim personal law as the issue for determination is the sale of a house, i.e. title to a landed property. We are aware that section 277(2)(e) allows a civil appeal to lie to the Sharia Court of Appeal even though the issue is not touching or pertaining to Muslim personal law provided the parties to the suit being Muslims requested that the suit be adjudged in line with Muslim personal law. But in the instant appeal there is no such a request reflected in the record of proceedings before the court of first instance. This being the case, we are of the view that this court has jurisdiction. This panel would therefore hear and dispose of the appeal at the next appeal session. The hearing of this appeal is therefore adjourned to the next appeal session.

(sgd)
K.M. Kolo
Chief Judge
28/6/2002

(sgd)
A.G. Kwajaffa
Judge
28/6/2002

SHARIA IMPLEMENTATION IN NORTHERN NIGERIA:
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(5) *Haruna Haruna & Anr vs. Suleiman & Attorney General Zamfara State*
(2014), Vol. 2, SQLR Part IV, pp. 521-542

[Ed. note: issue decided: Whether sharia states could by statute expand the jurisdiction of their Sharia Courts of Appeal, beyond questions of Islamic personal law only, to all questions decided in their Sharia Courts under Islamic law. Holding: they could not.]

IN THE COURT OF APPEAL
SOKOTO JUDICIAL DIVISION
HOLDEN AT SOKOTO

On Friday, the 18th Day of July, 2014

Before Their Lordships

Hon. Justice Ahmad O. Belgore	Justice, Court of Appeal
Hon. Justice Tunde O. Awotoye	Justice, Court of Appeal
Hon. Justice M.L. Shuaibu	Justice, Court of Appeal

Appeal No. CA/S/8^S/2011

Between:

1. Alhaji Aminu Haruna	}	Appellants
2. Alhaji Yusuf Dan Hausa		

vs

1. Umar Suleiman	}	Respondents
2. Attorney General Zamfara State		

JUDGMENT

(Delivered by Hon. Justice Ahmad O. Belgore, JCA)

This is an appeal against the decision of Sharia Court of Appeal of Zamfara State in Appeal No. SCA/GUS/H/19/07 delivered on the 22nd February, 2008 in which the Sharia Court of Appeal allowed the appeal of the 1st respondent against the judgment of Upper Sharia Court 1, Gusau in Case No. CR/112/2003 delivered on 8th September, 2004.

The 1st respondent was charged before the trial court for offences of criminal misappropriation and breach of trust contrary to sections 161 and 176 of Zamfara State Sharia Penal Code respectively. The trial court, based on the confession made before it, found the 1st respondent guilty and accordingly sentenced him to two years imprisonment with option of a fine of Ten Thousand Naira. And an order of restitution was made in favour of the 1st appellant.

Consequently, a landed property belonging to the 1st respondent situated at Kaduna was auctioned and sold to the 2nd appellant. ...

Thereafter the 1st respondent approached the Sharia Court of Appeal, Zamfara State. The appeal was entered between the 1st respondent as the appellant and the 2nd respondent as the respondent therein. After hearing the parties, in its judgment delivered

on 22/02/2008, the court below allowed the appeal and quashed the decision of the trial court. The court below further ordered that the certificate of occupancy in respect of the auctioned property be returned to the 1st respondent and fresh matter be instituted in Kaduna.

The 1st appellant, unhappy with the judgment of the court below, filed, on 31/03/2008, a motion on notice at the court below seeking to be joined as a 2nd respondent. He further prayed the court below to set aside its judgment delivered on the 22/02/2008 for want of jurisdiction. On 10/06/2009 the court below struck out the 1st appellant's motion.

The appellants came to this court via a motion on notice filed on 16/07/2009 seeking extension of time within which to seek leave to appeal; leave to appeal; and extension of time to appeal. This court on 19/10/2009 granted the prayers. The appellants filed on 28/10/2009 their notice of appeal which contained three grounds of appeal. Briefs of argument have been filed and exchanged on behalf of the parties. ...

The issues for determination as identified by the learned counsel for the appellants ... are as follows:

1. "Whether the Sharia Court of Appeal has jurisdiction to entertain an appeal outside the contemplation of section 277 of the 1999 Constitution.
2. Whether having regard to the facts and circumstances, it was proper the Sharia Court (sic), Zamfara State to have proceeded with hearing of the appeal in the absence of the appellants."

On issue No. 1, the learned counsel for the appellants submitted that the jurisdiction of the court below is limited within the sphere provided under section 277 of the 1999 Constitution of the Federal Republic of Nigeria (as amended). Thus the court below has no power to entertain criminal appeals. He cited *Abuja vs. Bizji* (1980) NWLR (Pt. 119) 120 at 125 and *Ibrahim vs Fulani* (2003) 18 WRN 40 at 80-81 and other cases. He urged the court to resolve this issue in favour of the appellants.

On issue No. 2, the learned counsel for the appellants submitted that the court below erred in law when it reached its decision without giving the appellants, whose rights are directly affected by the decision, opportunity to be heard as such denying them right of fair hearing which rendered the decision a nullity...

Learned counsel for the 1st respondent formulated two issues...that are substantially the same with that formulated by the appellants' counsel. In arguing the issues, he conceded to the submission of the learned counsel for the appellants on the first issue while he contended, on the second issue, that the lower court, going by section 211 of the 1999 Constitution... was right to have proceeded to hear the appeal in the absence of the appellants. ...

The learned counsel for the 2nd respondent...formulated two issues for determination; though differently worded, the issues are the same as those formulated by the...appellants....

On issue No. 1, the learned counsel submitted that going by the provisions of sections 275(1) and 277(1) of the 1999 Constitution..., a state may confer additional appellate jurisdiction on its Sharia Court of Appeal. He further submitted that sections 42 and 43 of Zamfara State Sharia Court Establishment Law No. 5 are consistent with the 1999 Constitution. As such the Sharia Court of Appeal of Zamfara State has power

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to hear and determine criminal appeals from Upper Sharia Courts of the State. He urged the court to so hold and resolve this issue in favour of the respondents.

On issue No. 2 the learned counsel argued that it was not established, from the records of the proceedings, that the appellants had sought and obtained leave to be joined as parties in the appeal before the lower court. He submitted that for a party to be joined in a matter before a court, leave of the court must be sought and obtained and court cannot *suo moto* join the parties....

I will determine this appeal based on Issue One....

Attention must be drawn to the fact that this appeal stemmed from criminal proceedings before the two courts below. The appellant is now challenging the jurisdiction of the Sharia Court of Appeal to entertain an appeal from the Upper Sharia Court in respect of a criminal matter, i.e. an offence of criminal breach of trust contrary to Section 65 of the Zamfara State Sharia Penal Code.

The Sharia Court of Appeal, Zamfara State, derives its jurisdiction from, and is created by the Constitution of the Federal Republic of Nigeria, 1999, as amended (now "The Constitution"). Subsection (1) of Section 277. [sic] Section 277(1) and (2) of the Constitution provide as follows: -

277. (1) The Sharia Court of Appeal of a State shall, in addition to such other jurisdiction as may be conferred upon it by the law of the State, exercise such appellate and supervisory jurisdiction in civil proceedings involving questions of Islamic personal law which the court is competent to decide in accordance with the provisions of subsection (2) of this section.

(2) For the purposes of subsection (1) of this section, the Sharia Court of Appeal shall be competent to decide:

- a. any question of Islamic personal Law regarding a marriage concluded in accordance with that Law, including a question relating to the validity or dissolution of such a marriage or a question that depends on such a marriage and relating to family relationship or the guardianship of an infant;
- b. where all the parties to the proceedings are Muslims, any question of Islamic personal Law regarding a marriage, including the validity or dissolution of that marriage, or regarding family relationship, a founding or the guarding of an infant;
- c. any question of Islamic personal Law regarding a *wakef*, gift, will or succession where the endower, donor, testator or deceased person is a Muslim;
- d. any question of Islamic personal Law regarding an infant, prodigal or person of unsound mind who is a Muslim or the maintenance or the guardianship of a Muslim who is physically or mentally infirm; or
- e. where all the parties to the proceedings, being Muslims, have requested the court that hears the case in the first instance to determine that case in accordance with Islamic personal law, any other question.

Subsection (1) has limited the jurisdiction of the Sharia Court of Appeal of a State to **Civil Proceedings** and to any questions involving Islamic Personal Law. What constitute Islamic Personal Law in civil proceedings are listed in Subsection (2) of Section 277.... Any matter outside civil proceedings is not within the jurisdiction of the Sharia Court of Appeal. Apart from that, the Sharia Court of Appeal will only be

competent to assume jurisdiction in any civil proceeding if it involves questions of Islamic Personal Law. See *Faransi vs. Noma* (2007 10 NWLR (Pt. 104)).

The learned Attorney-General for the 2nd Respondent has forcefully submitted that Subsection (1) of Section 277...empowers or enables a State Legislature to confer additional appellate and supervisory jurisdiction on the Sharia Court of Appeal, independent of or outside Islamic Personal Law. With respect to the learned Attorney, that cannot be. The provisions of Section 277(1) and (2) are very clear and unambiguous to admit of any meaning other than the ordinary one being ascribed to them. Anything outside civil proceedings involving questions of Islamic Personal law will be inconsistent with the constitutional provisions and will be void. The learned Attorney has copiously referred to Sections 42 and 43 of the Zamfara State Sharia Courts (Establishment) Law, 1999, in submitting that it is mandatory for all appeals from the Upper Sharia courts (both civil and criminal) to be lodged at the Sharia Court of Appeal. I do not see how this law derived its blood and flesh from the true intent of the opening wordings of Section 277(1) of the Constitution as submitted by the learned Attorney. I do not agree that the word "other" as used in Subsection (1) has created a dissimilarity. Rather the word is used to allow similar jurisdiction to be created and conferred on the Sharia Court of Appeal. I am fortified in this interpretation by the provisions of Subsection (2) which lists the extent of the competency of the Sharia Court of Appeal. This is a pure case of **Ejusdem Generis**.

[phrase written in Arabic]

"Birds of the same feather flock together"

Sections 42 and 43 of the Sharia Courts (Establishment) Law, 1999 of Zamfara State provide thus: -

42. Appeals shall lie from the decisions or orders of the Upper Sharia Court sitting in its original or appellate jurisdiction in all civil or criminal proceedings to the Sharia Court of Appeal of the State.

43. The Sharia Court of Appeal shall have the jurisdiction and power to hear and determine all appeals from the decisions or orders of an Upper Sharia Court sitting in its original or appellate jurisdiction in all civil or criminal proceedings as provided for in this Law.

It is apparent from the above quoted provisions...that the Law does not stop at making an expanded provisions for the jurisdiction of the Sharia Court of Appeal with regard to civil proceedings; it goes on to confer on the court criminal jurisdiction which the Constitution has not provided for. I said "expanded provisions for the jurisdiction of the Sharia Court of Appeal with regard to civil proceedings." This expression is used advisedly and deliberately because the law talks of "**In all Civil...Proceedings**". It should be noted that not all civil proceedings in the Upper Sharia Courts involve questions of Islamic Personal Law. A good number of civil proceedings in the Upper Sharia Courts involve questions of Islamic Law simpliciter, other than Islamic Personal Law. For instance questions involving Shuḥʿa; Rahan; Musharaka; etc. are matters of civil proceedings within the scope of Islamic Law but they do not involve questions of Islamic Personal Law.

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The second limb of this provision confers on the Sharia Court of Appeal, jurisdiction **“In all Criminal Proceedings”**. This has taken the jurisdiction of the Sharia Court of Appeal outside the realm of Section 277(1) and (2) of the Constitution. The effect of these two Sections of the Zamfara State Sharia Courts (Establishment) Law 1999 is to amend the provision of the Constitution. This is clearly ultra vires the Zamfara State House of Assembly. You do not give to people what you do not have. The Law in *Nafiu Rabiu vs. State* (1980) 8-11 SC 130, Per Sir Udo Udoma, JSC is still the law but liberal interpolation is not meant to create an absurdity. Any meaning other than the one I have placed on the provisions of these two Sections will certainly lead to absurdity.

It is in the light of the foregoing that I hold that the provisions of Sections 42 and 43 of the Zamfara State Sharia Courts (Establishment) Law 1999 are inconsistent with the provisions of Section 277(1) and (2) of the Constitution. Similar provisions in Section 17 of the Sokoto State Sharia Courts Law, 2000 were held by this court to be inconsistent with the provisions of Section 277(1) and (2) of the Constitution in the case of *Kanama vs. Maikaset* (2007 10 NWLR (Pt. 1042). In that case, the Sokoto law was held to be null and void to the extent of its inconsistency with the Constitution.

I have no choice in this matter other than to hold that the Zamfara State Sharia Courts (Establishment) Law 1999 is null and void to the extent of its inconsistency with the Constitution, and I so hold. See also *Mallam Ado & Anor vs. Hajiya Dije* (1984) 5 NCLR 260, 267.

I hold that the Zamfara State Sharia Court of Appeal lacks the jurisdiction and competency to entertain this appeal in Suit No. SCA/GUS/H/19/2007 involving questions other than those of Islamic Personal Law and in criminal proceedings outside the provisions of Section 277(1) and (2) of the Constitution.

This appeal succeeds and it is hereby allowed on the issue of jurisdiction. I see no need to consider any of the other issues remaining in this appeal.

No cost is awarded.

(signed)

Hon. Justice Ahmad O. Belgore
Justice, Court of Appeal

I had the opportunity of reading before now the draft of the judgment just delivered by my brother Ahmad O. Belgore JCA. I am in total agreement with the reasoning and conclusion therein. I also abide by all consequential orders made in the judgment.

(signed)

Hon. Tunde O. Awotoye
Justice, Court of Appeal

I have had the privilege of reading in draft the judgment of my learned brother Ahmad O. Belgore and I entirely agree that Sections 42 and 43 of the Zamfara State Sharia Courts (Establishment) Law No. 5, 1999 are inconsistent with Section 277(1) and (2) of the 1999 Constitution which is the organic and fundamental law of the land. Being inconsistent with the provisions of Section 277(1) and (2) of the Constitution, the said Sections 42 and 43 of the Zamfara State Sharia Courts (Establishment) Law No. 5 of 1999 are liable to be set aside.

For the same reasons articulated in the lead Judgment, I also find merit in this appeal.

(signed)

Hon. M.L. Shuaibu
Justice, Court of Appeal

c. Memorandum on amendment of the 1999 constitution, by 25 Grand Kadis and Presidents of Sharia and Customary Courts of Appeal, 26 June, 2012

[Ed. note: The sharia states all tried to expand the jurisdiction of their Sharia Courts of Appeal beyond questions of Islamic personal law (IPL), to all questions, civil and criminal, decided in their inferior Sharia Courts under Islamic law. The unanimous rulings of the High Courts and divisions of the Court of Appeal that have considered the question, have been that this is not possible under the Nigerian Constitution as it now stands. Two such rulings are reproduced above.

The problem of limitation of Sharia Court of Appeal jurisdiction to questions of Islamic personal law only has existed since 1979. Numerous attempts have been made since 1979 to amend the constitution, to allow Sharia Courts of Appeal to entertain appeals at least in all civil cases decided under Islamic law in the courts below them. None of these attempts has been successful.⁸⁷

The constitutional amendment process was started again during the presidency of Goodluck Jonathan. As part of this, a group of Grand Kadis of Sharia Courts of Appeal and Presidents of Customary Courts of Appeal wrote a joint memorandum to the Chairman of the House of Representatives Committee on Constitutional Amendment (26 June 2012), urging among other things that Sharia Court of Appeal jurisdiction be expanded to all ‘civil proceedings where the subject matter of the claim is on, or relates to Islamic law’. This proposal was supported by the Chief Justice of the Supreme Court. But in the end no such amendment was included among those enacted by the National Assembly in early 2015 and sent to President Jonathan for his signature; in any event the President did not sign that Act before going out of office, and it ultimately died.

In 2016 research visits to the Sharia Courts of Appeal in the sharia states, we were kindly given three separate copies of the 2012 memorandum of the Grand Kadis and Presidents. Two of the copies were signed hard copies, probably second or third-generation photocopies of the original, which do not scan clearly. The third was a soft copy, unsigned, which is reproduced below. We have compared the text reproduced here with the hard copies and can attest that the texts are the same, except that: (1) §2.8: The prefatory words ‘This section should be redrafted to read-’ are omitted in the signed copies. (2) §2.10: Instead of ‘This section should be redrafted to read-’ the signed copies have ‘This section should be amended as follows:’ (3) There are some formatting

⁸⁷ The history, from the creation of the first Sharia Court of Appeal for the Northern Region in 1960, to the constriction of Sharia Court of Appeal jurisdiction in 1979, to the attempts to amend the constitution in the 1980s and ‘90s, is recounted in P. Ostien, ‘An Opportunity Missed by Nigeria’s Christians: The 1976–78 Sharia Debate Revisited,’ in B. Soares, ed., *Muslim-Christian Encounters in Africa*, 221–55, Leiden and Boston: Brill (2006). The paper is also available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1464339.

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changes. (4) One of the signed copies we received has an extra signature-page with four additional names and signatures. The names are appended at the end of this appendix.

The memorandum:

26th June, 2012

The Chairman,
House of Representative Committee on
Constitutional Amendment,
National Assembly Complex
Three Arm Zone

**MEMORANDUM SUBMITTED ON THE PROPOSED
AMENDMENT OF THE 1999 CONSTITUTION (AS AMENDED)**

We the undersigned Grand Kadis and Presidents of the Sharia and Customary Courts of Appeal, respectively in Nigeria wish to submit this memorandum on behalf of the Customary and Sharia Courts of Appeal for the consideration of the Committee under these following heads:

1.0 JURISDICTION

1.1 We wish to bring to the fore the agelong complaints of the Sharia and Customary Courts of Appeal regarding the sections of the Constitution providing for the jurisdiction of the two types of appellate courts because the sections have been given very restrictive interpretations by the Supreme Court to the extent that virtually all cases formulated and founded on sharia and customary laws at the trial Area and Customary Courts cannot be entertained on appeal by the Sharia and Customary Courts of Appeal thereby defeating the primary aims and objectives of establishing these courts.

The recommendations complained about did not provide solution to the jurisdiction quagmire of the Sharia and Customary Courts of Appeal that made grounds of appeal from the decisions of the trial court the basis of competence of appeals before these Courts as opposed to the subject matter at the trial court. See for example the case of *Abmadu Usman v. Sidi Umaru (1992) 7 N.W.L.R. (Part 254) at 377.*

1.2 Another reason for the amendments sought hereunder is that it was felt that the Country deserves to be better served by the Sharia and Customary Courts of Appeal by allowing them realize their full potentials. This can be achieved by allowing, for example, the Customary Courts of Appeal to have original jurisdiction in chieftaincy matters which are also largely rooted or founded on customary law, as provided for in the FCT by the Customary Court of Appeal of the Federal Capital Territory (Jurisdiction on Chieftaincy Matters) Act, 2011. We also believe that the Sharia Courts of Appeal should be given original jurisdiction in matters rooted in Emirship and District Headship.

1.3 It is worthy of note that under the 1999 Constitution, the Court of Appeal could not entertain all appeals from the Sharia and Customary Courts of Appeal as it

did in respect of appeals from the High Court. This created a very unpleasant situation where the Sharia and Customary Courts of Appeal became the “final” courts in some matters.

2.0 AMENDMENTS SOUGHT

2.1 The foregoing informed the recommendations produced hereunder.

Section 244(1)

This section should be amended to read-

“An appeal shall lie from the decisions of a Sharia Court of Appeal to the Court of Appeal as of right in any civil proceedings before the Sharia Court of Appeal”.

