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CHAPTER 4

THE SHARIA PENAL CODES

I.

Introduction to Chapter 4: Nigeria's Sharia Penal Codes

Philip Ostien

1. Brief history of the penal law of the Northern States of Nigeria.

a. The colonial period. Until 1960, Islamic criminal law and procedure were widely applied in the Native Courts of Northern Nigeria.

> [T]he case of Northern Nigeria was, indeed, almost unique, for up till [1960] this was the only place outside the Arabian peninsula in which the Islamic law, both substantive and procedural, was applied in criminal litigation – sometimes even in regard to capital offences…. [T]here was also a Nigerian Criminal Code – corresponding, in general terms, to English criminal law – which was administered in the Magistrates' Courts and in the High Court, although in point of fact more than ninety per cent of all criminal cases were tried in the indigenous or 'native' courts.[1]

Indeed, the situation was more complicated than this, for besides Islamic criminal law and the Nigerian (i.e. English) Criminal Code, in the parts of the North not dominated by Muslims all of the vague bodies of "native [criminal] law and custom" of the many local ethnic groups were also applied in the Native Courts serving their territories; and in ethnically and religiously mixed places heterogeneous amalgams of Islamic and native law and custom were applied. None of this – except of course the Nigerian Criminal Code administered in the Magistrates' and High Courts – was codified. In Muslim areas the alkalis, without any body of judicial precedent to work with, were finding Islamic criminal law afresh from the basic sources (the Qur'an, the Hadith, the books of *fiqh*) on each occasion of judgment.[2] Where Islamic law was not determinative, the judges of the

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[1] J.N.D. Anderson, *Law Reform in the Muslim World* (London: Athlone Press, 1976), 27-28. The Criminal Code became Cap. 42 of both the 1948 and 1958 Laws of Nigeria. It continues in force today, as amended, as Federal law and as the law of the States carved out of the former Eastern and Western Regions, see Cap. 77 LFN 1990 and Cap. C38 LFN 2004. On the Criminal Code see C.O. Okonkwo and M.E. Naish, *Criminal Law in Nigeria, excluding the North* (London: Street & Maxwell; Lagos: Nigerian Universities Press, 1964).

[2] Unlike English common law, but like Roman law, Islamic law, in its form as *fiqh*, was worked out by jurists – the *fukaha* – not by judges – the *qadi*s. In Islamic lands in former times there was no hierarchy of courts, and no doctrine of judicial precedent or of *stare decisis* developed. Each *qadi* was expected to find the law from its basic sources afresh in every case. The basic sources, to begin with the Qur'an and the Hadith, grew, via the doctrine of *ijma* or consensus, to include the elaborate scholarly works – the *fiqh* – of the real specialists in the Islamic Sharia, the *fukaha*. The *qadi*s were expected to follow the *fiqh*, and had little influence on its development, except as they may have contributed to it as *fukaha* themselves.

non-Muslim and "mixed" courts were taking the advice of tribal elders as to what the law or custom applicable in a given case might be. There were some limitations on the application of Islamic law and of native law and custom, particularly on forms of punishment:

> [F]rom the very beginning of British rule it was made clear to the local rulers that their customary penal structures would be brought under the close scrutiny of the administration. Some customary penalties were therefore specifically abolished by statute. Prohibitions on mutilation and torture appeared at once… The remaining penalties were made subject to the requirement that they should not be repugnant to "natural justice and humanity"… Death sentences passed by native courts had to be carried out in a humane way… The humanity of the various forms of corporal punishment was apparently not questioned until 1933, but restrictions introduced in that year limited the weapons to rattan canes and single-tailed whips of prescribed dimensions.[3]

Other limitations could also result from application of the repugnancy doctrine. For example, in 1959 it was held that a rule of Islamic criminal procedure barring a person accused of highway robbery from putting up any defence during his trial, was "repugnant to natural justice, equity, and good conscience."[4] Except for these few restrictions, however, the English Criminal Code, Islamic criminal law, the native criminal laws and customs of many different ethnic groups, and amalgams of all of the above, were all being applied in the many various courts all over the North right up to Independence Day (1 October 1960). Which law was applied to the facts of a particular case depended on which court – in which province, city or town, or even on which side of the street in the same town – the accused was tried in, and further, sometimes, on the wide discretion of the judge sitting in that court on that particular day.

In the early days of colonial rule, before much ethnic mixing had occurred, and under the controlling hand of the British, this extreme form of legal pluralism worked without too much difficulty. But by the 1940s and 50s, when people of all ethnic and religious groups had dispersed to all parts of the country, the resulting unpredictability and inequalities in the administration of the criminal laws in the Northern Region were reaching levels that were felt by many, Muslims and non-Muslims alike, for various reasons, to be intolerable. Among other pressures for change was the onrush, at least as viewed from the North, of Nigerian independence, as a self-governing federation of its three regions. The controlling hand of the British would soon be removed. In part to replace it, the Eastern and Western Regions, supported by the British, were demanding inclusion in the Federation's new Independence Constitution of an enforceable chapter on fundamental human rights, which would, among other things, require that all criminal law be enacted as written law in which all criminal offences were defined and the penalties therefor prescribed (in short, all criminal law to be codified); that no person be

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[3] A. Milner, "Sentencing Patterns in Nigeria", in Milner, A., ed., *African Penal Systems* (London: Routledge and Kegan Paul, 1969), 263-64 (footnotes omitted).

[4] *Guri v Hadejia N.A.* (1959) N.N.L.R. 98. For further discussion of the repugnancy doctrine and its impact on Islamic law, see M. Tabi'u, 'The Impact of the Repugnancy Test on the Application of Islamic Law in Nigeria', *Journal of Islamic and Comparative Law*, 18 (1991), 53. Criminal procedure is discussed further in Chapter 5.

discriminated against by any agency of government solely on the basis of his or her religion or ethnic affiliation among others; and that no person be subjected to torture or to inhuman or degrading punishment or other treatment.[5] The North's largely-Muslim ruling class concluded that the North should keep up with the pace set by the East and the West in the race for independence, although it was less "ready" than they, and that Northern independence, when it came, should be in federation with the Eastern and Western Regions. To achieve these goals, the Government of the Northern Region agreed to reform the legal and judicial systems of the Region, including, most notably, to abrogate all the then-prevailing systems of criminal law, including Islamic criminal law, in favour of a single new Penal Code applicable in all courts of the Region to all persons without regard to religious or ethnic affiliation. This was the Penal Code of 1960. Along with the Penal Code a new Criminal Procedure Code, discussed further in Chapter 5, was also introduced. The process by which all of this was accomplished was much influenced by the Panel of Jurists brought in by the Government of the Northern Region in 1958 and again in 1962 to study the legal and judicial systems of the Region and to recommend changes. Readers interested in pursuing this history further are referred to Chapter 1 of this work, where the two reports of the Panel of Jurists and many of the documents they considered on their second visit are published for the first time.[6]

b. The Penal Code of 1960. The new Penal Code that was introduced[7] derived from the Sudan Penal Code (1899), itself derivative of the Indian Penal Code (1834), both of which had been enacted by the British for populations similar to Northern Nigeria's in their proportions and mixtures of Muslims and non-Muslims and had found acceptance there among all groups.[8] The contents of the Penal Code were negotiated at length with Northern politicians and legal scholars of various schools, particularly the North's leading *ulama*. Basically English in derivation, the resulting Code also incorporated various principles of Islamic law. For instance, seduction and enticement – mere torts in England – were made crimes under the Penal Code (§389),[9] as was "insulting the modesty of any woman" (§400). Adultery and fornication were criminalised for persons

[5] The chapter on fundamental rights ultimately included in Nigeria's Independence Constitution was derived primarily from the European Convention on Human Rights of 1950. For further discussion see T.O. Elias, "The New Constitution of Nigeria and the Protection of Human Rights and Fundamental Freedoms", *Journal I.C.J.*, II (1959-60), 30-46, and S.A. de Smith, "Fundamental Rights in the New Commonwealth", *International and Comparative Law Quarterly*, 10 (1961), 83-102 and 215-237.

[6] For contemporaneous views of these developments, in addition to the documents published and the authorities cited in Chapter 1, see J.N.D. Anderson, "Conflict of Laws in Northern Nigeria", *Journal of African Law*, 1 (1957), 87-98; P.C. Hubbard, "Conflict of Laws in Northern Nigeria", 3 *Journal of African Law*, 3 (1959), 85-88, with a response by J.N.D. Anderson 88-89; "Legal and judicial reform in Northern Nigeria", *West Africa*, September 24, 1960.

[7] N.R. No. 18 of 1959, which became Cap. 89 of the *Laws of Northern Nigeria* 1963.

[8] J.N.D. Anderson, "A Major Advance", *Modern Law Review* 24 (1961) 616-25 at 618. See also S.S. Richardson, *Notes on the Penal Code Law* (Kaduna: Government Printer, 1960) and A. Gledhill, *The Penal Codes of Northern Nigeria and the Sudan* (London: Street & Maxwell; Lagos: African University Press, 1963).

[9] Interestingly, §389 has been removed from all the new Sharia Penal Codes, see ¶4d of this essay, below.

(like Muslims) "subject to any native law or custom in which extra-marital sexual intercourse is recognised as a criminal offence" (§§387-388). Whereas drunkenness was criminalised generally (§§401-402), *any* consumption of alcohol was criminalised specifically for Muslims (§403). Muslim offenders, in addition to the punishments otherwise specified, were also made "liable to the punishment of Haddi lashing as prescribed by Muslim law" for adultery and fornication, alcohol-related offences, and defamation and injurious falsehood (§68(2)). The residual religion-based discrimination inherent in these provisions was protected from the constitutional ban on such practices by a proviso;[10] *haddi* lashing was similarly protected from the ban on cruel, inhuman and degrading punishment and treatment.[11] Along with the Penal Code an elaborate new Criminal Procedure Code was also made applicable in all cases.[12] These two codes – the Penal Code and the Criminal Procedure Code both of 1960 – were inherited by and are still in effect in all of the States into which the Northern Region has subsequently been divided, including the Sharia States.

c. The new Sharia Penal Codes. Alongside the old Penal Codes we now have, also, in all the Sharia States except for Niger, new Sharia Penal Codes running in parallel. The Sharia Penal Codes bring Islamic criminal law back into more or less full force within the Sharia States as to persons tried for crimes in the new Sharia Courts. They do so in the form of lengthy codes, in compliance with the constitutional requirement that all criminal law be enacted as written law in which all criminal offences are defined and the penalties therefor prescribed. At the same time all the old Penal Codes, clones of the Penal Code of 1960, remain on the books – to be applied to persons tried in the Magistrate or High Courts. In short, as in colonial days, which penal law is applied to a person depends on which court he or she is tried in. The choice of court seems to a large extent to be the accused's. There is a presumption that non-Muslims will be charged and tried in the Magistrate and High Courts (and therefore be subject to the old Penal Codes); but they may *opt into* the Sharia courts (and therefore be subject to the Sharia Penal Codes) if they give their consent in writing. Equally, Muslims, by one means or

[10] Section 27(1) of the 1960 Constitution prohibited discrimination based among other things on ethnicity and religion. §27(2): "Nothing in this section shall invalidate any law by reason only that the law: * * * (d) imposes any disability or restriction or accords any privilege or advantage that, having regard to its nature and to special circumstances pertaining to the persons to whom it applies, is reasonably justifiable in a democratic society." The same proviso appeared in the 1963 Constitution, but it was taken out of the 1979 Constitution; probably, therefore, from 1979 the provisions of the Penal Code providing different punishments for different people based solely on their religion have been unconstitutional. This point appears never to have been ruled on by a court of record however, probably because since 1979 the discriminatory provisions have not been applied – so it seems – so the point has been moot.

[11] Section 18(1) of the 1960 Constitution prohibited the subjection of any person to torture or to inhuman or degrading treatment." §18(2): "Nothing in this section shall invalidate any law by reason only that it authorises the infliction in any part of Nigeria of any punishment that was lawful and customary in that part on the 1st day of November, 1959", which *haddi* lashing was. The same proviso appeared in the 1963 Constitution, but was taken out of the 1979 Constitution; from 1979, therefore, it has been an open question whether *haddi* lashing would be in violation of the ban.

[12] Cap. 30 of the *Laws of Northern Nigeria* 1963. The Criminal Procedure Code of 1960 and the new Sharia Criminal Procedure Codes deriving from it are the subject of Chapter 5, below.

another, seem always able to *opt out of* the Sharia courts, if they prefer to go under the old Penal Codes in the Magistrate or High Courts. Thus are large degrees of uncertainty and inequality, including discrimination based solely on religion, reintroduced into the criminal justice systems of the Sharia States.

Niger State adopted a different drafting strategy to approximately the same effect. Instead of adopting a whole new Sharia Penal Code, it amended its existing Penal Code, by adding a new section 68A, which lays down that certain other sections of the code, when applied to Muslims, will carry different burdens of proof and different punishments than when applied to non-Muslims. In Niger, since the same Penal Code, as amended, still applies in all courts of the State, it appears that even when Muslims are charged in the Magistrate and High Courts they should have the new Sharia-inspired provisions of §68A applied to them. If so, then the only way a Muslim charged in the courts of Niger State could opt out of §68A would be to deny his or her faith. But it appears not to be so: §68A, though part of the Niger Penal Code, is nevertheless not being applied in the Magistrate and High Courts, even when the accuseds are Muslims. All these interesting jurisdictional and choice-of-law points will be discussed in greater detail in a forthcoming chapter of this work on "Court Reorganisation".

Some states initially adopted yet a third legislative strategy for bringing Islamic criminal law back into force. Without taking the time or trouble to draft lengthy Sharia Penal Codes, they enacted that in criminal matters their Sharia Courts should simply apply Islamic criminal law as found in the basic and classical sources: the Qur'an, the Hadith, and the *fiqh*. This would really have brought the position back to what it was before 1960, and even more so, before 1900. An example of this sort of legislation – Katsina State's Islamic Penal System (Adoption) Law 2000 – is given in Part V of this chapter. Possible motivations for the use of this strategy are discussed in Ibrahim Na'iya Sada's essay in Part II of this chapter. But the consensus among the lawyers was that it was clearly unconstitutional to try to bring Islamic criminal law into force in this way, and all states, except Niger as noted, have now adopted comprehensive Sharia Penal Codes.

2. What this chapter comprises.

The purpose of this chapter is to document the eleven Sharia Penal Codes themselves, as well as Niger State's "Sharia amendment" to its existing Penal Code. This is done in several ways.

a. The Harmonised Sharia Penal Code Annotated. The Sharia Penal Codes are voluminous – with upwards of 400 sections each – so they can not all be published here. Instead we publish one of them, with annotations, section by section, showing variations between it and all the ones not published. The code we have elected to annotate and publish, in Part III of this chapter, is in fact not one of those actually enacted by the States, but a "harmonised" version prepared by the Centre for Islamic Legal Studies (CILS) of Ahmadu Bello University, Zaria. The CILS Harmonised Sharia Penal Code is in effect a model law, recommended by CILS for adoption by the States in place of the various codes they adopted in the early days of Sharia implementation; in fact Zamfara State has already replaced its first Sharia Penal Code with the CILS Harmonised Sharia Penal Code. We decided to use the CILS code here for two main reasons: it may be the

coming thing, and, more practically, CILS very generously let us have a digital copy to work with, so we did not have to retype. We are grateful to CILS for its permission to use the Harmonised Sharia Penal Code in this way.

b. The Niger State Penal Code Amendment Law 2000. Since Niger State did not enact a whole new Sharia Penal Code, but only a relatively brief amendment to its existing Penal Code, and since the drafting strategy is interestingly different, we have reproduced the Niger State Penal Code Amendment Law in full in Part IV.

c. The Katsina State Islamic Penal System (Adoption) Law 2000. This one-page document, since superseded, illustrates one possible strategy for bringing Islamic criminal law back into force; it is reproduced in Part V.

d. Relations to the Penal Code of 1960. The main source for all the Sharia Penal Codes was the Penal Code of 1960. This is documented here in three ways:

i. The annotations to the CILS Harmonised Sharia Penal Code, Part III, note variations between it and the Penal Code of 1960, as well as between it and the Sharia Penal Codes of the States.

ii. Two conversion tables are provided, one from the Penal Code of 1960 to the CILS code, Part VI, the other from the CILS code to the Penal Code of 1960, Part VII. Besides facilitating comparison of the codes section by section, these tables show at a glance how extensive the relations between them are.

iii. Two lists of sections included in one code but omitted in the other are provided, Parts VIII and IX. These distinguish between sections omitted outright and sections omitted because of the collapsing of distinctions made in one code but not in the other; the first sort of omitted sections are quoted in full, the second sort are merely listed by section title. Simple calculations result in estimates of the percentages of sections of the Penal Code included in the CILS Harmonised Sharia Penal Code (90%) and percentages of sections of CILS included in the Penal Code (89%).

Much of the following discussion is derived from these five documents.

e. Sada's essay on the making of the Zamfara and Kano State Sharia Penal Codes (Part II). Dr. Sada served as the Director of the Centre for Islamic Legal Studies from 2002 to 2006, and was closely involved in the making of the Harmonised Sharia Penal and Criminal Procedure Codes reproduced in this work. His essay in this chapter provides a behind-the-scenes look at the making of two of the Sharia Penal Codes.

f. This introduction. Finally, the remainder of this introduction attempts to bring out some of the interesting points that came up in the process of putting the rest of the materials of this chapter together.

3. Tracing the origins of the codes back further.

A work that needs to be done is to unearth and study any remaining evidence relating to the discussions and negotiations between the Northern Region's *ulama* and the British over the precise wording of the various sections of the new Penal Code, as the sections

were studied and agreed to one by one in late 1958 and early 1959.[13] A good place to start is the work just cited – the memorandum drafted in April 1962 by the still-British Attorney-General of the Northern Region, Hedley Marshall, to brief the Panel of Jurists, who were returning for a second visit, on how far the Panel's 1958 recommendations had been implemented and how things were going along. The Attorney-General's memorandum contains a detailed outline of the process by which the various aspects of the Penal Code were agreed to between the British and the North's Muslim leaders; the leads it gives should be followed up.

As has been indicated, the Penal Code of 1960 derived in the first instance from the Sudan Penal Code of 1899. For those wishing to study this relationship further, a place to start is S.S. Richardson's *Notes on the Penal Code Law*, cited above, which among other valuable features correlates the sections of the Penal Code of 1960 with the corresponding sections of the Sudan Penal Code. Richardson's book, also published in Hausa, is still a staple in Nigeria's various institutions of legal learning, including the schools and colleges of Islamic legal studies where many of the alkalis of the new Sharia Courts have received their training.[14]

4. Differences between the Penal Code of 1960 and the Sharia Penal Codes.

a. Reorganisation of sections. The numbers of sections in the various codes are not much different: 412 in the Penal Code (including three sections added in 1962), 414 in the CILS Harmonised Sharia Penal Code, which for present purposes may represent all the Sharia Penal Codes. But the numbers of chapters are very different: 25 in the Penal Code, only 10 in CILS.

The first seven chapters in both codes cover the same ground (although with somewhat different content):

CILS Harmonised Sharia Penal Code	**Penal Code of 1960**
Cap. I: GENERAL EXPLANATIONS AND DEFINITIONS	Cap. I: GENERAL EXPLANATIONS AND DEFINITIONS
Cap. II: CRIMINAL RESPONSIBILITY	Cap. II: CRIMINAL RESPONSIBILITY
Cap. III: PUNISHMENTS AND COMPENSATION	Cap. III: PUNISHMENTS AND COMPENSATION
Cap. IV: JOINT ACTS	Cap. IV: JOINT ACTS
Cap. V: ABETMENT	Cap. V: ABETMENT
Cap. VI: ATTEMPTS TO COMMIT OFFENCES	Cap. VI: ATTEMPTS TO COMMIT OFFENCES
Cap. VII: CRIMINAL CONSPIRACY	Cap. VII: CRIMINAL CONSPIRACY

It is the subsequent 18 chapters of the Penal Code that the Harmonised Sharia Penal Code (following the Sharia Penal Codes enacted by the States) reorganises into just three, as follows:

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[13] For a detailed account of the drafting process, see ¶¶4-7 of the "Memorandum by the Attorney-General to the Panel of Jurists as to the Implementation of the Policy of the Northern Region Government on the Reorganisation of the Legal and Judicial Systems of the Region based on the Recommendations of the Panel of Jurists dated 10th September, 1958", reproduced in Chapter 1 of this work (in Vol. I).

[14] See e.g. Chapter 2 of this work (in Vol. II), 28, where Richardson's book is included among those recommended for students of the A.D. Rufa'i College for Legal & Islamic Studies, Misau, Bauchi State.

Chapter VIII on HUDUD AND HUDUD-RELATED OFFENCES, includes or covers the same ground as the indicated parts of the following chapters of the Penal Code:

- Cap. XVIII, OFFENCES AFFECTING THE HUMAN BODY (parts, covering rape, "unnatural offences", and gross indecency)
- Cap. XIX, OFFENCES AGAINST PROPERTY (parts, covering theft, armed robbery, extortion, criminal misappropriation, criminal breach of trust, receiving stolen property, cheating, and criminal trespass)
- Cap. XXII, OFFENCES RELATING TO MARRIAGE AND INCEST (parts, covering adultery and incest)
- Cap. XXIII, DEFAMATION (parts, put immediately after SPC sections on false accusation of *zina* (*qadhf*))
- Cap. XXIV, CRIMINAL INTIMIDATION, INSULT AND ANNOYANCE AND DRUNKENNESS (sections on use of alcoholic drinks only)

Chapter IX on QISAS AND QISAS-RELATED OFFENCES, includes or covers the same ground as the indicated parts of the following chapter of the Penal Code:

- Cap. XVIII, OFFENCES AFFECTING THE HUMAN BODY (parts, covering offences affecting life, causing miscarriage etc., hurt, criminal force and assault, and kidnapping, abduction, and forced labour)

Chapter X on TA'AZIR OFFENCES, includes most sections of the following chapters or indicated parts of chapters of the Penal Code:

- Cap. VIII, BREACH OF OFFICIAL TRUST
- Cap. IX, OFFENCES AGAINST THE PUBLIC PEACE
- Cap. X, OFFENCES BY OR RELATING TO PUBLIC SERVANTS
- Cap. XI, CONTEMPTS OF THE LAWFUL AUTHORITY OF PUBLIC SERVANTS
- Cap. XII, FALSE EVIDENCE AND OFFENCES RELATING TO THE ADMINISTRATION OF JUSTICE, including all five subdivisions of this chapter
- Cap. XIII, PUBLIC NUISANCE
- Cap. XIV, LOTTERIES AND GAMING HOUSES
- Cap. XV, CRUELTY TO ANIMALS
- Cap. XVI, OFFENCES RELATED TO RELIGION
- Cap. XVII, OFFENCES RELATED TO ORDEAL, WITCHCRAFT AND JUJU
- Cap. XVIII, OFFENCES AFFECTING THE HUMAN BODY (sections on wrongful restraint and wrongful confinement)
- Cap. XIX, OFFENCES AGAINST PROPERTY (sections on mischief)
- Cap. XX, FORGERY, including the subdivision on *Property and Other Marks*
- Cap. XXI, CRIMINAL BREACH OF CONTRACTS OF SERVICE
- Cap. XXIV, CRIMINAL INTIMIDATION, INSULT AND ANNOYANCE AND DRUNKENNESS (sections on criminal intimidation, insult and annoyance)
- Cap. XXV, VAGABONDS

The reorganisation thus effected is quite tidy: only three chapters of the Penal Code are sorted into more than one chapter of the Harmonised Sharia Penal Code. Chapter

XVIII, on OFFENCES AFFECTING THE HUMAN BODY, goes partly into the CILS chapter on HUDUD, partly into QISAS, and partly into TA'AZIR. Chapter XIX, on OFFENCES AGAINST PROPERTY, goes partly into HUDUD and partly into TA'AZIR. Chapter XXIV, on CRIMINAL INTIMIDATION, INSULT AND ANNOYANCE AND DRUNKENNESS, also goes partly into HUDUD and partly into TA'AZIR. Within their new settings the order in which types of offences are dealt with has also sometimes been changed.

Note also the expansion in the Sharia Penal Codes of the concepts of *hudud* and *qisas* to "*hudud*-related" and "*qisas*-related" offences. The *hudud*-related offences include, for example, receiving stolen property, for which no penalty is fixed in the Qur'an or Hadith and which is punished under the Sharia Penal Codes with imprisonment and lashing.[15] The *qisas*-related offences include forced labour, which the Sharia Penal Codes do not punish with retaliation in kind but with imprisonment or fine or both.[16] Kidnapping is included in the chapter on QISAS AND QISAS-RELATED OFFENCES, but is punished in some of the codes under the section on theft punishable with *hadd*.[17] Whether there is precedent in Islamic jurisprudence for these extensions, others will have to say.

b. Substantial changes in the sections on *hudud* and *qisas* offences. The most substantial redrafting, not only as to punishments but as to definitions of the offences themselves, went into the Sharia Penal Code sections covering the *hudud* and *qisas* offences proper. The punishments laid down in the Sharia Penal Codes of course include, most controversially, stoning to death for *zina* and related sexual offences by persons who are or have been married,[18] amputation of the hand for certain cases of theft (*sariqah*),[19] multiple amputations or even crucifixion for armed robbery (*hirabah*),[20] and retaliation in kind (*qisas*) for homicide and causing hurt – a life for a life, an eye for an eye and a tooth for a tooth.[21] The sections of the different codes dealing with the *hudud* and *qisas* offences invite detailed comparison and analysis which we do not undertake here, except to make three points about the re-definitions of the crimes and punishments falling under the heading of *qisas*, with particular reference to homicide.

i. Elimination of the defence of provocation. Under the Penal Code, a defendant can plead "provocation" in defence or in mitigation of certain offences punishable with *qisas* in Islamic law, for instance homicide.[22] However, consistently with Maliki law,

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[15] See CILS Harmonised Sharia Penal Code §§168-171 and notes thereto.
[16] Ibid. §238 and notes.
[17] Ibid. §231 and notes.
[18] Ibid. §§126 (*zina*), 128 (rape), 130 (sodomy, *liwat*), 132 (incest), and notes. Kano and Katsina also punish lesbianism (*sihaq*) with stoning to death, see note to CILS §134.
[19] Ibid. §144.
[20] Ibid. §152.
[21] For this one must consult the Sharia Criminal Procedure Codes as well as the Sharia Penal Codes. See CILS Harmonised Sharia Criminal Procedure Code (Chapter 5 below), §§241 and 242. "241. When a person is sentence to death the sentence shall direct that: … (b) in case of *qisas*, he be caused to die in the like manner he caused the death of his victim except such manner that is contrary to Sharia …" "242. When a person is sentenced to suffer *qisas* for injuries the sentence shall direct that the *qisas* be carried out in the like manner the offender inflicted such injury on the victim." This is discussed further in the Introduction to Chapter 5.
[22] What counts as provocation is discussed in Cap. I of the Penal Code on GENERAL EXPLANATIONS AND DEFINITIONS, §38. The concept is then used in §222 on culpable homicide

which recognises no such defence, all mention of provocation has been eliminated from the Sharia Penal Codes. The result in homicide cases, for instance, is that "the death penalty [*qisas*] is applicable, on the demand of the heirs of blood, where the accused caused the death of the deceased by any hostile assault, however intrinsically unlikely to kill or wound" and no matter how extreme the provocation.[23] So the Sharia States seem to be back to the position that gave rise to the famous 1940s case of *Tsofo Gubba v. Gwandu Native Authority*.[24] In this case the accused was convicted of intentional homicide and sentenced to death by the Emir of Gwandu's court (applying Islamic law), although had the accused been tried on the same facts in the English courts (applying the Criminal Code), he would only have been convicted of manslaughter and sentenced to a term of imprisonment (because of the element of provocation). The West Africa Court of Appeal ultimately quashed the conviction and set aside the sentence, holding that whenever a native court tried any person for any offence defined in the Criminal Code it was bound to follow the Code to the exclusion of Islamic law or native law and custom. This ruling, for many reasons, caused consternation in the North; it brought to a head the problem of the conflict of criminal laws in the Northern Region and was an important factor in the decision to adopt the Penal Code of 1960.[25]

ii. Possible remittance of *qisas* by the victim's heirs. Elimination of the defence of provocation can expand the scope of the death penalty in cases of homicide beyond the circumstances in which it would apply under the Penal Code; this is the point just made. The other side of the coin is that the punishment of *qisas*, including the death penalty in most cases of homicide, can be remitted by the victim's heirs, in favour of payment of "blood-money" or *diyah*; and even payment of *diyah* can be waived so that the offender gets off quite lightly – in cases in which he would be put to death under the Penal Code.[26] This point applies not only to cases of intentional homicide, but to other crimes as well:

Offence	CILS		Penal Code	
	§	Max. punishment	§	Max. punishment
giving false evidence to procure conviction of capital offence resulting in execution of innocent person	330(2)	*qisas*	159(2)	death

not punishable with death, §§244-247 on causing hurt, §266 on assault or criminal force with provocation, and §399 on intentional insult with intent to provoke breach of the peace.

[23] Quoting "Report of the Panel of Jurists Appointed by the Northern Region Government to Examine the Legal and Judicial Systems of the Region", Chapter 1 of this work, ¶5; compare CILS Harmonised Sharia Penal Code §§198-199 and notes. Similar remarks apply to other offences punishable with *qisas*, for instance causing grievous hurt: if A and B get into a fight and A knocks out B's tooth, A's punishment (unless remitted) will be to have his tooth knocked out in turn, no matter how much B may have provoked A into fighting him, see CILS §§214-220.

[24] (1947) 12 W.A.C.A. 141.

[25] The discussion here of the *Tsofo Gubba* case relies on and to some extent paraphrases E.A. Keay and S.S. Richardson, *The Native and Customary Courts of Nigeria* (London: Street & Maxwell, 1966), 46-51.

[26] See CILS §199 and notes (remittance of *qisas* in cases of intentional homicide); cf. §219 (remittance of *qisas* in cases of intentional causing of grievous hurt). Under §199 even if both *qisas* and *diyah* are remitted by the deceased's heirs, the convict will still be punished by the state "with caning of one hundred lashes and with imprisonment for a term of one year."

trial by ordeal resulting in death of any party to the proceeding	407	*qisas*	214	death

In sum, the switch to the Maliki law of homicide can not only expand the scope of the death penalty beyond those cases in which it would be applied under the Penal Code (no defence of provocation), but can also reduce it (remittance of *qisas*). It is notable that Muslims are encouraged to remit *qisas* as a meritorious act.[27] It would be interesting to know how often this is done in practice.

iii. Introduction of new defences. Moreover, two new defences to offences punishable with *qisas* have been introduced in the Sharia Penal Codes, which may restrict the scope of infliction of the death penalty even further than remittance of *qisas* alone would do.

Act of necessity. Both the Penal Code and the Sharia Penal Codes provide in some detail for "The Right of Private Defence", set out in the CILS Harmonised Sharia Penal Code in §§84-92. In addition to this, CILS and all the Sharia Penal Codes of the States have inserted a new section entitled "Act of necessity", §81 in CILS, which provides that:

> It shall not be an offence if an act is done by a person who is compelled by necessity to protect his person, property or honour, or person, property or honour of another from imminent grave danger which he has not wilfully caused or wilfully exposed himself or other persons to and which he or that other person is not capable of avoiding.

In what ways and how far this may go beyond the right of private defence already provided for are questions that deserve further study.

Retaliatory killings by certain heirs of a deceased person. All the Sharia Penal Codes define a class of persons known severally as *waliyy al-damm*. This class, as to any person, includes his or her "male agnatic heirs, daughters, full sisters, paternal aunts and consanguine sisters."[28] This notion is then used in the section on homicide as follows:

> Whoever being a *waliyy al-damm* of a deceased person causes the death of the suspect alleged to have killed the deceased[29] shall be punished:
>
> (a) with imprisonment for a term of six months and shall also be liable to caning which may extend to fifty lashes, if it was proved that the person killed was the one who caused the death of the deceased; or
>
> (b) where it was not proved that the suspect was the one who caused the death of the deceased, or it was proved that the death of the

[27] See for example Qur'an 42:40 and 43: "The recompense for an injury is an injury equal thereto (in degree), but if a person forgives and makes reconciliation, his reward is due from God, for (God) loves not those who do wrong…. But indeed if any show patience and forgive, that would truly be an exercise of courageous will and resolution in the conduct of affairs." Thanks to Dr. I.N. Sada for providing these passages.

[28] See CILS §50 and note.

[29] Bauchi inserts here: "with the intention of retaliation before taking the matter to court".

> deceased was caused by the suspect but with legal justification the *waliyy al-damm* shall be deemed to have committed intentional homicide punishable under section 199 [i.e. punishable with *qisas*].

In sum, a *waliyy al-damm* may take the law into his own hands if his relative is killed, and kill the killer in return, if he is sure he knows who the killer is and if he is willing to pay the relatively small price exacted by the State for this usurpation of its supposed monopoly on the lawful use of violence. This is not permitted under the Penal Code.

c. Many variations as to punishment of other offences. Beyond the fairly narrow field of the *hudud* and *qisas* offences proper, the definitions of offences as contained in the Penal Code have mostly been retained in the Sharia Penal Codes, but the punishments have been thoroughly revised. We mention three types of revisions: those affecting only lengths of terms of imprisonment and the like; those affecting life or death; and those affecting the discretion in sentencing accorded the judges.

i. How many years and/or how many lashes and/or how much fine. Let four illustrations suffice, two in which the maximum punishment under the CILS Harmonised Sharia Penal Code is more severe than under the Penal Code, and two in which it is less severe; in all cases the definition of the offence is the same. Many other instances of both these phenomena occur in the codes.

Offence	CILS		Penal Code	
	§	Max. punishment	§	Max. punishment
disturbance of public peace	287	2 years and 50 lashes and fine	113	1 year or fine or both
inciting disturbance	288	3 years and 60 lashes and fine	114	2 years or fine or both
giving false evidence in judicial proceeding	329(1)	5 years and 60 lashes	158(1)	14 years and fine
giving false evidence to procure conviction of capital offence	330(1)	5 years and 60 lashes	159(1)	life and fine

It is sometimes thought that the penalties under the Sharia Penal Codes are always more severe than those under the Penal Code for the same offence. Muslims say this is a burden they have voluntarily agreed to bear in order more fully to practise their religion (thinking particularly of the *hudud* offences). But we have been seeing here and in the discussion of *qisas* that this is by no means always the case: the religion-based discrimination inherent in the codes also sometimes works against non-Muslims rather than in their favour. The system of dual penal codes now operating in the Sharia States is therefore open to constitutional challenge on this ground from the side of the non-Muslims as well as from that of the Muslims. Up to the time of this writing, however, no person with the *locus standi* to do so has raised the issue in his or her defence: Muslims, perhaps because they or their lawyers do not wish to raise fundamental challenges to the system, and non-Muslims perhaps because they or their lawyers have not thought of it. This subject will be discussed further in a forthcoming chapter of this work discussing on constitutional questions raised by Sharia implementation.

ii. Life or death. As to some offences unrelated to *hudud* or *qisas* the Sharia Penal Codes have gone far beyond the Penal Code in the severity of their punishments.

Offence	CILS		Penal Code	
	§	Max. punishment	§	Max. punishment
insulting or exciting contempt of religious creed	402	2 years or fine and 30 lashes	210	2 years or fine or both
insulting, abusing, etc. any prophet recognised by Islam	406(1)	death	--	--
injuring or defiling place of worship or object held sacred	403	2 years or fine and 30 lashes	211	2 years or fine or both
damaging, defiling, or destroying the Holy Qur'an	406(2)	death	--	--
witchcraft, broadly defined	409	death	216	2 years or fine or both
cannibalism	413	death	218	2 years or fine or both
possession of human body parts as trophy, juju or charm	414	death	219	5 years or fine or both

Conceivably infliction of the death penalty in these sorts of cases could be held to violate the constitutional ban on inhuman or degrading punishment, as being disproportional to the magnitude of the offence.

iii. Discretion in sentencing. The Penal Code already allows judges a very substantial discretion in the matter of sentencing. This is reflected not only in the discretion to sentence to "up to" so many years imprisonment, for example, but also in the discretion granted by §§77 and 78 to *substitute* caning or payment of compensation in lieu of any other punishment in most cases. The Sharia Penal Codes continue this broad discretion and expand it further, allowing also a sentence of reprimand (*tawbikh*), warning *(tahdid),* exhortation (*wa'az*) or boycott *(hajar)* to be passed "on any offender in lieu of, or in addition to any other punishment to which he might be sentenced for any offence not punishable with death, or offences falling under *hudud* and *qisas*."[30] This restores the almost unlimited discretion of the classical *qadi* in *ta'azir* cases, at least in the matter of sentencing.

d. Other differences. In two other sections the Sharia Penal Codes significantly expand, in rather vague terms, offences more narrowly defined in the Penal Code:

Unlawful societies. The Penal Code (§97A) defines an unlawful society as one "declared by an order of the Governor in Council to be a society dangerous to the good government of Northern Nigeria or any part thereof." The Sharia Penal Codes have: "Any society which by its composition, nature, or conduct is anti-social, counter productive or opposed to the general belief and culture of the people of the State, or is dangerous and obstructive to the good governance of the State or any part thereof, is said to be an unlawful society."[31] The punishment for managing or belonging to an unlawful society can be harsh: up to seven years imprisonment under all codes, plus fine or caning.

Sale, printing, exhibition of obscene books etc. The Sharia Penal Codes enact the Penal Code section on this subject (§202), but then add a second subsection as

[30] See CILS Harmonised Sharia Penal Code §101. Query: do the "offences falling under *hudud* and *qisas*" meant by this section include also the "*hudud*-related" and "*qisas*-related" offences of the Sharia Penal Codes?

[31] See CILS §123 and note.

follows: "(2) Whoever deals in materials contrary to public morality or manages an exhibition or theatre or entertainment club or show house or any other similar place and presents or displays therein materials which are obscene, or contrary to public policy shall be punished with imprisonment for a term which may extend to one year and with caning which may extend to twenty lashes."[32] What is or is not "obscene" is already vague enough; this is compounded by the introduction of "contrary to public morality" and "contrary to public policy", which the alkalis of the Sharia courts hardly seem qualified to define.

Finally, we conclude this discussion of differences between the Penal Code of 1960 and the Sharia Penal Codes by merely noting the titles of some sections included in the Penal Code but not in the Sharia Penal Codes, or vice versa. The full texts of all such sections are quoted in the two documents entitled "Sections of the [one code] omitted in the [other code]" which appear later in this chapter.

Offence	CILS		Penal Code	
	§	Max. punishment	§	Max. punishment
abetment of suicide	--	--	228	10 years and fine
attempt to commit suicide	--	--	231	1 year or fine or both
buying or disposing of slave	--	--	279	14 years and fine
deceitfully inducing belief of lawful marriage	--	--	383	10 years and fine
marrying again during life-time of husband or wife	--	--	384	7 years and fine
re-marriage with concealment of former marriage	--	--	385	10 years and fine
marriage ceremony fraudulently gone through without lawful marriage	--	--	386	7 years and fine
enticing or taking away or detaining with criminal intent a married woman	--	--	389	2 years or fine or both
false accusation of *zina* (*qadhf*)	139	80 lashes (may be remitted)	--	--
manufacturing, transporting, or dealing in alcoholic drinks or other intoxicants	149	40 lashes or 6 months or both	--	--
blasphemous acts, utterances, etc. against the Prophet or the Qur'an	406	death	--	--

5. Variations among the Sharia Penal Codes themselves.

So far we have been concentrating on differences between the Penal Code of 1960 and the Sharia Penal Codes as exemplified by the CILS Harmonised Sharia Penal Code. We now look at some variations among the Sharia Penal Codes themselves.

a. Definitions of some *hudud* and *qisas* offences. The most substantial redrafting of Penal Code sections went into the Sharia Penal Code sections covering *hudud* and *qisas* offences proper; this has already been noted. It is not surprising therefore that variations among the Sharia Penal Codes themselves have come into the definitions of some of these offences. The relevant sections invite detailed comparison and analysis which we do not undertake here.

[32] See CILS §374(2) and note.

b. "General Offences". One *hudud* offence not explicitly included in any Sharia Penal Code is apostasy from Islam – *ridda*. This has been left out for good reason: §38(1) of the Constitution guarantees every person "freedom of thought, conscience and religion, including freedom to change his religion or belief." Nevertheless, seven of the codes[33] have inserted a section entitled "General Offences", as follows:

> Any act or omission which is not specifically mentioned in this Sharia Penal Code but is otherwise declared to be an offence under the Qur'an, Sunnah, and *ijtihad* of the Maliki school of Islamic thought, shall be an offence under this code and such act or omission shall be punishable: (a) with imprisonment for a term which may extend to five years, or (b) with caning which may extend to 50 lashes, or (c) with a fine which may extend to ₦5,000.00, or with any two of the above punishments.[34]

Anyone charged under this section would surely have a good defence under the same constitutional provision that necessitated the enactment of detailed Sharia Penal Codes in the first place, §36(12), which bears full quotation here:

> Subject as otherwise provided by this Constitution, a person shall not be convicted of a criminal offence unless that offence is defined and the penalty therefor is prescribed in a written law; and in this subsection, a written law refers to an Act of the National Assembly or a Law of a State, any subsidiary legislation or instrument under the provisions of a law.

c. Variations as to punishment of other offences.

i. Trivial variations. As perusal of the annotations to the CILS Harmonised Sharia Penal Code will show, there is a very large amount of more or less trivial variation among the Sharia Penal Codes in the specification of punishments particularly for *ta'azir* offences (but also for "*hudud*-related" and "*qisas*-related" offences). We illustrate this with the punishment information for just one offence. The definition of the offence is the same in all codes. Information about the Penal Code is also included as in the annotations.

Offence	CILS		Other Sharia Penal Codes	
	§	Max. punishment	§	Max. punishment
making or possessing counterfeit seal with intent to commit forgery	256	3 years and fine	var.	PC: 14 years/fine. Bauchi: 15 years/40 lashes. Gombe, Jigawa, Sokoto, Yobe, Zamfara: 5 years/fine. Kano, Katsina: 5 years/₦50,000 fine/ both. Kebbi: 5 years and fine or 40 lashes. Kaduna: *ta'azir*.

This example may also serve to illustrate some broad generalizations about the various Sharia Penal Codes which the annotations seem to bear out:

- The maximum punishments under the Bauchi code are often the harshest of any.

[33] Bauchi, Gombe, Jigawa, Kebbi, Sokoto, Yobe and Zamfara.

[34] Gombe omits the word '*ijtihad*' and puts instead "*qiyas* and *ijma* and other sources of the Maliki school of thought". Bauchi varies the punishments: imprisonment may extend to 1 year only, caning may extend to 40 lashes only, and the fine may extend to ₦50,000.00.

- Gombe, Jigawa, Sokoto, Yobe, and Zamfara States often march together; this is no doubt because the others were largely copied from Zamfara's code which was drafted and enacted first.
- Kano and Katsina often march together. Kano's code was enacted first (November 2000, as opposed to Katsina's June 2001), so Katsina has probably followed Kano where the two are alike but different from the others. One respect in which Kano and Katsina frequently differ from the others is in specifying more definitely the maximum fine imposable for a given offence (as above), but this is not done consistently (see e.g. notes to CILS §§355 and 356). Another respect in which Kano and Katsina sometimes differ from the others is in simplifying somewhat the language of sections otherwise copied from the Penal Code (see notes to CILS §§308, 309, 310, 311 and 313).
- Kebbi's punishment formulations are frequently more convoluted and therefore more ambiguous than the others. In the illustration above, for example, Kebbi's full formulation is "shall be punished with imprisonment for a term which may extend to five years and may also be liable to fine or caning which may extend to forty lashes."[35] A logician will wonder which connective has the larger scope, the "and" or the "or".
- Kaduna, alone among the Sharia Penal Codes, has in almost all sections dealing with *ta'azir* offences not specified any punishment at all except for "*ta'azir*", meaning "correction" or "chastisement", in effect leaving everything up to the discretion of the sentencing judge without giving him any guidance at all.

ii. Non-trivial variations. One of these has already been noted: Kaduna's substitution of the single word "*ta'azir*" for all further specification of the punishments for most offences. As with the "General Offences" discussed above, query whether this device is constitutional under §36(12) of the Constitution.

Several other variations in the punishment provisions also count as non-trivial: we simply list them here without further comment.

Offence	CILS		Other Sharia Penal Codes	
	§	Max. punishment	§	Max. punishment
hirabah were murder is committed and property is seized	152	*salb* (Kaduna: same)	var.	Borno, Gombe, Jigawa, Kebbi, Sokoto, Yobe, Zamfara: crucifixion. Bauchi: "death by impalement (crucifixion)". Kano, Katsina: death.
criminal breach of trust by public servant or by banker, merchant or agent[36]	167	7 years with fine and 60 lashes (with trivial variations in other codes)	Kano 134B	amputation of right hand and not less than 5 years imprison-ment and stolen wealth confiscated.

[35] Kebbi State Penal Code (Amendment) Law 2000, First Schedule, §257.

[36] The definitions of the offence as contained in CILS (and most other SPCs) on the one hand, and Kano on the other, are somewhat different and bear further comparison.

kidnapping of person over the age of 7[37]	231(2)	3 years and 40 lashes (with trivial variations in other codes)	var.	Bauchi, Kano and Katsina: punished as theft punishable with *hadd*
fraudulent cancellation, destruction or theft of document of title	259	5 years and 50 lashes and fine	var.	All SPCs except Kaduna: amputation[38] if the value of the title amounts to *nisab*. Kaduna: *ta'azir*

d. Other variations among the Sharia Penal Codes. We note just two interesting additions to two of the codes:

Prohibition of praise singing, drumming, begging, playing cards, etc. Bauchi inserts in its code (§376), amid the sections on "idle persons" and "vagabonds", the following: "Any person who in any street or place of public resort or within sight or hearing of any person or in any social, public or private ceremony, engages in praise singing (*roko*), begging (*bara*), playing cards (*karta*), *wasan maciji*, *wasa da kura*, *wasan wuta*, *wasan wuka*, *wasan bori*,[39] etc. is guilty of an offence and liable on conviction to imprisonment for a term which may extend to one year and a fine of not less than ₦5,000.00 and shall also be liable to canning of twenty lashes." Other States or Local Governments have enacted somewhat similar prohibitions, aimed at various widespread practices considered to be "social vices", see Chapter 3, but Bauchi is the only one to incorporate them in its Sharia Penal Code.

Criminal charms. The practice of various forms of witchcraft, magic and "juju" remains widespread throughout Nigeria, although the Penal Code of 1960 prohibited it and the Sharia Penal Codes all follow suit, in virtually identical chapters (subchapters in the SPCs) on *Offences Relating to Ordeal, Witchcraft and Juju*.[40] Kano and Katsina have all this but add some different twists as well. All the Sharia Penal Codes have essentially the same provision (derived from the Penal Code) on "criminal charms", prohibiting possession of "any fetish or charm which is pretended or reputed to possess power to protect a person in the committing of any offence." Kano and Katsina have this section but give it a new twist by prohibiting, more broadly, possession of "any fetish object or charm which is pretended or reputed to possess power to protect *or give illegal benefit to* any person in the committing of any offence", and adding a second subsection, as follows:

[37] CILS and all SPCs punish kidnapping of a person under the age of 7 as theft punishable with *hadd*.

[38] Presumably of the hand as in theft punishable with *hadd*.

[39] *Wasa* = play, here, with various dangerous things (respectively snakes, hyenas, fire and knives), under the guise of protection by charms or other supernatural powers, for whatever the on-lookers may be willing to donate. Crowds are frequently attracted; *boka* or "malams" ply their trade in charms, fortune-telling and traditional medicines; and thieves and pick-pockets circulate. *Wasan bori* is more directly associated with the cult of spirit-possession: the devotee by incantations and turning in a circular dance achieves a state of possession in which he/she performs various feats before passing out. This is usually not for public consumption, but only for members or potential members of the cult.

[40] See Penal Code §§214-219; CILS §§407-414 and notes.

> Whoever engages in unlawful sexual behaviours under the guise of offering medical treatment, invocation [sic: ?] under the guise of curing an illness or causing a favour to a person shall be imprisoned for five years or sentenced to a fine of fifty thousand naira and shall also be liable to caning of sixty [Katsina: 50] lashes.[41]

This addresses what seems to be a common problem: the use of charms or the exploitation of alleged healing powers for sexual purposes. The unlawful sexual behaviours punished here are presumably unlawful under other sections of the code in any case, and punishable far more severely, but this section calls attention to them explicitly and perhaps allows conviction upon lesser evidence than would be required to convict, for instance, of *zina*.

6. The harmonisation project.

The many variations among the Sharia Penal Codes (and among the Sharia Criminal Procedure Codes, as the next chapter shows) were quickly noted among lecturers in the universities' law faculties, among practising lawyers, and among the *ulama*. Two schools of thought developed regarding all this mostly trivial diversity among the Sharia Penal and Criminal Procedure Codes.

In some influential circles the diversity was thought to be a bad thing – violating jurisprudential canons of legal certainty and uniformity and perhaps appearing a little unseemly – which if possible ought to be eliminated or at least minimized. There was a further reason why harmonisation might be desirable: the sometimes badly-drafted, badly-typed, and badly-proofread actually-enacted codes could be replaced with a more professional product. Those who felt this way were able to obtain funding from the Governors of the Sharia States, in 2001-02, to finance the production of a "Harmonised Sharia Penal Code" which could then be recommended back to the States for adoption in replacement of their already existing, needlessly diverse Sharia Penal Codes. The prestigious Centre for Islamic Legal Studies, a unit of Ahmadu Bello University closely associated with the Faculty of Law, was commissioned to make the draft. The result is the document reproduced in the Part III of this chapter – the Harmonised Sharia Penal Code made by CILS. As far as we know no learned body, except CILS, has formally approved the CILS code or recommended its adoption by the States. Nevertheless one State – Zamfara – has enacted it into law *in toto*, in fact enacting a photocopy of CILS's product with CILS's headers still visible upon the pages. The same thing was done with the CILS Harmonised Sharia Criminal Procedure Code reproduced in the next chapter.

Not everyone approves of the harmonisation programme. The sceptics ask: what is the point? They argue that the Sharia itself – not so concerned as some Westerners with legal certainty and uniformity – permits a great deal of diversity of opinion and exercise of discretion, and that most or all of the variations the harmonisers worry about are perfectly tenable in Islamic law. They say the diversity is not causing any particular problems within the Federation, such as might be caused, for example, by similarly diverse commercial laws. They say that in fact the diversity among the codes has positive effects. This is a Federation, after all, and the most important of all State's Rights – too

[41] §§388 and 394 of the Kano and Katsina Sharia Penal Codes, respectively.

little exercised in Nigeria up till now – is the right to be different: the Sharia States are setting an excellent example. They are moreover doing it in a quite democratic way, reflecting in their legislation the consensus of committees of mostly-local scholars, lawyers and *ulama*, appointed by elected Governors to draft their codes, with contentious issues put to votes in elected Houses of Assembly in the process of enactment.[42] What is bad about all this? – This, I conceive, is more or less the argument of those who have no problem with all the diversity among the Sharia Penal and Criminal Procedure Codes and think the States should not be badgered into uniformity.

Only time will tell how the harmonisers fare politically against the sceptics. So far no other State has followed Zamfara in enacting the CILS codes into law, and there does not seem to be a clamour anywhere to do so. But new Governors and Houses of Assembly were elected[43] in April 2007; perhaps the CILS harmonised codes will prosper under their regimes. In the mean time the debate between the harmonisers and the sceptics deserves more public articulation and more scholarly attention than it has received so far.[44]

[42] One example: §134B of Kano's Sharia Penal Code, laying down amputation of the hand as the punishment for criminal breach of trust by a public servant, banker, merchant or agent, was put into the code by the committee first appointed by the Governor to draft it; was removed by a second committee appointed to review the draft before submission to the House of Assembly; and was restored by the House of Assembly itself before final enactment. See Part II, infra.

[43] The word is used loosely.

[44] The foremost sceptic about harmonisation is Professor Auwalu H. Yadudu of Bayero University, Kano. His view is presented in his paper (among others) "Evaluating the Implementation of Sharia in Nigeria: Challenges and Limiting Factors Revisited", presented at the National Conference on Leadership, State & Society under the Sharia in Nigeria: The Dividends, organised by the Institute for Contemporary Research, Kano, held at the Shehu Yar'adua Centre, Abuja, 10-12 July 2006 (copy in possession of the author). I am aware of no similarly detailed articulation of the arguments of the harmonisers; but in his paper at the Conference just mentioned, the Grand Kadi of Kaduna State said that "If I may suggest: a) Concerted effort be made by all the stakeholders to bring about uniform Sharia Laws and Rules for use in all the states implementing the Sharia Law Reform…." Dr. Maccido Ibrahim, "The Achievements of Sharia in Kaduna State" (copy in possession of the author). So the debate continues. The arguments on both sides of a similar debate in a different context are made in A. Klip and H. van der Wilt, eds., *Harmonisation and Harmonising Measures in Criminal Law* (Amsterdam: Royal Netherlands Academy of Arts and Sciences, 2002).

Chapter 4 Part II

The Making of the Zamfara and Kano State Sharia Penal Codes

*Ibrahim Na'iya Sada**

Zamfara

When in June 1999, the Executive Governor of Zamfara State in the northwest of Nigeria appointed a committee to study the ways and means of "implementing Sharia" in the State, including the full scope of Islamic criminal law, little did he think that he was ushering in an event which is not only of national significance but something which is also of global interest. By the end of the year 2000, eleven other states in the Northern part of Nigeria had also adopted the application of the Sharia criminal law, differing only in approach and in various details.

Zamfara State's first Sharia-related piece of legislation was its Sharia Courts (Administration of Justice and Certain Consequential Changes) Law, No. 5 of 1999, assented to by the Governor on 8th October, 1999.[45] This law established inferior Sharia Courts for Zamfara State with the power to determine both civil and criminal proceedings "in Islamic law" (§5(i)(a) and (b)). By section 5(i)(c) the House of Assembly was mandated to "establish offences and their punishments, and the procedure for trials in criminal matters". Section 7(i) provided that:

> 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:[46]
>
> (a) The Holy Qur'an;
> (b) The Hadith and Sunnah of Prophet Muhammad (SAW);
> (c) *Ijmah*;
> (d) *Qiyas*;
> (e) *Masalahah-Mursala*
> (f) *Istihsan*;
> (g) *Istishab*;
> (h) *Al-Urf*;
> (i) *Mashabul-Sahabi*; and
> (j) *Shar'u Man Kablana.*

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[45] Published in Zamfara State of Nigeria Gazette Vol. 1 No. 1, 15th June 2000, A1-A30.

[46] Strictly speaking, only the first two items on the following list, the Qur'an and Sunnah, can be considered as sources of Islamic law. The remaining eight items not only derive their authority from the first two but also can be referred to as rules of procedure on how to extract rules from the two basic sources. The Qur'an and Sunnah are also referred to as the divine component of the Sharia, while *ijma*, *qiyas*, etc. are referred to as the human component, involving the process of *ijtihad* which is strictly speaking human effort to understand and apply the divine component to the day-to-day affairs of the Muslim community.

The law also created a Council of Ulama for the State (§§9-13), with the power (among others) 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), *Ijmah*, *Qiyas* and other sources of Islamic Law", and to advise on the enactment of the laws so codified (§7(vii) and (viii)).

It is interesting to observe that Zamfara's very first law on Sharia implementation called for *codification* of Islamic criminal law. An alternative approach to the reinstatement of Islamic criminal law might have been simply to enact that in criminal matters the new Sharia Courts should apply Islamic criminal law as derived from the sources mentioned above and as articulated in detail in the books of *fiqh*. This was in fact the way the law was found and applied in the alkalis' courts of Northern Nigeria right up to 1960 – with some limitations on punishments imposed by the British during the period of their rule. Some States which followed Zamfara in Sharia implementation – Katsina State, for example – in fact initially took this approach. Katsina's Islamic Penal System (Adoption) Law, enacted in July 2000, provided in its two operative sections that:

> 3. (1) Notwithstanding any provision contained in the Penal Code and the Criminal Procedure Code, proceedings for the determination of any civil or criminal matter before any Sharia Court shall be governed in accordance with the primary sources of Islamic Law, that is to say: -
>
> (a) Qur'an and
> (b) Hadith[47]
>
> (2) Subject to the provisions contained in the texts mentioned in subsection (1) of this section, a Sharia Court is empowered, in any proceedings before it to refer to an utilize the texts in the Maliki School of Law; Provided that they are in consonance with the Qur'an and Hadith.
>
> 4. Offences committed on or after the date of commencement of this Law shall be tried in accordance with the provisions of this Law.[48]

This approach to the reinstatement of Islamic criminal law, also initially taken by Kano State,[49] might have had either or both of two motivations. One, which certainly existed, was the immense pressure – discussed further below – to do *something* – that built up in the northern States after Governor Sani so dramatically led the way: it was much simpler and quicker for State Governments and Houses of Assembly simply to tell the Sharia

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[47] 'Hadith' and 'Sunnah' are used interchangeably and synonymously to mean the same thing.

[48] Islamic Penal System (Adoption) Law, 2000, signed into law 31st July 2000, coming into operation 1st August 2000, Katsina State of Nigeria Gazette No. 5 Vol. 11, 10th August, 2000, Supplement Part A pp. A97-98, reproduced in full in Part V of this chapter, infra.