2.2 Section 245(1)

This section should be redrafted to read-

“An appeal shall lie from decisions of a Customary Court of Appeal to the Court of Appeal as of right in any civil proceedings before the Customary Court of Appeal”.

2.3 Section 261(1)

This section should be amended to read-

“The appointment of a person to the office of the Grand Kadi of the Sharia Court of Appeal of the Federal Capital Territory Abuja, shall be made by the President on the recommendation of the National Judicial Council, subject to the confirmation of that appointment by the Senate. Any person so appointed and who is a legal practitioner shall be a member of the following bodies-

- (a) Board of Governors of the National Judicial Institute (NJI);
- (b) Body of Benchers; and
- (c) Any other body established for the legal profession.”

2.4. Section 262(1)

This section should be redrafted to read-

“The Sharia Court of Appeal of the Federal Capital Territory Abuja, shall in addition to such other jurisdiction as may be conferred upon it by an Act of the National Assembly, exercise such appellate and supervisory jurisdiction in civil proceedings where the subject matter of the claim is on, or relates to Islamic Law”.

Sub-section (2) should therefore be deleted.

2.5 Section 266(1)

This section should be amended to read-

“The appointment of a person to the office of the President of the Customary Court of Appeal of the Federal Capital Territory Abuja, shall be made by the

President on the recommendation of the National Judicial Council, subject to the confirmation of that appointment by the Senate. Any person so appointed and who is a legal practitioner shall be a member of the following bodies-

- (a) Board of Governors of the National Judicial Institute (NJI);
- (b) Body of Benchers; and
- (c) Any other body established for the legal profession.”

2.6 Section 26[7]

This section should be redrafted to read-

“(1) The Customary Court of Appeal of the Federal Capital Territory Abuja, shall in addition to such other jurisdiction as may be conferred upon it by an Act of the National Assembly, exercise such appellate and supervisory jurisdiction in civil proceedings where the subject matter of the claim is on, or relates to Customary Law and other ancillary matters.”

(2) The Customary Court of Appeal of the Federal Capital Territory Abuja, shall have exclusive Original Jurisdiction in Chieftaincy matters.

2.7 Section 276(1)

This section should be amended to read-

“The appointment of a person to the office of the Grand Kadi of the Sharia Court of Appeal of a State shall be made by the Governor of the State on the recommendation of the National Judicial Council subject to the confirmation of that appointment by the House of Assembly of the State. Any person so appointed and who is a legal practitioner shall be a member of the following bodies-

- (a) Board of Governors of the National Judicial Institute (NJI);
- (b) Body of Benchers; and
- (c) Any other body established for the legal profession.”

2.8 Section 277

This section should be redrafted to read-

(1)The Sharia Court of Appeal of a State shall, in addition to such other jurisdiction as may be conferred upon it by the Law of the State, exercise such appellate and supervisory jurisdiction in civil proceedings where the subject matter of the claim is on, or relates to Islamic Law and other ancillary matters.

Sub-section (2) should therefore be deleted and a new one substituted as follows:

(2) The Sharia Court of Appeal of a State (where it exists) shall have exclusive original jurisdiction in matters of Emirship and District Headship.

2.9 Section 281(1)

This section should be amended to read-

“The appointment of a person to the office of the President of a Customary Court of Appeal of a State shall be made by the Governor of the State on the recommendation of the National Judicial Council subject to the confirmation of such appointment by the House of Assembly of the State.

Any person so appointed shall be a member of the following bodies-

- (a) Board of Governors of the National Judicial Institute (NJI);
- (b) Body of Benchers; and
- (c) Any other body established for the legal profession.”

2.10 **Section 282**

This section should be redrafted to read-

“(1) A Customary Court of Appeal of a State shall, in addition to such other jurisdiction as may be conferred upon it by the Law of the State House of Assembly, exercise appellate and supervisory jurisdiction in civil proceedings where the subject matter of the claim is on, or relates to Customary Law and other ancillary matters.

Sub-section (2) should be deleted and a new one substituted as follows:

(2) A Customary Court of Appeal of a State, (where it exists) shall have exclusive original jurisdiction in Chieftaincy matters”

2.11 **Third Schedule**

PART 1

I- The National Judicial Council

20. The following subsections should be amended to read-

- (g) five serving Grand Kadis and two retired Grand Kadis to be appointed by the Chief Justice of Nigeria from among Grand Kadis of the Sharia Courts of Appeal to serve in rotation for two years;
- (h) five serving Presidents and two retired Presidents of Customary Courts of Appeal to be appointed by the Chief Justice of Nigeria from among Presidents of Customary Courts of Appeal to serve in rotation for two years.

PART II

C- State Judicial Service Commission

5(i) A State Judicial Service Commission shall comprise the following members-

- (a) The Chief Judge of the State;
- (b) The Grand Kadi of the Sharia Court of Appeal of the State, if any;
- (c) The President of the Customary Court of Appeal of the State, if any;
- (d) Two members, who are legal practitioners, who have been qualified to practice as legal practitioners in Nigeria for not less than ten years; and

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- (e) Two other persons not being legal practitioners, who in the opinion of the Governor are of unquestionable integrity.
- (ii) The Chairmanship of the Commission shall rotate among the Chief Judge, the Grand Kadi (where it exists) and the President (where it exists) of Sharia and Customary Courts of Appeal on a two year tenure.

PART III

Judicial Service Committee of the Federal Capital Territory, Abuja

- 1(i) The Judicial Service Committee of the Federal Capital Territory, Abuja shall comprise the following members-
 - (a) The Chief Judge of the Federal Capital Territory;
 - (b) The Grand Kadi of the Sharia Court of Appeal of the Federal Capital Territory, Abuja;
 - (c) The President of the Customary Court of Appeal of the Federal Capital Territory, Abuja;
 - (d) One person who is a legal practitioner and who has been qualified to practice as legal practitioner in Nigeria for a period not less than ten years; and
 - (e) One other person, not being a legal practitioner, who in the opinion of the President is of unquestionable integrity.
- (ii) The Chairmanship of the Committee shall rotate among the Chief Judge, the Grand Kadi and the President of Sharia and Customary Courts of Appeal on a two year tenure.

2.12 **Sixth Schedule**

Item 1(2) of this schedule *should be amended* as follows:

“The Chairman shall be a Judge of the High Court or Kadi of the Sharia Court of Appeal or Judge of a Customary Court of Appeal who shall be a legal practitioner and the two other members shall be appointed from among the Judges of the High Court, Kadis of the Sharia Court of Appeal and Judges of the Customary Court of Appeal”.

Item 2(2) of the same Sixth Schedule should as well be amended as follows-

“The Chairman shall be a Judge of the High Court or Kadi of a Sharia Court of Appeal or Judge of a Customary Court of Appeal who shall be a legal practitioner and the two other members shall be appointed from among the Judges of the High Court, Kadis of the Sharia Court of Appeal and Judges of the Customary Court of Appeal who shall be legal practitioners.”

3.0 **CONCLUSION**

We have stated that there is no rationale in trying to subordinate the Sharia and Customary Courts of Appeal to the High Court. After all appeals go from the High Court, Sharia Court of Appeal and the Customary Court of Appeal to the same court i.e. the Court of Appeal.

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Granted that the colonial masters brought in the High Court first just as they established the Army first, before the people of this Country, in their wisdom decided to bring in the Sharia and Customary Courts of Appeal as the Navy and Air Force were subsequently established. The Judiciary should therefore emulate the Military as it treats the three arms equally and independent of each other in order to treat its own three arms equally.

In previous attempts by the National Assembly at Constitutional amendments, it addressed some of the issues raised herein. Unfortunately, that attempt to amend the Constitution failed.

We strongly believe that the good people of this Country will enjoy the services of these two courts more than they presently do if these recommendations are accepted and the relevant sections amended accordingly.

We therefore humbly request that these recommendations be favourably considered.

1. Hon. Justice Moses A. Bello (JP) OFR
2. Hon. Justice S. Olorunfemi
3. Hon. Justice Abdulkadir Saidu Tambuwal
4. Hon. Justice Adamu S.M. Kanam, OFR
5. Hon. Justice Usman Baba Liman
6. Hon. Justice Shehu Muazu Danmusa
7. Hon. Justice Mohammad A.A. Gummi
8. Hon. Justice Ibrahim Ahmed
9. Hon. Justice Dahiru Rabi
10. Hon. Justice Maccido Ibrahim, OON
11. Hon. Justice M.I. Jega
12. Hon. Justice Jibril Idrisu
13. Hon. Justice Ibrahim A. Shaibu
14. Hon. Justice J.O. Olubor, OFR
15. Hon. Justice Margaret Mary Igbeter, OFR
16. Hon. Justice V.N. Nebo
17. Hon. Justice Abdullahi Yakubu Marafa
18. Hon. Justice S. Kamall-Dinn
19. Hon. Justice Abdullahi Muhammad
20. Hon. Justice Mohammed Shehu, OFR
21. Hon. Justice G.A. Sha, OFR

Additional signatures appended to one of the signed photocopies received by the authors:

22. Hon. Justice A. Onwuchekwa (KSC)
23. Hon. Justice P.N.C. Agumagu
24. Hon Justice D.A. Ayah
25. Hon Justice S.N. Okoye

4.

Courses for *alkalis* and *kadis*

a. Institutions *alkalis* and *kadis* attend

The provisions of the Sharia Courts Laws as to minimum qualifications of *alkalis* in the various sharia states are summarised in section 1.c.(2) above. The general idea is that an *alkali* must have a 'recognised qualification in Islamic law' acceptable to the state's Judicial Service Commission (JSC). For *kadis* of the Sharia Courts of Appeal, the constitutional *sine qua non* is 'a recognised qualification in Islamic law from an institution acceptable to the National Judicial Council' (NJC), plus something more⁸⁸ – note the national role in the appointment of these state court judges (along with judges of other superior courts of record).

The 'qualifications in Islamic law' possessed by *alkalis* and *kadis* are virtually all diplomas or degrees from institutions of higher learning acceptable to the appropriate JSC or the NJC as the case may be. The institutions granting these diplomas or degrees are mostly colleges, polytechnics, or universities authorised in Nigeria to grant them. They are federal, state and private colleges, polytechnics, or universities, in increasing numbers: this is a growth industry in Nigeria. Some *alkalis* and *kadis* however have diplomas or degrees from foreign universities, notably in Sudan or Saudi Arabia.

The colleges that *alkalis* and *kadis* go to are often 'Colleges of Islamic Legal Studies', by that or similar names, of which there is now at least one in every sharia state except Zamfara, which instead has the Zamfara State College of Arts and Sciences, Gusau.⁸⁹ These colleges grant the 'Diploma in Sharia and Civil Law' possessed by many *alkalis* and *kadis*, and a range of other diplomas, including ones in 'Arabic', 'Islamic Studies', 'Arabic and Islamic Studies', etc. all of which are also 'acceptable qualifications' especially for *alkalis*, based on our data. There is a recent study of the Aminu Kano College of Islamic

⁸⁸ See constitution §276(3): 'A person shall not be qualified to hold office as a Kadi of the Sharia Court of Appeal of a State unless - (a) he is a legal practitioner in Nigeria and has been so qualified for a period of not less than ten years and has obtained a recognised qualification in Islamic law from an institution acceptable to the National Judicial Council; or (b) he has attended and has obtained a recognised qualification in Islamic law from an institution approved by the National Judicial Council and has held the qualification for a period of not less than ten years; and (i) he either has considerable experience in the practice of Islamic law, or (ii) he is a distinguished scholar of Islamic law.'

⁸⁹ Here is a list of the colleges of legal studies that the editor is aware of in 2016: **Adamawa**: College for Legal Studies, Yola. **Bauchi**: A.D. Rufa'i College for Legal and Islamic Studies, Misau. **Borno**: Mohammed Goni College of Legal and Islamic Studies, Maiduguri. **Jigawa**: Jigawa State College of Legal and Islamic Studies, Ringim. **Kaduna**: Centre for Islamic Legal Studies, ABU Zaria. **Kano**: Aminu Kano College of Islamic and Legal Studies, Kano. **Katsina**: Yusuf Bala Usman College of Legal and Islamic Studies, Daura. **Kebbi**: School of Legal Studies, Yauri. **Kwara**: College of Arabic and Islamic Legal Studies, Ilorin. **Niger**: Justice Fati Lami Abubakar College of Islamic Legal Studies, Minna. **Sokoto**: College of Legal & Islamic Studies, Sokoto. **Yobe**: Atiku Abubakar College of Legal and Islamic Studies, Nguru. **Zamfara** has the Zamfara State College of Arts and Sciences, Gusau, which offers similar programmes.

and Legal Studies which may interest the reader.⁹⁰ Polytechnics and universities also issue acceptable diplomas in these and related subjects. Colleges of Education issue acceptable certificates: the NCE, National Certificate in Education.

First degrees, including the LL.B. (Bachelor of Laws) from a Faculty of Law, are granted by universities accredited by the National Universities Commission. Some northern universities, in addition to the 'straight' LL.B., offer degrees called 'LL.B. Sharia'⁹¹ or 'LL.B. With Specialization in Islamic Law',⁹² with heavier concentrations of mandatory courses in Islamic law along with 'common law' or 'civil law' subjects. These are acceptable qualifications for alkalIs and kadIs. Other first degrees being accepted are B.A.s or B.Ed.s in Arabic, Islamic Studies, Arabic and Islamic Studies, and Sharia.

Most of the alkalIs and kadIs who have LL.B.s have also gone on to become 'qualified legal practitioners' – meaning they have completed the course at the Nigerian Law School approved by the Council of Legal Education, have passed the examination for Call to the Bar, and are admitted to practice in all courts anywhere in the country. In Nigeria these further accomplishments are often signalled by adding the initials 'B.L.' to one's list of qualifications, a practice we follow here.⁹³

b. Syllabuses for LL.B. programmes

Syllabuses for the then four-year programmes leading to LL.B.s at ABU, Bayero, Maiduguri and Sokoto as of 1987/88 are given in Appendix X, pp. 285-88 of Khalid Rashid, ed., *Islamic Law in Nigeria: Application and Teaching* (Lagos, Kaduna, Kano, Ilorin: Islamic Publications Bureau, 1988). The syllabus for the second through fifth years of the by-then five year LL.B. programmes at 'Nigerian Universities (Dept. of Islamic Law)' is given at pp. 25-28 of Abdul-Qadir Zubair, *Shari'ah in Our Citadels of Learning* (Ilorin: Library and Publications Committee, University of Ilorin 2003). Rashid's work, pp. 283-84, also gives the syllabus for the LL.B. (Sharia) programme at the Islamic University, Medina as of 1962-78 and 1978-88. Zubair's work, at pp. 25-28, also gives the syllabuses for the LL.B. (Sharia) programmes at the Islamic University of Madinah, Al-Azhar University (Cairo), Al-Qurawiyyin University (Fas), and Omdurman Islamic University. The course structure for the LL.B. (HONS) Degree with Specialization in Islamic Law at ABU can be found at law.abu.edu.ng/pages/wsilcoursestructure.html.

c. Hassan Usman Katsina Polytechnic, Katsina Department of Sharia and Civil Law Certificate and diploma courses, 1997

[Ed. note: on a visit to the Hassan Usman Katsina Polytechnic in 2003, photocopies of the pages of the Polytechnic's syllabus relating to the Department of Sharia and Civil

⁹⁰ A. Thurston, 'The Aminu Kano College of Islamic and Legal Studies: A Site for the Renegotiation of Islamic Law and Authority in Kano, Nigeria', in M. Lo & M. Haron, eds., *Muslim Institutions of Higher Education in Postcolonial Africa*, Palgrave Macmillan, 2016, 247-264.

⁹¹ E.g. University of Maiduguri, www.unimaid.edu.ng/root/faculty_of_law/dept_sharia_law.html.

⁹² E.g. Ahmadu Bello Univeristy, law.abu.edu.ng/pages/undergraduate.html.

⁹³ 'B.L.' is another acronym for 'Bachelor of Laws', like 'LL.B.'. Neither the Nigerian Law School nor the Council of Legal education grants degrees. Nevertheless LL.B.-holders who go on to complete the course at the Nigerian Law School and pass the bar exam thereafter say they are 'LL.B., B.L.'

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Law – in English, Hausa, and Arabic – were kindly provided. The syllabus dates from the 1997/98 academic session, i.e. before sharia implementation began in 1999/2000. Nevertheless, the pages in English are reproduced here, as they give information about the history of the Department and shed light on the education of Area Court judges in the 1980s and '90s, most of whom, in the sharia states, became Sharia Court judges in the early 2000s.]

(a) Historical background:

In the year 1980 the Sharia Court of Appeal of the then Kaduna State⁹⁴ felt that there was great need to appoint Area Court judges who are well-versed in Islamic law, hence the need to establish a training institution for that purpose. A bill was then proposed to the defunct Kaduna State House of Assembly in the same year.⁹⁵

The objective of the programme was to train Area Court personnel in the application of Islamic law. To achieve this, a College, known at that time [as] Kaduna State College of Legal Studies, was established to train persons in the Sharia law and its application.

The proposal was to teach students in Arabic, and English language in the case of common law subjects. The first site of the College was the former Native Authority Works Department buildings [in Katsina]. The first batch of students graduated in July 1981.

After the military coup of [31st December] 1983, the College was, in 1984, transferred to the present Hassan Usman Katsina Polytechnic.

Apart from Diploma in Sharia, the Department introduced Advanced Judicial Certificate course of one year duration which was run for only three sessions before it was phased out in 1993/94.

(b) Staff:

The Department has six academic and two non-academic staff: [names omitted].

(c) Diploma and certificate programmes mounted by the Department:

Diploma in Sharia Law

i. Aims and objectives:

- to provide participants with the knowledge and application of substantive area courts [sic] of law;
- to give candidates the opportunity to improve their primary knowledge on the Sharia and civil law;
- who have successfully completed the course are expected to be Assistant Registrars, Registrars and Judges.

ii. Admission requirements: Candidates for Diploma in Sharia Law [must] pass the following:

⁹⁴ Katsina State was carved out of Kaduna State in 1987.

⁹⁵ Nigeria was returned to civilian rule in 1979, so the bill in question was considered by the Kaduna State House of Assembly elected in the July 1979 elections and taking office on 1 October 1979. The military took over again on 31st December 1983, after which all elected assemblies became defunct.