[49] In its Sharia and Islamic Administration of Justice Reform Law 2000, signed into law on 24th February 2000, gazetted as No. 2 of 2001, Kano State of Nigeria Gazette No. 3, Vol. 33, 15th November 2001, pp. A5-A11. The basic purpose of this Law was to establish new Sharia Courts for Kano State. Section 6(5) gave the Sharia Courts jurisdiction "to try all criminal cases under Islamic law where all the parties are Muslims." The interpretation section provided that "'Sharia law' means Islamic law and practice as prescribed by the Holy Qur'an, Hadiths and consensus of Islamic jurists." As is recounted below the law was repealed and replaced by a new Sharia Courts law in November 2000.

Courts just to apply Islamic criminal law as found in the classical sources, than to draft and enact entire new Sharia Penal and Criminal Procedure Codes. Another possible motivation might in some cases have been the view that any attempt to codify Sharia would misrepresent its character, by deciding and fixing in advance, in narrowly drafted code sections, a set of choices which the *fiqh* leaves open to discretion – choices, for example, about what to do with convicted thieves, and with politicians caught embezzling public funds. But §36(12) of the Nigerian Constitution requires that all criminal law be enacted by the Federal or a State legislature as written law in which all criminal offences are defined and the penalties therefor prescribed. This seems clearly to require codification of the criminal law; this view was taken by no less than the former Chief Justice of the Federation, Hon. Justice Mohammed Bello, himself a respected authority in the Muslim community.[50] Therefore, as long as it proposed to remain within the Nigerian Federation, Zamfara's approach to the matter, i.e. codification of Islamic criminal law notwithstanding its somewhat theoretical drawbacks, was the correct one; and all Sharia States, including Kano and Katsina, have subsequently followed it. The other alternative would very likely have quickly been struck down by the courts.

Pursuant to its mandate under the initial Sharia Courts (Administration of Justice and Certain Consequential Changes) Law, Zamfara State's House of Assembly proceeded to enact a Sharia Penal Code for the State. A draft was made apparently by the Legal Drafting Department of the State Ministry of Justice working in conjunction with the Council of Ulama. The draft bill was brought to the notice of the National Islamic Centre, Zaria (NIC), which was then mandated to go and make all the necessary consultations and come up with a final draft. The NIC immediately contacted some lecturers in law from the Centre for Islamic Legal Studies (CILS) and the Faculty of Law, Ahmadu Bello University, Zaria. It was this group of seven people – Dr. Ibrahim A. Aliyu, Dr. M.B. Uthman, Dr. Bashir Yusuf, Dr. M.S. Abubakar, Dr. Y.Y. Bambale, Bala Babaji and Abdullahi Shehu – that came up with the final draft of the Zamfara State Sharia Penal Code that was subsequently enacted by the House of Assembly as Law No. 10 of 2000 and signed into law by Governor Sani on 27th January 2000. The code came into force on that same day.

In approaching the Sharia Penal Code, the CILS group relied mainly on first, the classical books of Islamic jurisprudence (*fiqh)* and secondly on some earlier legislation passed by some Islamic states like the Sudan in their attempt to implement the Sharia. While all views from the various Sunni schools of law (*madhahib*, sing. *madhab*) were considered, in most cases issues were resolved in favour of the preponderant view in the Maliki *madhab*, which is the more widely known and practised in Northern Nigeria and in fact in the whole of the North-West African sub-region. Views of other *madhahib* were also used in resolving some cases. Due to the legal background of all the members of the group a lot of time was spent on attempts to make sure that at least substantial conformity with the provisions of the Nigerian Constitution of 1999 was achieved. The

[50] See Justice Bello's paper on "Sharia and the Constitution" at pp. 5-13 in *The Sharia Issue: Working Papers for a Dialogue*, (Lagos: Committee of Concerned Citizens, n.d. but probably 2000), edited by the Committee of Concerned Citizens who included Justice Bello, Prof. Nwabueze, Chief Williams, Prof. Yadudu, Vice Admiral Nyako, and Dr. Adegbite all of whom have essays in the book.

work was tedious and the time short in view of the pressure the Government was exerting to get the code. This explains the errors and drafting mistakes in the Zamfara code, which subsequently found their way into the other codes that mostly copied from it.

The declaration of the implementation of Sharia in Zamfara State, done with fanfare and huge celebration at Gusau, obviously put all the other States with substantial Muslim populations on serious alert. The Gusau declaration was attended by prominent representatives of almost all Muslim organisations in Nigeria. All the leading *ulama* from all over the country were also in attendance. Speeches were delivered by the scholars and finally by the Governor, Ahmad Sani, ushering in a new era in the application of the Sharia in Nigeria. It must be appreciated that what Governor Sani did was a revolution hitherto unthinkable. What the colonial masters removed after intensive negotiations based on the reports of so many committees, Governor Ahmad Sani restored by a single simple declaration. The expectations of the people were high; the support was total and absolute in the belief that Sharia would quickly bring about the much-needed security, social and economic justice and morality that have eluded the society for too long. It was also firmly believed that corruption in all facets of life including nagging delays in judicial proceedings would soon come to an end. As to whether these expectations were realised, this is a subject for another study.

Despite pressure from all angles – politicians, Muslim organisations, the *ulama*, and the Muslim populace at large – the Governments of some States dragged the implementation of the Sharia up to the middle of 2001. This was perhaps due in some cases to reluctance on the part of the Governors to proceed with the implementation programme; it was also partly the result of appointment by the Governors of committees charged to study the situation and come up with suggestions and ideas including, in most cases, a draft Sharia Penal Code for the consideration of the Governments. The work of these committees necessarily took some time.

Kano

In Kano State Sharia implementation did not properly commence until November 2000 – over a year after the Gusau declaration. This seems to have been due to both of the factors just mentioned: apparent reluctance on the part of the Governor to proceed, and the time taken by committees to complete their work.

What was happening in Zamfara State was quickly known and enthusiastically embraced in Kano. Malam Faruk Chedi, for example, subsequently the Commander-General of the *hisbah* in Kano, stated his belief that what was happening was a confirmation of the hadith of the Prophet (peace be upon him) which stated that a *mujaddid* (reformer) for Islam will be raised up after every 100 years. Already on 10 August 1999 a meeting of the Kano *ulama* was convened to discuss how to realise the implementation of Sharia in the State; a resolution on resolving all differences (sectorial) was adopted and plans were made on how to proceed. Public lectures aimed at mobilising the general public were organised in the School for Arabic Studies, in the Aminu Kano College of Islamic Legal Studies, and elsewhere; these continued throughout the remainder of 1999. These had the desired effect of increasing pressure on the Government. For example, in December 1999 about 5,000 women, mobilised by

an organisation called Women in Islam, marched to Government House in Kano to protest the apparent foot-dragging on Sharia implementation and to demand action.[51] In early February 2000, when there was still no movement, a group of prominent *ulama* paid a call on the Governor, Dr. Rabiu Musa Kwankwaso, to urge that something be done. The *ulama* had already prepared a Sharia Penal Code bill of their own, which they planned to submit to the State House of Assembly if the Governor's response was not encouraging.

In response to all this pressure the State Government finally did do something: it secured the passage of the initial Sharia and Islamic Administration of Justice Reform Law 2000 that has already been referred to, signed by the Governor on 24th February 2000. This Law established Sharia Courts for Kano State – on paper at least – and instructed them to apply Islamic criminal law as found in the classical sources; this point was noted above. But these parts of the law remained a dead letter, and in fact the entire Sharia and Islamic Administration of Justice Reform Law was repealed and replaced by a new Sharia Courts Law – along with a new Sharia Penal Code to be applied in the Sharia Courts – later in the year. It was only thereafter that the Sharia Courts were actually established and made functional by the appointment of judges and other staff to them.

Besides Sharia Courts, the Sharia and Islamic Administration of Justice Reform Law also established – on paper – a Sharia Implementation Advisory Committee (SIAC) for Kano State. Under section 13 of the Law the SIAC was charged to:

a. review all laws in force in the State with a view to conforming them with all relevant rules, principles and norms of Sharia;
b. advise on the training of relevant personnel for the various courts established under this Law;
c. advise the Government on ways of creating a conducive socio-economic environment for comprehensive implementation of reforms;
d. advise the Government on the appropriate date for the commencement of this Law.

But the last subsection made the position clear: nothing would actually happen until the SIAC had made its report – whenever that might be. Before the SIAC was even appointed, therefore, the Sharia Penal Code that had already been drafted by the *ulama* was introduced in the House of Assembly as a private bill. The Speaker welcomed the bill and proceeded to work on it. It went up to the second reading. Before the third and final reading, the Governor, fearing the political implication of being left out of the process as anti-Sharia, called a meeting of all key figures in Kano – including the Emir, Alhaji Ado Bayero, Malam Isyaka Rabiu, Alhaji Aminu Dantata, and others – to discuss Sharia implementation in the State. That same day two committees were set up by the Governor: a Technical Committee to be headed by Prof. A.H. Yadudu, and the SIAC under the chairmanship of Sheikh Isa Waziri, the *Wazirin* Kano. After studying the matter Prof. Yadudu's committee recommended that the private bill be withdrawn and another Sharia Penal Code be prepared and submitted as an Executive Bill to

[51] Reported in *Guardian*, 13 December 1999 p. 6.

"irrevocably commit Kano State Government to the implementation of the Sharia" in the State. This was subsequently done.

Meanwhile the country had witnessed the terrible fighting and destruction in Kaduna State triggered off by rival groups of Muslims and Christians marching and demonstrating for and against the implementation of Sharia in that State. In the wake of that episode, in March 2000, a meeting was called by the Vice President, Atiku Abubakar, at the State House in Abuja, to discuss the Sharia issue now gaining momentum in all the Northern States. People invited to the meeting included Malam Faruq Chedi, Sheikh Karibullahi Nasiru Kabara, Sheikh Aminuddeen Abubakar, Sheikh Ahmad Lemu, Justice Bashir Sambo, Malam Abubakar Jibril, Sheikh Sanusi Gumbi, Sheikh Sambo Rigachukun, Malam Ibrahim Sulaiman, Sheikh Sheriff Ibrahim Saleh and Sheikh Dahiru Usman Bauchi and others. It was a gathering of all major *ulama* in Nigeria. At the meeting, the Vice President spoke of the likely problems the Sharia implementation may bring to the corporate existence of Nigeria. He referred to the general weaknesses of the North particularly in economy and other social infrastructures, and urged for caution and a gradual approach in introducing the Sharia. After a lengthy discussion with speeches from many of the scholars like Sheikh Sheriff Ibrahim Saleh, Malam Ibrahim Umar Kabo, Bashir Sambo and Faruk Chedi, the *ulama* remained adamant that Sharia must be introduced and that it would not affect the corporate existence of Nigeria. They also promised to do all in their power to avoid any further conflict with non-Muslims.

In Kano the call for the implementation of Sharia was gaining ground. Meetings and consultations were taking place organised by various groups. It became known that Malam Ibrahim Shekarau, who was then a Permanent Secretary in the Kano State Government, had attended one of the meetings at Rumfa College. Because of this, Governor Kwankwaso caused a query to be issued to Malam Shekarau: as a government official, he was not supposed to attend "political" meetings called by private non-governmental organisations. Despite pleas from various people, Governor Kwankwaso refused to withdraw the query, which ultimately led to the termination of Malam Shekarau's appointment. During the remaining Kwankwaso years, Malam Shekarau, who had the sympathy of all Sharia-loving people and was seen as having been unfairly treated by Kwankwaso, gained in popularity. Eventually he decided to run for Governor himself, using the Independent Sharia Committee for his grassroots campaign. When Shekarau succeeded in winning the election in 2003, he reinvigorated the drive for Sharia implementation, among other things by establishing new Sharia and Hisbah Commissions and a Directorate for Public Complaints and Anti-Corruption founded on Islamic principles.

But let us return to the year 2000 and the drafting of the Kano State Sharia Penal Code by the Sharia Implementation Advisory Committee, the SIAC.

The SIAC had about 50 members, some *ex officio* and some appointed by the Governor. It included virtually all the people who mattered in Kano, ranging from renowned *ulama* to representatives of the Emirate Council, legal practitioners and Islamic scholars. Subcommittees were appointed to work on various aspects of the Committee's remit. A subcommittee headed by Muzammil S. Hanga was responsible for preparation of the draft Sharia Penal Code. Hanga is a lawyer by training. It was the Hanga

subcommittee's draft code that was ultimately submitted to the Kano State House of Assembly as an Executive Bill and enacted after revisions as described below.

The draft Sharia Penal Code prepared by the Hanga subcommittee was in Hausa. As it would have to be submitted to the House of Assembly and enacted in English, a translation of it into English was made by the State Ministry of Justice. The SIAC finally submitted this draft Sharia Penal Code, in Hausa and English versions, to the Governor in early November 2000, along with other draft legislation, including the new Sharia Courts Law and a Criminal Procedure Code (Amendment) Law which would lay down rules governing trials of criminal cases under the new Sharia Penal Code in the new Sharia Courts.

All this draft legislation was coming just in time, for the Governor was under intense pressure to make progress with Sharia implementation. Because of so many delays, he was perceived as anti-Sharia and was booed and stoned wherever he passed around Kano City. Even though the Deputy Governor, Ganduje, was perceived as more supportive of Sharia, because of the perception of the Government as anti-Sharia he was also booed and pelted with stones when he attended *maulud* celebrations at the Eid Ground, Kofan Mata. The tension had almost reached a boiling point. To defuse the situation the Governor had promised that full Sharia would commence, with all necessary legislation in place, by the 1st day of Ramadan 2000 – i.e. on 26th November. In fact both the new Sharia Courts Law and the new Sharia Penal Code were signed into law on 25th November and came into operation on 26th November, as promised; the Criminal Procedure Code (Amendment) Law was signed on 27th November and came into operation the same day; and the Grand Kadi executed the establishment of Sharia Courts and promulgated Rules of Civil Procedure for them also on the same day.[52] But this did not happen before a great deal of further work was done in a very short time on the draft Sharia Penal Code which the Hanga subcommittee had prepared.

Upon the receipt of the draft Sharia Penal Code from the SIAC, in early November, Governor Kwankwaso saw a need to set up a Review Committee charged with the following responsibilities:

(a) To study and review the draft Sharia Penal Code.

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[52] Sharia Courts Law 2000, assented to 25th November, 2000, gazetted as No. 6 of 2002 in Kano State Gazette No. 3, Vol. 34, 28th Feb. 2002, pp. A31-A44; Sharia Penal Code Law 2000, signed into law on 25th November 2000, coming into operation on 26th November 2000, no gazette information available; printed and published by Kano Printing Corporation; Criminal Procedure Code Cap. 37 (Amendment) Law 2000, gazetted as No. 6 of 2001 in Kano State Gazette No. 8 vol. 33, 27 Dec. 2001 pp. 39-46; Sharia Courts (Establishment and Territorial Jurisdiction) Order 2000, issued by the Grand Kadi under the Sharia Courts Law on 27th November, 2000, gazetted as Kano State Legal Notice No. 1 of 2002, Kano State Gazette No. 3, Vol. 34, 28th Feb. 2002, pp. B1-B6; Sharia Courts (Civil Procedure) Rules 2000, assented to by the Grand Kadi 27th Nov. 2000 and effective the same date, ungazetted copy in possession of the author; Upper Sharia Court (Appeals) Rules 2000, assented to by the Grand Kadi 27th Nov. 2000 and effective the same date, ungazetted copy in possession of the author.

(b) To identify and rectify any contradictions in the draft code and harmonise the code where necessary with other existing laws in Nigeria, while ensuring its full Islamic essence.
(c) To make appropriate recommendations to the Government.

The Review Committee consisted of ten people, with the then State Solicitor-General, Barrister Rilwanu Muhammad Aikawa, as its Secretary, and members as follows:

1)	Dr. Ibrahim Na'iya Sada	-	Chairman
2)	Dr. Muhammad Tabi'u	-	Member
3)	Sheikh Dr. Aminuddeen Abubakar	-	"
4)	Sheikh Ja'afar Mahmud Adam	-	"
5)	Sheikh Karibullah Nasiru Kabara	-	"
6)	Alh. Mahe Bashir Wali, mni (*Walin* Kano)	-	"
7)	Sheikh Tijjani Bala Kalarawi	-	"
8)	Sheikh Ibrahim Umar Kabo	-	"
9)	Sheikh Isma'ila Khalifa	-	"
10)	Sheikh Mahmud Salga	-	"

This Committee was inaugurated on the 13th November 2000. Because the 1st Ramadan was less than two weeks away, and because the code, after vetting by the Review Committee, would still have to pass through the House of Assembly, the Review Committee was given only one week to do its work.

The Committee in the discharge of its assignment adopted two methods: to study the draft submitted to it alongside other existing laws, and to proffer amendments where necessary. The Committee resolved to work on both the Hausa version and the English translation that had been made by the State Ministry of Justice. The Committee further observed that in view of the intensive work needed to bring the draft to the level required for presentation to the State House of Assembly as a bill, the one-week period given to it was grossly inadequate. The Committee, however, recognised the sense of urgency in the State on the matter and resolved to hold intensive long sessions day and night to meet the time limit given to it.

The English and Hausa versions of the draft code were studied along with other existing laws, primarily:

1) the Constitution of the Federal Republic of Nigeria 1999;
2) the Corrupt Practices and other Related Offences Act 2000;
3) the Legal Practitioners Act; and
4) the Penal Code of 1960 as amended and made part of the revised Laws of Kano State 1991.

In the course of its examination of the draft, the Committee observed that certain provisions tended to conflict with the Constitution of the Federal Republic of Nigeria or existing Federal Laws. The Committee accordingly amended or deleted those provisions. Examples of such sections were:

i) Section 92 of the draft. This reproduced §92 of the Zamfara Sharia Penal Code, which criminalises "Any act or omission which is not specifically mentioned in this Sharia Penal Code but is otherwise declared to be an offence under the

Qur'an, Sunnah, and *ijtihad* of the Maliki school of Islamic thought". The Review Committee felt that this was inconsistent with Section 36(12) of the Constitution requiring definition of offences in a written Law. Deletion of Section 92 was accordingly recommended by the Committee.

ii) Section 142 of the draft. Section 142 provided in part that the testimony of a person convicted of *qadhf* "shall not be accepted thereafter unless he repents before the court". This was felt to be in conflict with the 1999 Constitution and the Legal Practitioners Act and was deleted.

The Committee further amended the penalties for offences relating to receiving gratification by public servants to bring them into harmony with the Corrupt Practices and Other Related Offences Act of 2000. The Committee proffered significant changes in the draft by adjusting some of the punishments, harmonising various sections, synchronising the English and the Hausa versions and improving the clarity of the language.

One section received especially intense scrutiny. This was the section which in the Penal Code is captioned "Criminal Breach of Trust by Public Servant or by Banker, Merchant or Agent" (PC §315). Instead of essentially copying the Penal Code section on this subject and putting it in the Sharia Penal Code chapter on TA'AZIR OFFENCES, where all the other Sharia Penal Codes have it, the Hanga subcommittee had redrafted the section and put it in the chapter on HUDUD AND HUDUD-RELATED OFFENCES. Here is the new section as translated by the Ministry of Justice:

> Whoever is a public servant or a staff of a private sector including bank or company connives with somebody or some other people or himself and stole public funds or property under his care or somebody under his jurisdiction he shall be punished with amputation of his right hand wrist and sentence of imprisonment of not less than five years and stolen wealth shall be confiscated. If the money or properties stolen are mixed with another different wealth it will all be confiscated until all monies and other properties belonging to the public are recovered. If the confiscated amount and stolen properties are not up to the amount the whole wealth shall be confiscated and he will be left with some amount to sustain himself.

The Review Committee had an exhaustive discussion about this and finally resolved to amend the draft by re-designating it as an offence attracting *ta'azir* punishment and not a *hadd* attracting the *hadd* of *siraqah* as provided in the draft. It is interesting to note that the Kano State House of Assembly, in the bill it finally enacted, restored the original draft position, as above, and made theft of public funds by public servants etc. an offence attracting the maximum punishment of amputation of the hand as provided for ordinary theft (*siraqah)*. This section now appears as §134B of the Kano State Sharia Penal Code.

The Review Committee, finally, in submitting the corrected draft of the Sharia Penal Code in both English and Hausa made the following recommendations:

1) The process of establishing Sharia and bringing society in harmony with its provisions is a continuous one. The Government should keep reviewing the

Code and the other laws of the State from time to time to bring them in further conformity with the Sharia.

2) The Government may also consider putting in place Islamic social welfare policies and measures which will provide a conducive framework for successful implementation of the Sharia, such as the collection and management of *zakat*, poverty alleviation and economic empowerment measures, and rehabilitation of the destitute as well as persons of easy virtue like *karuwai* (prostitutes), *'yan daudu* (transvestites) and *kawalai* (pimps).

3) The Government may also consider establishing an appropriate organ or institution to facilitate the realisation of the suggested policies in 2 above.

4) Government should consider organising orientation for all prosecutors in the State prior to the date the Sharia Penal Code comes into operation.

5) That if the Bill is eventually passed into law, a public enlightenment campaign should be vigorously pursued.

Immediately after receiving the Review Committee report, the Governor there and then passed the copy of the draft Sharia Penal Code, as amended by the Review Committee, to the Speaker of the State House of Assembly. This was necessary if the target of 1st Ramadan 2000 was to be met. The Governor sent the reviewed draft to the House of Assembly as an Executive Bill.

Executive Bills are usually moved by the Majority Leader, and the first reading amounts simply to reading the long title of the Bill. This procedure was followed in this case. The House of Assembly then committed the Bill to the House Committee on Judiciary and Justice, which studied the Bill, then brought it out for consideration by the full House. There were debates during the third reading, particularly on the issue of theft of public funds by public servants. Some *ulama* were contacted and invited to advise the House. Sheikh Umar Sani Fagge went to the House of Assembly chamber and addressed the members there. Sheikh Ja'afar M. Adam was contacted on phone. These *ulama* gave *fatwa* that the punishment should be amputation of the hand as provided for ordinary *siraqah*. Hence §134B of the enacted Bill.

The members of the House of Assembly were enthusiastic in passing the Bill. Sheikh Umar Sani Fagge made a touching speech at the House Chamber where he implored the members to view the task of passing the Bill as a lifetime contribution to Islam, which would guarantee them Paradise.

The timeframe in which the House of Assembly considered and passed the Bill was very short. It barely had a week to pass the Bill. However, each and every section was scrutinized and where necessary debated.

There was rush on the part of the State Sharia Implementation Advisory Committee in making the initial draft, there was another rush in the review of the draft entrusted to the Review Committee, and certainly more rush in the work of the House of Assembly who barely had one week to process the Bill and pass it for the Governor's signature before 1st Ramadan. The consequence of all this haste is obvious if one takes a very

critical look at the Kano Sharia Penal Code. It is very clear that it was made and passed in haste.

The same was true of the making and passing of all the Sharia Penal Codes of all the States; all the Sharia Criminal Procedure Codes; the Sharia Courts Laws; and all the other Sharia-related legislation that was passed in 1999-2001: all was done quickly and in most cases without due care for the careful, scrupulous draftsmanship and subsequent publication of the texts that should be exercised in the case of such serious legislation. These texts are full of typists' errors which those who should have proof-read them failed to correct – to say nothing of the drafting errors. These are problems that should be corrected, partly through creation of more professional, competent, and careful legal drafting departments in the legislative assemblies and the Ministries of Justice. That will be done in time we hope and expect, but in the meantime it is a very significant accomplishment for the Muslims of Nigeria's Sharia States that the laws under which they live have been brought back into so much closer conformity with Islamic Sharia than they were before. The larger problem now is more serious enforcement, inside Government and outside, of the laws that have been enacted, not correcting their grammar.

Chapter 4 Part III

The Centre for Islamic Legal Studies' Draft Harmonised Sharia Penal Code Annotated

What follows for the next hundred pages or so is the "Harmonised Sharia Penal Code" produced by the Centre for Islamic Legal Studies of Ahmadu Bello University, Zaria, annotated to show variations between it and the Penal Code of 1960 on the one hand, and the enacted Sharia Penal Codes of ten of the Sharia States on the other hand.

1. List of codes included in the annotations, in order of their coming into operation:

PC: Penal Code Law, Northern Region of Nigeria No. 18 of 1959, coming into operation on **30th September 1960,** as amended to 1963; as found in Chapter 89, *Laws of Northern Nigeria* 1963.

Zamfara: Sharia Penal Code Law 2000, Law No. 10 of 2000, signed into law on 27th January 2000, coming into operation on **27th January 2000**, Zamfara State Gazette Vol. 3 No. 1, 15th June, 2000.

Kano: Sharia Penal Code Law 2000, signed into law on 25th November 2000, coming into operation on **26th November 2000**, no gazette information available; printed and published by Kano Printing Corporation, Kano.

Kebbi: Penal Code (Amendment) Law 2000, Law No. 21 of 2000, signed into law on 1st December 2000, coming into operation on **1st December 2000**, Kebbi State Gazette Vol. 2 No. 1, Supplement 31st December 2000.

Jigawa: Sharia Penal Code Law 2000, Law No. 12 of 2000, signed into law on 18th December 2000,[53] coming into operation on **27th December 2000**, Jigawa State Gazette Vol. 1 No. 12, 27th December 2000.

Sokoto: Sharia Penal Code Law 2000, signed into law on 25th January 2001, coming into operation on **31st January 2001**, gazetted as a separate volume given no number or date.

Yobe: Sharia Penal Code Law 2000, Law No. 8 of 2001, signed into law 9th March 2001, coming into operation on **25th April 2001**, gazetted in Yobe State Gazette Vol. II No. 12, 22nd March 2001.

Bauchi: Sharia Penal Code Law 2001, no date of signing into law given, no date of coming into operation given [guessing **May 2001**],[54] Bauchi State Gazette Vol. 26 No. 16, 18th September 2001.

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[53] The page on which the Governor signed says 18th December 2001, but this is evidently a mistake.

[54] Bauchi's Sharia Penal Code was amended by a law signed on 29th June 2001 – before the Code itself had even been gazetted. The amending law was gazetted in Bauchi State Gazette Vol. 26 No. 7, 29th June 2001: it deleted what had been subsection (2) of §148 (punishment for dealing in alcoholic drinks) and added what became §376 (prohibition of praise singing, etc.). We are guessing that the Code itself was signed and came into force sometime in May 2001.

Katsina: Sharia Penal Code Law 2001, Law No. 2 of 2001, no date of signing given, coming into operation on **20th June 2001**, Katsina State Gazette Vol. 12 No. 23, 27th August 2001.

Gombe: Sharia Penal Code Law 2001, signed into law on **23rd November 2001**, no date of coming into operation given, no gazette information available, photocopy of signed original in possession of editor.

Kaduna: Sharia Penal Code Law 2002, Law No. 4 of 2002, signed into law on 21st June 2002, coming into operation on **21st June 2002**, Kaduna State Gazette No. 17 Vol. 36, 4th July 2002, pp. A15-A108, a separate bound volume (with Sharia Criminal Procedure Code).

2. Not included in the annotations:

Borno: Sharia Penal Code Law 2001, signed into law on **3rd March 2003**, no date of coming into operation given, no gazette information available, photocopy of signed original in possession of editor.

Niger: Penal Code (Amendment) Law 2000, HB.4/2000, signed into law on 22nd February 2000, coming into operation on **4th May 2000**, Niger State Gazette Vol. 25 No. 8, 9th March 2000.

Zamfara: Sharia Penal Code Law 2005, No. 5 of 2005, signed into law on **23rd November 2005**, no date of coming into operation given,no gazette information available, photocopy of signed original in possession of editor.

The Borno law was not obtained until May 2006, after the work of annotation of the CILS code had been completed. The Niger law is not a complete Sharia Penal Code: it merely amends the Penal Code of 1960, laying down that certain sections, when applied to Muslims, will carry different burdens of proof and different punishments than when applied to non-Muslims; it is printed in its entirety as part IV of this chapter. The Zamfara Sharia Penal Code of 2005 is the CILS code published and annotated here (except for certain corrections subsequently made to the CILS code).

3. Some comments on the annotations. In making our annotations we have ignored what we considered to be clearly typographical errors (of which the Sharia Penal Codes published by the States are full), unless the meaning was unclear, in which case we noted it. We have also ignored what we considered to be immaterial variations. For instance, CILS §173 defines the crime of "cheating by personation". Some of the codes have "personification" instead of "personation": we did not note that.

A greater difficulty was presented by the many variations, not only in punishments, but in the manner of specifying punishments. One example will illustrate how we have tried to deal with this without unduly lengthening the notes. CILS §157 states that whoever is convicted of putting any person in fear of injury in order to commit extortion "shall be punished with imprisonment for a term which may extend to two years and shall also be liable to caning which may extend to fifty lashes." The footnote reads as follows:

> PC: 2 years or fine or both. Bauchi, Jigawa, Kano, Katsina, Kebbi, Zamfara: 5 years/15 lashes. Sokoto: 2 years/15 lashes. Yobe: 5 years/50 lashes. Gombe: 5 years/caning. Kaduna: *ta'azir*.