COURSES FOR ALKALIS AND KADIS

- (a) HIS/SIS certificate with at least pass in all subjects.
 (b) Grade II certificate from any Arabic Teachers College with credit in Arabic Language and pass in all subjects.
- iii. Duration: The programme is run for six semesters (three academic sessions).
- iv. Course units:

First Semester	Second Semester
History of Islamic Law	History of Islamic Law
Mu'amalat	Mu'amalat
Ibadat	Ibadat
Nigerian Legal System	Nigerian Legal System
Criminal Law	Criminal Law
Arabic Language	Arabic Language
English Language	English Language

Third Semester	Fourth Semester
Crime and Torts	Crime and Torts
Mu'amalat	Mu'amalat
Sources of Islamic Law	Sources of Islamic Law
Tafsir and Hadith	Tafsir and Hadith
Personal Status	Personal Status
Criminal Procedure Code	Criminal Procedure Code
English Language	English Language
Arabic Language	Arabic Language
Citizenship Education	Citizenship Education
Fifth Semester	Sixth Semester
Murafa'at	Murafa'at
Succession	Succession
Tafsir and Hadith	Tafsir and Hadith
Personal Status	Personal Status
Contract	Contract
Evidence & Civil Procedure	Evidence & Civil Procedure
Arabic Language	Arabic Language
English Language	English Language
Court Administration	Court Administration

v. Students enrolment (1997/98) academic session (2nd batch):

Diploma I	–	8
Diploma II	–	5
Diploma III	–	<u>10</u>
Total	–	23

Advanced Judicial Certificate Course

i. Aims and objectives:

- to train participants with the knowledge and application of substantive area courts laws;

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- to serve as a sort of remedial course for candidates so that once the course is completed successful participants may gain admission into either the Diploma in Sharia or Common Law.
- Area Courts personnel who have successfully completed Advanced Judicial Course are expected to be promoted to Assistant Registrars.

ii. Admission requirements:

- a. The participants to be nominated should have worked in the Area Courts for at least one year and have not attended any judicial course in any institution.
- b. Customs officers, police officers, immigration officers, prison officers and officers of the armed forces not below salary level 06.
- c. GCE/SSCE 2 credits, or 1 credit 2 passes, or 4 passes on Grade II Teachers Certificate or its equivalent.

iii. Duration: The duration of the programme is two semesters (one academic session).

iv. Course units:

First Semester	Second Semester
Mu'amalat	Mu'amalat
Nikah	Nikah
Murafa'at	Murafa'at
Nirath	Nirath
Torts	Torts
Contract	Contract
Criminal Law	Criminal Law
English Language	English Language
Arabic Language	Arabic Language
General Studies	General Studies

Note: The programme will be re-introduced during the 1998/99 academic session.

(c) Library:

The Department has a Departmental Library in the Head of Department's office. The library comprises books on Sharia law.

**d. State College of Legal and Islamic Studies, Sokoto:
certificate and diploma courses, 2006**

[Ed. note: The following information about the Sokoto State College of Legal and Islamic Studies was generously provided by officials of the College during a visit there by Sama'ila Mohammed, one of the researchers for this project, on September 15, 2006. Three items were provided:

- the Student Handbook, including summaries of the curriculums for the nine programmes offered by the College as at September 2006;
- a digital copy of the College's comprehensive syllabus, comprising over 280 pages, showing curriculums and detailed course contents for all courses; and

- syllabuses for two new Advanced Diplomas, one in Law and one in Sharia.

Many thanks to Barr. Abubakar Musa Lamido, the Principal of the College in September 2006, who facilitated the gathering of these materials. What follows below is selected from the sources provided.]

Brief History of the College⁹⁶

The College was established in 1981 via Edict No. 12 of 1st June 1981 [sic: this was more likely a law enacted by the House of Assembly of Sokoto State] and since then the College was placed under academic supervision of Haliru Binji College of Arts and Science⁹⁷ through the academic supervisory committee. The College became fully autonomous in 1998.

The aims and objectives of the College are:

To provide courses of study, training [and] research in legal and Islamic studies leading to obtaining the Diploma in Law and Diploma in Shari’ah and Civil Law and such other courses as may be approved by the College.

To provide a venue for teacher-in-service courses and curricular development.

The College is presently operating in a temporary site within the permanent site of the Sokoto State Polytechnic.

Curriculums for Certificate and Diploma Programmes⁹⁸

Pre-Diploma Certificate in Law

First Semester	Second Semester
General principles of law	General principles of law
Introduction to Islamic law	Introduction to Islamic law
English language	English language
Islamic Studies	Islamic Studies
Arabic language	Arabic language

Diploma in Civil Law

Part One

First Semester	Second Semester
General Principle of Islam	General Principle of Islam
Constitutional law	Administrative law
Nigeria Legal System	Nigerian Legal System
Criminal Law	Criminal Law
Law of Contract	Law of Tort
English language	English language
Arabic language	Arabic language (Or)
Islamic Studies	Islamic Studies

Part Two

⁹⁶ From the Student Handbook, 7.

⁹⁷ Formerly the Sokoto State College of Arts and Science.

⁹⁸ From the comprehensive syllabus supplied digitally.

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First Semester	Second Semester
Islamic Family Law.	Law of Testate & Intestate Succession
Commercial Law.	Commercial Law.
Criminal Procedure.	Criminal Procedure.
Civil Procedure.	Civil Procedure.
Law of Evidence.	Law of Evidence.
English language	English language
Arabic language	Arabic language
Islamic Studies.	Islamic Studies.
Research Method.	Research Project.

Diploma in Sharia and Civil Law

Part One

First Semester	Second Semester
Nigeria Legal System	Constitutional & Administration Law
Islamic Jurisprudence	Islamic Jurisprudence
Islamic Law of Contract	Islamic Law of Tort
Criminal Law	Criminal Law
Arabic Language	Arabic Language
English language	English language

Part Two

First Semester	Second Semester
Islamic Personal status	Islamic Personal status
Law of Contract	Law of Tort
Mu'amalat	Mu'amalat
Arabic Language	Arabic Language
Tafsir and Hadith	Tafsir and Hadith
English language	English language

Certificate in Sharia Arabic Medium

First Semester	Second Semester
Islamic Jurisprudence	Islamic Jurisprudence
Islamic Criminal law	Islamic Criminal law
Shari'ah Penal Code	Shari'ah Penal Code
Arabic language	Arabic language
English language	English language
Tajweed	Tajweed
Hausa language	Hausa language
Introduction to Islamic law	Introduction to Islamic law

Diploma in Sharia Arabic Medium

Part One

First Semester	Second Semester
Islamic Jurisprudence	Islamic Jurisprudence
Islamic Personal Status	Islamic Personal Status
Mu'amalat'	Mu'amalat
Islamic Criminal law	Islamic Criminal law

COURSES FOR ALKALIS AND KADIS

General Principles of law	General Principles of law
Shari'ah Penal Code	Shari'ah Penal Code
Arabic language	Arabic language
English language	English language
Tajweed	Tajweed
Hausa autography	Hausa language

Part Two

First Semester	Second Semester
Qur'anic Science	Science of Hadith
Islamic Jurisprudence	Islamic Jurisprudence
Islamic law of succession	Islamic law of succession
Islamic law of evidence	Murafa'at
Islamic criminal procedure	Islamic criminal procedure
English language	English language
Arabic language	Arabic language
Research methodology	Research Project
Shari'ah penal code	Shari'ah penal code

Certificate in Islamic Studies Arabic Medium

First Semester	Second Semester
Introduction to Qur'anic Science	Introduction to Qur'anic Science
Introduction to Islamic Jurisprudent	Introduction to Islamic Jurisprudence
Islamic History	Islamic History
English language	English language
Arabic language	Arabic language
Studies of Hadith	Science of Hadith
Introduction to Islamic law	Introduction to Islamic law

Diploma in Islamic Studies Arabic Medium

Part One

First Semester	Second Semester
Islamic Law	Islamic Law
Qur'anic Studies	Usul Al- Fiqh
Dev. of Islamic Theology & Move.	Textual Studies of Hadith
Islamic Thought & Move.	Qur'anic Studies
Textual Studies of Hadith	Murafa'at
English language	English language
Arabic language I	Arabic language II
Arabic literature I	Arabic literature II
Introduction to Prosody and Balaga	Methodology of Teaching Arabic

Part Two

First Semester	Second Semester
Islamic Law	Al-Fiqh
Hadith Studies	Textual Studies of Hadith
Islamic Movement	Islamic Movement II
Hausa Language	Hausa Language

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Tafsir I	Tafsir II
English language	English language
Arabic language	Arabic language
Research methodology	Research Project

Certificate in Arabic Language

First Semester	Second Semester
Introduction to Arabic Language	Introduction to Arabic Language
Introduction to Arabic Writing & Dict	Composition & Essay
Reading & Comprehension	Introduction to Literature in Arabic
Arabic Library & Culture	Rhetoric & Vocabulary
Recitation	Introduction to Literary Criticism

Diploma in Arabic Language

Part One

First Semester	Second Semester
Arabic Language I	Arabic Language I
Arabic Literature	Introduction to Prosody & Balaga
Arabic Language & Culture	Literary Criticism
Orientalism	Poetry
Language Exercise	Tajweed
Use of English	Use of English

Part Two

First Semester	Second Semester
Arabic Language II	Arabic Language II
Arabic Literature II	Arabic Literature II
Reading and Memorization (Qur'an)	Literary Criticism and Rhetorics
Islamic Civilization	Novels and Drama
Research Methodology	Research Project
Use of English	Use of English

Advanced Diploma in Law and Advanced Diploma in Sharia⁹⁹

Basically, the College was established so as to remain the main source of provision of middle-level manpower to both the State judiciary and the Ministry of Justice. Hence judges of Sharia Courts in the State and other neighbouring States were graduands of this institution. This notwithstanding, other people trained in other disciplines, i.e. Islamic Studies, Arabic, etc. were [also] employed and appointed as judges.

It is in the light of the above that the introduction of Advanced Diploma Programme in both Civil and Shariah is conceived. The programme will be a one year extensive teaching and research programme, and at the end of which students will be expected to learn the basics of both the common law, Nigerian laws and Islamic law as well.

⁹⁹ From the syllabus for these two programmes.

COURSES FOR ALKALIS AND KADIS

The general aims and objectives of this programme will not differ from other aims and objectives of the College.

Entry requirements

1. Holders of university degree or its equivalent.
2. Holders of Diploma in Civil Law or Diploma in Sharia and Civil Law with a not below Merit.
3. Candidates with Diploma in Islamic Studies or Arabic who have at least three years working experience in the judiciary may be considered.
4. Any other qualification ancillary to 1 and 2 above and acceptable to the College.

Advanced Diploma in Law: Courses to be Offered

1. Comparative Jurisprudence I
2. Comparative Jurisprudence II
3. Constitutional Law I
4. Constitutional Law II
5. Introduction to Islamic Law I
6. Introduction to Islamic Law II
7. Nigerian Legal System I
8. Nigerian Legal System II
9. Criminal Law I
10. Criminal Law II
11. Legal Drafting I
12. Legal Drafting II
13. Law of Evidence I
14. Law of Evidence II
15. Law of Contract I
16. Law of Contract II
17. Nigerian Land Law I
18. Nigerian Land Law II
19. Administrative Law I
20. Administrative Law II
21. Research Project

Advanced Diploma in Sharia: Courses to be Offered

1. Comparative Jurisprudence I
2. Comparative Jurisprudence II
3. Constitutional Law I
4. Constitutional Law II
5. Law of Evidence I
6. Law of Evidence II
7. Islamic Law of Crimes & Torts I
8. Islamic Law of Crimes & Torts II
9. Islamic Law of Contract (Mu'amalat) I
10. Islamic Law of Contract (Mu'amalat) II
11. Islamic Family Law I

SHARIA IMPLEMENTATION IN NORTHERN NIGERIA:
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12. Islamic Family Law II
13. Mirath and Wasiyyah I
14. Mirath and Wasiyyah II
15. Islamic Property Law I
16. Islamic Property Law II
17. Murafaat I
18. Murafaat II
19. Nigerian Legal System I
20. Nigerian Legal System II
21. Research Project

e. Centre for Islamic Legal Studies: course outline for Diploma in Sharia, 2008¹⁰⁰

First Year – First Semester

1. Nigerian Legal System
 - (a) Definition and meaning of “law”
 - (b) Meaning of “legal system”
 - (c) Historical development of Nigerian legal system
 - (d) Sources of Nigerian law
 - (e) The structures of the courts and the law they administer
 - (f) Laws, statutes, Islamic law and customary law, etc.
2. Nigerian Law of Contracts
 - (a) Nature of contracts
 - (b) Sources of the law of contracts
 - (c) Formation of contracts: offer and acceptance, parties to the contract, capacity, consideration, intention to create legal relation
 - (d) Contents of the contracts: terms, excluding and limiting terms and fundamental breach of terms, capacity, infancy, illiteracy, patients, drunkard, undue influence, etc.
 - (e) Discharge by frustration, etc.
 - (f) Breach of contract
3. Criminal Law I
 - (a) The function and object of criminal law, the nature of crimes (both in Islamic and Nigerian criminal law), the sources of criminal law, the history of criminal law in Nigeria, etc.
 - (b) General principles of criminal liability/responsibility (actus reus and mens rea), the constituents of the offence, problems of causation, etc.
4. Law of Evidence I
 - (a) Introduction, classification, sources and application.
 - (b) Admissible facts, facts in issue, relevant facts, relevancy and admissibility of statements, admission of confession, statement of persons who cannot be called as witnesses, statements made in special circumstances, proof, competence and compellability of witness.

¹⁰⁰ This is an updated course outline kindly provided in 2008 by CIILS.

COURSES FOR ALKALIS AND KADIS

5. Land Law I
 - (a) Historical perspective: why was statutory land introduced in the country? The Land Tenure Law of Northern Nigeria 1962.
 - (b) The Land Use Decree 1978: the contents of the Decree, concept of land and various interests in it.
 - (c) Salient points or characteristics of customary land law, individual, group (family and community) ownership of land, etc.
6. Arabic I

The course introduces students to the following areas of study:

 - (a) Knowing Arabic alphabets
 - (b) Knowing Arabic consonants, vowels and their types, short and lengthy
 - (c) Doubled consonants (*shadda*), notation (*tanween*) of vowels.
7. Islamic and Statutory Civil Procedure
 - (a) Meaning of civil procedure and distinction from criminal procedure.
 - (b) The inferior courts of record: Area and Customary Courts, District Courts, Juvenile Courts, Courts Martial etc.
 - (c) Superior courts of record: Customary Court of Appeal, Sharia Court of Appeal, the Federal High Court, High Court. Method of commencing civil proceeding in the High Court. The writ of summons, service of process, summary judgement, pleading.
 - (d) Adjournment and amendment proceedings at the trial in the High Court. Judgement, stay of execution, and enforcement of judgement. The Court of Appeal. The Supreme Court of Appeal.
8. Islamic Jurisprudence I
 - 1st Stage: Pre-Islamic Arabia/the period of the Prophet (SAW)
 - 2nd Stage: Period of Sahaba
 - 3rd Stage: Period of Umayyad
 - 4th Stage: First Abbasid period
 - 5th Stage: Second Abbasid period
 - 6th Stage: Period of stagnation and decline
 - 7th Stage: Islamic Law under colonial rule
 - 8th Stage: Sharia/Islamic Law in contemporary world: general survey: Egyptian, Pakistani, Turkish, Malaysian, Iranian, Sudanese and Nigerian experience.

First Year – Second Semester

1. Constitutional Law
 - (a) Meaning of “constitution”
 - (b) Historical development of Nigerian constitution
 - (c) Types of constitution: rigid and flexible
 - (d) Systems of government; parliamentary and presidential
 - (e) Supremacy of the constitution and the rule of law
 - (f) Federalism, unitary and confederation
 - (g) Fundamental Human Rights
 - (h) The role of courts, etc.

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2. *Daman* (Islamic Law of Torts)
 - (a) Historical background, general principles of tortious liability, negligence, defamation, conversion, detinue, nuisance, trespass, assault etc.
 - (b) Defences
3. Criminal Law II
General defences to criminal liability: insanity, infancy, intoxication, provocation, mistake of facts, necessity, accident, right of private defence, etc.
4. Law of Evidence II
 - (a) Character evidence
 - (b) Opinion evidence
 - (c) Hearsay evidence
 - (d) Estoppel; competence and compellability
 - (e) Corroboration
 - (f) Burden of proof
 - (g) Documentary evidence
5. Islamic Law Relating to Land
 - (a) Division of land into *mamluka* (owned land), *mawat* (dead land), *amiriyyah* (land within the vicinity of the town), *matruka* (abandoned land), *waqaf* (non disposable land), *harim* (space surrounding land).
 - (b) Disputes as to ownership of water and watering, types of water ownership. The owned watering system which is on one's own piece of land, the owned watering system on land which does not belong to anyone, ownership as to cattle ranch, disputes on cattle tracts, etc.
 - (c) Gratuitous assistance rendered to neighbours, disputes as to ownership of wall, joint ownership of walls, duty to maintain fence or wall to farms/farmlands.
 - (d) *Darar* (nuisance), types of nuisance, proceedings on nuisance.
 - (e) Transfer or delivery of land includes all that is on it, exception
 - (f) Usurpation (trespass to land), *ta'addi*, legal remedies, procedural aspects, etc.
 - (g) Different interests on land: ownership, hire, life-tenant, loan, pledge, etc.
6. Islamic Jurisprudence II
Legal theories: *hukum shar* (law of value of Sharia), *hukum taklifi*, types into *wajib*, *haram*, *mandub*, *makruh* and *mubah*. Declaratory law (*hukum al-wad'i*), *azima*, *rukhsa*. Pillars of *hukum*. Lawgiver (*hakim*), subject matter of *hukum* (*mahkum fihi*), legal capacity (*ahliyyah*), conflicts of evidence (*ta'arud*), *ijtihad* (personal reasoning), etc.
7. Arabic II
 - (a) Language drill
 - (b) Simple Arabic composition, and
 - (c) Simple introduction to Arabic grammar
8. Sharia in Contemporary Nigeria

Second Year – First Semester

1. Islamic Family Law
Purpose and spiritual importance of marriage in Islamic law. Ethics in *hikbbab* (choice of partner), legal and spiritual consequences in disregard of ethical *hikbbab*. Elements and conditions of marriage: offer/acceptance, partners should not fall within the prohibited degree of marriage, temporary prohibitions and their legal consequences, witnesses required for a valid marriage, conditions in the marriage, the *quid pro quo* of the marriage (*sadaq*), prompt and deferred *sadaq*, quantum, in case of bankruptcy which of the two (payment of *sadaq* or loan) takes priority over the other, marriage guardian, etc.
2. Islamic Criminal Law I
Hudud offences. The policy of Sharia (*maqasid ash-shar*). Theft: definition, elements and conditions, punishment. Illicit sexual intercourse: definition, elements and conditions, punishment. False accusation of *zina*: definition, elements and conditions, punishment. Drinking alcohol: definition, elements and conditions, punishment. Rebellion: definition, elements and punishment. Sodomy: definition, element and punishment. Lesbianism: definition, elements and conditions and punishment. Changing religion: definition, elements, conditions and why the offence is punished, etc.
3. Murafa'ah I
 - (a) The judge (*al-qadi*)
 - (b) Appointment and removal of *qadi*
 - (c) Qualification and conduct of a *qadi*
 - (d) Court and jurisdiction
 - (e) Institution of an action – *da'wah*
 - (f) Conditions of claims – *shurut al-da'wah*
 - (g) Proof of claim – *ithbab al-da'wah*
 - (h) Means of proof
 - (i) Admission or confession – *iqrar*; authorities
 - (j) Essential of *iqrar*
 - (k) Limits of *iqrar*
 - (l) Withdrawal of *iqrar*
4. Mu'amalat I
 - (a) Elements and conditions of sale, when are the goods sold delivered, in the sale of land what things are delivered or transferred along with it, duty of care imposed on a buyer, the issue of price control, *al-ja-ijab* and its consequences in the sale of farmland, void, voidable and valid sale, vitiation of sale, etc.
 - (b) Dormant/active partnership (*mudaraba/qirada*), elements and conditions, vitiation of [sic].
 - (c) The contract of *ijarah* as distinguished from *kira'ah* and *jualah*.
 - (d) *Wakala/muwakki* (principal and agent), elements and conditions, vitiation, etc.
 - (e) Islamic law relating to *shuf'ah* (pre-emption), etc.

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5. Succession I
 - (a) Basic factors to successful distribution of estate under Islamic law: knowledge, *ikhlas*, *amana*, etc.
 - (b) Elements and conditions of inheritance: the deceased person, the heirs, the estate.
 - (c) Grounds of succession: marriage/paternity, void and voidable marriages and their legal effect in Islamic law of succession, termination of such marriage, minimum and maximum periods of gestation, accidental sexual relations between persons that are not married, legal effect of the paternity of a child begotten as a result of such marriage.
 - (d) Impediments to succession: difference of religion, killing and slavery.
 - (e) Distribution of estate: procedure for distribution (*al-qisma*), resolving conflicts in distribution, *as-sufqa*.
 - (f) *Ikrar* (admission): what it is, who is competent to make it, its legal consequences on the person who makes it, acknowledged heir legal consequences, etc.
 - (g) Missing person: how his/her estate is distributed, when it becomes due for distribution
 - (h) Inter-sex (*humsa mushkal*): how is it determined, rules regarding distribution of estate
 - (i) The problems of *radd* and the role of Muslim Public Treasury
 - (j) The problems of *awl*
 - (k) Heirs from outer-family.
6. Principles of Government in Islam I
7. Ulum al-Hadith I
8. Ulum al-Qur'an I

Second Year – Second Semester

1. Islamic Family Law II (Dissolution of Marriage)
 - (a) Termination of marriage: Their categorization into (i) *faskh* with or without *talaq*, its legal consequences (ii) *talaq* (iii) *khul* (iv) *zihar* (v) *ila*, etc; ambiguous and non-ambiguous words in communication of termination (expressed or implied).
 - (b) *Iddah* (waiting period): by three *quru* (menstruation), by three months and ten days, by one year, by delivery, where *iddah* does not apply, etc.
 - (c) Consequences of termination: maintenance, custody, guardianship of the child.
2. Islamic Criminal Law II (*Qisas* and *Ta'azir* Offences)
 - (a) What constitutes intentional and unintentional killing in Islamic Law, categorization of killings into intentional, unintentional and semi-intentional.
 - (b) Proofs of killings: (i) judicial confession, extra-judicial confession, qualified confessions, confession incriminating others; (ii) proof by: *lauth*, *latbu* and

- qasama*, and (iii) dying declaration, retracted confession and the legal consequences thereof.
- (c) Punishment of *qisas*: (i) execution of an offender when the offence is proved (ii) pardoning accompanied by *diyyah* and pardoning without *diyyah*.
 - (d) *Diyyah*: What it means, who are responsible and when. Social and economic problems associated with *diyyah*, what is a way out of the problems, etc.
 - (e) *Ta'azir*: definition and scope.
3. Murafa'ah II
- 1) Testimony - *shabada*
 - (a) Authority
 - (b) Limitation of *shabada*
 - (c) Condition of *shabada*
 - (d) Number of witnesses
 - (e) Classes of witnesses
 - (f) Disqualification of evidence
 - (g) Retraction of evidence
 - (h) Clash of evidence
 - 2) Oath (*al-yamin*)
 - 3) Documentary evidence (*al-kitaba*)
 - 4) Hearsay evidence (*shahadat al-sima'*)
 - 5) Conclusive presumption (*al-qarina al-qati'a*).
4. Mu'amalat II (Gratuitous Contract)
- (a) Pledge (*rahan*): meaning and scope, elements and conditions, multiplicity of the contract in one agreement, pledge of loaned chattel, pledge of fruits or farm produce, under what circumstances can it be used by the pledger, sale of pledged goods, procedure not allowed, dispute between the parties, etc.
 - (b) Islamic law relating to gifts (*waqaf*), elements and conditions, its operation, vitiation, disputes between the parties, termination of the agreement.
 - (c) Islamic law relating to loan: what constitutes loan, elements and conditions, when does it terminate, etc.
5. Ulum al-Hadith II
6. Islamic and Statutory Criminal Procedure Codes:
 Search and seizure: search with warrant; search for a specific document or thing; search by police officer for stolen property; search for a person wrongfully confined; search without warrant; statutory rules relating to search. Legal effect of unlawful search and seizure. Search and seizure conducted under a warrant wrongfully obtained; search without warrant; search made under valid warrant but in unlawful manner; remedies available against search and seizure.
7. Ulum al-Qur'an II - H
8. Principles of Government in Islam II

f. Centre for Islamic Legal Studies: short courses for Sharia Court al-kalīs¹⁰¹

With the re-introduction of the Islamic criminal law [in the sharia states], the Centre for Islamic Legal Studies immediately recognized the importance and necessity of re-training of the judges who will be engaged in the implementation of the Sharia, who were, hitherto, confined to matters of personal status. The Centre designed short but intensive training courses which were accepted and conducted in some states. The main objectives of these short intensive courses were stated as follows;

- i) to expose the Sharia judges to a deeper and more comprehensive understanding of the Sharia legal system;
- ii) to inculcate a deeper appreciation of the provisions of the Qur'an and Sunnah relating to criminal justice system which is the main addition in the new Sharia dispensation;
- iii) to expose the judges to a wider and more up-to-date civil law jurisdiction.
- iv) to inculcate a deeper understanding of the criminal and civil procedure under the Sharia; and
- v) to train the judges in other matters relating to professional ethics and conduct expected of a judge under the Sharia with a view to building public confidence in the judiciary.

The content of the training courses covers:

1. Sources of Islamic law
 - a) The Qur'an
 - b) The Sunnah
 - c) *Ijma*
 - d) *Qiyas*
 - e) Other supplementary and subsidiary sources
2. The Islamic criminal justice system
 - a) *Hudud*
 - b) *Qisas*
 - c) *Ta'azir*
3. Marriage and divorce under the Sharia
 - a) Contract of marriage
 - b) Legal effects of marriage
 - c) Termination of marriage contract
 - i) Modes of termination
 - ii) Consequences of termination
 - 1) *Iddah*
 - 2) Custody of children
 - 3) Maintenance during *iddah* etc.
4. Guardianship of person with incomplete legal capacity
 - a) Categories of persons under interdiction (*hajar*)

¹⁰¹ From "A Brief on the role of the Centre for Islamic Legal Studies, Ahmadu Bello University, Zaria" by Dr. I.N. Sada, the Director of CILS from 2002-2006. A copy of the paper, which is apparently unpublished, is in the possession of the editor.

- b) Types of guardians and the scope of their powers
- 5. Inheritance (*mirath*) and bequest (*wasīyah*)
 - a) Pre-requisite of inheritance and bequest
 - b) *al-Qismah* (distribution)
- 6. *Daman* – tortious liability
 - a) *Gasb* and *ta’addi*
 - b) Negligence - professionals and others
- 7. Commercial transactions
 - a) *al-Buyu’* (sale)
 - b) *al-Kira* (rent)
 - c) *al-Ijarah* (hire)
 - d) *al-Rahn* (pledge/mortgage)
 - e) *al-Ju’ala* (service reward)
 - f) *ad-Duyun* (debts) and related matters
- 8. Property law
 - a) Land acquisition and disposal
 - b) The right of *shuf’ah*
 - c) Land Use Act and the Sharia
- 9. Evidence and *mu’rafa’at*
 - a) Proof (means)
 - b) Confession and admission
 - c) Witnesses
 - d) Oaths
 - e) Others
- 10. Nigerian legal system
 - a) Sources of Nigerian law
 - b) Nigerian court system
 - c) Sharia court system
 - d) Control, inspection and supervision of Sharia courts
- 11. Code of Conduct and Professional Ethics for Judges and Other Judicial Officers

The training of judges is a continuous process which requires patience and resources. The Sharia implementing states have fully recognized that and are working seriously to screen and send their judges for further training.

g. National Judicial Institute: Programmes for Judges 2006-2008

Ed. note: The information that follows is drawn from documents that were generously supplied by staff of the National Judicial Institute, Abuja when the editor visited there on in January 2016. Special thanks go to Hadiza Santali Saeed, who arranged the visit, and to Hon. Justice R.P.I. Bozimo, OFR, the Administrator of the NJI.

Profile of the National Judicial Institute¹⁰²

The National Judicial Institute (NJI) was established by Decree No. 28 of 1991 as amended by Decree No. 15 of 1999. It is managed by a Board of Governors, which is composed of the Chief Justice of Nigeria as Chairman, Attorney-General of the

¹⁰² From a pamphlet provided by the NJI.

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Federation and Minister of Justice, the Most Senior Justice of the Supreme Court, President of the Court of Appeal, Chief Judge of the Federal High Court, Chief Judges of all the 36 States and the Federal Capital Territory, and two Grand Kadis of Sharia Courts of Appeal and two Presidents of Customary Courts of Appeal, respectively, among other members.

The objectives and functions of the Institute as provided by section 3 of the National Judicial Institute Decree, 1991, which established the Institute is as follows:

- (1) The Institute shall serve as the principal focal point of judicial activities relating to the promotion of efficiency, uniformity and improvement of the quality of judicial services in the superior and inferior courts.
- (2) For the purposes of subsection (1) of this section, the Institute is hereby empowered to:
 - (a) conduct courses for all categories of judicial officers and their supporting staff with a view to expanding and improving their overall knowledge and performances in their different sections of service;
 - (b) provide continuing education for all categories of judicial officers by undertaking, organizing, conducting and facilitating study courses, lectures, seminars, workshops, conferences and other programmes related to judicial education;
 - (c) organize once in two years a conference for all Nigerian judges of superior and lower courts respectively;
 - (d) disseminate by way of publication of books, journals, records, reports or other means of information about any part of its activities to the extent deemed justified by the Board of Governors generally as a contribution towards knowledge; and
 - (e) promote or undertake any other activity which in the opinion of the Board is calculated to help achieve the purpose for which the Institute was established.

* * *

The following workshops, seminars and conferences are usually conducted by the Institute:

- i. Biennial All Nigeria Judges' Conference for the superior court judges, i.e. justices of the Supreme Court of Nigeria, justices of the Court of Appeal, judges of the Federal, FCT and State High Courts, kadis of the Sharia Courts of Appeal, judges of the Customary Courts of Appeal.
- ii. Biennial Conference of All Nigeria Judges of the Lower Courts, i.e. Magistrates, Area and Customary Court judges and Sharia Court judges.
- iii. Annual Induction Courses for Newly Appointed Judges and Kadis.
- iv. Refresher Course for High Court judges, kadis of the Sharia Courts of Appeal and judges of the Customary Courts of Appeal, nationwide.
- v. Workshop for Judicial Librarians.
- vi. Workshop for Court Registrars.
- vii. Judicial Administration Workshop for Chief Registrars, Secretaries of Judicial Service Commissions, Deputy Chief Registrars, Directors, Accountants, etc.
- viii. National Workshop for Magistrates of 1-5 years post-appointment.

COURSES FOR ALKALIS AND KADIS

- ix. Workshop for Area and Customary Court Judges and Directors and Inspectors of Area and Customary Courts.
- x. Workshop for Sharia Court Judges and Directors and Inspectors of Sharia Courts.
- xi. Workshop for Information Technology for Confidential Secretaries and Typists in the Judiciary.
- xii. Workshop for Junior Staff of the Judiciary.

Furthermore, the National Judicial Institute also organizes and conducts the following seminars and workshops in collaboration with other organizations in Nigeria and abroad:

1. Zonal Inter-State Workshops for Lower Court Judges on Human Rights and Administration of Justice, which was organized in collaboration with the Civil Liberties Organization, National Human Rights Commission, and the Danish Center for Human Rights, Denmark (1998-2001).
2. Annual Oil and Gas Seminar for Judges, which was organized in conjunction with the Shell Petroleum Development Company PLC (1998-2002)
3. Maritime Seminar for Judges, which is organized in collaboration with the Nigerian Shippers' Council.
4. Zonal Workshop on Alternative Dispute Resolution (ADR) for Judges, in conjunction with the Nigerian Institute of Advanced Legal Studies (2001-2003).
5. With effect from 2001, the National Judicial Institute commenced collaboration with the Chartered Institute of Bankers of Nigeria in organizing and conducting the annual Seminar on Banking and Allied Matters for Judges (2001 till date).
6. Training Workshop on Legal Issues in Telecommunications for Judges, which since 2003 is organized in collaboration with the Nigerian Communications Commission and USAID.
7. Training Workshop on Jurisprudence of Equality Project (JEP), which since 2003 was organized in collaboration with the United Nations Development Fund for Women and the National Association of Women Judges, Nigeria.
8. Investment Seminar for Judges in Nigeria, organized jointly with the Investment Banking and Trust Company Limited (IBTC) (2005-2006).
9. Juridical Training Workshop on Environmental Law in Nigeria, held in collaboration with UNEP (2006-2007).
10. Training Workshops on ADR, Ethics for Judicial Officers/Court Employees and Assessment of the Nigerian Courts in Ten Pilot States is currently being organized in collaboration with the United Nations Office on Drugs and Crime (UNODC).
11. African ADR Summit, organized in collaboration with Negotiation and Conflict Management Group (NCMG) (2006 to date).
12. Workshop on the theme "The Administration of Justice in the Nigerian Capital Market", organized in collaboration with the Investments and Securities Tribunal, Abuja, with effect from October 2007.

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2006 Induction Course for Newly Appointed Judges & Kadis: 5th-9th June 2006

Topics covered:¹⁰³

1. Judicial Ethics, Courtroom Comportment and Code of Conduct for Judges: Hon. Justice E.O. Ayoola, Chairman, ICPC
2. Recording of Evidence and Transcription in Today's Court: CJ, FCT to nominate
3. Modern Style of Judgment Writing: Mrs. Oluwatoyin Doherty
4. The Bench and the Bar: Partnering for Justice: Lawyer Uche
5. Relationship Between the Heads of Court and Judges/Kadis as Well as Judges of the Lower Courts
6. Case Flow and Court Management: Current Innovations: KD, Rivers to chair
7. Court Automation and Information Management System
8. Promoting the Use of ADR Processes: Peter Akper, Enugu to chair
9. The Multi-Door Court House Concept: A Review: Kehinde Aina, Hon Justice Goodluck to chair
10. Understanding Intellectual Property Law: the Nigerian Perspective: Dr. J.M. Nasir, D-G Nigerian Copyright Commission, Abuja
11. Ex Parte Applications: Guiding Principles: Justice Kekere-Ekun, JCA
12. National Industrial Court: Jurisdiction, Powers and Challenges: NIC
13. Stress Management and Healthy Living
14. Islamic Law: Practice and Procedure in Sharia Courts of Appeal: G.K. Sokoto, C-Man Retired [sic]; Grand Kadi Kogi to chair
15. Customary Laws: Practice and Procedure in Customary Courts of Appeal: President, Customary Court of Appeal, Plateau State
16. Ergonomics: Mind that Ache: Miss Amaka
17. Fitness Exercise for Judges (to visit gym)
18. Information and Communication Technologies and their Impact on Administration of Justice
19. Personal Security Planning
20. Key to Financial Stability in Retirement
21. Cyber Crime: Investigation, Prosecution and Adjudication: EFCC
22. Legal and Institutional Frameworks for Environmental Protection: An Overview.

2007 Refresher Course for Judges and Kadis: 12th-16th March, 2007

Topics covered:¹⁰⁴

1. Judicial Ethics, Code of Conduct and Courtroom Decorum for Judicial Officers: Hon. Justice Niki Tobi, JSC
2. Evaluation of the Performance of Judges of the Superior Courts of Record: The Role of the National Judicial Council: Hon. Justice B.O. Babalakin, JSC.
3. Election Petitions and the Challenge of Speedy Dispensation of Justice in Nigeria: Ademola O. Popoola, Faculty of Law, Obafemi Awolowo University

¹⁰³ From a "List of Topics" supplied by the NJI, with the names of presenters or tentative presenters as given here.

¹⁰⁴ From the papers contained in the spiral-bound coursebook supplied by the NJI. The book indicates 16 papers, of which only 11 are included.

COURSES FOR ALKALIS AND KADIS

4. High Job Demand, Low Job Control, and Job Dissatisfaction: Are They Risk Factors to Work-Related Musculoskeletal Disorders Among Judicial Officers? Ms. Uzoamaka Umeh, Consultant Physiotherapist
5. Recording of Evidence & Judgment-Writing: Law and Practice: Hon Justice G.O. Olateru-Olagbegi, Chief Judge, Ondo State
6. Relationship Between Judges and Lawyers as Ministers in the Temple of Justice: Awa U. Kalu, Esq.
7. The National Industrial Court: Current Dispensation in Labour Disputes Resolution: Hon. Justice B.B. Kayin, NIC
8. The Rights of Men, Women & Children in Marriage and Divorce Under Customary Laws in Nigeria: Hon. Justice A.E. Ubiri, Customary Court of Appeal, Delta State
9. ADR and Restorative Justice: Panacea for Delay in Dispensation of Justice: Mr. Kevin Nwosu, Deputy Director (Academics), Nigerian Law School, Kano campus
10. Computer Literacy for Judicial Officers: Mr. Joseph Boko, Computer Consultant
11. Practical Session on Computer: Mr. Joseph Boko, Computer Consultant

2007 National Workshop for Sharia Court Judges and Directors/Inspectors of Sharia Courts: 25th-29th June 2007

Topics covered:¹⁰⁵

1. Judicial Ethics, Decorum and Code of Conduct for Sharia Court Judges and Directors/Inspectors of Sharia Courts: Hon. Justice Shehu Ibrahim Ahmad, Sharia Court of Appeal, Kaduna State
2. Execution of Judgment: The Role of Stakeholders in Sharia Courts: Sheikh Danladi Keffi, Centre For Islamic Legal Studies, Ahmadu Bello University
3. Burden of Proof Under Islamic Law and the Common Law: A Comparative Analysis: Hon. Kadi M.A. Oredola, Sharia Court of Appeal, Kwara State
4. The Right of Audience of Legal Practitioners in Sharia Courts in Nigeria vis-à-vis the Right of Fair Hearing: Hon. Kadi Abubakar I. Kankarofi, Sharia Court of Appeal, Kano State
5. High Job Demand, Low Job Control, and Job Dissatisfaction: Are They Risk Factors to Work-Related Musculoskeletal Disorders Among Judicial Officers? Ms. Uzoamaka Umeh, Consultant Physiotherapist
6. Effective Court Inspection: The Role of Directors/Inspectors of Sharia Courts Towards Efficient Dispensation of Justice: Hon. Kadi Shehu Mu'azu Danmusa, Sharia Court of Appeal, Katsina State
7. Dissolution of Marriage Through Judicial Process Under Islamic Law: Alhaji Suleiman Yahaya Abubakar, Deputy Director of Studies, National Judicial Institute
8. An Examination of Qualifications for Appointment of Sharia Court Judges: The Classical Islamic Law Approach & Recent Developments: Hon. Kadi Umar Ibrahim, Sharia Court of Appeal, Plateau State
9. Implementation of Sharia in Nigeria: The Journey So Far: Professor Mohammed Tabiu, Bayero University, Kano

¹⁰⁵ From the papers contained in the spiral-bound coursebook supplied by the NJI. The book indicates 14 papers, of which only 12 are included.