One difference between the PC and CILS is the difference between "and" and "or": this is clearly noted. But this still leaves the footnote ambiguous as to whether the indicated numbers are maximums, minimums, or to be imposed exactly as stated, and also as to whether the punishments specified by the States are conjunctive or disjunctive. To resolve these ambiguities the reader should read the variants back into the language of the section being annotated. Thus all the numbers in this case are maximums, and the stroke means "and shall also be liable to". Where this does not work we have made fuller notes. There remain some ambiguities in the language of the codes which we have of course not attempted to resolve.

4. Omission of section titles in the body of the code. The titles of the code sections are given at the beginning under the heading "Arrangement of Sections". In order to save space we have not repeated the titles in the body of the code; anyone wanting to know the title of a particular section can refer to the list at the beginning.

5. Note on spellings, formatting, etc. As throughout this work, we have corrected and standardised spellings, capitalisations, etc. in the Harmonised Sharia Penal Code, and made adjustments to the formatting. This is discussed further in the Preface to Volumes I - V.

6. The CILS Harmonised Sharia Penal Code Annotated follows.

HARMONISED
SHARIA PENAL CODE LAW, 2002

CENTRE FOR ISLAMIC LEGAL STUDIES
AHMADU BELLO UNIVERSITY
ZARIA

MARCH, 2002

THE SHARIA PENAL CODE LAW, 200_

Arrangement of sections:

1. Citation and commencement.
2. Establishment of Sharia Penal Code.
3. Punishment of offences committed in the State.
4. Offences against laws of the State.
5. Civil remedies.
6. Contempt of court.
7. Retrospective effect of acts or omissions.

SCHEDULE A: SHARIA PENAL CODE

Arrangement of sections:

CHAPTER 1 – GENERAL EXPLANATIONS AND DEFINITIONS

1. Sense of expression once explained.
2. Gender.
3. Number.
4. Man, Woman.
5. Person.
6. Public.
7. Court of Justice.
8. Judicial proceedings.
9. Public servant.
10. Armed forces.
11. Movable property.
12. Wrongful gain.
13. Wrongful loss.
14. Gaining wrongfully, losing wrongfully.
15. Dishonestly.
16. Fraudulently.
17. Reason to believe.
18. Likely, probable
19. Property in possession of wife, clerk or servant.
20. Counterfeit.
21. Writing, document.
22. Document of title.
23. Words referring to acts include illegal omissions.
24. Act, omission.
25. Effect caused partly by act and partly by omission.
26. Voluntarily.
27. Offence.
28. Illegal.
29. Legally bound to do.

30. Injury.
31. Life, death.
32. Animal.
33. Vessel.
34. Year, month.
35. Oath.
36. Good faith.
37. Compensation.
38. Invalid consent.
39. Harbour.
40. Genital.
41. *Zina.*
42. Married.
43. *Sadaq al-mithli.*
44. *Rajm.*
45. *Hirz.*
46. *Nisab.*
47. *Taklif.*
48. *Mukallaf.*
49. *Waliyy al-damm.*
50. *Qatl al-gheelah.*
51. *Wa'az.*
52. *Tash-heer.*
53. *Hajar.*
54. *Al-musadarah.*
55. *Ghurrah.*
56. *Ta'azir.*
57. *Hudud.*
58. *Qisas.*
59. *Tawbikh.*
60. *Diyah.*
61. *Hukumah.*
62. Government.
63. Foreign government.

CHAPTER II – CRIMINAL RESPONSIBILITY

64. Basic criminal responsibility.
65. Common knowledge.
66. Presumption of knowledge of an intoxicated person.
67. Act done by person justified by law.
68. Act of court of justice.
69. Act done pursuant to the judgment or order of court.
70. Accident in doing a lawful act.
71. Act likely to cause injury but done without criminal intent and to prevent other injury or to benefit person injured.
72. Act of child.
73. Act of person of unsound mind or person asleep.
74. Involuntary intoxication.
75. Act not intended to cause death or grievous hurt done by consent.
76. Act not intended to cause death done by consent for a person's benefit.
77. Correction of child, pupil, apprentice or wife.
78. Communication made in good faith.
79. Act to which a person is compelled by threats.
80. Non-voluntary act.
81. Act of necessity.
82. Act causing slight harm.
83. Presumption of right of *diyah,* damages, etc.

The Right of Private Defence

84. Things done in private defence.
85. Right of private defence.
86. Right of private defence against act of a person of unsound mind, etc.
87. General limit of right of private defence.
88. No right of private defence when protection of public authorities available.
89. Limitation of right of private defence against act of public servant.
90. When right of private defence of the body extends to causing death.
91. When right of private defence of property extends to causing death.
92. Right of private defence against deadly assault when there is risk of harm to innocent person.

CHAPTER III – PUNISHMENTS AND COMPENSATION

93. Punishments.
94. Limitation on punishments.
95. Special provision for juvenile offenders.
96. Amount of fine.

97. Sentence of imprisonment for non-payment of fine.
98. Imprisonment or caning in default of payment of fine.
99. Limit of punishment when act within definition of more than one offence or when offence made up of several offences.
100. Caning or lashing.
101. Punishment for misdemeanours.
102. Restitution or compensation.
103. Closure of premises.

CHAPTER IV – JOINT ACTS

104. Acts done by several persons in furtherance of common intention.
105. When such act is criminal by reason of its being done with a criminal knowledge or intention.
106. Co-operation by doing one of several acts constituting an offence.
107. Persons concerned in criminal act may be guilty of different offences.

CHAPTER V – ABETMENT

108. Abetment defined.
109. Abetment of offence defined.
110. Abetment if the act abetted is committed in consequence and where no express provision is made for its punishment.
111. Abetment if person abetted does act with different intention from that of abettor.
112. Liability of abettor when one act abetted and different act done.
113. Abettor when liable to cumulative punishment for act abetted and for act done.
114. Liability of abettor for an effect caused by the act abetted different from that intended by abettor.
115. Abettor present when offence committed liable as principal.
116. Abetment of offence punishable with death or imprisonment for life if offence not committed.
117. Abetment of offence punishable with imprisonment if offence is not committed.
118. Abetting commission of offence by the public or by more than ten persons.
119. Administering unlawful oath.

CHAPTER VI – ATTEMPTS TO COMMIT OFFENCES

120. Attempting to commit offences punishable with imprisonment.

CHAPTER VII – CRIMINAL CONSPIRACY

121. Criminal conspiracy defined.
122. Punishment for criminal conspiracy.
123. Unlawful society defined.
124. Punishment for managing or membership of unlawful society.

CHAPTER VIII – HUDUD AND HUDUD-RELATED OFFENCES

Zina (Adultery or Fornication)
125. *Zina* defined.
126. Punishment for *zina*.
Rape
127. Rape defined.
128. Punishment for rape.
Sodomy (Liwat)
129. Sodomy defined.
130. Punishment for sodomy.
Incest
131. Incest defined.
132. Punishment for incest.

Lesbianism (Sihaq)
133. Lesbianism defined.
134. Punishment for lesbianism.
Bestiality (Wat al-Bahimah)
135. Bestiality defined.
136. Punishment for bestiality.
Gross Indecency
137. Acts of gross indecency.
False Accusation of Zina (Qadhf)
138. *Qadhf* defined.
139. Punishment for *qadhf.*
140. Remittance of the offence of *qadhf.*
Defamation
141. Defamation
142. Punishment for defamation.
Theft (Sariqah)
143. Theft punishable with *hadd* defined.
144. Punishment for theft punishable with *hadd.*
145. Theft not punishable with *hadd* defined.
146. Remittance of the *hadd* for theft.
147. Punishment for theft not punishable with *hadd.*
Drinking alcoholic drink (Shurb al-Khamr)
148. Punishment for drinking alcoholic drink.
149. Punishment for dealing in alcoholic drinks.
150. Punishment for drunkenness in a public or private place.
Hirabah - (Robbery)
151. *Hirabah* defined.
152. Punishment for *hirabah.*
153. Making preparation to commit *hirabah.*
154. Belonging to gang of persons associated for the purpose of committing *hirabah.*
Extortion
155. Extortion defined.
156. Punishment for extortion.
157. Putting person in fear of injury in order to commit extortion.
158. Extortion by putting a person in fear of death or grievous hurt.
159. Extortion by threat of accusation of an offence punishable with death.
Criminal Misappropriation
160. Criminal misappropriation defined.
161. Punishment for criminal misappropriation.
162. Criminal misappropriation of property possessed by deceased person at the time of his death.
Criminal Breach of Trust
163. Criminal breach of trust defined.
164. Punishment for criminal breach of trust.
165. Criminal breach of trust by carrier, etc.
166. Criminal breach of trust by clerk or servant.
167. Criminal breach of trust by public servant or by banker, merchant or agent.
Receiving Stolen Property
168. Stolen property defined.
169. Dishonestly receiving stolen property.
170. Assisting in concealment of stolen property.
171. Having possession of thing reasonably suspected of being stolen.
Cheating
172. Cheating defined.
173. Cheating by personation defined.
174. Punishment for cheating.
175. Cheating person whose interest offender is bound to protect.
176. Punishment for cheating by personation.
177. Cheating and dishonestly inducing delivery of property.
Criminal Trespass
178. Criminal trespass defined.
179. House trespass defined.
180. Lurking house trespass defined.
181. Lurking house trespass by night defined.
182. Housebreaking defined.
183. Housebreaking by night defined.
184. Punishment for criminal trespass.
185. Punishment for house trespass.
186. House trespass to commit offence punishable with death.
187. House trespass to commit offence punishable with seven years imprisonment.
188. House trespass to commit offence punishable with imprisonment.

189. Punishment for lurking house trespass or housebreaking.
190. Punishment for lurking house trespass or housebreaking in order to commit offence punishable with imprisonment.
191. Lurking house trespass or housebreaking by night.
192. Lurking house trespass or housebreaking by night to commit offence punishable with imprisonment.
193. Joint liability for lurking house trespass or housebreaking where death or grievous hurt caused.
194. Breaking open receptacle containing property.
195. Breaking open receptacle by person entrusted with custody.
196. Lurking with house breaking instruments.
197. Fabrication of false key or instrument.

CHAPTER IX – QISAS AND QISAS-RELATED OFFENCES

Homicide
198. Intentional homicide defined.
199. Punishment for intentional homicide.
200. Unintentional homicide defined.
201. Punishment for unintentional homicide.
202. *Waliyy al-damm* causing death of suspect.
203. Remittance of *qisas*.
204. Attempts to commit intentional homicide.
205. Abetment in cases of homicide.
Causing Miscarriage, etc.
206. Causing miscarriage.
207. Causing miscarriage unintentionally.
208. Death caused by act done with intent to cause miscarriage.
209. Act done with intent to prevent child being born alive or to cause it to die after birth.
210. Causing death of quick unborn child by act amounting to intentional homicide.
211. Abandonment of child under fifteen years.
212. Cruelty to children.
213. Concealment of birth.
Hurt
214. Hurt defined.
215. Grievous hurt defined.
216. Voluntarily causing hurt.
217. Voluntarily causing grievous hurt defined.
218. Punishment for causing hurt.
219. Punishment for causing grievous hurt.
220. Punishment for unintentionally causing grievous hurt.
Criminal Force and Assault
221. Force defined.
222. Criminal force defined.
223. Assault defined.
224. Punishment for assault or criminal force.
225. Assault or criminal force to deter public servant from discharge of his duty.
226. Assault or criminal force to woman with intent to outrage modesty.
227. Assault or criminal force in attempt to commit theft of property carried by a person.
228. Assault or criminal force in attempt wrongfully to confine a person.
Kidnapping, Abduction and Forced Labour
229. Kidnapping defined.
230. Abduction defined.
231. Punishment for kidnapping.
232. Punishment for abduction.
233. Kidnapping or abducting in order to cause death.
234. Procuration of minor girl or woman.
235. Importation of girl or woman from any place outside the State.
236. Concealing or keeping in confinement kidnapped or abducted person.
237. Buying or selling minor or unsound minded person for immoral purpose.
238. Unlawful compulsory labour.
239. Traffic in women.

CHAPTER X – TA'AZIR OFFENCES

Criminal Intimidation
240. Criminal intimidation defined.
241. Punishment for criminal intimidation.
242. Criminal intimidation by anonymous communication.
Wrongful Restraint; Wrongful Confinement
243. Wrongful restraint defined.
244. Wrongful confinement defined.
245. Punishment for wrongful restraint.
246. Punishment for wrongful confinement.
247. Wrongful confinement after warrant or order or writ issued for production or liberation.
248. Wrongful confinement in secret.
249. Wrongful confinement to extort property or constrain to illegal act.
250. Wrongful confinement to extort confession or compel restoration of property.
Forgery
251. Making a false document defined.
252. Forgery and forged document defined.
253. Punishment for forgery.
254. Forgery of public seals, etc.
255. Using as genuine a forged document.
256. Making or possessing counterfeit seal with intent to commit forgery.
257. Possession of forged record.
258. Counterfeiting device or mark used for authenticating document.
259. Fraudulent cancellation or destruction of document of title.
260. Falsification of accounts.
Property and Other Marks
261. Property mark defined.
262. Using a false property mark defined.
263. Punishment for using a false property mark.
264. Punishment for counterfeiting a property mark used by another.
265. Counterfeiting a mark used by a public servant.
266. Making or possession of any instrument for counterfeiting a property mark.
267. Punishment for making a false mark upon any receptacle containing goods.
268. Making use of any such false mark.
269. Tampering with property mark.
Criminal Breach of Contracts of Service
270. Breach of contract of service during voyage or journey.
271. Breach of contract to attend on and supply wants of helpless person.
Breach of Official Trust
272. Breach of official trust defined.
273. Punishment for breach of official trust.
Offences against the Public Peace
274. Unlawful assembly defined.
275. Membership of unlawful assembly defined.
276. Punishment for membership of unlawful assembly.
277. Joining unlawful assembly armed with deadly weapon.
278. Joining or continuing in unlawful assembly knowing it has been commanded to disperse.
279. Rioting defined.
280. Punishment for rioting.
281. Rioting armed with deadly weapon.
282. Every member of unlawful assembly guilty of offence committed in prosecution of common object.
283. Promoter of unlawful assembly liable as a member.
284. Joining or continuing in assembly of five or more persons knowing that it has been commanded to disperse.
285. Wearing or carrying of emblem, flag, etc.
286. Assaulting or obstructing public servant when suppressing riot, etc.
287. Disturbance of public peace.
288. Inciting disturbance.
Offences by or Relating to Public Servants
289. Public servant taking gratification in respect of official act.
290. Taking gratification in order to influence public servant.

291. Abetment by public servant of offence mentioned in section 290.
292. Offering or giving gratification to public servant.
293. Public servant obtaining valuable thing without consideration from person concerned in proceeding or business transacted by such public servant.
294. Offering or giving valuable thing without consideration.
295. Third person profiting by gratification.
296. Public servant dishonestly receiving money or property not due.
297. Public servant disobeying direction of law with intent to cause injury or to save person from punishment or property from forfeiture.
298. Public servant framing incorrect document with intent to cause injury.
299. Public servant in judicial proceeding acting contrary to law.
300. Wrongful committal or confinement by public servant.
301. Public servant omitting to arrest or aiding escape.
302. Public servant negligently omitting to arrest or permitting to escape.
303. Public servant causing danger by omitting to perform duty.
304. Abandonment of duty by public servant.
305. Public servant unlawfully purchasing property.
306. Personating a public servant.

Contempt of the Lawful Authority of Public Servants

307. Absconding to avoid or preventing service or publication of summons, notice or order, etc.
308. Failure to attend in obedience to an order from public servant.
309. Failure to produce document to public servant.
310. Failure to give notice or information to public servant.
311. Furnishing false information.
312. False information with intent to mislead public servant.
313. Refusing to answer public servant authorised to question.
314. Refusing to sign statement.
315. Resistance to taking of property by lawful authority of public servant.
316. Obstructing sale of property offered for sale by authority of public servant.
317. Removing property under lawful seizure.
318. Illegal purchase or bid for property offered for sale by authority of public servant.
319. Obstructing public servant in discharge of functions.
320. Obstructing public servant in discharge of duty under any written law.
321. Failing to assist public servant when bound by law to assist.
322. Contravention of residence order.
323. Disobedience to order duly promulgated by public servant.
324. Threat of injury to public servant.
325. Threat of injury to induce person to refrain from applying for protection to public servant.
326. Intentional insult or interruption to public servant sitting in judicial proceeding.

False Evidence and Offences Relating to the Administration of Justice

327. Giving false evidence defined.
328. Fabricating false evidence defined.
329. Punishment for false evidence.
330. Giving false evidence to procure conviction of capital offence.
331. Giving false evidence to procure conviction of offence punishable with imprisonment.
332. Using evidence known to be false.
333. Issuing or signing false evidence.
334. Using as true a certificate known to be false.
335. False statement in declaration which is by law receivable as evidence.
336. False translation.
337. Destruction of document to prevent its production as evidence.

Screening of Offenders
338. Causing disappearance of evidence of offence or giving false information to screen offender.
339. Taking gratification to screen an offender from punishment.
340. Offering gratification in consideration of screening offender.
341. Penalty for harbouring offender who commits the offence of *hirabah*.
Resistance to Arrest and Escape
342. Resistance or obstruction to lawful arrest of another person.
343. Resistance or obstruction by a person to his lawful arrest or escape.
344. Resistance or obstruction to lawful arrest or escape in cases not provided for by section 343.
Fraudulent Dealings with Property
345. Fraudulent removal of property to prevent lawful seizure or execution.
346. Fraudulently suffering decree for sum not due.
347. Fraudulently obtaining decree for sum not due.
348. Dishonest or fraudulent execution of deed of transfer containing false statement of consideration.
Miscellaneous
349. Giving false information respecting an offence.
350. False personation.
351. False charge of offence made with intent to injure.
352. Taking gift to help to recover stolen property.
353. Influencing course of justice.
Public Nuisance
354. Public nuisance defined.
355. Adulteration of food or drink intended for sale.
356. Sale of food or drink not corresponding to description.
357. Sale of adulterated food or drink.
358. Sale of noxious food or drink.
359. Adulteration of drugs.
360. Sale of adulterated or expired drugs.
361. Sale of drug as a different drug or preparation.
362. Fouling water of public well.
363. Making atmosphere noxious to health.
364. Exhibition of false light, mark or buoy.
365. Obstruction in public way or line of navigation.
366. Employees engaged on work of public utility ceasing work without notice.
367. Negligent conduct causing danger to person or property.
368. Negligent conduct with respect to animal.
369. Punishment for public nuisance in cases not otherwise provided for.
370. Continuance of nuisance after injunction to discontinue.
371. Invasion of privacy.
372. Obscene or indecent acts.
373. Keeping a brothel.
374. Sale of obscene books, etc.
375. Obscene songs, etc.
Vagabonds
376. Definitions.
377. Penalty on conviction as idle person.
378. Penalty on conviction as vagabond.
379. Penalty on conviction as incorrigible vagabond.
380. Evidence of intent to commit an offence.
Mischief
381. Mischief defined.
382. Punishment for mischief.
383. Mischief by killing or maiming animal.
384. Mischief in relation to water supply.
385. Mischief by injury to public road, bridge, river, channel or pipeline.
386. Mischief by inundation or obstruction to pubic drainage.
387. Mischief in relation to electricity, telegraphs and telephones.
388. Mischief by destroying or moving a public landmark.
389. Mischief by fire or explosive with intent to cause damage.
390. Mischief by fire or explosive with intent to destroy house, etc.
391. Mischief to vessel.

392. Mischief by fire to vessel.
393. Running vessel aground or ashore with intent to commit theft.
394. Mischief committed after preparation made for causing death or hurt.

Lotteries and Gaming Houses

395. Definitions.
396. Keeping gaming house or lottery office.
397. Offences relating to lotteries.
398. Power to order forfeiture of lottery equipment, proceeds, etc.

Cruelty to Animals

399. Ill treatment of domestic animals
400. Overriding and neglect of animal.
401. Power to order temporary custody or destruction of animal.

Offences Relating to Religion

402. Insulting or exciting contempt of religious creed.
403. Injuring or defiling place of worship.
404. Disturbing religious assembly.
405. Committing trespass on place of worship or burial.
406. Blasphemous acts, utterances, etc.

Offences Relating to Ordeal, Witchcraft and Juju

407. Trial by ordeal.
408. Prohibition of juju.
409. Offences relating to witchcraft and juju.
410. Attending places of witchcraft or trial by ordeal.
411. Causing death by witchcraft or juju.
412. Criminal charms.
413. Cannibalism.
414. Unlawful possession of human corpse or any part thereof

SCHEDULE B

PART A: Cases that warrant the penalty of *qisas*.
PART B: Cases that warrant the payment of the full amount of *diyah*.
PART C: Cases that warrant triple payment of the full *diyah*.
PART D: Cases that warrant the payment of half of the full *diyah*.
PART E: Cases that warrant the payment of one-third of the full *diyah*
PART F: Cases that warrant the payment of one-tenth of the full *diyah*.
PART G: Cases that warrant the payment of one-twentieth of the full *diyah*.
PART H: Cases that warrant the payment of one-thirtieth of the full *diyah*.
PART I: Cases that warrant the payment of three-twentieths of the full *diyah*.
PART J: Cases that do not warrant the payment of *diyah* but are subject to computation of damages only (*hukumah)*.

THE SHARIA PENAL CODE LAW 200_

A BILL FOR A LAW TO ESTABLISH A SHARIA PENAL CODE FOR …….. STATE

BE IT ENACTED by the …… State House of Assembly as follows:

1. This Law may be cited as the Sharia Penal Code Law, 200_ and it shall come into operation on the ..... day of .....[1]

2. The provisions contained in the schedules to this Law[2] shall be the law of the State[3] with respect to the several matters therein dealt with and the said schedules may be cited as[4] the Sharia Penal Code.

3. Every person who is a Muslim and/or every other person who voluntarily consents to the exercise of the jurisdiction of any of the Sharia Courts established under the Sharia Courts Law, ……. shall be liable to punishment under this law for every act or omission contrary to the provisions thereof of which he shall be guilty within the State.[5]

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[1] PC: "This Law may be cited as the Penal Code Law". Kebbi enacted its Sharia Penal Code by a "Penal Code (Amendment) Law 2000" which amended its former Penal Code Law, the new Sharia Penal Code becoming the first Schedule, and the former Penal Code becoming the Second Schedule thereto. PC and Sokoto specify the date of commencement by a separate un-numbered notation preceding the first section.

[2] Katsina adds here: "and the Islamic Penal System (Adoption) Law 2000", referring to the statute of that name enacted on 31st July 2000, see Supplement to Katsina State Gazette No. 5 Vol. 11 of 10 August 2000 pp. A97-A98. That statute enacts that: "3. (1) Notwithstanding any provision contained in the Penal Code and the Criminal Procedure Code, proceedings for the determination of any civil or criminal matter before any Sharia Court shall be governed in accordance with the primary sources of Islamic Law, that is to say – (a) Qur'an; and (b) Hadith. (2) Subject to the provisions contained in the texts mentioned in subsection (1) of this section, a Sharia Court is empowered, in any proceedings before it to refer to and utilise the texts in the Maliki School of Law: Provided that they are in consonance with the Qur'an and Hadith. 4. Offences committed on or after the date of commencement of this Law shall be tried in accordance with the provisions of this Law". There were objections, at the time, that this enactment did not comply with §36(12) of the Nigerian Constitution of 1999, which provides that "a person shall not be convicted of a criminal offence unless that offence is defined and the penalty therefor is prescribed in a written law; and in this subsection, a written law refers to an Act of the National Assembly or a Law of a State, any subsidiary legislation or instrument under the provisions of a law." The full Katsina State Sharia Penal Code Law annotated here was then enacted in 2001; but offences under the Islamic Penal System (Adoption) Law were still triable, see n. to §7 below.

[3] PC: "law of Northern Nigeria"; and in general, where in this Draft Harmonised Code and in the SPCs references are made to "the State", PC has "Northern Nigeria"; this will not be specially noted subsequently. Gombe, Kebbi: "the law of [Gombe or Kebbi] State".

[4] PC and all SPCs except Gombe, Kano, Katsina add here: "and is hereinafter [or hereby] called".

[5] PC: "(1) Every person shall be liable to punishment under the Penal Code for every act or omission contrary to the provisions thereof of which he shall be guilty within Northern Nigeria. (2) After the commencement of this Law no person shall be liable to punishment under any native law or custom." All SPCs, on the contrary, agree in limiting their application to Muslims or to others who voluntarily consent to the jurisdiction of the Sharia courts in which the SPCs are to be applied; those not subject to the SPCs then go under the old PC. Katsina omits the concluding phrase "for every act or omission

4. (l) Where by the provisions of any law of the State[6] the doing of any act or the making of any omission is made an offence, those provisions shall apply to every person subject to the provisions of this Law[7] who is in the State at the time of his doing the act or making the omission.

(2) Where any such offence comprises several elements and any acts, omissions or events occur which, if they all occurred in the State, would constitute an offence, and any of such acts, omissions or events [occur in the State, although the other acts, omissions or events][8], which if they occurred in the State would be elements of the offence, occur elsewhere than in the State then:

(a) if the act or omission, which in the case of an offence committed wholly in the State would be the initial element of the offence, occurs in the State, the person who does that act or makes that omission is guilty of an offence of the same kind and is liable to the same punishment as if all the subsequent elements of the offence occurred in the State; and

(b) if that act or omission occurs elsewhere than in the State and the person who does that act or makes that omission afterwards enters the State, he is by such entry guilty of an offence of the same kind, and is liable to the same punishment as if that act or omission had occurred in the State and he had been in the State when it occurred.

** [subsections (3) and (4)][9]

5. (1) When by the provisions of this law[10] any act is declared to be lawful no action shall be brought in respect thereof.

(2) Except as aforesaid, the provisions of this Law shall not affect any right of action which any person would have had against another, if this Law had not been passed; nor shall the omission from this law[11] of any penal provision in respect of any act or omission which before the time of the coming into operation of this law constituted an actionable wrong affect[12] any right of action in respect thereof.

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contrary to the provisions thereof of which he shall be guilty within the State". Kaduna and Yobe add to this section a subsection (2), which here and in all other SPCs is §7 below.

[6] Bauchi, Gombe, Jigawa, Kano, Katsina, Sokoto, Zamfara: "provisions of this law".

[7] PC, Kebbi: omit "subject to the provisions of this law". Gombe: "shall apply to any Muslim in the State who commits such act or omission."

[8] Bracketed language in PC, but omitted here and in all SPCs except Bauchi.

[9] PC adds here two further subsections, as follows: "(3) Notwithstanding the provisions of subsection (2) it shall be a defence to the charge in any such case to prove that the person accused did not intend that the act or omission should have effect in Northern Nigeria. (4) The provisions of subsection (2) do not extend to a case in which the only material event that occurs in Northern Nigeria is the death of a person whose death is caused by an act or omission at a place outside, and at a time when that person was outside, Northern Nigeria."

[10] PC, Kebbi: "When by the Penal Code". All SPCs except Kano and Katsina: "When by the Sharia Penal Code".

[11] PC and Kebbi, on one side, and all SPCs except Kano and Katsina on the other: instead of "this law" here and in the next line, refer to "the Penal Code" or "the Sharia Penal Code", respectively.

[12] Kano, Katsina: "which would affect".

6. Nothing in this Law[13] shall affect the authority of[14] courts subject to the jurisdiction of this Law[15] to punish a person summarily for the offence commonly known as contempt of court.

7. No act or omission committed by a person shall be an offence under the provisions of this law unless such act or omission was committed on or after the commencement date of this law.[16]

SCHEDULE A: SHARIA PENAL CODE

CHAPTER I – GENERAL EXPLANATIONS AND DEFINITIONS[17]

1. Every expression, which is explained in any part of this Sharia Penal Code, is used in every part of this Sharia Penal Code in conformity with the explanation, unless the subject or sense of the context otherwise requires.

2. The pronoun "he" and its derivatives are used for any person whether male or female.

3. Unless the contrary appears from the context, words importing the singular number include the plural number and words importing the plural number include singular number.

4. The word "man" denotes a male human being of any age and the word "woman" denotes a female human being of any age.[18]

** ["age of maturity"][19]

5. (1) The word "person" includes any company or association or body of persons, whether incorporated or not.[20]

(2) A child becomes a person when it has been born alive whether the umbilical cord is severed or not.[21]

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[13] PC: "in this Law or in the Penal Code".
[14] Kano, Katsina: "shall preclude".
[15] PC: "courts of record".
[16] PC omits this section. Kaduna and Yobe have it as subsection (2) of §3. Katsina: "An act or omission committed by a person shall not be an offence nor shall it have retrospective effect under the provisions of this Law, unless such an act or omission was committed on or after the commencement of this Law or the Islamic Penal System (Adoption) Law, 2000", cf. n. 3 above. Kano as Katsina but omitting the reference to Katsina's Islamic Penal System (Adoption) Law. Kebbi adds a subsection (2) to this section providing that "all pending criminal cases commenced or instituted prior to the coming into force of this Law shall continue to be tried under the [old Penal Code]."
[17] Kano, Katsina entitle this Chapter INTERPRETATION. As to the order of the definitions: the HSPC and all SPCs except Kebbi and Sokoto follow the order of the definitions given in PC, with insertions or omissions noted subsequently. Kebbi and Sokoto order the definitions alphabetically by section title (except in the case of the first section, which is the same as here).
[18] Sokoto divides this definition into two, one under "Man" and the other under "Woman".
[19] Bauchi inserts here a definition of "age of maturity": "denotes the attainment of the age of fifteen or of puberty in the case of a man and of the age of fourteen in the case of a woman or of the attainment of such woman's menstruation whichever of the two conditions may precede in either case." No other code has a similar definition. Bauchi then uses the phrase in its versions of what are here §§38, 77, 95, 127, etc.
[20] Jigawa: "The word 'person' includes any class or section of the public" – obviously conflating the definition of 'person' with that of 'the public' in the next section. Jigawa then omits subsection (2) of this section.

6. The words "the public" include any class or section of the public.[22]

** ["Magistrate"][23]

7. "Court of justice" includes every civil or criminal court established by any Act or Law or deemed to be so established and every person or body of persons exercising judicial functions in the State by virtue of any Act or Law in force in the State.[24]

8. "Judicial proceedings" denotes[25] a proceeding in the course of which it is lawful to take evidence whether on oath or not.[26]

9. The words "public servant" denote a person falling under any of the descriptions hereinafter following, that is to say:[27]

(a) every person appointed[28] by the Government or the Government of the Federation or of a State while serving in the State[29] or by any Local Government Council[30] and every person serving in the State appointed by a servant or agent of any such Government or council for the performance of a specific public duty[31] while performing that duty;[32]

(b) every person not coming within the description set forth in paragraph (a) who is in the service of the Government or of any Local Government Council[33] in a judicial or quasi-judicial, executive, administrative or clerical capacity;[34]

(c) every commissioned officer of the Nigerian Armed Forces;[35]

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[21] Bauchi, Gombe, Kano, Sokoto separate the subsections of this section into two sections, one under "Person" and the other under "Child".
[22] Sokoto omits this definition.
[23] PC has here "The word 'magistrate' denotes a magistrate under the Criminal Procedure Code." The Sharia Criminal Procedure Codes of course do not refer to magistrates.
[24] PC adds: "and shall also include every court martial held in Northern Nigeria under the military law in force in Northern Nigeria."
[25] PC, Gombe: "includes" instead of "denotes"; Kaduna and Sokoto: "means".
[26] PC, Gombe: "proceeding in the course of which it is lawful to take evidence on oath."
[27] Bauchi, Jigawa, Yobe, Zamfara add: "without prejudice to the provisions of [designated sections of their Sharia Courts statutes]". Kebbi does not divide what follows into subsections, saying only: "The phrase 'public servant' shall have the same meaning as defined by the 1999 Constitution of the Federal Republic of Nigeria."
[28] Katsina: "appointed as a civil servant by". Gombe: "appointed or employed by".
[29] Gombe, Jigawa, Kano, Katsina: "by the Government of the Federation or of a State". Sokoto: "by the Government of the State or the Government of the Federation or of a State". Gombe, Katsina omit "while serving in the State".
[30] PC: "or by any native, provincial, municipal or other local authority".
[31] PC: "for the performance of public duties whether with or without remuneration or for the performance of a specific public duty". Gombe: "and their agents for the performance of the public duties with or without remuneration".
[32] Katsina omits "while performing that duty".
[33] PC: "in the service of the Government or of any native, provincial, municipal or other local authority". Kano, Katsina: "in the service of the Government".
[34] Katsina adds a the end: "or belonging to any of the armed forces". Katsina then omits what is here subsection (c). Gombe omits this subsection entirely.
[35] PC: "every commissioned officer of the Nigerian military forces or of the military forces of Great Britain while serving in Northern Nigeria". Katsina omits this subsection.

(d) every assessor or other person assisting a court of justice or a public servant exercising judicial or quasi-judicial functions while acting in that capacity;[36]

(e) every arbitrator or other person to whom any cause or matter has been referred for decision or report by any court of justice or by any other competent public authority, while acting in that capacity;[37]

(f) every officer or other person not being a member who is appointed to perform any duty in connection with the discharge of its functions by anybody forming part of the Legislature of the State;[38]

(g) every person who is in the service of any public corporation established by any Act or Law;[39]

(h) every person within the employment of the Federal, State and Local Governments, and their parastatals, departments and agencies.[40]

10. The term "armed forces" includes army, naval and air forces and defences.[41]

11. The words "movable property" include corporeal property[42] of every description except land and things attached to the earth or permanently fastened to anything which is attached to the earth.

12. "Wrongful gain" is gain by unlawful means of property to which the person gaining is not legally entitled.

13. "Wrongful loss" is the loss by unlawful means of property to which the person losing it is legally entitled.

14. A person is said to gain wrongfully when such person retains wrongfully as well as when such person acquires wrongfully, and a person is said to lose wrongfully when such person is wrongfully kept out of any property as well as when such person is wrongfully deprived of property.[43]

15. A person is said to do a thing "dishonestly" who does that thing with the intention of causing a wrongful gain to himself or another or of causing wrongful loss to any other person.

16. A person is said to do a thing "fraudulently" or "with intent to defraud" who does that thing with intent to deceive and by means of such deceit to obtain some advantage for himself or another or to cause loss to any other person.

17. A person is said to have "reason to believe" a thing if he has sufficient cause to believe that thing but not otherwise.

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[36] Bauchi combines this with the previous subsection. Katsina omits this subsection.
[37] Katsina omits this subjection.
[38] Katsina omits this subsection.
[39] Katsina omits this subsection.
[40] PC, Gombe, and Katsina omit this subsection. PC adds two explanations following this series of subsections, omitted here and in all SPCs.
[41] PC: "The term 'military forces' includes naval and air forces and the term 'military affairs' includes affairs relating to naval and air forces and defences." Bauchi, Jigawa as here except omits "and defences". Sokoto omits this section.
[42] Gombe, Kano: "corporal property". Jigawa: "corporate property".
[43] Sokoto omits this section.

18. (1) An act is said to be "likely" to have a certain consequence or to cause a certain effect if the occurrence of that consequence or effect would cause no surprise to a reasonable man.

(2) An effect is said to be a probable consequence of an act if the occurrence of that consequence would be considered by a reasonable man to be the natural and normal effect of the act.[44]

19. When property is in the possession of a person's wife, clerk or servant on account of that person, it is in that person's possession within the meaning of this Law.[45]

20. A person is said to "counterfeit" who causes one thing to resemble another thing intending by means of that resemblance to practise deception or knowing it to be likely that deception will thereby be practised.[46]

21. The word "writing" denotes any marks made upon paper or other substance to express words or ideas, and includes marks made by printing, lithography, photography, engraving or any other process; and the word "document" signifies any writing intended to be used or which may be used as evidence of the matter expressed thereby.[47]

22. The words "document of title" denote a document which is or purports to be a document whereby a legal right is created, extended, transferred, restricted, extinguished, revoked[48] or released, or whereby the existence or the extinction or revocation[49] of a legal right is acknowledged or established.

23. In every part of this law, except where a contrary intention appears from the context, words which refer to acts done extend also to illegal omissions.

24. The word "act" denotes a series of acts as well as a single act and the word "omission" denotes a series of omissions as well as a single omission.[50]

25. Wherever the causing of a certain effect or an attempt to cause that effect by an act or by an omission is an offence, it is to be understood that the causing of that effect or the attempt to cause that effect partly by an act and partly by an omission is the same offence.[51]

26. A person is said to cause an effect "voluntarily" when he causes it by means whereby he intended to cause it or by means which, at the time of employing those means, he knew or had reason to believe to be likely to cause it.[52]

27. Except where otherwise appears from the context,[53] the word "offence" includes an offence under any law for the time being in force.

28. Everything which is prohibited by law and which is an offence or which furnishes ground for a civil action is said to be "illegal".

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[44] Sokoto puts this subsection as a separate section under the heading "probable".
[45] PC has an explanation following this section, omitted here and in all SPCs.
[46] PC has two explanations following this section, omitted here and in all SPCs.
[47] Sokoto splits this section into two, "writing" and "document".
[48] Only Kaduna, Kano and Katsina include the word "revoked".
[49] Only Kaduna includes the word "revocation".
[50] Sokoto splits this section into two, "act" and "omission".
[51] Sokoto omits this section.
[52] PC has an illustration after this definition, omitted here and in all SPCs.
[53] Sokoto omits "Except where otherwise appears from the context".

29. A person is said to be "legally bound to do" not only whatever he is bound by law to do but also everything the omission to do which by him is an offence or furnishes ground for a civil action.

30. The word "injury" denotes any harm whatever illegally caused to any person, in body, mind, reputation, modesty[54] or property.

31. The words "life" and "death" denote the life or death of human being unless it otherwise appears from the context.[55]

32. The word "animal" does not include a human being.

33. The word "vessel" denotes anything made for the conveyance by water of human beings or of property.

34. Wherever the word "year" or the word "month" is used, it is to be understood that the year or the month is to be reckoned according to the Islamic calendar and its Gregorian equivalent.[56]

35. The word "oath" includes swearing in the name of Almighty Allah (SWT) or any of His attributes.[57]

36. Nothing is said to be done or believed in good faith which is done or believed without due care and attention.[58]

** [provocation][59]

37. Any person who is convicted of an offence under this law may be adjudged to make compensation to any person injured by his offence and such compensation may be either in addition to or in substitution for any other punishment.[60]

38. A consent is not such a consent as is intended by any section of this law, if the consent is given:

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[54] PC omits "modesty".
[55] Sokoto omits this section.
[56] PC: "according to the Gregorian calendar".
[57] Sokoto as here, but then adds the PC definition as follows: the word "oath" "includes a solemn affirmation substituted by law for an oath, and any declaration required or authorised by law to be made before a public servant or to be used for the purpose of proof, whether in a court of justice or not."
[58] Sokoto: "'Good faith' means an act done in good faith if it is done with due care and attention."
[59] PC has here a definition captioned "Provocation": "Such grave and sudden provocation as under any section of this Penal Code modifies the nature of an offence or mitigates the penalty which may be inflicted shall not be deemed to include: (i) provocation sought or voluntarily provoked by the offender as an excuse for committing an offence; (ii) provocation given by anything done in obedience to the law or by a public servant in the lawful exercise of the powers of such public servant; (iii) provocation given by anything done in the lawful exercise of the right of private defence." This is followed by three illustrations. No SPC has this.
[60] PC has this section, but places it in the chapter on PUNISHMENTS AND COMPENSATION; and see the section of this code on "Restitution or Compensation", §102 below. Gombe: "'Compensation' is a fixed amount of wealth against a convinced [sic] person for an offence under this Sharia Penal Code Law to any person injured by his offence and such compensation may be either in addition to or substitution for any other punishment."

(a) by a person under fear of injury, or under a misconception of fact, and if the person doing the act knows, or has reason to believe, that the consent was given in consequence of such fear or misconception; or

(b) by a person who, from unsoundness of mind or involuntary intoxication,[61] is unable to understand the nature and consequence of that to which he gives his consent; or

(c) by a person who is under eighteen years of age or has not attained puberty.[62]

39. A person is said to "harbour" another person who has committed or intends to commit an offence or who is seeking to evade arrest when he supplies that other with shelter, food, drink, money, clothes, arms, ammunition, or means of conveyance, or assists that other in any way to evade arrest.

40. The word "genital" includes the vagina and the rectum.[63]

41. The word *"zina*" includes adultery and fornication.[64]

42. The word "married" means having ever consummated a valid marriage, such consummation not being done whilst in a state of fasting or seclusion thereof (*i'tikaf*), or in a state of ritual consecration of pilgrimage (*ihram*), or in a state of menstruation.[65]

43. The words *"sadaq al-mithli"* denote the dower due to brides within the same social, educational and family background.[66]

44. The word *"rajm"* means the penalty of stoning or pelting to death of a Muslim convicted for the offence of "*zina"*, rape, incest or sodomy.[67]

45. The word *"hirz*" denotes any location, place or means[68] that is customarily understood to represent safe keeping or custody or protection.

46. The word *"nisab "* denotes the minimum amount of property, or its value not below a quarter of a *dinar* or three *dirhams* which, if stolen, shall attract *hadd* punishment.[69]

47. The word *"taklif"* denotes the age of attaining legal and religious responsibilities.[70]

48. The word *"mukallaf*' denotes a person possessed of full legal and religious capacity.[71]

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[61] PC omits "involuntary".
[62] PC: under 14 years of age. Bauchi: under the age of maturity.
[63] PC omits this section.
[64] PC omits this section.
[65] PC omits this section. All SPCs except Kaduna define marriage "in relation to punishment for adultery" or "under the meaning of the punishment for adultery": "means being married or ever consummating a valid marriage." Kaduna just says "'marriage' means being married or ever consummating a valid marriage". No SPC has the elaborate definition given here.
[66] PC omits this section.
[67] PC omits this section. Bauchi, Gombe, Jigawa, Kebbi, Sokoto, Yobe, Zamfara omit "rape, incest or sodomy". Kaduna: "The word '*rajm*' means the execution of death penalty on a Muslim convicted for the offence of *zina*, rape, incest or sodomy through stoning by more than one person, firing squad or hanging."
[68] PC omits this section. All SPCs except Kaduna: "any location or place".
[69] PC omits this section. All SPCs except Kaduna and Yobe: "minimum amount of property, liable to payment of *zakat*, or which if stolen, the thief shall be liable to *hadd* punishment." Yobe: "minimum amount of property (*rubu ¼ dinar*) which, if stolen . . .".
[70] PC omits this section. Bauchi adds: "and is the age of maturity". Sokoto: "the state of attaining legal and religious responsibilities by both age and mental soundness".

49. The words *"waliyy al-damm "* include male agnatic heirs, daughters, full sisters, paternal aunts and consanguine sisters.[72]

50. The words *"qatl al gheelah "* denote the act of luring a person to a secluded place and killing him to take away his property.[73]

** [*al-aqila*][74]

51. The word "*wa'az*" denotes admonishing a person who has committed an offence.[75]

52. The word *"tashheer"* denotes public disclosure of a person convicted of an offence.[76]

53. The word *"hajar "* denotes social boycott of the offender by the public.[77]

54. The word *"al-musadarah"* denotes confiscation of property owned by the offender.[78]

55. The word *"ghurrah"* denotes compensation which is paid in respect of causing miscarriage of fetus.[79]

56. The word *"ta'azir*" denotes any punishment applied or fixed by the State for an offence the punishment of which is not specified by way of *hadd or qisas.*[80]

57. The word *"hudud"* denotes offences or punishments that are fixed under the Sharia and includes offences or punishments as provided under sections 125, 126, 127, 128, 129, 130, 131, 132, 138, 139, 143, 144, 148, 150, 151, 152 and 341 of this law.[81]

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[71] PC omits this section. Sokoto: "possessed of full legal age, mental soundness and religious capacity".
[72] PC omits this section. All SPCs except Kaduna and Sokoto: "male agnatic heirs, including three classes of females: full sister whether alone, consanguine sister and daughter, who are agnatised by their bothers." Kaduna: "legal heirs of a deceased victim of homicide". Sokoto: "male agnatic heirs including daughter, full sister, paternal sister and consanguine sister".
[73] PC omits this section. Bauchi, Gombe, Kano, Katsina: "luring a person to a secluded place and killing him". Kaduna: "luring a person, killing him and taking away his property".
[74] All SPCs insert here (or, in the case of Kebbi and Sokoto, in alphabetical order within the definitions) a definition of "*al-aqila*". All except Kaduna: "agnatic relatives of the killer who are responsible jointly for the payment of *diyah* each according to his capacity". Kaduna: "legal heirs and other associates whether individual or corporate of the killer who are responsible jointly or severally for the payment of *diyah*". PC omits this definition.
[75] PC omits this section. SPCs: "reminding [Gombe: admonishing; Kano, Katsina: warning] the person who has committed a transgression that he has done an unlawful act".
[76] PC omits this section. All SPCs except Kaduna and Kebbi: "public disclosure usually consists of the taking of the offender by some of the court officials to every [Kano, Katsina: any] part of the city and telling the people what he had committed for which he had received a *ta'azir* punishment". Kaduna: "the taking of the convict by court officials to parts of the city telling the people what offence he has committed". Kebbi: "the public display of offender by court officials, taking him to every part of the city, making public the offence for which he had received *ta'azir* punishment".
[77] PC omits this section. All SPCs except Kaduna: "boycotting the offender by the public". Bauchi rather defines "*hujran*", and Kano and Katsina "*hijran*": "boycotting the offender by the public".
[78] PC omits this section.
[79] PC omits this section. All SPCs except Kaduna: "compensation which is equivalent to 1/20 of *diyah* paid in respect of causing miscarriage of fetus".
[80] PC omits this section. Bauchi: "the body of Islamic laws pertaining to correctional punishment left to the discretion of the judge". All other SPCs except Kaduna, Yobe: "a discretionary punishment for offence whose punishment is not specified". Kaduna: "any punishment not provided for by way of *hadd* or *qisas* and includes the offences under section 96(1) [here §93] except paragraphs (g) and (h) thereof". Yobe: as here.

58. The word *"qisas"* includes punishments inflicted upon offenders by way of retaliation for causing death/injuries to a person.[82]

59. The word *"tawbikh "* denotes a severe rebuke or reprimand for misdemeanours.[83]

60. The word *"diyah "* denotes a fixed amount of money paid to a victim of bodily hurt[84] or to the deceased's legal heirs[85] in homicide cases.[86]

61. The word *"hukumah"*[87] denotes the amount of compensation short of *arsh*[88] payable to a victim of bodily injuries of unspecified quantum,[89] based on the discretion of the court.[90]

62. The word "Government" means the Government of a State or the Federal Government or Local Government.[91]

63. The words "foreign government" mean any government other than any government within the Federation of Nigeria.[92]

** [additional definitions in some SPCs][93]

CHAPTER II – CRIMINAL RESPONSIBILITY

64. (1) There shall be no criminal responsibility except upon a *mukallaf*.

(2) There shall be no criminal responsibility unless an unlawful act or omission is done intentionally or negligently.[94]

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[81] PC, Gombe, Jigawa, Sokoto, Zamfara omit this section. Bauchi: "*hudud* (sing. *hadd*) means a specific punishment for committing a stated offence imposed on the offender (and it is Allah's right)". Kano, Katsina: "punishable offences prescribed by Qur'an [Katsina: Holy Qur'an] and Hadith". Kaduna defines "*hadd*": "punishment that is fixed by Islamic law". Kebbi: "the punishment prescribed by the Qur'an and Sunnah". Yobe: as here.

[82] PC, Gombe, Jigawa, Kano, Katsina, Kebbi, Sokoto, Zamfara: omit this section. Bauchi: "the body of Islamic laws relating to retaliation".

[83] PC omits this section.

[84] Kaduna: "compensation paid to a person injured".

[85] All SPCs have "agnatic heirs" instead of "legal heirs".

[86] All SPCs except Kaduna and Sokoto have "murder cases" instead of "homicide cases". Bauchi adds: "applying to both *qisas* [retaliatory] cases as well as non-*qisas* cases". All SPCs except Bauchi and Kaduna add at the end: "the quantum of which is one thousand dinar, or twelve thousand dirham or 100 camels". Bauchi adds further: "or two hundred heads of cattle, or two thousand heads sheep". Kaduna has nothing like this at all. PC omits this section entirely.

[87] Gombe uses "*qeemah*" instead of "*hukumah*", but the definition is otherwise the same except as noted.

[88] All SPCs except Kaduna: "short of *diyah*".

[89] Kebbi: "compensated quantum".

[90] All SPCs: "discretion of the judge". PC omits this section entirely.

[91] PC: "means the Government of Northern Nigeria". Bauchi: "means the Government of Bauchi State except where the context otherwise admits or any of its Local Government Councils". Other SPCs insert the names of their own states instead of putting "a State".

[92] PC adds: ", the Government of the United Kingdom or of any British possession or part thereof".

[93] Kaduna and Yobe add a definition of "*arsh*": "specific amounts payable as compensation for injuries that do not involve the loss of life". Sokoto defines "*al-sahir*": "includes a magician". Kebbi: " building' means a structure of any kind whether permanent or temporary and includes a hut, store, granary, pound and a compound completely enclosed by a wall or other structure". Kaduna: "code": "unless otherwise indicated the word 'code' means the Sharia Penal Code".

65. A person is presumed, unless the contrary is proved, to have knowledge of any material fact if such fact is a matter of common knowledge.

66. A person who does an act in a state of voluntary intoxication is presumed to have the same knowledge as he would have had if he had not been intoxicated.

67. (1) Nothing is an offence which is done by any person who is justified by law, or who by reason of a mistake of fact and not by reason of a mistake of law, in good faith believes himself to be justified by law in doing it.

(2) Whoever being a *waliyy al-damm* of a deceased person causes the death of the suspect alleged to have killed the deceased shall not be punished with death, save as provided under section 202 of this law.[95]

Illustrations:[96]

(a) A an officer of a court of justice being ordered by that court to arrest Y and after due enquiry believing Z to be Y arrests Z. A has committed no offence.

(b) A sees Z commit what appears to A to be culpable homicide. A in the exercise to the best of his judgment exerted in good faith of the power which the law gives to all persons of arresting murderers seizes Z in order to bring him before the proper authorities. A has committed no offence, though it may turn out that Z was acting in self defence.

(c) A kills B. C, the son of B, kills A before A is convicted of killing B. C will not be punished for intentional homicide if it is established that A was indeed guilty of intentional homicide against B.[97]

68. Nothing is an offence which is done by a person when acting judicially as a court of justice or as a member of a court of justice in the exercise of any power which is or which in good faith he believes to be given to him by law.

69. Nothing which is done in pursuance of or which is warranted by the judgment or order of a court of justice, if done whilst such judgment or order remains in force, is an offence, notwithstanding that the court may have had no jurisdiction to pass such judgment or order, provided the person doing the act in good faith believes that the court had such jurisdiction.

70. Nothing is an offence which is done by accident or misfortune and without any criminal intention or knowledge in the course of doing a lawful act in a lawful manner by lawful means and with proper care and caution.

71. (1) Nothing is an offence by reason of an injury which it may cause or be intended by the doer to cause or be known by the doer to be likely to cause, if it be done without any criminal intention to cause injury and in good faith for the purpose of preventing or avoiding other injury to person or property or of benefiting the person to whom injury is or may be caused: *Provided:*

(a) that, having regard to all the circumstances of the case, the doing of the thing was reasonable; and

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[94] PC omits this entire section, but see §72 below and notes thereto. Kano and Katsina have: "upon an adult and sane person (*mukallaf)*".

[95] No similar subsection in PC or in Bauchi, Gombe, Kano, Katsina, Kebbi, Jigawa, Sokoto, Zamfara.

[96] Illustrations not included in Gombe.

[97] Illustration (c) not included in PC or in any of the SPCs.

(b) that, where the circumstances so require, the thing is done with reasonable care and skill.

(2) This section shall not apply to the intentional causing of death or to the attempting to cause death in order to prevent or avoid injury to property only except as is provided for in section 91 of this law.

(3) The death of a person shall under no circumstances be deemed to be for the benefit of that person.

(4) Mere pecuniary benefit is not benefit within the meaning of this section.

Illustrations:[98]

(a) A, in a great fire, pulls down houses in order to prevent the conflagration from spreading. He does this with the intention in good faith of saving human life or property. Here, if it is found that in the circumstances, A's act was reasonable, A is not guilty of an offence;

(b) A, a surgeon knowing that a particular operation is likely to cause the death of Z, who suffers from a painful complaint, but not intending to cause Z's death and intending in good faith Z's benefit performs that operation. Z dies in consequence of the operation. If the operation is one which in all the circumstances it was reasonable for A to perform and it was performed with reasonable care and skill, A has committed no offence;

(c) Z is seized by a hyena. A fires at the hyena in order to save the life of Z. A in fact kills Z. A has committed no offence.

72. No act is an offence which is done:[99]

(a) by a child under seven years; or

(b) in cases of *hudud and qisas,* by a child below the age of *taklif*.[100]

73. Nothing is an offence which is done by a person who, at the time of doing it, by reason of unsoundness of mind, or sleep, is incapable of knowing the nature or the consequences of the act, or he is doing what is either wrong or contrary to law.[101]

74. Nothing is an offence which is done by a person who, at the time of doing it, is by reason of intoxication caused by something administered to him without his knowledge or against his will, incapable of knowing the nature of the act, or that he is doing what is either wrong or contrary to law.

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[98] No state includes any of these illustrations except Sokoto, which includes only (a). PC includes a 4th illustration, involving a speeding passenger train approaching a stationary one on the same line of rails, and a railway employee who switches the moving train onto a siding in order to prevent a collision. PC also includes two qualifications to what is here illustration (b), involving (i) what happens if A is drunk when he performs the operation, and (ii) the relevance of Z's having consented to the operation.
[99] Bauchi omits this whole section.
[100] PC subsection (b) reads: "by a child above seven years of age but under twelve years of age who has not attained sufficient maturity of understanding to judge the nature and consequence of such act." Kano and Katsina: "in cases of punishable offences by the Qur'an or Hadith (*hudud*) by a child below the age of criminal responsibility (*taklif*)". No state, in subsection (b), mentions *qisas* as well as *hudud.*
[101] PC omits "or sleep".

75. (1) No act is an offence by reason of the injury it has caused to the person or property of any person who, being above the age of *taklif,* has voluntarily and with understanding given his consent express or implied to that act.[102]

(2) This section shall not apply to acts which are likely to cause death or grievous hurt, nor to acts which constitute offences independently of any injury which they are capable of causing to the person who has given his consent or to his property.

76. Nothing, which is not intended to cause death, is an offence by reason of any harm which it may cause, or be intended by the doer to cause, or be known by the doer to be likely to cause, to any person for whose benefit it is done in good faith, and who has given a consent, whether express or implied, to suffer that harm, or to take the risk of that harm.

77. (1) Nothing is an offence which does not amount to the infliction of grievous hurt upon any person and which is done:

(a) by a parent or guardian for the purpose of correcting his child or ward;[103] or

(b) by a school master for the purpose of correcting a child entrusted to his charge;[104] or

(c) by a master for the purpose of correcting his apprentice such apprentice being under eighteen years of age;[105] or

(d) by a husband for the purpose of correcting his wife.[106]

(2) No correction is justifiable which is unreasonable in kind or in degree, regard being had to the age and physical and mental condition of the person on whom it is inflicted; and no correction is justifiable in the case of a person who, by reason of tender years or otherwise, is incapable of understanding the purpose for which it is inflicted.

78. No communication made in good faith is an offence by reason of any harm caused to the person to whom it is made, if it is made for the benefit of that person.[107]

79. Except homicide, grievous hurt and offences against the State punishable with death, no act is an offence which is done by a person who is compelled to do it by coercion or by threat of death or imminent grievous hurt to his person or family or serious injury to his property which at the time of doing it reasonably caused the apprehension that instant death to that person will otherwise be the consequence:

Provided that the person doing the act did not, of his own accord or from apprehension of harm to himself short of instant death, place himself in the situation by which he became subject to such compulsion.

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[102] PC: "above the age of eighteen years".
[103] PC and Gombe, Jigawa, Kano, Katsina, Kebbi, Yobe, Zamfara: "child or ward being under eighteen years of age". Bauchi: "under the age of maturity".
[104] PC, Gombe, Jigawa, Kano, Katsina, Kebbi, Sokoto, Yobe, Zamfara: "child under eighteen years of age". Bauchi: "under the age of maturity".
[105] PC and all states except Kaduna: "servant or apprentice".
[106] PC goes on: "such husband and wife being subject to any native law or custom in which such correction is recognised as lawful."
[107] PC adds this illustration: "A, a surgeon, in good faith communicates to a patient his opinion that he cannot live. The patient dies in consequence of the shock. A has committed no offence, though he knew it to be likely that the communication might cause the patient's death."

80. No act is an offence which is done by a person involuntarily and without the ability of controlling his act by reason of act of God or sudden illness which makes him incapable of avoiding that act.[108]

81. It shall not be an offence if an act is done by a person who is compelled by necessity to protect his person, property or honour, or person, property or honour of another from imminent grave danger which he has not wilfully caused or wilfully exposed himself or other persons to and which he or that other person is not capable of avoiding.[109]

82. Nothing is an offence by reason that it causes or that it is intended to cause or that it is likely to cause any injury if that injury is so slight that no person of ordinary sense and temper would complain of such injury.

83. Nothing contained in the provisions of sections 66–81 shall prejudice the right of *diyah* or damages in appropriate cases.[110]

The Right of Private Defence

84. Nothing is an offence which is done in the lawful exercise of the right of private defence.

85. Every person has a right, subject to the restrictions hereinafter contained, to defend:

(a) his own body and the body of any other person against any offence affecting the human body;

(b) the property whether movable or immovable of himself or of any other person against any act, which is an offence falling under the definition of theft (*sariqah),* robbery (*hirabah)*, mischief (*fasad)* or criminal trespass (*ta'addi)*, or which is an attempt to commit theft (*sariqah)*, robbery (*hirabah)*, mischief (*fasad)* or criminal trespass (*ta'addi*).[111]

86. When an act, which would otherwise be a certain offence is not that offence by reason of the youth, the want of maturity of understanding, the unsoundness of mind or the intoxication of the person doing that act or by reason of any misconception on the part of that person,[112] every person has the same right of private defence against that act which he would have if the act were that offence.