SHARIA IMPLEMENTATION IN NORTHERN NIGERIA:
DOCUMENTARY MATERIALS ON THE SHARIA COURTS AND THEIR JUDGES

10. A Critical Appraisal of Judicial Independence and Integrity Under Sharia: Dr. A.M. Gurin, Faculty of Law, Ahmadu Bello University
11. Computer Appreciation for Sharia Court Judges: Mr. Bayo Olanrewaju, Computer Consultant
12. Practical Session on Computer: Mr. Bayo Olanrewaju, Computer Consultant

2007 Induction Course for Newly Appointed Judges and Kadis: 4th-15th June 2007

Topics covered:¹⁰⁶

1. Judicial Ethics, Code of Conduct for Judicial Officers, Courtroom Decorum and Comportment: Hon. Justice Niki Tobi, JSC
2. Judicial Integrity & Independence: Removing Corruption in the Wheel of Administration of Justice: Hon. Justice E.O. Ayoola, JSC (Rtd.), Chairman, ICPC
3. Organization of the Registry/Chambers and Case Flow Management: The Role of the Judge: Hon. Justice H.A.L. Balogun, High Court, Kaduna State
4. Remembering My Oaths of Office: Hon. Justice C.O.C. Izima, High Court, Abia State
5. Hints on Stress Management & Total Wellbeing: Dr. Jacob Nwachukwu, MBBS
6. The Constitution and the Role of the Judge in Civil Society: Hon. Justice A.U. Kalu, High Court, Abia State
7. An Examination of Islamic Law of Evidence and Matters of Procedure in Civil and Criminal Cases: Hon. Kadi Abdullahi Maikano Usman, Sharia Court of Appeal, Gombe State
8. Computer Literacy for Judicial Officers and Its Impact on Administration of Justice: Mr. Joseph Boko, Computer Consultant
9. Planning for Financial Security Now and In Retirement: Options for Judicial Officers: Mrs. Ify Umunnakwe, Asset Manager
10. High Job Demand, Low Job Control, and Job Dissatisfaction: Are They Risk Factors to Work-Related Musculoskeletal Disorders Among Judicial Officers? Ms. Uzoamaka Umeh, Consultant Physiotherapist

2007 All Nigeria Judges' Conference: 5th-9th November 2007

Topics covered:¹⁰⁷

1. Towards Strengthening Judicial Integrity: The Nigerian Experience: Hon. Justice Dahiru Musdapher, JSC
2. An Overview of the UNODC/NJI NGA/SO8 Project on Strengthening Judicial Integrity and Capacity in Ten Pilot States in Nigeria: Mr. Oliver Stople, UNODC
3. The Fight Against Corruption in the Judiciary in Nigeria: The Journey So Far: Hon. Justice E.O. Ayoola, JSC (Rtd), Chairman, ICPC
4. Obedience to Court Orders and Judgments: A Panacea for Sustainable Democracy: Hon. Justice Niki Tobi, JSC

¹⁰⁶ From the papers contained in the spiral-bound coursebook supplied by the NJI. The book indicates 21 papers, of which only 10 are included; possibly there was another coursebook which we did not obtain.

¹⁰⁷ From the Directory of Conference Proceedings

COURSES FOR ALKALIS AND KADIS

5. Performance Evaluation of Judicial Officers and the Role of the National Judicial Council: The Journey So Far: Hon. Justice Bola Babalakin, JSC (Rtd), Chairman, Committee of the NJC on Performance Evaluation of Judges of the Superior Courts of Record
6. Sentencing: Guiding Principles and Current Trends: Hon. Justice M.A. Owoade, JCA
7. The Role of the Judiciary in Industrial Harmony: Prof. E.E. Uvieghare, Lagos
8. The Challenges and Prospects of the Application of Sharia by the Courts: Hon. Justice I.T. Muhammad, JSC
9. Jurisdictional Issues in the Application of Customary Law in Nigeria: Hon. Justice S.H. Makeri, President, Customary Court of Appeal, Kaduna State
10. Information Technology and the Law: Dr. Francesco Contini, Research Institute on Judicial Systems, Italy and Mr. Alain Nkoyock, IT Expert, UNODC
11. Stress Management and Peak Performance in the Judiciary: Dr. A. Aderibigbe, Consultant Physician, Ilorin Teaching Hospital
12. Concept Paper on Family Courts and Family Courts Practice Directions 2007: Discussants: Prof. A. Adeyimi, Univ. of Lagos and Mrs. K.F. Anjoni, Executive Secretary, National Human Rights Commission

Attendees:¹⁰⁸

Fifteen justices of the Supreme Court.

Twenty-five justices of the Court of Appeal, from the headquarters and all ten divisions.

Fifteen judges of the Federal High Court.

Five judges of the National Industrial Court.

An average of about ten judges each from the High Court of the Federal Capital Territory and the High Courts of the thirty-six States of the Federation.

An average of four point five kadis each from the Sharia Court of Appeal of the Federal Capital Territory and the Sharia Courts of Appeal of the States carved out of the ex-Northern Region; the only such State that does not have its own Sharia Court of Appeal is Benue, which shares with Plateau.

An average of three point one judges each from the Customary Court of Appeal of the Federal Capital Territory and the Customary Courts of Appeal of ten States.

¹⁰⁸ Summarized from *ibid.*

SHARIA IMPLEMENTATION IN NORTHERN NIGERIA:
DOCUMENTARY MATERIALS ON THE SHARIA COURTS AND THEIR JUDGES

5.

Data on numbers of judges of the courts of the sharia states

1992

State	1991 population ¹⁰⁹	1992 numbers of judges per type of court ¹¹⁰				
		Area Courts		Sharia Court of Appeal	High Court	Magistrate/ District Courts
		ACs	UACs			
Bauchi/Gombe	4,351,007	129	24	6	8	13
Borno	2,536,003	48	12	5	11	17
Jigawa	2,875,525	34	4	2	4	6
Kaduna	3,935,618	92	5	5	10	23
Kano	5,810,470	58	11	6	12	33
Katsina	3,753,133	69	9	6	6	21
Kebbi	2,068,490	44	8	4	3	15
Niger	2,333,726	51	12	6	13	14
Sokoto/Zamfara	2,338,487	56	10	3	6	15
Yobe	1,399,689	18	7	1	4	6

2008

State	2006 population ¹¹¹	2008 numbers of judges per type of court ¹¹²				
		Sharia Courts		Sharia Court of Appeal	High Court	Magistrate/ District Courts
		SCs	USCs			
Bauchi	4,676,465	100	20			
Borno	4,151,193			6		
Gombe	2,353,879					
Jigawa	4,348,649	70	12	9	9	12
Kaduna	6,066,562	77	13	6	19	35
Kano	9,383,682	69	16	9	17	40
Katsina	5,792,578	86			10	18
Kebbi	3,238,628	50	15	10	10	40
Niger	3,950,249	49	27			40
Sokoto	3,696,999	38	16 ¹¹³	5	9	10
Yobe	2,321,591	24	17	3		
Zamfara	3,259,846	57	13	7	7	13

¹⁰⁹ Source: <http://www.onlinenigeria.com/Population/>, Table 1.3.3, Distribution of the 1991 population by states in Nigeria.

¹¹⁰ Source: Chief Gani Fawehinmi, *Courts' System in Nigeria: A Guide (1992)*, Lagos: Nigerian Law Publications Ltd., 1992, chapters on the judiciaries of the various States. In some cases vacancies in some approved judgeships are reported.

¹¹¹ Source: http://en.wikipedia.org/wiki/Demographics_of_Nigeria, citing the preliminary results of the 2006 Nigerian census.

¹¹² Source: Interviews conducted in the various states in February and March 2008. In some cases vacancies in some approved judgeships were reported. In some cases the numbers, though given by persons closely associated with the courts, were nevertheless prefaced with the word "about".

¹¹³ In Sokoto there are eight Upper Sharia Courts; the alkalis sit in panels of two.

NUMBERS OF JUDGES

2016

a	b	c	d	e	f	g	h	i	j	
State	Est. 2016 population ¹¹⁴	Sharia Courts	Cust. Courts	Magist. Courts	SCAs	CCAs	High Courts	Total judges	Judges per million people	
Bauchi	6,067,651	72		32	10		12	126	21	
Borno	5,439,167				6			14		
Jigawa	5,686,796	63			24		6		8	101	18
Kaduna	7,972,077	70	72	38	3 ¹¹⁵	5	20	208	26	
Kano	12,259,386	84		74	7		22	187	15	
Katsina	7,565,331	150		25	6			10	191	25
Kebbi	4,246,566	89		33	8			10	140	33
Niger	5,157,067	80		85	3 ¹¹⁶			14	182	35
Sokoto	4,828,331	33		18	6			7	64	13
Yobe	3,027,052	37		15	6			7	65	21
Zamfara	4,275,687	76		10	5			6	97	23

For comparison to 2016 table, column j: Judges and magistrates per million people, 2002, selected countries¹¹⁷

Russia	468
EU average	178
China	159
USA	101
Turkey	93
South Africa	44
Saudi Arabia	32
Japan	24
UK	22
Malaysia	15
Ethiopia	1.5

¹¹⁴ Based on *2006 Population and Housing Census of the Federal Republic of Nigeria*, Table DS 1: Distribution of Population by State and Sex, see www.population.gov.ng/images/Priority%20Tables%20Volume%20I-update.pdf, and assuming annual population growth rate of 2.6% in 2007 and 2.7% thereafter, per World Bank estimates, see data.worldbank.org/indicator/SP.POP.GROW, entry for Nigeria.

¹¹⁵ Out of 5 authorized positions.

¹¹⁶ Out of 9 authorized positions.

¹¹⁷ Source: www.nationmaster.com/country-info/stats/Crime/Judges-and-Magistrates-per-million.

6.

Data on actual qualifications of alkalis and kadis

a. Data found elsewhere in this work

(1) Results of screening in Kebbi State:

The “Report of the Committee for the Implementation of Sharia in Kebbi State”, at pp. 207-209 of *Sourcebook*, II, describes the criteria the Committee used in screening applicants for positions as Sharia Court alkalis. The results of the screening exercise are summarised on pp. 208-09, and then at pp. 224-28 the results are given in detail in tabular form, showing how many interviewees, among existing Area Court judges and new applicants separately, had what qualifications or scored how high on the various scales. A summary of the qualifications of the alkalis actually serving in Kebbi State in early 2008 is given in the table in subsection c below.

(2) Results of screening in Bauchi State.

Volume V of the “Report of the Bauchi State Task Force on Sharia Implementation” detailing the major activities of the Task Force, is published online as “Supplementary Material” to *Sourcebook*, II. Pp. 6-11 describe the Task Force’s work on the appointment of Sharia Court judges and inspectors. At pp. 13 and 14 are tables showing how many interviewees for judgeships, among existing Area Court judges and new applicants separately, had what qualifications. At pp. 23-24 the qualifications of a number of people found suitable to be appointed as inspectors are described. At p. 25 a table summarises the qualifications of all applicants for inspectorships. Pp. 26-30 discuss the appointment of registrars of Sharia Courts and summarise the qualifications of applicants. Unfortunately no data on the qualifications of the alkalis actually serving in Bauchi State in early 2008, for the table in subsection c below, was obtained.

(3) Brief biographies of eleven judges.

Sourcebook Vol. V, entitled “Two Famous Cases”, documents various aspects of the *zina* cases of Safiyatu Hussaini and Amina Lawal. Part VI of the chapter, at pp. 125-28, is entitled “Brief Biographies of the Judges Who Ruled on the Cases”. It summarises the careers of eleven Sharia Court and Sharia Court of Appeal judges from Sokoto and Katsina States, including the schools they attended, the formal qualifications they attained to, and their work experience.

b. Two additional brief biographies

Hon. Muhammad Saleh Abubakar, Grand Kadi, Yobe State. Born at Gashua in 1949, into a family of Islamic scholars: both his grandfather and his father were imams and alkalis in the Gashua area. Pursued his Qur’anic studies from the ages of about 5 to about 9. Was then sent to primary school at Gashua, and subsequently to the Borno Arabic Teachers College in Maiduguri (which became BOCLIS), where he trained to teach Arabic and Islamic Studies. Got his Grade III Teacher’s Certificate there, then went on to the Borno Teachers College for his Grade II Teacher’s Certificate. Returned to Gashua where he taught for 11 years. Went to ABU to do his Diploma in Sharia and Civil Law, 1979-82. Then returned to Gashua to join the judiciary. Started as a registrar in the Area Court; became an Area Court judge in 1984. Rose through the ranks. In 2000 was appointed a Kadi of the Sharia Court of Appeal, and in 2004 became Grand Kadi.

QUALIFICATIONS OF ALKALIS AND KADIS

Aliyu Aliyu Yabo, Wali of Sharia Courts, Sokoto State. Born in 1954 at Yabo. Attended Magajin Gari and Sultan Ward Primary Schools in Sokoto 1962-68 (School Leaving Certificate 1968); College of Arts and Arabic Studies Sokoto 1968-73 (Grade II Teacher's Certificate 1973); Ahmadu Bello University Zaria 1974-77 (Diploma in Sharia and Civil Law 1977), and the University of Sokoto 1981-1985 (LL.B. Common Law & Islamic Law). Started his career in the judicial system of Sokoto State as an Area Court Assistant Registrar in 1977, rising to Higher Registrar in 1981; then switched to the Area Courts Inspectorate, starting as a Principal Inspector in 1988, and serving variously as Assistant Director of Area Courts (1990-91), Acting Director (1991-94), and Deputy Director (1994-97). Was appointed an Acting Upper Area Court Judge in 1997, Acting Secretary of the Sokoto State Judicial Service Commission in 2007, and Wali of Sharia Courts in 2007.

c. Data on qualifications of alkalıs and kadıs: 2008¹¹⁸

State	Category of judge	Total judges	Numbers of judges with indicated qualification						
			Basic judicial course only	Diploma (mostly Sharia & Civil Law)	B.A. (mostly Islamic Studies)	M.A. (mostly Islamic Studies)	Ph.D. (all Islamic Studies)	LL.B.	LL.B. + BL
Bauchi	Kadis								
	Alkalıs								
Borno	Kadis	2		1					1
	Alkalıs								
Gombe	Kadis								
	Alkalıs								
Jigawa	Kadis	9							
	Alkalıs	82		61	2				9
Kaduna	Kadis	4		1			1		2
	Alkalıs	90	"Most of the Upper Sharia and Sharia Court judges are higher degree earners. Some have LL.B, some LL.B + BL, and some BA Islamic Studies. Others are diploma holders. Only one is there based on his experience."						
Kano	Kadis	9						2	2
	Alkalıs	85		56	10	1		10	6
Katsina	Kadis								
	Alkalıs	86							
Kebbi	Kadis	10	3	3			1		3
	Alkalıs	65	≈ 20% (13)	≈ 60% (39)	≈ 20% (13)				
Niger	Kadis								
	Alkalıs	76		≈57	≈10			5 or 6	3
Sokoto	Kadis	5		1	2			1	1
	Alkalıs	54		≈12	≈30			≈10	2
Yobe	Kadis	3		3					
	Alkalıs	41		23	10	2		2	
Zamfara	Kadis	7	1	4	1				1
	Alkalıs	70		64	5				1

¹¹⁸ The information in Table C was gathered on a tour of the sharia states undertaken by the editor in February and March 2008. Many thanks to all the court officials who provided the information.

d. Data on qualifications of alkalis and kadis: early 2016

Table 6.d.1 summarises the data collected in early 2016 on qualifications of alkalis by main types of qualification, for all states where data was provided. The diplomas and bachelor's degrees are disaggregated by subject-matter in Tables 6.d.3 and 6.d.5.

Table 6.d.1: Percentages of alkalis by main types of qualifications, 2016

State	Number of alkalis	% of alkalis holding:							
		a	b	c	d	e	f	g	h
		Judicial course	Certif.	Dip.	Adv. Dip.	B.A. or B.Ed.	M.A. or Ph.D.	LL.B. only	LL.B. + B.L.
Bauchi	72	2.8	1.4	58.3	16.7	13.9	2.8	2.8	1.4
Borno									
Jigawa	63	0.0	0.0	65.1	0.0	11.1	0.0	11.1	12.7
Kaduna	70	0.0	2.9	41.4	1.4	41.4	2.9	2.9	7.1
Kano	84	0.0	0.0	48.8	4.8	20.2	1.2	7.1	17.9
Katsina	115								
Kebbi	89	0.0	0.0	67.4	0.0	22.5	0.0	6.7	3.4
Niger	80	0.0	1.3	28.8	5.0	32.5	0.0	17.5	15.0
Sokoto									
Yobe	37	0.0	0.0	48.6	0.0	27.0	5.4	2.7	16.2
Zamfara	76	0.0	3.9	56.6	0.0	30.3	0.0	1.3	7.9
Averages		0.4	1.2	52.0	3.7	24.9	1.2	6.8	9.8

The 'judicial course', column a, had a good run during colonial days, in a succession of institutions set up specifically to train alkalis. The most famous were the Shahuci Judicial School in Kano (from early colonial period), Kano Law School (1934), and the Institute for Administration, Zaria (1947).¹¹⁹ Even up to 1997 one institution in Katsina was offering an 'advanced judicial course'.¹²⁰ But as is obvious from Table 6.d.1 the old judicial courses have been overtaken by other types of qualifications for alkalis.

The main categories of qualifications held by alkalis in 2016, per Table 6.d.1, are diplomas (52%), bachelor's degrees (25%), and law degrees (totalling 16.6% of alkalis if holders of LL.B.s only and holders of LL.B.s + B.L.s are added together).

The percentages of law degree holders among the alkalis varies widely among the states: here is the ranking based on Table 6.d.1:

Table 6.d.2: Ranking of states by percentage of alkalis holding LL.B. or LL.B. + B.L.

State	% of alkalis holding		
	LL.B. only	LL.B. + B.L.	LL.B. or LL.B. + B.L.
Niger	17.5	15.0	32.5
Kano	7.1	17.9	25.0

¹¹⁹ There is a lot of material on the training of Muslim scholars for positions as alkalis of the Native Courts during the colonial period in *Sourcebook, I, Historical Background*, especially in the memorandums (to the returning Panel of Jurists, 1962) of the Northern Attorney-General and of the Principal of the Institute of Administration Zaria.

¹²⁰ This was the Department of Sharia and Civil Law of Hassan Usman Katsina Polytechnic, Katsina, for details see Section 4.c above.

QUALIFICATIONS OF ALKALIS AND KADIS

Jigawa	11.1	12.7	23.8
Yobe	2.7	16.2	18.9
Kebbi	6.7	3.4	10.1
Kaduna	2.9	7.1	10.0
Zamfara	1.3	7.9	9.2
Bauchi	2.8	1.4	4.2

Obviously law degrees for alkalIs are held in higher esteem in some states than in others. We did hear from officials in some of the lower-ranking states (e.g. Kaduna) that they are making efforts to recruit more qualified legal practitioners into taking jobs as alkalIs – although there is no doubt resistance in some quarters against filling these positions up with lawyers: the alkalIs are supposed to be Islamic judges after all. At the same time, some qualified legal practitioners may think that jobs as alkalIs might be too low-paying for them.

The diplomas – 52% of alkalIs have diplomas on average – are distributed by subject, i.e. by course title and corresponding curriculims, as follows:

Table 6.d.3: Percentages of alkalIs holding diplomas, by category of diploma

State	Nums with dipls	% of alkalIs holding diplomas, whose diploma is in:									
		Arabic	Arabic & Islam. Stud.	Da'wa	Hausa & Arabic	Hausa Arabic & Islami. Stud.	Islam. Stud.	Law	Sharia	Sharia & Civil Law	Title not given
Bauchi	42	2.4	2.4	0.0	0.0	0.0	2.4	2.4	4.8	57.1	28.6
Borno											
Jigawa	41										100.0
Kaduna	29	37.9	0.0	0.0	0.0	0.0	10.3	6.9	20.7	24.1	0.0
Kano	41	0.0	0.0	0.0	0.0	0.0	0.0	34.1	46.3	0.0	19.5
Katsina											
Kebbi	60	51.7	0.0	3.3	0.0	26.7	0.0	0.0	0.0	18.3	0.0
Niger	23	0.0	0.0	0.0	0.0	0.0	26.1	65.2	4.3	0.0	4.3
Sokoto											
Yobe	18	0.0	0.0	0.0	0.0	0.0	5.6	0.0	0.0	94.4	0.0
Zamfara	43	0.0	4.7	0.0	14.0	37.2	0.0	0.0	2.3	41.9	0.0
Averages		13.1	1.0	0.5	2.0	9.1	6.3	15.5	11.2	33.7	19.1

As one can see from Table 6.d.3 there is quite a variety of diploma courses that students can choose from. Ranking the popularity of different types, based on the averages shown in the bottom row, we get:

Table 6.d.4: Ranking of categories of diplomas by percentage of alkalIs holding them

Diploma title	% of alkalIs holding:
Sharia and Civil Law	33.7
Title not specified in nominal roll	19.1
Law	15.5
Arabic	13.1
Sharia	11.2
Hausa, Arabic & Islamic Studies	9.1
Islamic Studies	6.3
Hausa and Arabic	2.0
Arabic & Islamic Studies	1.0

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All these different diplomas are obtained primarily from the ‘Colleges of Islamic Legal Studies’, with variations on the names, that now exist in most northern states, and many universities offer diplomas as well.¹²¹ Universities and Colleges of Education are offering similar courses.¹²² The diplomas in Sharia & Civil Law, and in plain Law, involve substantial instruction in the constitution and laws of Nigeria and the legal methods they involve, as well as in aspects of sharia. The curriculums for the other types of diploma are much more heavily weighted towards Arabic and Muslim and Hausa law, language, and culture.; for details see Section 4 above. Although according to Table 6.d.4 the diplomas in Law plus Sharia & Civil Law, combined, are almost in the majority of diplomas held by alkalis (49.2%), the JSCs in many states obviously believe that courses of study of Arabic, Islamic Studies, Hausa, Sharia, and combinations of these, are equally acceptable as qualifications for alkalis of their Sharia Courts, and that studies of these subjects should also be preserved and promoted by state patronage.

Next we give a table analyzing the classes of B.A.s and B.Eds. held by alkalis. According to Table 6.d.1, holders of these bachelor’s degrees total 24.9% of all alkalis. Table 6.d.5 shows the range of subjects these degrees are in:

Table 6.d.5: Percentages of alkalis holding B.A.s or B.Ed.s, by category of degree

State	Number of alkalis holding B.A. or B.Ed.	% of alkalis holding B.A. or B.Ed., whose degree is in:				
		Arabic	Arabic and Islamic Studies	Islamic Studies	Sharia	Title not specified
Bauchi	10	20.0	10.0	0.0	10.0	60.0
Borno						
Jigawa	0	0.0	0.0	85.7	14.3	0.0
Kaduna	29	41.4	0.0	44.8	6.9	6.9
Kano	17	0.0	0.0	94.1	5.9	0.0
Katsina						
Kebbi	20	55.0	0.0	45.0	0.0	0.0
Niger	26	26.9	0.0	69.2	3.8	0.0
Sokoto						
Yobe	10	20.0	0.0	80.0	0.0	0.0
Zamfara	23	56.5	0.0	43.5	0.0	0.0
Averages		27.5	1.3	57.8	5.1	8.4

These bachelor’s degrees are being offered by many of the north’s increasing numbers of public and private universities, in their Departments of Languages and Linguistics, Departments of Religious Studies, Departments of Education, and sometimes Faculties of Law.

We have been discussing qualifications of alkalis of the Sharia Courts; here now is the data we gathered on qualifications of kadis of the Sharia Courts of Appeal:

¹²¹ See Section 4.a above, and n. 89.

¹²² There are Colleges of Education in every state, to train teachers but offering programmes in Arabic, Islamic Studies, etc., that often qualify a person for a job as an alkali as well.

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Table 6.d.6: Numbers of Sharia Court of Appeal kadis by qualification, 2016

State	Total kadis	number of kadis holding:			
		Diploma Sharia & Civil Law	Other diploma	LL.B. only	LL.B. + B.L.
Bauchi	10				
Borno	6		1	1	4
Jigawa	6	4			2
Kaduna	3				3
Kano	7	3			4
Katsina	6	3			3
Kebbi	8				
Niger	3				3
Sokoto	6				
Yobe	6	2		2	2
Zamfara	5	3		1	1
Totals		15	1	4	22

In sum: data was obtained on qualifications of forty-two kadis in seven states. Of them, twenty-two, or 52.4%, are qualified legal practitioners with LL.B. + B.L. Four more, 9.5%, have LL.B.s, bringing the total of graduates of university law faculties among these kadis to 61.9%, or close to two-thirds. Another 15, or 35.7%, have Diplomas in Sharia & Civil Law, leaving only one, in Borno State, with his diploma in Hausa, Arabic & Islamic Studies. So although the state JSCs, which appoint the alkalıs, still appoint substantial numbers of people whose qualifications are diplomas in Arabic, Islamic Studies, Arabic & Islamic Studies, Hausa Arabic & Islamic Studies, etc., the National Judicial Council, which appoints the kadis of the Sharia Courts of Appeal, is obviously leaning towards appointees who have been trained in the national/secular side of Nigerian law as well, with a bias towards fully-qualified legal practitioners.

7.

Data on remuneration of alkalīs and kadīs

**a. Historical data on the remuneration of various categories of alkalīs
in 1950, 1958/59, and 1962/63**

One of the early judicial reforms instituted by the British was to require the Native Authorities to put alkalīs on regular salaries.

In 1911 the effect of the payment of the native judges deserves special notice. The improved position and growing efficiency of the native judiciary, noted in previous reports [of the colonial administration] had now been established by the institution of native treasuries and the payment of regular salaries to the native judges. Formerly the judges (Alkalai) had no fixed stipends and depended for their livelihood on the generosity of the reigning Emir or on the fees collected through orders from their own courts. In such circumstances it could hardly be expected that the courts would be efficient, or free from bribery and corruption. It was now generally conceded that the former weakness of the native courts was caused rather by a radically bad system [i.e. of paying the alkalīs] than by any real lack of men who could, if properly supported, efficiently administer justice.¹²³

This reform did not, however, extend so far as the prescription by the colonial administration of how much Native Authorities must pay their alkalīs. Even up to the early 1960s – that is, before the North's Native Courts were Regionalised in the reforms of 1967-68 –

In the Northern Law a Provincial Commissioner in establishing a [native] court must satisfy himself that adequate provision will be made by the Native Authority to pay the members of the court and its officers and to provide fitting accommodation for its work.... But there is no statutory power vested in the Minister to prescribe salaries and terms of service for members or officers....¹²⁴

Accordingly the remuneration of alkalīs varied from one Native Authority to another; and it is not easy now to find information about how much the alkalīs anywhere were then paid.

Fortunately there are two sources for at least some information on this point:

- the Brooke Commission Report, i.e. the *Report of the Native Courts (Northern Provinces) Commission of Inquiry*,¹²⁵ which gives patchy information about the pay of some alkalīs in some Provinces in 1950; and

¹²³ Brooke North, 12.

¹²⁴ E.A. Keay and S.S. Richardson, *The Native and Customary Courts of Nigeria* (London: Sweet & Maxwell, Lagos: African Universities Press, 1966), 203 (footnotes omitted).

¹²⁵ Lagos: Government Printer, 1951; the main report must be read together with the *Native Courts Commissions of Inquiry 1949 to 1952: Appendix and Summary of Conclusions and Recommendations* (Lagos: Government Printer, 1953). Information on remuneration of Native Court alkalīs is given at p. 54 of the main report and p. 30 of the appendix.

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- a “Memorandum of Increases in Salary Granted to Alkalai, Native Court Presidents and Other Members of the Native Courts Judiciary” submitted to the Panel of Jurists on their second visit to Northern Nigeria in May and June 1962,¹²⁶ which gives more detailed but still incomplete information about the pay of alkalis and other court officers in some Provinces in 1958/59 and 1962/63.

In order to provide a basis for comparison with the remuneration of alkalis of the present-day Sharia Courts, the data from these two sources is given here, in three tables. The basic data in all the tables are the annual salaries, in British/Nigerian pounds,¹²⁷ of various categories of Native Court alkalis from various Provinces of the Northern Region, for 1950, 1958/59, and 1962/63. The tables also give the equivalents, in 2016 US dollars and 2016 Nigerian naira, of the historical salaries in pounds. Historical pounds have been converted to 2016 dollars in two steps: (1) using the average CPI/RPI conversion rates given on in Lawrence H. Officer and Samuel H. Williamson, "Computing 'Real Value' Over Time With a Conversion Between U.K. Pounds and U.S. Dollars, 1774 to Present", www.measuringworth.com/calculators/exchange/index.php, to convert 1950, 1958, and 1962 pounds to 2014 dollars (the last year for which the rate has been calculated)¹²⁸, and then (2) inflating 2014 US\$ to 2016 US\$ using the CPI inflation rates given by the US Bureau of Labor Statistics, www.usinflationcalculator.com.¹²⁹ 2016 dollars have been converted to 2016 naira at an estimated average exchange rate for the year, on the parallel market, of 1:425.¹³⁰ The results:

Table 7.a.1: Remuneration of some Native Court alkalis in 1950, per the Brooke Commission Report

Category of alkali	Annual salary in 1950 £	Equivalent in 2016 US\$	Equivalent in 2016 ₦
Bornu Province			
Chief Alkali	480	19,791	8,411,208
Other alkalis			
high	170	7,009	2,978,970
low	50	2,062	876,168
Kano Province			
Chief Alkali	864	35,624	15,140,175
Grade A alkalis	350	14,431	6,133,173
Grade B alkalis	230	9,483	4,030,371
Grade D alkalis	170	7,009	2,978,970

¹²⁶ The memorandum, prepared by the Northern Region’s Ministry for Local Government, is reproduced in *Sourcebook*, I, pp. 101-103.

¹²⁷ The Nigerian pound was introduced in 1959, at par with the British pound, as part of the country’s preparation for independence the next year. The Nigerian pound was replaced by the naira on 1st January 1973.

¹²⁸ The conversion rates given are £1:\$40.30 for 1950, 1:28.40 for 1958, and 1:26.30 for 1962.

¹²⁹ The inflation rates given are 0.7% for 2015 and 1.6% for 2016.

¹³⁰ Average exchange rate, dollars to naira, for 2016, estimated based on rates quoted for five days of each month by <http://www.fxmallam.com/forex-rates>, on which were based estimated monthly averages, which were then themselves averaged for the year.

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Grad E alkalis	108	4,453	1,892,522
Katsina Province			
Chief Alkali	432	17,812	7,570,088
Sokoto Province			
Chief Alkali	650	26,800	11,390,178
Junior alkalis elsewhere			
high	168	6,927	2,943,923
low	84	3,463	1,471,961

*Table 7.a.2: Remuneration of some Native Court alkalis in 1958/59,
per the Ministry for Local Government of the Northern Region*

Category of alkali	Annual salary in 1958 £	Equivalent in 2016 US\$	Equivalent in 2016 ₦
Borno			
Chief Alkali	720	20,921	8,891,253
Alkali	400	11,623	4,939,585
Alkali	360	10,460	4,445,626
Kano			
Chief Alkali	1,248	36,262	15,411,504
Alkali	588	17,085	7,261,190
Registrar	564	16,388	6,964,814
Katsina			
Chief Alkali	716	20,804	8,841,857
Alkali	323	9,385	3,988,715
Insp. of Cts.	282	8,194	3,482,407
Ilorin			
Chief Alkali	345	10,024	4,260,392
Snr. Alkali	282	8,194	3,482,407
Registrar	270	7,845	3,334,220
Idoma			
Court President	200	5,811	2,469,792
Registrar	162	4,707	2,000,532
President	48	1,395	592,750
Borgu			
Alkali	180	5,230	2,222,813
Alkali	162	4,707	2,000,532
Gumel			
Alkali	252	7,322	3,111,938
Alkali	132	3,835	1,630,063
Asst. Alkali	132	3,835	1,630,063
Tiv			
Alkali	216	6,276	2,667,376
Registrar	180	5,230	2,222,813

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President	150	4,358	1,852,344
Lafia			
Alkali	120	3,487	1,481,875
Alkali	66	1,918	815,031
Mufti	66	1,918	815,031

Table 7.a.3: Remuneration of some Native Court alkalies in 1962/63, per the Ministry for Local Government of the Northern Region

Category of alkali	Annual salary in 1962 £	Equivalent in 2016 US\$	Equivalent in 2016 ₦
Borno			
Chief Alkali	1,278	34,388	14,614,996
Alkali	780	20,988	8,919,951
Alkali	766	20,611	8,759,849
Kano			
Chief Alkali	1,519	40,873	17,371,032
Alkali	1,176	31,644	13,448,541
Insp. of Cts.	1,282	34,496	14,660,740
Katsina			
Chief Alkali	1,285	34,577	14,695,047
Alkali	854	22,979	9,766,203
Insp. of Cts.	564	15,176	6,449,811
Ilorin			
Chief Alkali	660	17,759	7,547,651
Snr. Alkali	540	14,530	6,175,351
Registrar	510	13,723	5,832,276
Idoma			
Court President	250	6,727	2,858,959
Registrar	225	6,054	2,573,063
President	250	6,727	2,858,959
Borgu			
Alkali	264	7,104	3,019,060
Alkali		Position abolished	
Gumel			
Alkali	552	14,853	6,312,581
Alkali	290	7,803	3,316,392
Asst. Alkali	290	7,803	3,316,392
Tiv			
Alkali	240	6,458	2,744,600
Registrar	180	4,843	2,058,450
President	500	13,454	5,717,917
Lafia			
Alkali	366	9,848	4,185,515
Alkali	216	5,812	2,470,140
Mufti	138	3,713	1,578,145

b. Remuneration of alkalis in 2004, 2008 and 2016

In May 1967 Nigeria's four Regions were subdivided into twelve States, six of them in the North; and in late 1967 and early 1968 the Military Governors of the six Northern States issued edicts reconstituting the Native Courts as Area Courts, and putting them under the centralised control of the State Governments. Since then the remuneration of the judges of these courts, including, now, the alkalis of the Sharia Courts in the sharia states, has been the responsibility of the State Governments.

(1) Remuneration of Sharia Court alkalis in early 2004:

The table that follows gives data on remuneration in early 2004 of alkalis of the sharia states, extracted from the *Report of the Committee of the Chief Judges, Grand Kadis and Presidents Customary Courts of Appeal in the Northern States and Federal Capital Territory Abuja on the Conditions of Service of the Judges of the Lower Bench: Magistrates, Area, Customary and Sharia Court Judges*, dated 4th October 2004 (except that the report contains no data from Katsina State). The report reproduces information provided to the Committee by the States in April and May 2004. The report has not been published, but a copy was generously provided by one of the Grand Kadis for purposes of this research.

'Highest level', 'mid-level', and 'entry-level' alkalis are defined as:

- highest-level: Upper Sharia Court alkalis at GL 15 in all states except Zamfara, where Upper Sharia Court alkalis I are on GL 16;
- mid-level: alkalis at GL 12 in all states except Zamfara, where the lowest grade level is 12; 'mid-level' in Zamfara is GL 14;
- entry-level: alkalis at the lowest grade level for which data are given in the source: GL 07 in Borno and Kaduna; GL 08 in Bauchi, Gombe, Jigawa, Kano and Yobe; GL 09 in Sokoto; GL 10 in Niger; GL 12 in Zamfara; and 'Judges of Lower Sharia Court' in Kebbi.

The last row of the table gives the annual remunerations of alkalis at the various levels as recommended by the Committee of Chief Judges, Grand Kadis and Presidents of Customary Courts itself. For purposes of this table highest-, mid- and entry-level alkalis would be at GL 16, 14 and 10, respectively.

The data as given in the Committee's Report allocates yearly totals to basic salary plus numerous other allowances, grants, and benefits. The table given here omits these details.

The table given here also converts the 2004 naira figures, into 2004 US dollars and into 2016 US dollars. For this purpose 2004 naira were first changed to 2004 dollars at an assumed average parallel market exchange rate for 2004 of 135:1,¹³¹ and then 2004 dollars were inflated to 2016 dollars by multiplying by the factor of 1.28 given by the U.S. Bureau of Labor Statistics inflation calculator at <http://data.bls.gov/cgi-bin/cpicalc.pl>.

¹³¹ From <http://www.nairaland.com/498412/nigeria-exchange-rates-dollar-history>.

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Table 7.b.1: Annual remuneration of Sharia Court alkalis in early 2004

State	Highest-level alkalis			Mid-level alkalis			Entry-level alkalis		
	2004 ₦	2004 \$	2016 \$	2004 ₦	2004 \$	2016 \$	2004 ₦	2004 \$	2016 \$
Bauchi	412,287	3,054	3,848	298,165	2,209	2,783	190,617	1,412	1,779
Borno ¹³²	501,691	3,716	4,682	384,857	2,851	3,592	277,656	2,057	2,591
Jigawa ¹³³	561,098	4,156	5,237	354,012	2,622	3,304	241,896	1,792	2,258
Kaduna ¹³⁴	423,823	3,139	3,956	300,578	2,227	2,805	140,246	1,039	1,309
Kano	518,356	3,840	4,838	399,709	2,961	3,731	283,980	2,104	2,650
Katsina	... No data ...			... No data ...			... No data ...		
Kebbi	365,214	2,705	3,409	... No data ...			298,248	2,209	2,784
Niger	689,291	5,106	6,433	438,433	3,248	4,092	379,134	2,808	3,539
Sokoto	567,682	4,205	5,298	408,897	3,029	3,816	267,336	1,980	2,495
Yobe	437,996	3,244	4,088	305,884	2,266	2,855	183,075	1,356	1,709
Zamfara	1,163,340	8,617	10,858	703,296	5,210	6,564	573,084	4,245	5,349
Averages	558,269	4,135	5,211	394,104	2,919	3,678	277,697	2,057	2,592
Committee recommend	1,145,864	8,488	10,695	818,742	6,065	7,642	516,000	3,822	4,816

¹³² In Borno, alkalis who were qualified legal practitioners received an additional 50% of existing allowances for their grade levels: here = N83,784 additional per annum (not included in the table).

¹³³ In Jigawa, alkalis who were qualified legal practitioners received additional allowances totalling N339,332 additional per annum (not included in the table).

¹³⁴ In Kaduna, alkalis who were qualified legal practitioners received a domestic staff allowance of N138,264 additional per annum and their basic salaries are also somewhat higher at all grade levels (not included in the table).

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(2) Remuneration of Sharia Court alkalis in early 2008:

The next table, Table 7.b.2, gives data on the remuneration of Sharia Court alkalis in early 2008, which was kindly provided by Sharia Court officials during visits to their States in February and March 2008. For purposes of this table, “highest level”, “mid-level”, and “entry-level” alkalis are defined as follows:

- highest-level: Jigawa: 15; Kaduna: 16; Kano: 15/9; Kebbi: 15; Niger: 15/7; Sokoto: 15/8; Yobe: 16/4; Zamfara: 16;
- mid-level: Jigawa: 12; Kaduna: 12; Kano: 12/9; Kebbi: no data; Niger: 12/7; Sokoto: 13-14/8; Yobe: 12/2; Zamfara: 14;
- entry-level: Jigawa: 8; Kaduna: 8; Kano: 8/9; Kebbi: “Judges of Lower Sharia Court”; Niger: 10/7; Sokoto: 9/8; Yobe: 10; Zamfara: 12.