Illustrations:[113]

(a) Z under the influence of madness attempts to kill A; Z is guilty of no offence. But A has the same right of private defence which he would have if Z were sane.

(b) A enters by night a house which he is legally entitled to enter. Z, in good faith taking A for a house-breaker, attacks A. Here Z, by attacking A under this misconception, commits no offence. But A has the same right of private defence against Z, which he would have if Z were not acting under that misconception.

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[108] Not in PC.
[109] Not in PC.
[110] Not in PC.
[111] PC does not include the Arabic words for the specified offences.
[112] Bauchi compresses all conditions into: "by reason of infirmity of mind or misconception of the offender" .
[113] Gombe does not include the illustrations.

87. Subject to the provisions of section 203 paragraph (c) of this law,[114] the right of private defence in no case extends to the inflicting of more harm than it is necessary to inflict for the purpose of defence.

88. There is no right of private defence in cases in which there is reasonable time to have recourse to the protection of the public authorities.[115]

89. There is no right of private defence against an act which does not reasonably cause the apprehension of death or of grievous hurt, if done or attempted to be done:

(a) by a public servant doing an act justifiable in law and in good faith; or

(b) by any person acting under the direction of a public servant acting lawfully and in good faith.[116]

90. The right of private defence of the body extends, under the restrictions mentioned in sections 87 and 88 to the voluntary causing of death only when the act to be repelled is of any of the following descriptions, namely:

(a) an attack which causes reasonable apprehension of death or grievous hurt; or

(b) rape or an assault with the intention of gratifying unnatural lust; or

(c) abduction or kidnapping.

91. The right of private defence of property extends, under the restrictions mentioned in sections 87 and 88 to the voluntary causing of death only when the act to be repelled is of any of the following descriptions, namely:

(a) robbery (*hirabah)*; or

(b) house-breaking by night; or

(c) mischief by fire committed on any building, tent or vessel, which building, tent or vessel is used as a human dwelling or as a place for the custody of property; or

(d) theft, mischief, or house-trespass in such circumstances as may reasonably cause apprehension that, if such right of private defence is not exercised, death or grievous hurt will be the consequence.

92. If, in the exercise of the right of private defence against an assault which reasonably causes the apprehension of death, the defender be so situated that he cannot effectually exercise that right without risk of harm to an innocent person, his right of private defence extends to the running of that risk.[117]

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[114] PC, Gombe, Jigawa, Kano, Kebbi, Sokoto, Zamfara all leave out this initial "subject to" clause.

[115] The word "reasonable" is omitted from all codes except Kano and Katsina.

[116] PC adds the following explanation not included in any SPC: "A person is not deprived of the right of private defence against an act done or attempted to be done: (a) by a public servant as such unless he knows or has reason to believe that the person doing that act is such public servant; or (b) by the direction of a public servant, unless he knows or has reason to believe that the person doing the act is acting by such direction or unless such person states the authority under which he acts or, if he has authority in writing, unless he produces such authority if demanded."

[117] PC and Sokoto insert an illustration following this section: "A is attacked by a mob which attempts to kill him. He cannot effectually exercise his right of private defence without firing on the mob and he cannot fire without risk of harming young children who are mingled with the mob. A commits no offence if by so firing he harms any of the children."

** [General offences[118]]

CHAPTER III – PUNISHMENTS AND COMPENSATION

93. (1) The punishments to which offenders are liable under the provisions of this law are:

(i) death (*qatl*);
(ii) imprisonment (*sijn*)
(iii) closure of premises
(iv) forfeiture and destruction of property (*al-musadarah-wal ibadah*);
(v) detention in a reformatory *(habs fi islahiyyah);*
(vi) fine *(gharamah);*
(vii) caning *(jald);*[119]
(viii) amputation (*qat'*);
(ix) retaliation *(qisas);*
(x) blood-wit *(diyah);*
(xi) restitution (*radd*);
(xii) reprimand *(tawbikh);*
(xiii) public disclosure *(tash-heer);*[120]
(xiv) boycott *(hajar);*
(xv) exhortation (*wa'az*);[121]
(xvi) compensation *(hukumah);*
(xvii) warning *(tahdid);* and
(xviii) stoning to death (*rajm*).[122]

(2) Nothing in this section shall prevent a court from dealing with an offender in accordance with the Probation of Offenders Law.[123]

94. No sentence of imprisonment shall be passed on any person who in the opinion of the Court is under fifteen years of age.

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[118] Bauchi, Gombe, Jigawa, Kebbi, Sokoto, Yobe, Zamfara all have in this place a provision entitled "General Offences", of which we quote Zamfara's: "Any act or omission which is not specifically mentioned in this Sharia Penal Code but is otherwise declared to be an offence under the Qur'an, Sunnah, and *ijtihad* of the Maliki school of Islamic thought, shall be an offence under this code and such act or omission shall be punishable: (a) with imprisonment for a term which may extend to five years, or (b) with caning which may extend to 50 lashes, or (c) with a fine which may extend to ₦5,000.00, or with any two of the above punishments." Gombe omits the word '*ijtihad*' and puts instead "*qiyas* and *ijma* and other sources of the Maliki school of thought". Bauchi varies the punishments: imprisonment may extend to 1 year only, caning may extend to 40 lashes only, and the fine may extend to ₦50,000.00. PC has nothing similar.

[119] Sokoto has "*hadd*-lashing" in addition to caning. The PC also has the following provision on *haddi* lashing: "Offenders who are of the Moslem faith may in addition to the punishments specified in subsection (1) be liable to the punishment of *Haddi* lashing as prescribed by Moslem law for offences contrary to sections 387 [adultery by a man], 388 [adultery by a woman], 392 [defamation], 393 [injurious falsehood], 401, 402, 403 and 404 [all relating to alcohol] of this Penal Code."

[120] Called "public scorn" in Gombe.

[121] Called "admonishing" in Gombe.

[122] Only Gombe, Kano and Katsina have stoning to death in addition to death.

[123] Gombe adds: "or any other written law enforced in this State."

** [Fractions of term of punishment][124]

95. (1) When an accused person who has completed his seventh but not completed his eighteenth year of age[125] is convicted by a court of any offence, the court may instead of passing the sentence prescribed under this law, subject the accused to:

(a) confinement in a reformatory home for a period not exceeding one year; or

(b) caning which may extend to twenty lashes, or with fine or with both.[126]

(2) Where it is proved that the offence committed by the accused person is by negligence of the parent or guardian the court may impose a fine not exceeding five thousand naira.[127]

96. (1) Where no sum is expressed to which a fine may extend, the amount of fine to which the offender is liable is unlimited but shall not exceed the jurisdiction of the court imposing it and shall not be excessive.

(2) The court shall assess fine with reference to the nature of the offence committed, the amount of wrongful gain obtained thereby, the degree of the offender's participation and his financial status.[128]

97. Whenever an offender is sentenced to a fine whether with or without imprisonment under this law the court which sentences the offender may direct by the sentence that, in default of payment of the fine, the offender shall be committed to prison for a certain term which term shall be in excess of any other term of imprisonment to which he may have been sentenced or to which he may be liable under a commutation of a sentence.[129]

98. (1) If an offence is punishable with fine or with imprisonment and fine the court may direct that in default of payment the offender shall be imprisoned for any term not exceeding the maximum fixed in the following scale, or the offender may be caned with a number of lashes not exceeding the maximum fixed in the same scale:[130]

	Where the fine:	**The period of imprisonment shall not exceed:**	**Number of lashes shall not exceed:**
(a)	does not exceed two hundred naira;	seven days;	five lashes;
(b)	exceeds two hundred naira and	fourteen days;	ten lashes;

[124] PC has a section in this place that states: "In calculating fractions of terms of punishment, imprisonment for life shall be reckoned as equivalent to imprisonment for twenty years." No SPC has this.

[125] Bauchi: "accused person who has attained his penultimate year before maturity but has not completed the age of maturity."

[126] PC: "deal with the accused in accordance with the provisions of the Children and Young Persons Law." Kano and Katsina omit "or fine or both". Kaduna omits both subsections (a) and (b), saying: "subject the convict to *ta'azir* punishment."

[127] Only Kano and Katsina have subsection (2).

[128] Subsection (2) not in PC.

[129] Kaduna: "may direct that his movable or immovable property shall be auctioned or he shall be given fine to pay instalmentally."

[130] Not in Kaduna. PC and all SPCs omit the possibility of lashes in case of default. The ranges of fines and the periods of imprisonment for default vary among the codes, the highest period of imprisonment being five years in Kebbi State if the fine exceeds ₦20,000.

	does not exceed four hundred naira;		
(c)	exceeds four hundred naira and does not exceed one thousand five hundred naira;	one month;	fifteen lashes;
(d)	exceeds one thousand five hundred naira and does not exceed two thousand naira;	two months;	twenty lashes;
(e)	exceeds two thousand naira and does not exceed three thousand naira ;	four months;	twenty-five lashes;
(f)	exceeds three thousand naira and does not exceed five thousand naira	six months;	thirty lashes;
(g)	exceeds five thousand naira and does not exceed eight thousand naira;	eight months;	forty lashes;
(h)	exceeds eight thousand naira and does not exceed ten thousand naira;	ten months;	forty-five lashes;
(i)	exceeds ten thousand naira and does not exceed twenty thousand naira;	one year;	fifty-five lashes.

(2) The sentence served under subsection (1) shall discharge the offender from liability to pay the fine or the unpaid part thereof.[131]

(3) The Governor may, with the approval of the House of Assembly by order review the fine in the scale prescribed in subsection (1) of this section when it is considered to be practicable in the interest of justice.[132]

** [Fine not discharged by death or service of sentence in default of payment][133]

99. When the same act falls within the definition of more than one offence or when an offence consists of a series of acts each of which or any one or more of which constitutes the same or some other offence, the offender shall not, unless it be otherwise expressly provided, be punished with a more severe punishment than the court which tries him could award for any one of such offences.[134]

100. A sentence of caning may be passed by any court whether trying a case summarily or otherwise on any offender as the punishment for that offence or in lieu of or in addition to

[131] Neither PC nor any SPC has this subsection; but see ** following §98.
[132] Only Kano and Katsina have this subsection.
[133] PC has here the following provision, also contained in Gombe, Jigawa, Kebbi, Sokoto, Yobe, and Zamfara: "Where a fine or any part thereof remains unpaid the offender or his estate, if he is dead, is not discharged from liability to pay the fine or the unpaid part thereof notwithstanding that he has served a term of imprisonment in default of payment of the fine." Bauchi has the same provision but changes "not discharged" to "discharged". Kaduna, Kano and Katsina omit the provision entirely.
[134] Not in Kaduna. PC inserts an illustration: "A gives Z fifty strokes with a stick. Here A can be punished for one beating only, although each blow may by itself constitute an offence." But if, while A is beating Z, Y interferes and A strikes Y, A is liable to two punishments – one each for Y and Z.

any other punishment to which he might be sentenced for any offence not punishable with death.[135]

Explanation:

In a situation where death sentence or hadd or qadhf punishments are combined the punishment of hadd shall precede that of death.[136]

101. A sentence of reprimand *(tawbikh),* or warning *(tahdid),* exhortation (*wa'az*) or boycott *(hajar)* may be passed by any court whether trying the case summarily or otherwise on any offender in lieu of, or in addition to any other punishment to which he might be sentenced for any offence not punishable with death, or offences falling under *hudud* or *qisas.*[137]

102. Any person who is convicted of an offence under this law shall, in addition to the punishment for the offence, be ordered to make complete restitution of any benefits, moneys, funds or properties obtained by the crime or other illegal means to the person(s), authorities, bodies or corporations concerned, and the court may, upon application by the victim or his relatives, order compensation for any injury that had resulted from the offence, in accordance with provisions of the relevant Act or Law.[138]

103. The court may order the closure of any premises used in conducting in any way any business in contravention of the provisions of this law for a period of not less than one month and not exceeding one year.[139]

CHAPTER IV – JOINT ACTS

104. When a criminal act is done by several persons in furtherance of the common intention of all, each of such persons is liable for that act in the same manner as if it were done by him alone.

105. Whenever an act, which is criminal only by reason of its being done with a criminal knowledge or intention, is done by several persons, each of such persons who joins in the act with such knowledge or intention is liable for the act in the same manner as if the act were done by him alone with that knowledge or intention.

106. When an offence is committed by means of several acts, whoever intentionally co-operates in the commission of that offence by doing any one of those acts, either singly or jointly with any other person, commits that offence.[140]

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[135] Not in Kaduna. PC limits the caning to twelve strokes, and to male offenders.

[136] Only Kano and Katsina have this explanation.

[137] Not in PC. Kano and Katsina omit warning.

[138] Not in Kaduna. PC provides for "compensation to any person injured … in addition to or in substitution for any other punishment." Sokoto: "upon application by the victim or his legal representative and in case of victim's death by his legal heirs, order compensation … in accordance with the relevant provisions of this code or the general principles of Maliki School of thought." Note also the section on compensation included in the chapter on GENERAL EXPLANATIONS AND DEFINITIONS, above §37.

[139] Not in PC. Bauchi and Katsina omit the period of closure. Jigawa: "not exceeding one year or pending the determination of the case." Kaduna allows the court to vacate any such order to allow the premises to be used for any legitimate purpose.

[140] PC has three illustrations to this section, of which Sokoto alone includes one, the second, as follows: "A and B are joint jailors and as such have the charge of Z a prisoner alternately for six hours at a time. A and B intending to cause Z's death knowingly co-operate in causing that effect by illegally

107. Where several persons are engaged or concerned in the commission of a criminal act each person may be guilty of a different offence or offences by means of that act.[141]

CHAPTER V – ABETMENT

108. A person abets the doing of a thing, who:

(a) instigates any person to do that thing; or

(b) engages with one or more person or persons in any conspiracy for the doing of that thing; or

(c) intentionally aids or facilitates by any act or illegal omission the doing of that thing.[142]

109. A person abets an offence who abets either the commission of an offence or the commission of an act which would be an offence, if committed with the same intention or knowledge as that of the abettor by a person capable by law of committing an offence.[143]

110. Whoever abets any offence shall, if the act abetted is committed in consequence of the abetment and no express provision is made by this law or by any other law for the time being in force for the punishment of such abetment, be punished with the punishment provided for the offence.[144]

111. Whoever abets the commission of an offence shall, if the person abetted does the act with a different intention or knowledge from that of the abettor, be punished with the punishment provided for the offence which would have been committed if the act had been done with the intention or knowledge of the abettor and with no other.

112. When an act is abetted and a different act is done and the act done was a probable consequence of the abetment and was committed under the influence of the instigation or in pursuance of the conspiracy or with the aid which constitutes the abetment, the abettor is

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omitting, each during the time of his attendance, to furnish Z with food supplied to them for that purpose. Z dies of hunger. Both A and B are guilty of culpable homicide."

[141] PC has an illustration after this section, omitted in all SPCs and here.

[142] PC has an explanation and two illustrations following this section. Only Kano, Katsina and Sokoto include any of this, namely, the two illustrations, as follows: "(a) A is authorised by a warrant from a court of justice to arrest Z. B, knowing that fact and also that C is not Z, wilfully represents to A that C is Z and thereby intentionally causes A to arrest C. Here B abets by instigation the arrest of C. (b) A, a policeman, bound as such to give information of all designs to commit robbery and knowing that Z intends to commit a robbery illegally omits to give information of Z's intention, knowing that the commission of the robbery is likely to be thereby facilitated. Here A has abetted the robbery."

[143] PC has five explanations and six illustrations following this section. Kano and Katsina include the first two explanations only, as follows: "Explanation 1. The abetment of the illegal omission of an act may amount to an offence although the abettor may not himself be bound to do that act. Explanation 2. To constitute the offence of abetment, it is not necessary that the act abetted should be committed or that the effect requisite to constitute the offence should be caused." Sokoto includes a different one of the explanations, as follows: "The abetment of an offence being an offence, the abetment of such an abetment is also an offence." No other SPC includes any of the illustrations or explanations, the rest of which we omit here.

[144] PC has an explanation and two illustrations following this section. These are omitted in all SPCs and here. Kaduna changes the provision as follows: " … if the act abetted is committed in consequence of the abetment be subjected to *ta'azir* punishment."

liable for the act done in the same manner and to the same extent as if he had directly abetted it.[145]

113. If the act for which the abettor is liable under section 112 is committed in addition to the act abetted and constitutes a distinct offence, the abettor is liable to punishment for each of the offences.

114 When an act is abetted with the intention on the part of the abettor of causing a particular effect and an act for which the abettor is liable in consequence of the abetment causes a different effect from that intended by the abettor, the abettor is liable for the effect caused in the same manner and to the same extent as if he had abetted the act with the intention of causing that effect, provided he knew that the act abetted was likely to cause that effect.[146]

115. Whenever any person who if absent would be liable to be punished as an abettor is present when the act or offence for which he would be punishable in consequence of the abetment is committed, he shall be deemed to have committed such act or offence.[147]

116. (1) Whoever abets the commission of an offence punishable with death or imprisonment for life shall, if that offence be not committed in consequence of the abetment and no express provision is made by this law or by any other Act or Law for the time being in force for the punishment of such abetment, be punished with imprisonment for a term which may extend to two years and shall also be liable to caning, which may extend to fifty lashes.[148]

(2) If the abettor is a public servant whose duty it is to prevent the commission of such offence, he shall be liable to imprisonment for a term which may extend to four years and shall also be liable to caning which may extend to fifty lashes.[149]

117. (1) Whoever abets an offence punishable with imprisonment shall, if that offence is not committed in consequence of the abetment and no express provision is made by this law or by any other Act or Law for the time being in force for the punishment of such abetment, be punished with imprisonment for a term which may extend to one fourth part of the longest term provided for that offence or with such fine as is provided for that offence or with both.[150]

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[145] PC has two illustrations following this section, omitted in all SPCs and here.
[146] PC has an explanation and an illustration following this section, omitted in all SPCs and here.
[147] This section is omitted from Kaduna.
[148] PC: up to "seven years and shall also be liable to fine." Gombe, Jigawa, Kano, Katsina, Sokoto, Yobe and Zamfara have the same provision as here. Bauchi reduces the maximum number of lashes to 40, Kebbi to 15; and Kebbi allows fine in the alternative to imprisonment. Kaduna's punishment provision is different: "Whoever abets … shall be liable to *ta'azir* punishment."
[149] PC: up to "ten years and shall also be liable to fine." The only state with the identical punishment as here is Yobe. Gombe, Jigawa, Kano, Katsina and Zamfara: up to 2 years and 50 lashes. Bauchi: 3 years/40 lashes; Sokoto: 3 years/60 lashes. Kebbi again allows fine in the alternative to imprisonment and up to 15 lashes. Kaduna omits this section entirely. PC also includes an illustration not included in any SPC or here.
[150] Kaduna omits this and the next subsection entirely.

(2) If the abettor is a public servant whose duty it is to prevent the commission of such offence, he shall be liable to imprisonment for a term which may extend to three years and shall also be liable to caning which may extend to fifty lashes.[151]

118. Whoever abets the commission of an offence by the public generally or by any member thereof or class of persons exceeding ten, shall be punished with imprisonment for a term which may extend to one year or with fine or with both.[152]

119. Whoever administers, or takes, or is present at and consents to the administering of, any oath or engagement in the nature of an oath, purporting to bind the person who takes it to commit any offence shall be punished:

(a) with imprisonment for a term which may extend to two years or with fine or with both;[153] and

(b) if the offence is an offence punishable with death, with imprisonment for a term which may extend to five years, or with fine and shall in addition be liable to caning of forty-five lashes.[154]

CHAPTER VI – ATTEMPTS TO COMMIT OFFENCES

120. Whoever attempts to commit an offence punishable with imprisonment or to cause such an offence to be committed and in such attempt does any act towards the commission of the offence shall, where no express provision is made by this law or by any other Act or Law for the time being in force for the punishment of such attempt, be punished with imprisonment for a term which may extend to one half of the longest term provided for that offence or with such fine as is provided for the offence or with both.[155]

CHAPTER VII – CRIMINAL CONSPIRACY

121. (1) When two or more persons agree to do or cause to be done:

(a) an illegal act; or

(b) an act which is not illegal by illegal means,

such an agreement is called a criminal conspiracy.

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[151] PC includes an illustration not included in any SPC or here. PC punishes with imprisonment for up to "one half of the longest term provided for that offence or with such fine as is provided for the offence or with both." Gombe, Jigawa, Kano, Katsina, Yobe and Zamfara are identical to the provision here. Bauchi: 1 year/40 lashes. Sokoto: 1 year/50 lashes. Kebbi again allows fine in the alternative to imprisonment for up to 3 years, plus 15 lashes.

[152] Bauchi: up to 2 years or fine or both. Kano and Katsina add to the punishment provisions here, in the alternative, five to forty lashes, "or all". Kaduna's provision is different: "Whoever abets the commission of an offence by more than one person shall be subject to *ta'azir* punishment."

[153] Bauchi raises the maximum term of imprisonment to 7 years. Kano and Katsina specify the amount of the fine: ₦50,000. Kaduna omits this subsection and the next entirely.

[154] PC: up to life or fine or both. Bauchi: up to life. Gombe, Jigawa, Kebbi, Yobe and Zamfara: up to 5 years or fine or both. Sokoto is like these last except imprisonment may only be for up to 2 years. Katsina is as here, except the amount of the fine is put at ₦50,000. Kano is like Katsina except that the 45 lashes are in the alternative instead of in addition.

[155] PC gives two illustrations following this section, omitted in all SPCs and here. Kaduna eliminates the requirement that the offence attempted be punishable with imprisonment, and makes the punishment "*ta'azir* punishment."

(2) Notwithstanding the provisions of subsection (1), no agreement except an agreement to commit an offence shall amount to a criminal conspiracy unless some act besides the agreement is done by one or more parties to such agreement in pursuance thereof.

Explanation 1:

It is immaterial whether the illegal act is the ultimate object of such agreement, or is merely incidental to that object.

Explanation 2:

This section shall not apply to an agreement of two or more persons to do or cause to be done any act in contemplation or furtherance of a trade dispute if such act committed by one person would not be punishable as an offence.[156]

122. (1) Whoever is a party to a criminal conspiracy to commit an offence punishable with death or with imprisonment shall where no express provision is made in this law for the punishment of such a conspiracy be punished in the same manner as if he had abetted such offence.

(2) Whoever is a party to a criminal conspiracy other than a criminal conspiracy to commit an offence punishable as aforesaid shall be punished with imprisonment for a term not exceeding six months or with fine or with both.[157]

123. Any society which by its composition, nature, or conduct is anti-social, counter productive or opposed to the general belief and culture of the people of the State, or is dangerous and obstructive to the good governance of the State or any part thereof, is said to be an unlawful society.[158]

124. Whoever manages or is a member of an unlawful society shall be punished with imprisonment for a term which may extend to seven years and shall also be liable to caning which may extend to sixty lashes.[159]

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[156] PC contains a third explanation omitted in all SPCs and here. Gombe omits all explanations.

[157] Kaduna collapses the two subsections of this section into: "Whoever is a party to a criminal conspiracy to commit an offence shall be punished in the same manner as if he had abetted such offence."

[158] Sokoto: "opposed to the general belief in worship and culture". PC has an entirely different wording: "A society is an unlawful society if declared by an order of the Governor in Council to be a society dangerous to the good government of the State or any part thereof."

[159] PC: up to 7 years or fine or both. Gombe, Jigawa, Kano, Katsina, Yobe and Zamfara as here except that Kano and Katsina add "or with both". Bauchi: 7 years/40 lashes. Sokoto: 2 years/60 lashes. Kebbi: 7 years or fine, and up to 15 lashes. Kaduna: *ta'azir*.

CHAPTER VIII – HUDUD AND HUDUD-RELATED OFFENCES[160]

Zina (Adultery or Fornication)[161]

125. Whoever, being a man or a woman fully responsible, has sexual intercourse through the genital of a person over whom he has no sexual rights and in circumstances in which no doubt exists as to the illegality of the act, is guilty of the offence of *zina.*[162]

126. Whoever commits the offence of *zina* shall be punished:

(a) with caning of one hundred lashes if unmarried, and where the offender is a man shall also be liable to imprisonment for a term of one year;[163] or

(b) if married, with stoning to death *(rajm)*.[164]

Explanation:

Mere penetration is sufficient to constitute the sexual intercourse necessary to the offence of zina.[165]

Rape

127. (1) A man is said to commit rape who, save in the case referred in subsection (2),[166] has sexual intercourse with a woman in any of the following circumstances:

(a) against her will;

(b) without her consent;

(c) with her consent, when her consent has been obtained by putting her in fear of death or of hurt;

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[160] This chapter gathers offences organised and sometimes defined differently in PC. Adultery and incest come in PC in a chapter entitled OFFENCES RELATING TO MARRIAGE AND INCEST; five other PC offences relating to marriage, e.g. "Deceitfully inducing belief of lawful marriage", are omitted here and in all SPCs. Rape, sodomy, lesbianism, bestiality and gross indecency come in PC in the chapter on OFFENCES AFFECTING THE HUMAN BODY, where sodomy, lesbianism, and bestiality are not differentiated but are presumably what is meant there by "unnatural offences". There is a separate chapter of PC dealing with DEFAMATION, where *qadhf* is not separately distinguished. Offences related to alcohol are dealt with in PC in a chapter on CRIMINAL INTIMIDATION, INSULT AND ANNOYANCE AND DRUNKENNESS. All the rest of the offences included in this chapter are grouped in PC under OFFENCES AGAINST PROPERTY. The only PC offences against property not included in this chapter are those relating to *Mischief*, which are put here in the chapter on TA'AZIR OFFENCES. For more details, see notes to the specific sections.

[161] Compare PC §§387 and 388: "Whoever, being a [§387: man; §388: woman] subject to any native law or custom in which extra-marital sexual intercourse is recognised as a criminal offence, has sexual intercourse with a person who is not and whom [he; she] knows or has reason to believe is not [his wife; her husband] [§387: such sexual intercourse not amounting to the offence of rape] is guilty of the offence of adultery and shall be punished with imprisonment for a term which may extend to two years or with fine or with both."

[162] Bauchi: "fully responsible and of Islamic faith". Kebbi: "no doubt exists as to the committal of the act". Kebbi also adds: "PROVE: 1. Four male witnesses to the act of *zina* who shall be Muslims; 2. Self confession; 3. Pregnancy."

[163] Bauchi and Kebbi: imprisonment "in a location other than his domicile". Gombe, Jigawa, Katsina, Kebbi, Sokoto, Yobe and Zamfara omit the limitation of the punishment of imprisonment to males.

[164] Kebbi: "if married and the marriage consummated".

[165] Gombe omits the explanation.

[166] Kano and Katsina omit this excepting clause in subsection (1), but nevertheless include the exception as subsection (2).

(d) with her consent, when the man knows that he is not her husband and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married;

(e) with or without her consent, when she is under fifteen years of age or of unsound mind.[167]

(2) Sexual intercourse by a man with his own wife is not rape.[168]

Explanation:

Mere penetration is sufficient to constitute the sexual intercourse necessary to the offence of rape.

128. Whoever commits rape, shall be punished:[169]

(a) with caning of one hundred lashes if unmarried, and shall also be liable to imprisonment for a term of one year;[170] or

(b) if married, with stoning to death *(rajm)*; and

(c) in addition to either (a) or (b) above shall also pay the dower of her equals *(sadaq al-mithli)* and other damages to be determined by the court.[171]

[Explanation:][172]

Sodomy (Liwat)[173]

129. Whoever has anal coitus with any man is said to commit the offence of sodomy.[174]

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[167] PC: "when she is under fourteen years". Bauchi: "under the age of maturity". Kaduna: "under the age of *taklif*".

[168] PC adds: "if she has attained to puberty".

[169] PC omits subsections (a)-(c), punishing rape "with imprisonment for life or for any less term and shall also be liable to fine."

[170] Bauchi: "imprisonment for a term which may extend to fourteen years in a location other than his domicile". Kano and Katsina: "imprisonment which may extend to life imprisonment".

[171] Only Kaduna includes, as here, "and other damages to be determined by the court".

[172] Kano and Katsina have the following explanation here: "The conditions for proving the offences of *zina* (fornication or adultery) or rape in respect of a married person are as follows: (a) Islam; (b) maturity; (c) sanity; (d) liberty; (e) valid marriage; (f) consummation of the marriage; (g) four witnesses; or (h) confession. If any of the above conditions has not been proved by the person alleging *zina* or rape there is no punishment of stoning to death; the person alleging such offence shall be imprisoned for one year and shall also be liable to caning which may extend to one hundred lashes."

[173] PC omits the separate offence of sodomy, presumably including it under "Unnatural offences": "Whoever has carnal intercourse against the order of nature with any man, woman or animal shall be punished with imprisonment for a term which may extend to fourteen years and shall also be liable to fine. Explanation: Mere penetration is sufficient to constitute the carnal intercourse necessary to the offence described in this section."

[174] Only Kaduna and Yobe have this same language. All other states: "Whoever has carnal intercourse against the order of nature with any man or woman is said to commit the offence of sodomy." Kano and Katsina qualify this: "with any man or woman through her rectum". All states except Kaduna also add the following proviso: "Except that whoever is compelled by the use of force or threats [Sokoto: of force or in fear of death or grievous hurt or fear of any other serious injury] or without his consent to commit that act of sodomy [Kano and Kaduna: with another shall not be the subject] [all others: upon the person of another or be the subject] of the act of sodomy nor shall he be deemed to have committed the offence." Kebbi also adds the following: "PROVE: 1. Sound mind; 2. Self Confession; 3. Four male witnesses in the act of sodomy who shall be trustworthy Muslims."

130. (1) Subject to the provisions of subsection (2), whoever commits the offence of sodomy shall be punished with stoning to death *(rajm).*[175]

(2) Whoever has anal coitus with his wife shall be punished with caning which may extend to fifty lashes.[176]

Explanation:

Mere penetration is sufficient to constitute anal coitus necessary to the offence of sodomy.[177]

Incest[178]

131. (1) Whoever being a man, has sexual intercourse with a woman who is and whom he knows or has reason to believe to be his daughter, his grand daughter, his mother or any other of his female ascendants or descendants, his sister or the daughter of his sister or brother or his paternal or maternal aunt has committed the offence of incest.

(2) Whoever, being a woman, voluntarily permits a man who is and whom she knows or has reason to believe to be her son, her grandson, her father or any other of her male ascendants or descendants, her brother or the son of her brother or sister or her paternal or maternal uncle to have sexual intercourse with her, has committed the offence of incest.[179]

132. Whoever commits incest shall be punished:[180]

(a) with caning of one hundred lashes if unmarried, and where the offender is a male shall also be liable to imprisonment for a term of not less than one year and not exceeding five years;[181] or

(b) if married, with stoning to death *(rajm).*

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[175] Only Yobe is as here. Kaduna, Katsina and Kebbi: "Whoever commits the offence of sodomy shall be punished with stoning to death (*rajm*)."Bauchi adds: "or by any other means decided by the state." Gombe, Jigawa, Kano and Zamfara: "Whoever commits the offence of sodomy shall be punished: (a) with caning of 100 lashes if unmarried and shall also be liable to imprisonment for a term of one year, or (b) if married [Kano: or has previously been married] with stoning to death (*rajm*)." Sokoto: "shall be punished (a) with stoning to death; (b) if the act is committed by a minor on an adult person the adult person shall be punished by way of *ta'azir* which may extend to 100 lashes and minor with correctional punishment."

[176] Only Kaduna and Yobe vary the punishment in the case of sodomy with the wife, as here. Yobe: punishment as here. Kaduna: *ta'azir.*

[177] Gombe and Kaduna omit this explanation.

[178] Kano and Katsina omit the offence of incest.

[179] PC includes subsections (1) and (2) in one section, which also specifies the punishment. PC also includes an explanation: "In this section words expressing relation include relatives of the half blood and relatives whose relation is not traced through a lawful marriage."

[180] PC omits subsections (a) and (b), punishing all incest "with imprisonment for a term which may extend to seven years and shall also be liable to fine."

[181] Bauchi, Gombe, Jigawa, Kebbi, Sokoto, Yobe, and Zamfara omit the limitation of the punishment of imprisonment to males. All states make the term of imprisonment one year. Kebbi adds: "PROVE: Four trustworthy male witnesses to the act of incest."

Lesbianism (Sihaq)[182]

133. Whoever, being a woman, engages another woman in carnal intercourse through her sexual organ or by means of stimulation or sexual excitement of one another has committed the offence of lesbianism.

134 Whoever commits the offence of lesbianism shall be punished with caning which may extend to fifty lashes and in addition be sentenced to a term of imprisonment which may extend to six months.[183]

[Explanation:][184]

Bestiality (Wat al-Bahimah)[185]

135 Whoever, being a man or woman, has carnal intercourse with any animal is said to commit the offence of bestiality.

136 Whoever commits the offence of bestiality shall be punished with caning of fifty lashes and in addition shall be sentenced to a term of imprisonment of six months.[186]

Explanation:[187]

Mere penetration is sufficient to constitute the carnal intercourse necessary to the offence of bestiality.

Gross Indecency

137. Whoever commits an act of gross indecency by way of kissing in public, exposure of nakedness in public and other related acts of similar nature capable of corrupting public morals shall be punished with caning which may extend to forty lashes and may be liable to imprisonment for a term not exceeding one year and may also be liable to fine.[188]

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[182] PC omits the separate offence of lesbianism, presumably including it under "Unnatural offences": see note to *Sodomy (Liwat)* above.

[183] Bauchi: "imprisonment which may extend to up to five years." Kano and Katsina: stoning to death. Kaduna: *ta'azir*.

[184] Bauchi, Jigawa, Katsina, Kebbi, Sokoto, Yobe and Zamfara include the following explanation: "The offence is committed by the unnatural fusion of the female sexual organs and/or by the use of natural or artificial means to stimulate or attain sexual satisfaction or excitement."

[185] PC omits the separate offence of bestiality, presumably including it under "Unnatural offences": see note to *Sodomy (Liwat)* above.

[186] Bauchi: "shall be punished with caning of 40 lashes and in addition shall be sentenced to a term of imprisonment of fourteen years and animal shall be caused to be killed." Kano and Katsina: 100 lashes and two years. Kaduna: *ta'azir*.

[187] Kebbi adds: "PROVE: 1. Self confession; 2. Sound mind; 3. Four male witnesses in act of bestiality who shall be trustworthy Muslims." Explanation omitted in Gombe.

[188] Definition of the offence: Kaduna: omits "by way of kissing". Kano and Katsina: "in order to corrupt" instead of "capable of corrupting". Gombe: "any sexual offence against the normal or usual standards of behaviour." PC, Bauchi, Jigawa, Kebbi, Sokoto, Yobe and Zamfara do not define gross indecency, saying only: "Whoever commits an act of gross indecency upon the person of another without his consent or by the use of force or threat compels a person to join with him in the commission of such act shall be punished …" Punishment: PC: up to 7 years and fine. Bauchi: 40 lashes, 7 years and fine. Kaduna: *ta'azir*. Sokoto varies the provision here only by using 'or' instead of 'and' and adding 'or both'. All states except Kaduna add the following proviso: "Provided that a consent given by a person below the age of [PC: 16 years] [Gombe, Jigawa, Kebbi, Sokoto, Yobe, Zamfara: 15 years] [Kano, Katsina: puberty] [Bauchi: maturity] to such an act when done by his

False Accusation of Zina (Qadhf)[189]

138. Whoever by words either spoken or reproduced by mechanical or electronic[190] means or intended to be read or by signs or by visible representations makes or publishes any false imputation of *zina* or sodomy concerning a chaste person[191] or contests the paternity of such person even where such person is dead, is said to commit the offence of *qadhf*.

Provided that a person is deemed to be chaste who has not been convicted of the offence of *zina* or sodomy.

139. Whoever commits the offence of *qadhf* shall be punished with caning of eighty lashes.[192]

140. The offence of *qadhf* shall be remitted in any of the following cases:

(a) where the complainant *(maqdhuf)* pardons the accuser *(qadhf)*

(b) where a husband accuses his wife of *zina* and undertakes the process of mutual imprecation (*li'an*);

(c) where the complainant *(maqdhuf)* is a descendant of the accuser *(qadhf)*.

Defamation[193]

141. (1) Whoever by words either spoken or reproduced by mechanical or electronic[194] means or intended to be read or by signs or by visible representations makes or publishes any imputation concerning a person, intending to harm or knowing or having reason to believe that such imputation will harm the reputation of such person, is said, save in the cases hereinafter excepted, to defame that person.

(2) It is not defamation -

(a) to impute anything which is true concerning any person, if it be for the public good that the imputation should be made or published; whether or not it is for the public good is a question of fact;

(b) to express in good faith any opinion whatever respecting the conduct of a public servant in the discharge of his public functions or respecting his character so far as his character appears in that conduct and no further;

(c) to express in good faith any opinion whatever respecting the conduct of any person touching any public question and respecting his character so far as his character appears in that conduct and no further;

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teacher, guardian or any person entrusted with his care or education shall not be deemed to be a consent within the meaning of this section."

189 PC omits these provision on *qadhf*.

190 Only Kaduna includes "or electronic".

191 All SPCs add after 'chaste person': *muhsin*; similarly after 'chaste' in next sentence.

192 Bauchi, Gombe, Jigawa, Katsina, Kebbi, Sokoto, Yobe, Zamfara add: "and his testimony shall not be accepted thereafter unless he repents before the court." "Before the court" however omitted in Sokoto.

193 PC includes identical provisions on defamation, only varying the punishment as noted below. PC also includes many explanations and illustrations omitted here and in all SPCs.

194 Only Kaduna includes "or electronic".

(d) to publish a substantially true report of proceedings of a Court of Justice or of the result of any such proceedings;

(e) to express in good faith any opinion whatever respecting the merits of any case civil or criminal which has been decided by a court of justice or respecting the conduct of any person as a party, witness or agent in any such case or respecting the character of such person as far as his character appears in that conduct and no further;

(f) to express in good faith any opinion respecting the merits of any performance which its author has submitted to the judgment of the public or respecting the character of the author so far as his character appears in such performance and no further;

(g) in a person having over another any authority either conferred by law or arising out of a lawful contract made with that other to pass in good faith any censure on the conduct of that other in matters to which lawful authority relates;

(h) to prefer in good faith an accusation against any person to any of those who have lawful authority over that person with respect to the subject matter of the accusation;

(i) to make an imputation on the character of another, provided that the imputation be made in good faith for the protection of the interests of the person making it or of any other person or for the public good;

(j) to convey a caution in good faith to one person against another, provided that such caution be intended for the good of the person to whom it is conveyed or of some person in whom that person is interested or for the public good.

142. Whoever defames another shall be punished with caning which may extend to forty lashes and may be liable to imprisonment for a term which may extend to six months or fine which may extend to five thousand naira or with both.[195]

Theft (Sariqah)

143. The offence of theft shall be deemed to have been committed by a person who covertly, dishonestly and without consent, takes any lawful and movable property belonging to another, out of its place of custody *(hirz)* and valued not less than the minimum stipulated value *(nisab)* without any justification.[196]

144. Whoever commits the offence of theft punishable with *hadd* shall be punished with amputation of the right hand from the joint of the wrist; and where the offender is convicted for the second theft, shall be punished with the amputation of the left foot from the ankle; and where the offender is convicted for the third theft, shall be punished with the amputation of the left hand from the joint of the wrist; and where the offender is convicted for the fourth theft, shall be punished with the amputation of the right foot from the ankle;

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[195] PC: 2 years or fine or both. Bauchi, Zamfara: 2 years and 40 lashes. Gombe, Jigawa, Kano, Katsina, Kebbi, Sokoto, Yobe: 1 year and 40 lashes. Kaduna: *ta'azir*.

[196] PC: "(1) Whoever, intending to take dishonestly any movable property out of the possession of any person without that person's consent, moves that property in order to take it is said to commit theft. (2) Whoever dishonestly abstracts, diverts, consumes or uses any electricity or electric current is said to commit theft." In PC, five explanations and fourteen illustrations follow.

and where the offender is convicted for the fifth or subsequent thefts, he shall be imprisoned for a term not exceeding one year.[197]

145. Whoever commits the offence of theft that does not meet with the requirement of *hirz* or *nisab* as provided under section 144 is said to commit the offence of theft not punishable with *hadd.*[198]

146. The penalty of *hadd* for theft shall be remitted in any of the following cases:

(a) where the offence was committed by ascendant against descendant;

(b) where the offence was committed between spouses within their matrimonial home; provided the stolen property was not under the victim's lock and key;

(c) Where the offence was committed under circumstances of necessity and the offender did not take more than he ordinarily requires to satisfy his need or the need of his dependents;

(d) where the offender believes in good faith that he has a share (or a right or interest) in the said stolen property and the said stolen property does not exceed the share (or the right or interest) to the equivalent of the minimum value of the property *(nisab);*

(e) where the offender retracts his confession before execution of the penalty in cases where proof of guilt was based only on the confession of the offender;

(f) where the offender returns or restitutes the stolen property to the victim of the offence and repents before he was brought to trial, he being a first time offender;

(g) where the offender was permitted access to the place of custody *(hirz)* of the stolen property;

(h) where the victim of the offence is indebted to the offender and is unwilling to pay, and the debt was due to be discharged prior to the offence, and the value of the property stolen is equal to, or does not exceed the debt due to the offender to the extent of the *nisab*;

(i) Where the confession made by the offender was obtained involuntarily in cases where proof of guilt was based only on the confession of the offender.[199]

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[197] PC does not include anything similar to what are here §§144-146. SPCs: only Kaduna includes the words "from the ankle" in this section. For fifth offence: Bauchi: life; Kaduna: *ta'azir*. Kebbi: "PROVE: 1. Moveable property. 2. Property must be moved. 3. No right of entry. 4. *Mukalif* (sound mind). 5. Self confession. 6. Property must not be in open place."

[198] Kaduna adds: "Provided that a person may not be subject to *hadd* punishment who commits theft in times of war, famine, or other natural" [sic]. Katsina omits this section entirely. Kano, instead of this section, has here: "Whoever is a public servant or a staff of a private sector including bank or company connives with somebody or some other people or himself and stole public funds or property under his care or somebody under his jurisdiction he shall be punished with amputation of his right hand wrist and sentence of imprisonment of not less than five years and stolen wealth shall be confiscated. If the money or properties stolen are mixed with another different wealth it will all be confiscated until all monies and other properties belonging to the public are recovered. If the confiscated amount and stolen properties are not up to the amount the whole wealth shall be confiscated and he will be left with some amount to sustain himself." This provision of Kano's substitutes for the section on "criminal breach of trust by public servant or by banker, merchant or agent", §167 here, which Kano omits.

147. Whoever commits the offence of theft under section 145 or where the punishment of theft was remitted under section 146 shall be punished with imprisonment for a term which may extend to one year and shall also be liable to caning which may extend to fifty lashes.[200]

Drinking alcoholic drink (Shurb al-Khamr)

148. Whoever drinks alcohol or any other intoxicant knowingly and voluntarily, shall be punished with caning of eighty lashes.[201]

149. Whoever prepares alcohol by either manufacturing, pressing, extracting or tapping whether for himself or for another; or transports, carries or loads alcohol whether for himself or for another; or trades in alcohol by buying or selling or supplying premises by either leasing or storing or leasing out premises for the storing or preserving or consumption or otherwise dealing or handling in any way alcoholic drinks or any other intoxicant shall be punished with caning which may extend to forty lashes or with imprisonment for a term which may extend to six months or with both.[202]

150. Whoever is found drunk or drinking in a public or private place; and conducts himself in a disorderly manner, to the annoyance of any person or incapable of taking care of himself, shall in addition to the punishment specified in section 148 above, be punished with imprisonment for a term which may extend to six months or with a fine which may extend to two thousand naira or with both.[203]

Robbery (Hirabah)

151. Whoever acting alone or in conjunction with others in order to seize property or to commit an offence, or for any other reasons voluntarily causes or attempts to cause to any person death or hurt or wrongful restraint or fear of instant death or of instant hurt, or of

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[199] Subsection (i) not included in any SPC.

[200] Bauchi: 1 year/40 lashes. Kaduna: *ta'azir*. PC: punishment for theft: 5 years or fine or both; but if in or from any building, tent, or vessel etc., or if by a clerk or servant etc., 7 years or fine or both; and if done having made preparation for causing death or hurt or restraint etc., 14 years and fine; with two illustrations.

[201] Bauchi: "whoever, being a Muslim". No SPC includes the word "knowingly". Bauchi adds: "For the purpose of this section the intake of any substance that causes a change in the physical balance of the individual shall attract the same penalty." PC: "Whoever being of the Moslem faith drinks anything containing alcohol other than for a medicinal purpose shall be punished with [up to 1 month or £5 or both]." PC §404: punishments can double or triple for 2nd or subsequent convictions within 6 months.

[202] Bauchi, Jigawa, Kaduna, Kano and Katsina include "or any other intoxicant", but Kano and Katsina, perhaps inadvertently, omit before this phrase the words "alcoholic drinks". Punishments: Bauchi: 2 years/80 lashes. Kaduna: *ta'azir*. PC: no similar section.

[203] Bauchi: 1 year and 80 lashes, or fine. Kano and Katsina: 6 months or ₦5,000 or both. Kaduna: *ta'azir*. PC contains two separate sections related to this one: §401: "Whoever is found drunk in a public place or in any place by entering which he commits a trespass, shall be punished (a) with [up to 3 months or £50 or both]; and (b) if the person so found conducts himself in such place in a disorderly manner or is incapable of taking care of himself, with [up to 6 months or £100 or both]." §402: "Whoever being drunk in any private place there conducts himself in a disorderly manner to the annoyance of any person having a right to exclude him from such place or fails to leave such place when requested to do so by such person, shall be punished with [up to 6 months or £100 or both]." §404: punishments can double or triple for 2nd or subsequent offences within 6 months.

instant wrongful restraint in circumstances that render such person helpless or incapable of defending himself, is said to commit the offence of *hirabah*.[204]

152. Whoever commits *hirabah* shall be punished:[205]

(a) with imprisonment for life where the offence was committed without seizure of property or causing death;[206]

(b) with amputation of the right hand from the wrist and the left foot from the ankle where property was seized, but death was not caused;

(c) with death sentence where death was caused, but property was not seized;[207]

(d) with *salb*, where murder was committed and property was seized.[208]

153. Whoever makes any preparation for committing the offence of *hirabah,* shall be punished with imprisonment for a term not exceeding one year and shall also be liable to caning which may extend to fifty lashes.[209]

154. Whoever belongs to a gang of persons associated for the purpose of committing *hirabah,* shall be punished with imprisonment for a term which may extend to one year and shall also be liable to caning which may extend to fifty lashes.[210]

Extortion

155. Whoever intentionally puts any person in fear of any injury to that person or to any other and thereby dishonestly induces the person so put in fear to deliver to any person any

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[204] Kaduna: "… or to commit theft, armed with any dangerous weapon or instrument…", and other minor variations. Bauchi: "*Hirabah* (Brigandage and Armed Robbery) occurs when a person acting singly or in concert with others, commits theft through violence or profits by the fact that his victim(s) are far from help and openly seizes them or their goods, through: (a) the use of narcotics; (b) enticement and ambush; c) the use of naked violence including murder in any area." PC defines robbery as theft done by causing or attempting to cause death or hurt etc. or extortion done by putting in fear of same; there are 4 illustrations. Brigandage is defined as robbery or attempted robbery by 5 or more persons.

[205] PC, like the SPCs, varies the punishments for robbery and brigandage depending on the circumstances, but the parameters and the punishments are different than here. Simple robbery: up to 10 years and fine. If at night on the highway or a person sleeping outside: up to 14 years and fine. If by a person armed with a dangerous weapon: up to life and fine. If hurt caused: up to 14 years and fine. If culpable homicide committed during brigandage: all brigands: death. Etc.

[206] Gombe: up to 14 years. Sokoto: up to 5 years.

[207] Kano and Katsina: "with death sentence where death was caused"; and Kano and Katsina omit subsection (d).

[208] Only Kaduna uses *salb*; others have "crucifixion". Bauchi: "death by impalement (crucifixion)". Kano and Katsina omit this subsection, see previous note.

[209] Bauchi: up to 1 year and 40 lashes. Kaduna: *ta'azir*. Kebbi: up to 7 years and up to 50 lashes. Kano and Katsina omit this section entirely. PC: "preparation for committing brigandage": up to 10 years and fine.

[210] Bauchi: 21 years/40 lashes. Kebbi: 7 years/50 lashes. Kano: 5 years/100 lashes. Katsina: refers back to "Paragraph 140 [here, §152] (a), (b) or (c) as the case may be." Kaduna: *ta'azir*. PC §305: "associated for the purpose of habitually committing brigandage": up to 14 years and fine. §306: "belongs to any wandering gang of persons associated for the purpose of habitually committing theft or robbery and not being a gang of brigands": up to 7 years and fine. §307: "is one of five or more persons assembled for the purpose of committing brigandage": up to 7 years and fine.

property or document of title or anything signed or sealed which may be converted into valuable security, commits extortion.[211]

156. Whoever commits extortion shall be punished with imprisonment for a term which may extend to three years and shall also be liable to caning which may extend to fifty lashes.[212]

157. Whoever in order to commit extortion puts any person in fear or attempts to put any person in fear of any injury to that person or to any other, shall be punished with imprisonment for a term which may extend to two years and shall also be liable to caning which may extend to fifty lashes.[213]

158. Whoever in order to commit extortion puts any person in fear or attempts to put any person in fear of death or of grievous hurt to that person or to any other, shall be punished with imprisonment for a term which may extend to seven years and shall also be liable to caning which may extend to fifty lashes.[214]

159. Whoever commits extortion by putting any person in fear of an accusation against that person or any other of having committed or attempted to commit any offence punishable with death or with imprisonment for a term which may extend to ten years or of having attempted to induce any other person to commit such offence, shall be punished with imprisonment for a term which may extend to seven years and shall also be liable to caning which may extend to fifty lashes.[215]

Criminal Misappropriation

160. Whoever dishonestly misappropriates or converts to his own use any movable property, commits criminal misappropriation.[216]

161. Whoever commits criminal misappropriation shall be punished with imprisonment for a term which may extend to one year or with caning which may extend to forty lashes or with both.[217]

162. Whoever commits criminal misappropriation of property knowing that the property so misappropriated was in the possession of a deceased person at the time of that person's

[211] PC gives five illustrations after this section, of which Sokoto includes the following two: "(a) A threatens to publish a defamatory libel concerning Z, unless Z gives him money. He thus induces Z to give him money. A has committed extortion. (b) A, not pretending to be a judicial officer, usurps the functions of a court by unlawfully using his position in the community to force Z to pay a fine to him under threat of injury. A has committed extortion."

[212] PC: 5 years or fine. Bauchi: up to 5 years and 40 lashes. Sokoto: 1 year/50 lashes. Kaduna: *ta'azir*.

[213] PC: 2 years or fine or both. Bauchi, Jigawa, Kano, Katsina, Kebbi, Zamfara: 5 years/15 lashes. Sokoto: 2 years/15 lashes. Yobe: 5 years/50 lashes. Gombe: 5 years/caning. Kaduna: *ta'azir*.

[214] PC: 14 years and fine. Bauchi: 14 years/40 lashes. Gombe, Jigawa, Kano, Katsina, Kebbi, Yobe, Zamfara: 14 years/50 lashes. Sokoto: 5 years/50 lashes. Kaduna: *ta'azir*.

[215] Sokoto lowers the threshold of the offence: threatening accusation of a crime "punishable with death or with imprisonment for a term which may extend to five years". Punishments: PC: 14 years and fine. Bauchi, Gombe, Jigawa, Kano, Katsina, Yobe, Zamfara: 14 years/50 lashes. Kebbi: 10 years/50 lashes. Sokoto: 5 years/50 lashes. Kaduna: *ta'azir*.

[216] PC has two explanations and ten illustrations, omitted here and in all SPCs.

[217] PC: 2 years or fine or both. Kano as here. Bauchi, Gombe, Jigawa, Kebbi, Sokoto, Yobe, Zamfara: 1 year or 15 lashes or both. Katsina: 1 yr/50 lashes. Kaduna: *ta'azir*.

death and has not since been in the possession of any person legally entitled to such possession shall be punished:

(a) with imprisonment for a term which may extend to three years and shall also be liable to caning which may extend to forty lashes;[218] or

(b) if the offender at the time of such person's death was employed by him as a clerk or servant, with imprisonment for a term which may extend to five years and shall also be liable to caning which may extend to forty-five lashes.[219]

Criminal Breach of Trust

163. Whoever, being in any manner entrusted with property or with any dominion over property, dishonestly misappropriates or converts to his own use that property or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged or of any legal contract express or implied, which he has made touching the discharge of such trust, or wilfully suffers any other person so to do, commits criminal breach of trust.[220]

164. Whoever commits criminal breach of trust shall be punished with imprisonment for a term which may extend to seven years and with fine and shall also be liable to caning which may extend to fifty lashes.[221]

165. Whoever, being entrusted with property as a carrier, wharfinger or warehouse keeper, commits criminal breach of trust in respect of such property, shall be punished with imprisonment for a term which may extend to seven years and with fine and shall also be liable to caning which may extend to sixty lashes.[222]

166. Whoever, being a clerk or servant or employed as a clerk or servant and being in any manner entrusted in such capacity with property or with any dominion over property, commits criminal breach of trust in respect of that property, shall be punished with imprisonment for a term which may extend to seven years and with fine and shall also be liable to caning which may extend to sixty lashes.[223]

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[218] PC: 3 years and fine. Kano, Katsina: as here. All other SPCs except Kaduna: 3 years/15 lashes. Kaduna: *ta'azir*.

[219] PC: 7 years and fine. Kano, Katsina: as here. All other SPCs except Kaduna: 5 years/20 lashes. Kaduna: *ta'azir*.

[220] PC has six illustrations, of which Sokoto includes two: "(a) A, being executor to the will of a deceased person, dishonestly disobeys the law which directs him to divide the effects according to the will and appropriates them to his own use. A has committed criminal breach of trust. (b) A is a warehouse keeper. Z, going on a journey, entrusts his furniture to A under a contract that it shall be returned on payment of a stipulated sum for storage. A dishonestly sells the goods. A has committed criminal breach of trust."

[221] PC: 7 years or fine or both. Bauchi: 10 years or fine and 40 lashes. Gombe, Jigawa, Yobe, Zamfara: 10 years or fine or both. Kano, Katsina: 10 years or up to ₦100,000 fine or both. Kebbi, Sokoto: 5 years or fine or both. Kaduna: *ta'azir*.

[222] PC: 10 years and fine. Bauchi: 14 years and fine and 20 lashes. Gombe, Kano, Katsina, Yobe, Zamfara: 14 years/fine. Jigawa: 7 years/fine. Kebbi, Sokoto: 5 years/fine. Kaduna: *ta'azir*.

[223] PC: 10 years and fine. Bauchi: 1 year [sic: probably a typo] and fine and 20 lashes. Gombe, Yobe, Zamfara: 14 years/fine. Jigawa: 7 years/fine. Kano, Katsina: 14 years/fine up to ₦140,000. Kebbi, Sokoto: 5 years/fine, Sokoto adding: "Nothing shall preclude the court from imposing or making an order for the payment of restitution." Kaduna: *ta'azir*.

167. Whoever, being in any manner entrusted with property or with any dominion over property in his capacity as a public servant or in the way of his business as a banker, factor, broker, legal practitioner or agent, commits criminal breach of trust in respect of that property, shall be punished with imprisonment for a term which may extend to seven years and with fine and shall also be liable to caning which may extend to sixty lashes.[224]

Receiving Stolen Property

168. Property, the possession whereof has been transferred by theft or by extortion or by *hirabah,* and property, which has been criminally misappropriated or in respect of which criminal breach of trust has been committed, is stolen property, whether the transfer has been made or the misappropriation or breach of trust has been committed within the State or elsewhere; but if such property subsequently comes into possession of a person legally entitled to the possession thereof, it then ceases to be stolen property.[225]

169. Whoever dishonestly receives or retains any stolen property knowing or having reason to believe the same to be stolen property, shall be punished with imprisonment for a term which may extend to seven years and shall also be liable to caning of fifty lashes.[226]

170. Whoever voluntarily assists in concealing or disposing of or making away with property which he knows or has reason to believe to be stolen property, shall be punished with imprisonment for a term which may extend to five years and shall also be liable to caning of thirty lashes.[227]

171. Whoever knowingly has in his possession or under his control anything which is reasonably suspected of having been stolen or unlawfully obtained and who does not give an account to the satisfaction of a court of justice as to how he came by the same, shall be punished with imprisonment for a term which may extend to two years or with fine or with both.[228]

Cheating

172. Whoever by deceiving any person:

(a) fraudulently or dishonestly induces the person so deceived to deliver any property to any person or to consent that any person shall retain any property; or

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[224] Kano and Katsina omit this section entirely, but Kano includes a substitute among its provisions on theft, see note to §145 above. Punishments: PC: 14 years and fine. Bauchi, Gombe, Jigawa, Yobe, Zamfara: 15 years/fine. Kebbi: 5 years/fine. Sokoto: 7 years and fine, adding: "Nothing shall preclude the court from imposing or making an order for the payment of restitution." Kaduna: *ta'azir*.

[225] PC has "robbery" where *hirabah* is here and in all SPCs. Brigandage being included within *hirabah*, a separate section of PC prescribing punishment for receiving property stolen in the commission of brigandage is then omitted here and in all SPCs except Bauchi. As to Bauchi, see note to next section.