Again, the data provided by allocates yearly totals to basic salary plus numerous other allowances, grants, and benefits. Table 7.b.ii omits these details.

Table 7.b.2 also converts the 2008 naira figures, into 2008 US dollars and into 2016 US dollars. For this purpose 2008 naira were first changed to 2008 dollars at an assumed average parallel market exchange rate for 2008 of 120:1,¹³⁵ and then 2008 dollars were inflated to 2016 dollars by multiplying by the factor of 1.12 given by the U.S. Bureau of Labor Statistics inflation calculator at <http://data.bls.gov/cgi-bin/cpicalc.pl>.

¹³⁵ From <http://www.nairaland.com/498412/nigeria-exchange-rates-dollar-history>.

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Table 7.b.2: Annual remuneration of Sharia Court alkalis in early 2008

State	Highest-level alkalis			Mid-level alkalis			Entry-level alkalis		
	2008 ₦	2008 \$	2016 \$	2008 ₦	2008 \$	2016 \$	2008 ₦	2008 \$	2016 \$
Bauchi	... No data ...			... No data ...			... No data ...		
Borno	... No data ...			... No data ...			... No data ...		
Jigawa ¹³⁶	713,498	5,946	6,659	496,412	4,137	4,633	384,296	3,202	3,587
Kaduna	811,123	6,759	7,570	418,202	3,485	3,903	260,537	2,171	2,432
Kano	922,332	7,686	8,608	673,537	5,613	6,286	382,747	3,190	3,572
Katsina	... No data ...			... No data ...			... No data ...		
Kebbi ¹³⁷	419,996	3,500	3,920	... No data ...			342,985	2,858	3,201
Niger	756,144	6,301	7,057	574,645	4,789	5,363	488,344	4,070	4,558
Sokoto	694,090	5,784	6,478	597,784	4,982	5,579	354,471	2,954	3,308
Yobe	1,123,368	9,361	10,485	829,680	6,914	7,744	786,502	6,554	7,341
Zamfara	1,014,398	8,453	9,468	839,696	6,997	7,837	751,231	6,260	7,011
Averages	806,869	6,724	7,531	632,851	5,274	5,907	468,889	3,907	4,376

¹³⁶ In Jigawa, alkalis who were lawyers received additional allowances totalling N309,332 additional per annum (not included in the table). In March 2008 there were 9 such alkalis, all serving in Upper Sharia Courts.

¹³⁷ In Kebbi we were informed that the only change in alkali remuneration from 2004 was a 15% across-the-board increase given in early 2008. The figures entered here are calculated from the corresponding 2004 table accordingly.

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(3) Remuneration of Sharia Court al-kalīs in early 2016:

Again in the first three months of 2016 the administrators of the Sharia Courts in the sharia states were visited and asked to provide information on the remuneration of their al-kalīs, which most of them generously did. The data gathered are summarized in Table 7.b.3. In this case the grade levels associated with the remunerations in naira are given in the table. 2016 naira were changed to dollars at an assumed average parallel market exchange rate for 2016 of 425:1.¹³⁸ In 2016 most of the states provided annual remuneration totals only, not broken down into basic salary and allowances: the bookkeeping is being simplified in many places.

¹³⁸ Computed by the author from rates in the various months of 2016 quoted on the internet.

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Table 7.b.3: Annual remuneration of Sharia Court alkalIs in 2016

State	Highest-level alkalIs			Mid-level alkalIs			Entry-level alkalIs		
	Grade level	2016 ₦	2016 \$	Grade level	2016 ₦	2016 \$	Grade level	2016 ₦	2016 \$
Bauchi	... No data ...			... No data ...			... No data ...		
Borno	16	4,532,095	10,664	12	2,554,921	6,012	7	1,499,777	3,529
Jigawa	16	3,204,420	7,540	12	2,080,536	4,895	8	1,134,504	2,669
Kaduna	16	3,061,812	7,204	12	1,002,816	2,360	7	Data unclear	
Kano	15	3,199,153	7,527	12	2,206,603	5,192	7	1,167,522	2,747
Katsina	... No data ...			... No data ...			... No data ...		
Kebbi	16	3,912,209	9,205	14	1,604,579	3,775	12	1,295,712	3,049
Niger	16	2,614,647	6,152	14	1,871,729	4,404	10	1,312,029	3,087
Sokoto	16	3,217,023	7,569	13	1,726,293	4,062	9	1,123,229	2,643
Yobe	?	2,902,608	6,830	?	2,216,668	5,216	?	1,498,264	3,525
Zamfara	16	2,386,728	5,616	14	1,321,176	3,109	12	1,104,624	2,599
Averages		3,225,633	7,590		1,842,813	4,336		1,266,958	2,756

c. Remuneration of kadis in 2003, 2008, and 2016

Under Nigeria's 1999 constitution, the "remuneration, salaries and allowances" of the judges of all superior courts of record, among whom the Grand Kadis and Kadis of the Sharia Courts of Appeal are included (Arts. 6 and 84(4)), are set by the National Assembly (Art. 84(1)), are a charge on the consolidated revenue fund of the Federation (Art. 84(2)), and are paid through the National Judicial Council (Art. 81(3) and III^d Sched. Pt. I §21(e)). This seems straightforward enough, but the details are difficult to sort out because of the shifting boundaries between in-kind "remuneration" and cash "allowances".

Formerly, considerable parts of the total remuneration of the judges was paid as in-kind remuneration. As an earlier study put it:

At independence, for example, the judges of the superior courts got, in addition to their regular salaries:

- a large house, furnished all the way down to the silverware, usually in the nicest part of town, usually with separate servants' quarters on the compound;
- four or five domestic servants;
- free utilities, and since the electrical supply was (and still is) unreliable, often a stand-by generator as well;
- free telephone service;
- a car, maintained at government expense, with a driver and plenty of fuel;
- free health care for themselves and their families, which could (and still can) sometimes mean treatment in hospitals in Europe or the United States;
- two or three daily newspapers of their choice.¹³⁹

This long list held true right up to 1998, "except that at some time between 1983 and 1988, payment of domestic staff *allowances* was substituted [at least in some States for some superior court judges] for provision of domestic staff themselves – giving the judges the option to spend the allowances on other things."¹⁴⁰ This was the beginning of "monetisation" – the conversion of in-kind remuneration to cash allowances – which was adopted as a policy under the Obasanjo administration (1999-2007) and is still in progress up to the present.

(1) Remuneration of Grand Kadis and Kadis in 2003:

In 2002, the National Assembly enacted a new law governing the remuneration, salaries and allowances of judges of the superior courts (among State and Federal officials), which took effect in January 2003 and remained in effect through 2008, when a new law was enacted. Unfortunately a copy of the 2002 law has not been obtained, but only evidence of its effects on the remuneration, salaries and allowances of the Grand Kadis

¹³⁹ P. Ostien, "A Study of the Compensation of Nigerian Judges Since Independence", *Current Issues in Development* 2/2 (July-December 1998), 1-21, 6-7, also available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1458559.

¹⁴⁰ Ibid., p. 7 n. 9.

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and Kadis of the Sharia Courts of Appeal obtained from those courts in several of the States.

By 2003, monetisation appears to have gone quite far as to the Kadis of the Sharia Courts of Appeal, but less far as to the Grand Kadis, as the following table of salaries and allowances suggests:

Table 7.c.1: Annual salaries and allowances of Grand Kadis and Kadis of the Sharia Courts of Appeal: 2003-07 (naira)¹⁴¹

Items	Grand Kadis	Kadis
Basic salary	798,172	776,038
Allowances (% of basic salary)		
Utilities (20%)		155,208
Domestic staff (75%)		582,029
Entertainment (10%)		77,604
Personal assistant (25%)		194,010
Motor vehicle maint. & fuelling (30%)		232,811
Hardship (50%)	399,086	388,019
Leave (10%)	79,817	77,604
[Accommodation (100%)]		[776,038]

The blanks in the Grand Kadis' column do not mean that the Grand Kadis did not receive the indicated items: they received them in kind. In the same vein, the brackets in the row for the accommodation allowance indicate that the ordinary Kadis were not necessarily paid that allowance in cash: the States might provide them with the actual accommodation instead: in 2005 Plateau (for instance) provided furnished accommodation, while Borno and Niger States paid the allowance. Furthermore the States all provided their superior court judges with other in-kind remuneration not shown in the table: cars (in all known cases, new Peugeot 406s), sometimes drivers, health care for the judges and their families, and probably also smaller items like daily newspapers and sometimes land-line telephones. In Plateau State, the Kadis also received, every five years, sizeable lump sum allowances for furniture and for "outfits", i.e. judicial attire; probably this was also true in other States. There is much in all this that remains unclear and difficult to quantify.

(2) Remuneration of Grand Kadis and Kadis in 2008:

By 2008 monetisation had gone further, as the next table indicates. Total salaries and allowances had also gone way up. Table 7.c.2, which sums it up, is based on documents

¹⁴¹ This table is based primarily on two pages evidently prepared by the National Judicial Council and distributed to the various courts, obtained in September 2006 from the Sharia Court of Appeal in Jos, one captioned "States Judiciary Consolidated Salary For Chief Judges, Grand Khadi, Sharia Court of Appeal (SCA) and President Customary of Appeal (CCA) Vide 2002 Act" [sic], the other captioned "States Judiciary Consolidated Salary for Judges, Khadis, Sharia Court of Appeal, and Judges Customary of Appeal (CCA), Vide 2002 Act" [sic]. The second page does not show the optional accommodation allowance but this was confirmed by information supplied in 2003 and 2005-06 by officials of the Sharia Courts of Appeal of several other States which otherwise agreed with the two pages from Plateau; the information in the paragraph following the table is also based on those interviews.

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evidently prepared by the National Judicial Council and distributed to the various courts, one captioned “Details of Salary and Allowances Grand Khadi Sharia Court of Appeal, State” and the other captioned “Details of Salary and Allowances Khadi Sharia Court of Appeal, State”, which were obtained in identical form in February and March 2008 from the Sharia Courts of Appeal of several sharia states and confirmed in interviews with Sharia Court of Appeal officials in the other sharia states. In addition, (1) an amount is included in Table 7.c.2 as the fair annual rental value of the cars provided to the judges in all states, assumed to be (as at 2008) ₦600,000 for the Grand Kadis and ₦500,000 for the Kadis; (2) an amount is also included as the estimated cost of an insurance policy that would cover the health care provided to the judges and their families, assumed to be (as at 2008) ₦600,000 for all judges; this was in fact the amount paid by Plateau State to its Grand Kadi and Kadis in 2006 as a health care allowance in lieu of provision of health care in kind; and (3) columns are included converting 2008 naira to 2008 US dollars at an assumed average parallel market exchange rate for 2008 of 120:1, and inflating 2008 dollars to 2016 dollars by the factor of 1.12, see section 7.b.(2) above.

*Table 7.c.2: Remuneration of Grand Kadis and Kadis
of the Sharia Courts of Appeal: 2008*

Items	Grand Kadis			Kadis		
	2008 ₦	2008 \$	2016 \$	2008 ₦	2008 \$	2016 \$
Basic salary	1,804,740	15,040	16,844	1,669,385	13,912	15,581
Allowances (% of basic salary)						
Utilities (30%)	541,422	4,512	5,053	500,816	4,173	4,674
Domestic staff (75%)	1,353,555	11,280	12,633	1,252,039	10,434	11,686
Entertainment (45%)	812,133	6,768	7,580	751,223	6,260	7,011
Personal assistant (25%)	451,185	3,760	4,211	417,346	3,478	3,895
Motor vehicle maint. & fuel (75%)	1,353,555	11,280	12,633	1,252,039	10,434	11,686
Hardship (50%)	902,370	7,520	8,422	834,693	6,956	7,790
Newspaper (15%)	270,711	2,256	2,527	250,408	2,087	2,337
Outfit (25%)	451,185	3,760	4,211	417,346	3,478	3,895
Leave (10%)	180,474	1,504	1,684	166,939	1,391	1,558
Accommodation (100%)	1,804,740	15,040	16,844	1,669,385	13,912	15,581
Cars provided: est. fair rental value	600,000	5,000	5,600	500,000	4,167	4,667
Health care provided: est. cost of coverage	600,000	5,000	5,600	600,000	5,000	5,600
Totals	11,126,070	92,717	103,843	10,281,619	85,680	95,962

(3) *Remuneration of Grand Kadis and Kadis in 2016:*

By 2016, the remuneration of kadis of the Sharia Courts of Appeal had gone up again in naira terms, but had gone down in dollar terms, due to the sharp decline of the naira against the dollar. Table 7.c.3 sums it up. The figures for basic salary and allowances are based on the ‘Certain Political, Public and Judicial Office Holders (Salaries and Allowances, etc) Amendment Act, 2008’ and schedules thereto.¹⁴² 2016 naira have been

¹⁴² Available online at <http://lawsofnigeria.placng.org/laws/CERTAIN%20POLITICAL,%20PUBLIC%20AND%20J>

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converted to 2016 dollars at an assumed average parallel market exchange rate for 2016 of 425:1. Notes to the table give the basis for some calculated amounts.

Table 7.c.3: Remuneration of Grand Kadis and Kadis of the Sharia Courts of Appeal: 2016

Items	Grand Kadis		Kadis	
	2016 ₦	2016 \$	2016 ₦	2016 \$
Basic salary	1,995,430	4,695	1,804,740	4,246
Allowances (% of basic salary)				
Utilities (30%)	598,629	1,409	541,422	1,274
Domestic servants (75%)	1,496,573	3,521	1,353,555	3,185
Entertainment (45%)	897,944	2,113	812,133	1,911
Personal assistant (25%)	498,858	1,174	451,185	1,062
Motor vehicle maintenance & fuelling (75%)	1,496,573	3,521	1,353,555	3,185
Hardship (50%)	997,715	2,348	902,370	2,123
Newspaper (15%)	299,315	704	270,711	637
Outfit (25%)	498,857	1,174	451,185	1,062
Leave (10%)	199,543	470	180,474	425
Furniture (300% once every 4 years) ¹⁴³	1,496,573	3,521	1,353,555	3,185
Overhead cost	2,400,000	5,647	1,800,000	4,235
Main items paid or provided by states				
Accommodation (200% of basic) ¹⁴⁴	3,880,190	9,130	3,609,480	8,493
Car (new every 4 years) (est. annual fair rental value)	2,000,000	4,706	1,500,000	3,529
Medical coverage or allowance ¹⁴⁵	3,250,000	7,647	2,750,000	6,471
[Other ¹⁴⁶]				
Totals	22,006,200	51,779	19,134,365	45,022

d. Time-studies of the remuneration of alkalIs and kadIs

(1) Remuneration of the kadIs of the Sharia Courts of Appeal over time:

The previous study mentioned above, “A Study of the Compensation of Nigerian Judges Since Independence”, gives figures, stated both in nominal or contemporary naira and in constant 1998 US dollars, for the total remuneration of various categories of Nigerian

[UDICIAL%20OFFICE%20HOLDERS%20 SALARIES%20AND%20ALLOWANCES,%20E%20TC.pdf](#).

¹⁴³ Here shown as an annual payment of 1/4th of the 300% of annual basic paid every 4 years.

¹⁴⁴ The Act says ‘To be provided or 200%’. It appears that no state is currently providing housing in kind. Some pay more than the specified 200% of basic under this head: in Zamfara it is 300%.

¹⁴⁵ The Bill says ‘To be provided.’ In Yobe and Borno States the arrangement is supposed to be that the state government will cover costs of health care upon request if supported by suitable documentation. But we heard in Borno State that ‘more than 15 years nobody received kobo for medical expenses’, despite persistent official requests on behalf of unwell kadIs. Other states, e.g. Kaduna, Kano, Kebbi and Sokoto, pay annual allowances for medical coverage. Rough averages of these amounts are shown in the table.

¹⁴⁶ Some states provide miscellaneous other items. E.g. in Borno and Kebbi the kadIs are given new generators every four years. Some states supply ‘Special Assistants’. In Yobe a second car is made available at nominal cost. No amounts for these misc. other items are included in the table.

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judges for the years 1959, 1963, 1978, 1983, 1988, 1993, and 1998¹⁴⁷ – with numbers for 1968 and 1973 impossible to obtain and therefore missing from the series. The categories of judges covered in the study include the judges of the Regional/State High Courts. Since the creation of the Sharia Court of Appeal of the Northern Region in 1960, its kadis, and subsequently those of the Sharia Courts of Appeal of the States, have been compensated at par with the judges of the High Courts. The numbers for total remuneration given in the previous study, for ordinary judges of the High Courts, and therefore for ordinary kadis of the Sharia Courts of Appeal, from 1963 onward, are as follows:

Table 7.d.1: Total remuneration of kadis of the Sharia Courts of Appeal, 1963-1998 in contemporary naira and constant 1998 US dollars

Year	Contemporary ₦	1998 \$
1963	11,448	84,363
1968	?	?
1973	?	?
1978	26,845	105,689
1983	33,017	74,789
1988	84,166	25,785
1993	266,329	13,754
1998	903,915	10,395

The 1998 dollar figures given in the previous study translate into 2016 US dollars as follows, using the inflation factor, 1998 to 2016, of 1.48, given by the U.S. Bureau of Labor Statistics at http://www.bls.gov.data/inflation_calculator.htm: this yields Table 7.d.2:

Table 7.d.2: Total remuneration of kadis of the Sharia Courts of Appeal, 1963-1998 in contemporary naira and constant 2016 US dollars

Year	Contemporary ₦	2016 \$
1963	11,448	124,857
1968	?	?
1973	?	?
1978	26,845	156,420
1983	33,017	110,688
1988	84,166	38,162
1993	266,329	20,356
1998	903,915	15,385

Interpolating numbers for 1968 and 1973 by assuming straight-line growth, we get:

Table 7.d.3: Total remuneration of kadis of the Sharia Courts of Appeal, 1963-1998 in contemporary naira and constant 2016 US dollars (1968 and 1973 interpolated)

Year	Contemporary ₦	2016 \$
1963	11,448	124,857
1968	16,580	135,378

¹⁴⁷ Ostien, “A Study of the Compensation of Nigerian Judges”, op. cit., Appendix B.

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1973	21,712	145,899
1978	26,845	156,420
1983	33,017	110,688
1988	84,166	38,162
1993	266,329	20,356
1998	903,915	15,385

Adding the numbers for 2008 and 2016 arrived at in section c above, we get:

Table 7.d.4: Total remuneration of kadis of the Sharia Courts of Appeal, 1963-2016 in contemporary naira and constant 2016 US dollars

Year	Contemporary ₦	2016 \$
1963	11,448	124,857
1968	16,580	135,378
1973	21,712	145,899
1978	26,845	156,420
1983	33,017	110,688
1988	84,166	38,162
1993	266,329	20,356
1998	903,915	15,385
2003	?	?
2008	10,281,619	95,962
2016	19,134,365	45,022

Finally, interpolating numbers for 2003, again assuming straight-line growth, we have:

Table 7.d.5: Total remuneration of kadis of the Sharia Courts of Appeal, 1963-2016 in contemporary naira and constant 2016 US dollars (2003 interpolated)

Year	Contemporary ₦	2016 \$
1963	11,448	124,857
1968	16,580	135,378
1973	21,712	145,899
1978	26,845	156,420
1983	33,017	110,688
1988	84,166	38,162
1993	266,329	20,356
1998	903,915	15,385
2003	5,592,767	55,674
2008	10,281,619	95,962
2016	19,134,365	45,022

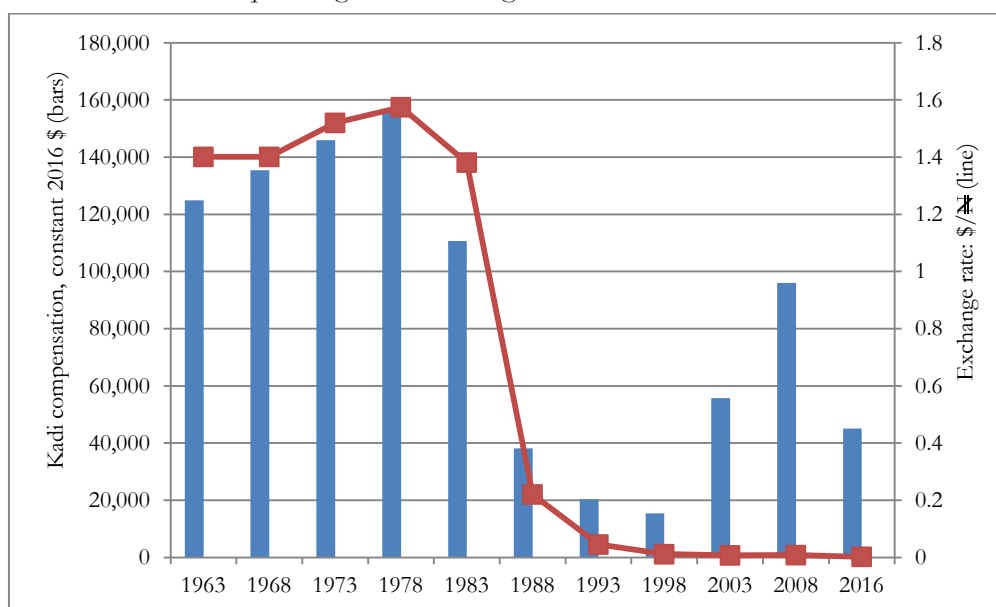
Adding exchange rates, dollars to naira, to the table, and charting the result, explains much about the relations between the kadis remuneration stated in contemporary naira and stated in constant dollars:

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Table 7.d.6: Total remuneration of kadis of the Sharia Courts of Appeal, 1963-2016 in contemporary naira and constant 2016 US dollars, with contemporary exchange rates

Year	Contemporary ₦	2016 \$	Exchange rates, \$ to ₦
1963	11,448	124,857	1.4010
1968	16,580	135,378	1.4010
1973	21,712	145,899	1.5200
1978	26,845	156,420	1.5748
1983	33,017	110,688	1.3812
1988	84,166	38,162	0.2204
1993	266,329	20,356	0.0453
1998	903,915	15,385	0.0115
2003	5,592,767	55,674	0.0074
2008	10,281,619	95,962	0.0083
2016	19,134,365	45,022	0.00235

Chart 7.d.1: Kadi remuneration in constant 2016 dollars plotted against the exchange rate, \$/₦, 1963-2016



The collapse of the value of kadi remuneration in real terms from 1983 to 1998 was due to the collapse of the naira. The recovery of kadi remuneration in real terms beginning in 2003 was not due to any improvement in the value of the naira relative to the dollar: the naira fell even lower in 2003, to \$0.0074, recovering only slightly in 2008 to \$0.0083. Rather, the recovery was due to the determined and laudable effort on the part of the Nigerian government to improve the conditions of service of the judges of the superior courts. The further collapse of the naira between 2008 and 2016 – when it lost almost 3/4ths of its value – accounts for the fact that kadi remuneration in real terms fell by over half in those years, even though their remuneration in naira almost doubled.

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(2) Remuneration of the alkalıs of the Sharia Courts over time:

There is much less data available for studies of how the remuneration of the alkalıs of the Native/Area/Sharia Courts has varied over time. Collection of data on this subject is difficult because there have been so many different jurisdictions (different Native Authorities, and subsequently different States) all compensating their alkalıs differently, so that data from one jurisdiction for a given year does not generalise to other jurisdictions even for that same year. Even where data from several jurisdictions is available for a given year, as in the tables presented in sections **a** and **b**, one often does not know how it matches up from jurisdiction to jurisdiction or from year to year. Thus, do the Chief Alkalıs of Borno, Kano, Katsina and Sokoto Provinces, as they were in 1950, 1958 and 1962, have any correlates among the alkalıs, even the “highest-level” alkalıs, who were at work in the sharia states in 2004, 2008 and 2016? Probably not. Modern-day highest-level alkalıs, on GL 15 or 16, probably correspond to the “Grade A alkalıs” shown in the Kano data from 1950; but then how do these 1950 Grade A Kano alkalıs match up with the 1950 alkalıs from other provinces, or the 1958 or 1962 alkalıs even from Kano, none of whom are identified by grade? The best can do is guess; but the results are instructive enough:

Table 7.d.7: Remuneration of highest level alkalıs (excepting Chief Alkalıs) 1950, 1958, 1962, 2004, 2008 and 2016, in constant 2016 \$

	1950 ¹⁴⁸	1958 ¹⁴⁹	1962 ¹⁵⁰	2004 ¹⁵¹	2008 ¹⁵²	2016 ¹⁵³
Borno	7,009	11,623	20,988	4,682	No data	11,054
Kano	14,431	17,085	31,644	4,838	8,608	7,803

This shows the gradual improvement in the “real” remuneration of the alkalıs that was occurring during the late colonial and early independence periods, its steep decline, in the 1980s and 1990s as the value of the naira crashed, resulting in the lowest figures (for the dates available here) in 2004, and the improvements that are now again being attempted.

The improvements in the ‘real’ remuneration of the alkalıs from 2004 to 2008, and then its deterioration again between 2008 and 2016, is shown more generally in the next table. All data are from Tables 7.b.1, 7.b.2 and 7.b.3.

Table 7.d.8: Alkali remuneration in the sharia states, 2004 2008 and 2016, in constant 2016 \$

State	Highest-level alkalıs			Mid-level alkalıs			Entry-level alkalıs		
	2004	2008	2016	2004	2008	2016	2004	2008	2016
Bauchi	3,848			2,783			1,779		
Borno	4,682		10,664	3,592		6,012	2,591		3,529
Jigawa	5,237	6,659	7,540	3,304	4,633	4,895	2,258	3,587	2,669
Kaduna	3,956	7,570	7,204	2,805	3,903	2,360	1,309	2,432	
Kano	4,838	8,608	7,527	3,731	6,286	5,192	2,650	3,572	2,747

¹⁴⁸ From Table 7.a.1.

¹⁴⁹ From Table 7.a.2.

¹⁵⁰ From Table 7.a.3.

¹⁵¹ From Table 7.b.1.

¹⁵² From Table 7.b.2.

¹⁵³ From Table 7.b.3.

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Katsina									
Kebbi	3,409	3,920	9,205			3,775	2,784	3,201	3,049
Niger	6,433	7,057	6,152	4,092	5,363	4,404	3,539	4,558	3,087
Sokoto	5,298	6,478	7,569	3,816	5,579	4,062	2,495	3,308	2,643
Yobe	4,088	10,485	6,830	2,855	7,744	5,216	1,709	7,341	3,525
Zamfara	10,858	9,468	5,616	6,564	7,837	3,109	5,349	7,011	2,599
Averages	5,211	7,531	7,590	3,678	5,907	4,336	2,592	4,376	2,756

This shows improvement in the real remuneration of the alkalis in every state in every category, except for the highest-level alkalis in Zamfara State, who appear to have suffered a decline between 2004 and 2008; this appearance is not likely to be correct but it is not known where the error lies.

8.

Caseload data, courts in sharia states, 2011-2015

a. Introduction

In the research conducted in the first few months of 2016, an attempt was made in each sharia state to collect the following types of data from the administrators of the various courts:

- (a) Numbers of original civil and criminal cases filed in Sharia Courts, Magistrate Courts, High Courts, and in Kaduna Customary Courts, for 2011-2015. The objective was to be able to see how many and what percentages of cases are going to which courts. Tables 8.b.1-8.b.4 show the data collected on numbers of original civil cases filed, Tables 8.c.1-8.c.4 show the data on numbers of original criminal cases filed, and Tables 8.b.5 and 8.c.5 show percentages of cases going to each type of court in the states where we got all the necessary information; in other states the data for one or more type of court is missing so no comparison is possible.
- (b) Numbers of civil and criminal appeals going from Sharia Courts to Sharia Courts of Appeal and High Courts, for 2011-2015. Tables 8.d.1 and 8.d.2 show the data collected on civil appeals, Tables 8.e.1 and 8.e.2 show the data on criminal appeals, and Tables 8.d.3 and 8.e.3 show percentages of appeals going to the two types of court in the states where we got all the necessary information; in other states the data for one or the other (or both) type of court is missing so no comparison is possible.
- (c) Numbers of judgments of amputation and stoning to death imposed by Sharia Courts in 2011-2015, and numbers of appeals of such judgments going to Sharia Courts of Appeal and High Courts. Tables 8.f.1-8.f.3 show the data collected on these topics.

Footnotes to Tables 8.b.1 and 8.c.1 indicate difficulties with the data from Jigawa and Zamfara States on original civil and criminal cases filed in Sharia Courts. For Jigawa, the numbers for 2014 are very much higher than for other years, and the numbers for 2012 are low. We think this is probably due to inconsistencies in the ways data were recorded from year to year. To strike our averages for Jigawa therefore we averaged only the numbers for 2011, 2013 and 2015, leaving out the highest and lowest years.

Then for Zamfara, we were given only totals by year for civil and criminal cases combined. In our tables we have allocated the totals, 70% to civil and 30% to criminal, but this is only our own guess as to what the proper allocation is.

Kano gave us only one year of data (2012) for original civil and criminal cases filed in its Sharia Courts. We have used those numbers as averages for 2011-2015. Similarly, Kano gave us only one year of data (2015) for civil and criminal appeals to its Sharia Court of Appeal. Again we have used those numbers as averages for 2011-2015.

In the tables, where a cell is empty it means that no information was collected. Where there is a zero it means that the information given us is that the number is zero.

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b. Numbers of original civil cases filed

Table 8.b.1: Original civil cases filed in Sharia Courts

	2011	2012	2013	2014	2015	Averages
Bauchi						
Borno	2,895	1,318	1,101	1,534	2,098	1,789
Jigawa	17,634	5,870	6,022	80,666	30,560	18,072 ¹⁵⁴
Kaduna	28,026	22,714	21,071	24,688		24,125
Kano		41,285				41,285
Katsina						
Kebbi						
Niger						
Sokoto						
Yobe	526	334	671	799	846	635
Zamfara ¹⁵⁵	4,806	4,674	4,865	3,959	5,697	4,800

Table 8.b.2: Original civil cases filed in High Courts

	2011	2012	2013	2014	2015	Averages
Bauchi	251	188	288	219	260	241
Borno	176	107	90	96	102	114
Jigawa	79	86	95	132	168	112
Kaduna						
Kano						
Katsina						
Kebbi						
Niger	288	495	312	407	560	412
Sokoto	83	92	92	104	36	81
Yobe	195	158	216	257	185	202
Zamfara	121	90	99	51	39	80

Table 8.b.3: Original civil cases filed in Magistrate Courts

	2011	2012	2013	2014	2015	Averages
Bauchi						
Borno	806	770	473	193	267	502
Jigawa	437	920	5,428	1,779	1,808	2,074
Kaduna						
Kano						
Katsina						
Kebbi						
Niger						
Sokoto						
Yobe	79	19	102	71	53	65
Zamfara						

¹⁵⁴ Average of 2011, 2013 and 2015, after discarding high and low years because of probable accounting inconsistencies.

¹⁵⁵ All years: figures for civil cases filed are 70% of figures given for total cases filed.

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Table 8.b.4: Original civil cases filed in Customary Courts

	2011	2012	2013	2014	2015	Average
Kaduna	4,012	5,006	2,003	2,420	2,240	3,136

Table 8.b.5: Percentages of original civil cases filed¹⁵⁶ by court in which filed, three states

	Sharia Courts	Magistrate Courts	High Court
Borno	74.4	20.9	4.7
Jigawa	89	10	1
Yobe	70	7	22

c. Numbers of original criminal cases filed

Table 8.c.1: Original criminal cases filed in Sharia Courts

	2011	2012	2013	2014	2015	Averages
Bauchi						
Borno	0	0	0	0	0	0
Jigawa	3,465	1,228	5,744	11,442	3,045	4,085 ¹⁵⁷
Kaduna	9,782	8,893	8,720	9,604	9,581	9,316
Kano		10,648				10,648
Katsina						
Kebbi						
Niger						
Sokoto						
Yobe	0	0	0	0	0	0
Zamfara ¹⁵⁸	2,060	2,003	2,085	1,697	2,442	2,057

Table 8.c.2: Original criminal cases filed in High Courts

	2011	2012	2013	2014	2015	Averages
Bauchi	35	44	56	50	57	48
Borno	42	43	67	12	21	37
Jigawa	265	358	398	375	408	361
Kaduna						
Kano						
Katsina						
Kebbi						
Niger	42	64	54	60	43	53
Sokoto	33	57	64	51	43	50
Yobe	93	171	188	257	200	182
Zamfara	55	80	62	145	94	87

¹⁵⁶ Using 5-year averages.

¹⁵⁷ Average of 2011, 2013 and 2015, after discarding high and low years because of probable accounting inconsistencies.

¹⁵⁸ All years: figures for criminal cases filed are 30% of figures given for total cases filed.

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Table 8.c.3: Original criminal cases filed in Magistrate Courts

	2011	2012	2013	2014	2015	Averages
Bauchi						
Borno	40	40	21	13	15	26
Jigawa	1,750	5,194	5,100	3,643	3,963	3,930
Kaduna						
Kano						
Katsina						
Kebbi						
Niger						
Sokoto						
Yobe	2,963	1,002	1,152	945	1,041	1,421
Zamfara						

Table 8.c.4: Original criminal cases filed in Customary Courts

	2011	2012	2013	2014	2015	Average
Kaduna	3,680	4,692	2,068	3,127	1,522	3,018

Table 8.c.5: Percentages of original criminal cases filed¹⁵⁹ by court in which filed, three states

	Sharia Courts	Magistrate Courts	High Court
Borno	0	41.3	58.7
Jigawa	48.8	46.9	4.3
Yobe	0	88.6	11.4

d. Numbers of civil appeals from Sharia Courts filed

Table 8.d.1: In Sharia Courts of Appeal

	2011	2012	2013	2014	2015	Averages
Bauchi						
Borno	96	77	43	39	41	59
Jigawa						
Kaduna	145	127	135	129	70	121
Kano					229	229
Katsina	87	131	137	159	117	126
Kebbi						
Niger	50	44	41	44	43	44
Sokoto						
Yobe						
Zamfara			210	242	203	218

¹⁵⁹ Using 5-year averages.

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Table 8.d.2: In High Courts

	2011	2012	2013	2014	2015	Averages
Bauchi						
Borno	108	80	67	49	28	66
Jigawa	0	0	0	0	0	0
Kaduna	18	14	17	16	21	17
Kano						
Katsina						
Kebbi						
Niger	7	15	21	18	12	15
Sokoto	0	1	1	3	5	2
Yobe	0	0	0	0	0	0
Zamfara	0	0	0	0	0	0

Table 8.d.3: Percentages of civil appeals from Sharia Courts filed in Sharia Courts of Appeal and High Courts, six states:

	Sharia Courts of Appeal	High Courts
Borno	47.2	52.8
Jigawa	100	0
Kaduna	87.7	12.3
Niger	74.6	25.4
Yobe	100	0
Zamfara	100	0

e. Numbers of criminal appeals from Sharia Courts filed

Table 8.e.1: In Sharia Courts of Appeal

	2011	2012	2013	2014	2015	Averages
Bauchi	0	0	0	0	0	0
Borno	0	0	0	0	0	0
Jigawa						
Kaduna	9	15	12	20	8	13
Kano					10	10
Katsina	0	0	0	0	0	0
Kebbi						
Niger	0	0	0	0	0	0
Sokoto						
Yobe	0	0	0	0	0	0
Zamfara			59	71	75	68

SHARIA IMPLEMENTATION IN NORTHERN NIGERIA:
DOCUMENTARY MATERIALS ON THE SHARIA COURTS AND THEIR JUDGES

Table 8.e.2: In High Courts

	2011	2012	2013	2014	2015	Averages
Bauchi						
Borno	0	0	0	0	0	0
Jigawa	0	0	0	0	0	0
Kaduna	69	57	67	51	45	58
Kano						
Katsina						
Kebbi	0	0	0	0	0	0
Niger	0	0	0	0	0	0
Sokoto						
Yobe	0	0	0	0	0	0
Zamfara	0	0	0	0	0	0

Table 8.e.3: Percentages of criminal appeals from Sharia Courts filed in Sharia Courts of Appeal and High Courts, seven states:

	Sharia Courts of Appeal	High Courts
Bauchi	0	100
Borno	NA	NA
Kaduna	18.3	81.7
Katsina	0	100
Niger	0	100
Yobe	NA	NA
Zamfara	100	0

f. Numbers of judgments of amputation and stoning to death imposed by Sharia Courts, and numbers of appeals from such judgments going to Sharia Courts of Appeal and High Courts

Table 8.f.1: Judgments of amputation and stoning to death imposed by Sharia Courts

	2011		2012		2013		2014		2015	
	Amp	Stng	Amp	Stng	Amp	Stng	Amp	Stng	Amp	Stng
Bauchi										
Borno	0	0	0	0	0	0	0	0	0	0
Jigawa	0	0	0	0	0	0	0	0	0	0
Kaduna	0	0	0	0	0	0	0	0	0	0
Kano										
Katsina										
Kebbi										
Niger	0	0	0	0	0	0	0	0	0	0
Sokoto										
Yobe	0	0	0	0	0	0	0	0	0	0
Zamfara										

CASELOAD DATA, COURTS IN SHARIA STATES, 2011-2015

Table 8.f.2: Judgments of amputation and stoning to death appealed to Sharia Courts of Appeal

	2011		2012		2013		2014		2015	
	Amp	Stng	Amp	Stng	Amp	Stng	Amp	Stng	Amp	Stng
Bauchi	0	0	0	0	0	0	0	0	0	0
Borno	0	0	0	0	0	0	0	0	0	0
Jigawa	0	0	0	0	0	0	0	0	0	0
Kaduna	0	0	0	0	0	0	0	0	0	0
Kano	0	0	0	0	0	0	0	0	0	0
Katsina	0	0	0	0	0	0	0	0	0	0
Kebbi										
Niger	0	0	0	0	0	0	0	0	0	0
Sokoto										
Yobe	0	0	0	0	0	0	0	0	0	0
Zamfara										

Table 8.f.3: Judgments of amputation and stoning to death appealed to High Courts

	2011		2012		2013		2014		2015	
	Amp	Stng	Amp	Stng	Amp	Stng	Amp	Stng	Amp	Stng
Bauchi										
Borno	0	0	0	0	0	0	0	0	0	0
Jigawa	0	0	0	0	0	0	0	0	0	0
Kaduna	0	0	0	0	0	0	0	0	0	0
Kano										
Katsina										
Kebbi	0	0	0	0	0	0	0	0	0	0
Niger	0	0	0	0	0	0	0	0	0	0
Sokoto										
Yobe	0	0	0	0	0	0	0	0	0	0
Zamfara	0	0	0	0	0	0	0	0	0	0