[226] PC: 14 years or fine or both. Bauchi: 14 years and 40 lashes. Bauchi adds subsection (b) as follows: "Whoever dishonestly receives or retains any stolen property, the possession whereof he knows or has reason to believe to have been transferred by the commission of brigandage, or dishonestly receives, from a person whom he knows or has reason to believe to belong or have belonged to a gang of brigands, property, which he knows or has reason to believe to have been stolen, shall be punished with imprisonment for life or any less term and shall also be liable to fine." This subsection (b) corresponds to PC §318, omitted here and in all other SPCs. But Bauchi does not separately define "brigandage", cf. note to §151 above.

[227] PC: 5 years or fine or both. Gombe: 7 years/30 lashes. Jigawa: 5 years/50 lashes. Kaduna: *ta'azir*.

[228] PC: 6 months or fine or both. Kaduna: *ta'azir*.

(b) intentionally induces the person so deceived to do or omit to do anything which he would not do or omit to do if he were not so deceived and which act or omission causes or is likely to cause damage or harm to that person in body or mind or reputation or property, is said to cheat.[229]

173. A person is said to cheat by personation if he cheats by pretending to be some other person or by knowingly substituting one person for another or representing that he or any other person is a person other than he or such other person really is.[230]

174. Whoever cheats shall be punished with imprisonment for a term which may extend to two years or with fine and in either case shall also be liable to caning which may extend to twenty lashes.[231]

175. Whoever cheats with the knowledge that he is likely thereby to cause wrongful loss to a person whose interest in the transaction, to which the cheating relates, he was bound either by law or by a legal contract to protect, shall be punished with imprisonment for a term which may extend to three years or with fine and in either case shall also be liable to caning which may extend to forty lashes.[232]

176. Whoever cheats by personation shall be punished with imprisonment for a term which may extend to two years or with fine and in either case shall also be liable to caning which may extend to forty lashes.[233]

177. Whoever cheats and thereby fraudulently or dishonestly induces the person deceived to deliver any property to any person or to make, alter or destroy the whole or any part of a document of title or anything which is signed or sealed and which is capable of being converted into a document of title, shall be punished with imprisonment for a term which may extend to three years and shall also be liable to caning which may extend to forty lashes.[234]

Criminal Trespass

178. Whoever enters into or upon property in the possession of another with intent to commit an offence or to intimidate, insult or annoy any person in possession of such property,[235] unlawfully remains there with intent thereby to intimidate, insult or annoy or with intent to commit an offence, is said to commit criminal trespass.

179. (1) Whoever commits criminal trespass by entering into or remaining in any building, tent or vessel used as a human dwelling or any building used as a place for worship, or

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[229] PC and Sokoto have this explanation: "A dishonest concealment of facts is a deception within the meaning of this section." PC has nine illustrations, of which Sokoto has only the first: "A, by falsely pretending to be in the government service, intentionally deceives Z and thus dishonestly induces Z to let him have on credit goods for which he does not mean to pay. A cheats."

[230] PC and Sokoto have this explanation: "The offence is committed whether the individual personated is a real or imaginary person." PC also has two other illustrations.

[231] PC: 3 years or fine or both. Bauchi: maximum term: 5 years; otherwise as here. Kano and Katsina specify the maximum fine at ₦20,000. Kaduna: *ta'azir*.

[232] PC: 5 years or fine or both. Bauchi: maximum term: 5 years; otherwise as here. Kano and Katsina specify the maximum fine at ₦30,000. Kaduna: *ta'azir*.

[233] PC: 5 years or fine or both. Bauchi: maximum term: 5 years; otherwise as here. Kano and Katsina specify the maximum fine at ₦20,000. Kaduna: *ta'azir*.

[234] PC: 7 years and fine. Bauchi: 10 years/40 lashes. Kaduna: *ta'azir*.

[235] PC inserts at this point: "or, having lawfully entered into or upon such property,".

as a place for the custody of property or any railway carriage, motor vehicle or aircraft used for the conveyance of passengers or goods, is said to commit house trespass.[236]

(2) For the purpose of this section "building" means a structure of any kind whether permanent or temporary and includes a hut, store, granary, pound and a compound completely enclosed by a wall or other structure.[237]

180. (1) Whoever commits house trespass, having taken precaution to conceal such house trespass from some person who has a right to exclude or eject the trespasser from the building, tent, vessel, railway carriage, motor vehicle or aircraft which is the subject of the trespass, is said to commit lurking house trespass.[238]

(2) For the purpose of this section "building" means a structure of any kind whether permanent or temporary and includes a hut, tent, store, granary, pound and a compound completely enclosed by a wall or other structure.[239]

181. Whoever commits lurking house trespass between sunset and sunrise, is said to commit lurking house trespass by night.[240]

182. A person is said to commit house breaking, who commits house trespass, if he effects his entrance into the house or any part of it in any of the six ways hereinafter described; or if being in the house or any part of it for the purpose of committing an offence or having committed an offence therein, he quits the house or any part of it in any of such six ways, that is to say:

(a) if he enters or quits through a passage made by himself or by any abettor of the house trespass in order to commit the house trespass;

(b) if he enters or quits through any passage not intended by any person, other than himself or an abettor of the offence, for human entrance, or through any passage to which he has obtained access by scaling or climbing over any wall or building;

(c) if he enters or quits through any passage which he or any abettor of the house trespass has opened in order to commit the house trespass by any means by which that passage was not intended by the occupier of the house to be opened;

(d) if he enters or quits by opening any lock in order to commit the house trespass or in order to quit the house after a house trespass;

(e) if he effects his entrance or departure by using criminal force or committing an assault or by threatening any person with assault;

(f) if he enters or quits by any passage which he knows to have been fastened against such entrance or departure and to have been unfastened by himself or by an abettor of the house trespass.[241]

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[236] PC omits "motor vehicle or aircraft". PC and Sokoto have this explanation: "The introduction of any part of the criminal trespasser's body is sufficient to constitute house trespass."
[237] PC and Kebbi omit subsection (2).
[238] PC omits "motor vehicle or aircraft".
[239] PC and Kebbi omit subsection (2).
[240] Kano and Katsina omit this section.
[241] PC and Sokoto add: "Explanation: The word house in this section includes any place which may be the subject of house trespass. Illustrations: (a) A commits house trespass by making a hole through the

183. Whoever commits house breaking between sunset and sunrise is said to commit house breaking by night.[242]

184. Whoever commits criminal trespass shall be punished with imprisonment for a term which may extend to one year and shall also be liable to caning which may extend to thirty lashes.[243]

185. Whoever commits house trespass shall be punished with imprisonment for a term which may extend to one year and shall also be liable to caning which may extend to thirty lashes.[244]

186. Whoever commits house trespass in order to commit any offence punishable with death, shall be punished with imprisonment for a term not exceeding seven years and shall also be liable to caning which may extend to fifty lashes.[245]

187. Whoever commits house trespass in order to commit any offence punishable with seven years[246] imprisonment, shall be punished with imprisonment for a term not exceeding two years and shall also be liable to caning which may extend to forty lashes.[247]

188. Whoever commits house trespass in order to commit any offence punishable with imprisonment, shall be punished with imprisonment for a term which may extend to two years and shall also be liable to caning which may extend to forty lashes.[248]

189. Whoever commits lurking house trespass or house breaking, shall be punished with imprisonment for a term which may extend to two years and shall also be liable to caning which may extend to forty lashes.[249]

190. Whoever commits lurking house trespass or house breaking in order to commit any offence punishable with imprisonment, shall be punished with imprisonment for a term which may extend to three years and shall also be liable to caning which may extend to thirty lashes.[250]

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wall of Z's house or cutting a slit in the tent in which Z is living and putting his hand through the aperture. A commits house breaking. (b) A commits house trespass by entering Z's house through a window. This is house breaking." PC further adds one other explanation and six other illustrations.

[242] Kano and Katsina omit this section.

[243] PC: 1 year or £50 or both. Bauchi: 3 years or ₦5,000. Kano and Katsina: as here, but up to 45 lashes. Kaduna: *ta'azir*.

[244] PC: 1 year or £50 or both. Bauchi: 3 years or "not than [sic] ₦10,000 fine" and up to 30 lashes. Kebbi: 1 year or fine and 30 lashes. Kaduna: *ta'azir*. Kano and Katsina omit any punishment for house trespass simpliciter.

[245] PC: 14 years/fine. Bauchi: 14 years/40 lashes. Kaduna: *ta'azir*.

[246] Sokoto is the only SPC using "punishable with seven years imprisonment" here: PC and all other SPCs except Kaduna have "fourteen years". Kaduna, in its marginal section title, calls this section "House trespass to commit offence punishable with seven years imprisonment." But the section itself reads: "Whoever commits house trespass in order to commit any offence shall be liable to *ta'azir* punishment"; and then Kaduna omits the next section.

[247] PC: 10 years and fine. Bauchi: 10 years and 40 lashes or fine. All other SPCs except Kaduna: 5 years/40 lashes. Kaduna: *ta'azir*. And see previous note.

[248] Kaduna omits this section. As to punishments: PC: 7 years/fine. Bauchi as here; all other states: 2 years/20 lashes.

[249] PC: 2 years/fine. Kano and Katsina: 5 years/40 lashes. Kebbi: 2 years or fine and 20 lashes. Kaduna: *ta'azir*. All other SPCs: 2 years/20 lashes.

[250] Bauchi omits this section. Kaduna changes the wording: "in order to commit any offence", although marginal definition says "in order to commit offence punishable with imprisonment";

191. Whoever commits lurking house trespass by night or house breaking by night, shall be punished with imprisonment for a term which may extend to four years and shall also be liable to caning which may extend to forty lashes.[251]

192. Whoever commits lurking house trespass by night or house breaking by night in order to commit any offence punishable with imprisonment, shall be punished with imprisonment for a term which may extend to seven years and shall also be liable to caning which may extend to fifty lashes.[252]

193. If at the time of the committing of lurking house trespass or house breaking any person guilty of such offence voluntarily causes or attempts to cause death or grievous hurt to any person, every person jointly concerned in committing such lurking house trespass or house breaking shall be punished:[253]

(a) with *qisas (*retaliation) under section 199 if death is caused; or

(b) with *qisas (*retaliation) under section 219 if grievous hurt is caused;[254] or

(c) with imprisonment for life or for any less term, and shall also be liable to fine.[255]

194. Whoever dishonestly or with intent to commit mischief breaks open or unfastens any closed receptacle which contains or which he believes to contain property, shall be punished with imprisonment for a term which may extend to one year and shall also be liable to caning which may extend to twenty lashes.[256]

195. Whoever, being entrusted with any closed receptacle which contains or which he believes to contain property, without having authority to open the same dishonestly or with intent to commit mischief breaks open or unfastens that receptacle, shall be punished with imprisonment for a term which may extend to two years and shall be liable to caning which may extend to thirty lashes.[257]

196. Whoever is discovered[258] carrying false keys or other instruments suitable for house breaking and seeks to conceal himself or is otherwise shown to have a criminal intention, shall be punished with imprisonment for a term which may extend to two years and shall also be liable to caning which may extend to thirty lashes.[259]

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punishment is *ta'azir*. Punishments in other codes: PC: 14 years/fine. Kano and Katsina: 7 years/50 lashes. Kebbi: 3 years or fine and 30 lashes. Others as here.

[251] Kano and Katsina omit this section. PC: 3 years/fine. Kebbi: 5 years or fine and 40 lashes. All other SPCs: 5 years/40 lashes.

[252] Bauchi, Kaduna, Kano and Katsina omit this section. PC: up to life/fine. Kebbi: 7 years or fine and 50 lashes.

[253] PC limits this offence to "lurking house trespass by night or house breaking by night". Bauchi omits "or attempts to cause" in the definition of the offence.

[254] Bauchi omits the word "grievous".

[255] This is the only punishment prescribed in PC. Gombe: 14 years/fine. Kano and Katsina: 5 years/fine. Kaduna: *ta'azir*.

[256] PC: 2 years or fine or both. Bauchi: 2 years/40 lashes. Kebbi: 1 year or fine and 20 lashes. Kaduna: *ta'azir*.

[257] PC: 3 years or fine or both. Bauchi: 1 year/40 lashes. Kebbi: 2 years or fine and 30 lashes. Kaduna: *ta'azir*.

[258] All codes except Kaduna, Kano and Katsina insert here: "between sunset and sunrise".

[259] PC: 3 years/fine. Bauchi: 3 years/20 lashes. Jigawa: 1 year/20 lashes. Kebbi: 2 years or fine and 20 lashes. Kaduna: *ta'azir*. All others: 2 years/20 lashes.

197. Whoever imitates or alters any key or fabricates any instrument intending that such false key or instrument shall be used for a criminal purpose, shall be punished with imprisonment for a term which may extend to two years and shall be liable to caning which may extend to thirty lashes.[260]

CHAPTER IX – QISAS AND QISAS-RELATED OFFENCES[261]

Homicide[262]

198. Except in the circumstances mentioned in section 203,[263] whoever being a *mukallaf*[264] causes the death of a human being by an act[265]:

(a) with the intention of causing death or such bodily injury as is probable or likely[266] to cause death[267]; or

(b) in a state of fight, combat, strife or aggression, which is not intrinsically likely or probable to cause death[268]; or

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[260] PC: 2 years/fine. Bauchi: 3 years/30 lashes. Jigawa: 1 year/30 lashes. Kebbi: 2 years or fine and 30 lashes. Kaduna: *ta'azir*.

[261] PC puts most of the offences included in this chapter, in a chapter entitled OFFENCES AFFECTING THE HUMAN BODY. Two groups of PC offences affecting the human body are however not included under QISAS AND QISAS-RELATED OFFENCES here or in the SPCs: *Wrongful Restraint and Confinement*, put in the SPCs under TA'AZIR OFFENCES, and *Rape and Unnatural and Indecent Offences Against the Person*, put in the SPCs under HUDUD AND HUDUD-RELATED OFFENCES. Kano and Katsina entitle this chapter RETALIATORY OFFENCES. Gombe groups *qisas* offences with *hudud*.

[262] This and all SPCs divide homicide into intentional, punishable with death (unless remitted by the relatives of the deceased, or unless falling under one of the statutory exceptions, see §203), and unintentional, punishable only with payment of *diyah*, see §§198-201. PC proceeds differently, first defining "culpable homicide", then dividing it into "punishable with death" and "not punishable with death". *Culpable homicide*: "Whoever causes death: (a) by doing an act with the intention of causing death or such bodily injury as is likely to cause death; or (b) by doing an act with the knowledge that he is likely by such act to cause death; or (c) by doing a rash or negligent act, commits the offence of culpable homicide." *Punishable with death*: "Except in the circumstances mentioned in section 222 culpable homicide shall be punished with death: (a) if the act by which the death is caused is done with the intention of causing death; or (b) if the doer of the act knew or had reason to know that death would be the probable and not only a likely consequence of the act or of any bodily injury which the act was intended to cause." *Not punishable with death*: see note to §203. Note: PC also includes separate sections on "causing death of person other than person whose death was intended", "death caused when intention is to cause hurt only", and "death caused in act of committing offence" (felony murder), all omitted here and in all SPCs.

[263] Kano and Katsina omit explicit reference here to the excepted circumstances, but list them in subsequent sections.

[264] Gombe, Kebbi, Sokoto, Yobe and Zamfara add here: "in a state of anger".

[265] Bauchi, Gombe, Jigawa, Kaduna, Kebbi, Sokoto, Yobe, Zamfara omit "by an act".

[266] Kano and Katsina omit "probable or".

[267] All SPCs except Kano and Katsina insert here: "with an object either sharp or heavy".

[268] All SPCs except Bauchi, Kano and Katsina include a subsection (b) on causes "not intrinsically likely or probable to cause death", but they disagree in the specification of such causes. Kaduna: "in a state of anger, with a light stick, a whip or any other thing of that nature which is not intrinsically likely or probable to cause death." Gombe, Jigawa, Kebbi, Sokoto, Yobe and Zamfara: same, but omitting "in a state of anger".

(c) if the doer of the act knew or had reason to know that death would be the probable and not only a likely consequence of the act or of bodily injury which the act was intended to cause[269],

commits the offence of intentional homicide *(qatl al-amd).*

199. Whoever commits the offence of intentional homicide shall be punished:

(a) with death; or

(b) where the relatives of the victim remit the punishment in (a) above, with the payment of *diyah;* or

(c) where the relatives of the victim remit the punishment in (a) and (b) above, with caning of one hundred lashes and with imprisonment for a term of one year:[270]

Provided that in cases of intentional homicide by way of *gheelah or hirabah,* the punishment shall be with death only.[271]

200. Whoever being a *mukallaf* causes the death of any other person by mistake or accident, or by doing a rash or negligent act is said to commit unintentional homicide.[272]

201. Whoever commits the offence of unintentional homicide shall be punished -

(a) Where the death was caused by mistake or accident, with payment of *diyah;* or

(b) Where the death was caused by a rash or negligent act, with payment of *diyah*, a term of imprisonment which may extend to six months and shall also be liable to caning which may extend to fifty lashes.[273]

202. Whoever being a *waliyy al-damm* of a deceased person causes the death of the suspect alleged to have killed the deceased[274] shall be punished:

(a) with imprisonment for a term of six months and shall also be liable to caning which may extend to fifty lashes, if it was proved that the person killed was the one who caused the death of the deceased;[275] or

(b) where it was not proved that the suspect was the one who caused the death of the deceased, or it was proved that the death of the deceased was caused by the suspect

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[269] Kaduna: "probable or likely consequence". Kano (as subsection (b)): "by doing an act with knowledge that he is likely by such act to cause death." Then in Kano subsection (c) and Katsina subsection (b): "by doing a rash and negligent act".

[270] Kano and Katsina: "where the relatives of the victim remit the punishment in paragraph (a) and (b) above, the convict shall, in addition to the payment of *diyah* be imprisoned for a period not exceeding 10 years." Kaduna omits subsection (c) entirely.

[271] Gombe: "by way of assassination (*qalt al-gheelah*) or robbery (*hirabah*)". Kaduna omits the proviso entirely.

[272] Only Kaduna includes "or by doing a rash or negligent act". Bauchi: "by mistake such as with a light stick or whip or any other thing of that nature which is not intrinsically likely or probable to cause death commits the offence of unintentional homicide (*qatl al-khata*)".

[273] Only Kaduna divides the punishments into subsections (a) and (b); all the rest say simply "punished with the payment of *diyah*"; cf. note to previous section. Kaduna subsection (b): "with payment of *diyah* and liable to *ta'azir* punishment."

[274] Bauchi inserts here: "with the intention of retaliation before taking the matter to court,".

[275] Bauchi: 6 months/40 lashes. Kano and Katsina: 10 years/50 lashes. Kaduna: *ta'azir.*

but with legal justification the *waliyy al-damm* shall be deemed to have committed intentional homicide punishable under section 199.[276]

203. Except in the circumstances mentioned in section 199 intentional homicide is punishable with the payment of *diyah* and a term of imprisonment which may extend to one year and not with death in any of the following circumstances[277]:

(a) where the offender is an ascendant or teacher of the victim and the intention of the ascendant or teacher is clearly shown to be the correction or discipline of the victim;[278] or

(b) where the offender, being a public servant acting for the advancement of public justice or being a person aiding a public servant so acting exceeds the powers given to him by law and necessary for the due discharge of his duty as such public servant or for assisting such public servant in the due discharge of such duty and without ill will towards the person whose death is caused;[279] or

(c) where the offender, in the exercise in good faith of the right of private defence of person or property, exceeds the power given to him by law and causes the death of the person against whom he is exercising such right of defence without premeditation and without any intention of doing more harm than is necessary for the purpose of such defence.[280]

204. Whoever does any act not resulting in death with such intention or knowledge and in such circumstances that if he by that act caused death, he would be guilty of intentional homicide, shall be punished with imprisonment for a term which may extend to one year and shall also be liable to caning of one hundred lashes.[281]

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[276] Kaduna does not split the punishments into subsections (a) and (b); what is here subsection (b) is put as a proviso to the foregoing. PC: no similar provision on *waliyy al-damm*.

[277] Bauchi, Gombe, Jigawa, Kebbi, Sokoto, Yobe, Zamfara: "punishable with *diyah* and not with death". Kano and Katsina complicate this section by dividing it into two subsections: "(1) Except in the circumstances mentioned in section 142, intentional homicide is punishable with the payment of *diyah* and a term of imprisonment which may extend to ten years where the offender is the father of the victim. (2) Except in the circumstances mentioned in section 142, intentional homicide is punishable with *diyah* and a term which may extend for life imprisonment: [then giving what are here subsections (b) and (c)]." This section is parallel to PC §222, listing seven cases in which "culpable homicide is not punishable with death". Two of the PC cases are included here, see notes to subsections (b) and (c). The other five: offender deprived of the power of self control by grave and sudden provocation; committed without premeditation in a sudden fight in the heat of passion; the decedent assumed the risk of death; woman kills her child under one year the balance of her mind being disturbed by not having recovered from giving birth; the death was caused by a rash or negligent act.

[278] No SPC includes "or teacher". Kano and Katsina omit this subsection altogether. There is also nothing like it in PC.

[279] = PC §222(3), part of the definition of "culpable homicide not punishable with death", except that after "exceeds the power given to him by law" PC inserts: "and causes death by doing an act which he in good faith believes to be lawful and".

[280] = PC §222(2), part of the definition of "culpable homicide not punishable with death".

[281] Bauchi: 1 year/40 lashes. Kebbi: 5 years/100 lashes. Kaduna: *ta'azir*. PC has separate sections on attempts to commit culpable homicide punishable with death and not punishable with death, punishing the former with imprisonment for up to life or fine or both, and the latter with up to 3 years or fine or both unless hurt is caused in which case up to 7 years or fine or both.

205. Whoever abets:

(a) any person under fifteen years of age, or any insane person, or any delirious person or any idiot or any person in a state of intoxication, to commit suicide or to kill himself;[282] or

(b) any person to commit intentional homicide or unintentional homicide, shall be punished under section 199 of this law if:

(i) the abettor knew of the probable or likely consequence or result or effect of the act of the persons mentioned in (a) or (b) above; and

(ii) the execution/carrying out of the act by the persons mentioned in (a) or (b) above would not have been possible without the abetment of the abettor.[283]

Causing miscarriage, Injuries to unborn children, Exposure of infants, Cruelty to children and Concealment of births

206. Whoever voluntarily causes a woman with child to miscarry, shall, if such miscarriage be not caused in good faith for the purpose of saving the life of the woman, be punished with the payment of *ghurrah,* and shall also be liable to caning which may extend to ten lashes.[284]

Explanation:

A woman, who causes herself to miscarry, is within the meaning of this section.

207. Whoever uses force to any woman and thereby unintentionally causes her to miscarry, shall be punished with the payment of *ghurrah.*[285]

208. Whoever with intent to cause miscarriage of a woman whether with child or not[286] does any act which causes the death of such woman, shall be punished:

(a) with the payment of *diyah;*[287] *or*

(b) if the act is done without the consent of the woman, with *qisas.*[288]

209. (1) Whoever before the birth of any child does any act with the intention of thereby preventing that child from being born alive and does by such act prevent that child from being born alive, shall, if such act be not caused in good faith for the purpose of saving the life of the mother, be punished with -

(a) Payment of *ghurrah;* and

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[282] Bauchi: "under the age of maturity". Kano, Katsina: "has not attained puberty". Kebbi: "under eighteen years of age". No SPC adds "or to kill himself" after "commit suicide". PC punishes abetment of suicide of persons similarly incapacitated, with death. In subsequent sections, omitted here and in all SPCs, PC also punishes other abetments of suicide with imprisonment of up to 10 years and fine, and punishes attempts to commit suicide with up to 1 year or fine or both.

[283] Gombe omits "/carrying out". Kebbi omits subsection (ii) altogether. PC: no separate section on abetment of homicide.

[284] PC: 14 years or fine or both. Sokoto has "*ghorrah* (one twentieth of *diyah*)". Kano and Katsina: "(*ghurrah*) compensation". Kaduna punishment: *ghurrah/ta'azir.*

[285] PC: up to 3 years or fine or both, but if the offender knew the woman was with child, up to 5 years or fine or both. Kano, Katsina: "(*ghurrah*) compensation".

[286] Kano, Katsina: "with intent to cause miscarriage of a pregnant woman".

[287] PC: up to 14 years and fine.

[288] PC: up to life and fine. Jigawa: "(a) with the payment of *qisas*; or (b) if without intention with payment of *diyah*". PC also has an explanation after this section omitted in all SPCs.

(b) Caning which may extend to fifty lashes.

(2) Whoever before the birth of any child does any act with the intention of thereby preventing that child from being born alive or causing it to die after its birth and does by such act cause it to die after its birth, shall, if such act be not caused in good faith for the purpose of saving the life of the mother, be punished with *qisas*.[289]

210. Whoever does any act in such circumstances that, if he thereby caused death he would be guilty of intentional homicide,[290] and does by such act cause the death of a quick unborn child, shall be punished with the payment of *ghurrah,* in addition to the punishment for the offence of attempt to cause the death of the woman.[291]

211. Whoever being the father or mother or having the care of a child under the age of fifteen years exposes or leaves such child in any place with the intention of wholly or partly abandoning such child, shall be punished with imprisonment for a term which may extend to three years and shall be liable to caning which may extend to forty lashes.[292]

212. Whoever having the charge or care of a child under the age of fifteen years or being in a position of authority over him wilfully ill-treats or neglects him in such a way as to cause him unnecessary suffering, or denies him access to education shall be punished:[293] -

(a) with imprisonment for a term which may extend to one year or with fine or with both;[294] and

(b) if the ill-treatment or neglect results in serious injury to the health of such child, the offender shall be punished with imprisonment for a term which may extend to five years and payment of *diyah*.[295]

213. Whoever, by secretly burying or otherwise disposing of the dead body of a child whether such a child dies before or after or during its birth, intentionally conceals or endeavours to conceal the birth of such child, shall be punished with imprisonment for a term which may extend to three years and shall also be liable to caning which may extend to thirty lashes.[296]

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[289] Only Kaduna, as here, divides this section into two subsections, in effect distinguishing between the case where the child is born dead and the case where it is born alive, and varying the punishments accordingly. Kaduna's only variation from what is here: punishment under subsection (1): *ghurrah /ta'azir*. PC and all other SPCs: whether the intention was to prevent a live birth or to cause the baby to die after being born alive, and whether the baby is born dead or alive, the punishment is: PC: up to 14 years or fine or both; SPCs: "(a) with *qisas*; and (b) if without intention with payment of *diyah*."

[290] PC: "culpable homicide".

[291] PC: up to life and fine. Kano: up to 1 year and payment of *ghurrah* and up to one hundred lashes. Katsina: like Kano, except omits caning. PC also includes an illustration omitted in all SPCs.

[292] PC: "under the age of twelve years"; Bauchi: "maturity"; Kano, Katsina: "puberty". PC: 7 years or fine or both. Bauchi: 1 year/40 lashes. Sokoto: 1 year. Kaduna: *ta'azir*. PC also has an explanation.

[293] Bauchi: "under the age of maturity". Kano, Katsina: "puberty". Only Kaduna includes "or denies him access to education".

[294] PC: 2 years/fine/both. Bauchi: 3 years/fine/both. Kano, Katsina: 1 year/fine of ₦10,000/both. Kaduna: *ta'azir*.

[295] PC and Kebbi: 5 years/fine/both. Bauchi, Gombe, Sokoto, Yobe, Zamfara: 5 years. Jigawa: 3 years/30 lashes. Kano, Katsina: 5 years/₦5,000 fine/both. Kaduna: *diyah*.

[296] PC: 2 years/fine/both. Bauchi: 5 years/40 lashes. Kebbi: 1 year/30 lashes. Kaduna: *ta'azir*.

Hurt

214. Whoever causes bodily pain, disease or infirmity to any person is said to cause hurt.[297]

215. The following kinds of hurt only are designated as grievous:[298]

(a) emasculation;

(b) permanent deprivation of the sight of an eye, of the hearing of an ear, of the power of speech, taste, smell or sound mind;[299]

(c) deprivation of any member or joint;

(d) destruction or permanent impairing of the powers of any member or joint;

(e) permanent disfiguration of the head or face;

(f) fracture or dislocation of a bone or tooth;

(g) any hurt which endangers life or which causes the sufferer to be[300] in severe bodily pain or unable to follow his ordinary pursuits.

216. Whoever does any act with the intention of thereby causing hurt to any person or with the knowledge that he is likely thereby to cause hurt to any person and does thereby cause hurt to any person, is said voluntarily to cause hurt.[301]

217. Whoever voluntarily causes hurt, if the hurt which he intends to cause or knows himself to be likely to cause is grievous hurt and if the hurt which he causes is grievous hurt, is said voluntarily to cause grievous hurt.[302]

218. Whoever voluntarily causes hurt to any person shall be punished with imprisonment for a term which may extend to six months or with caning which may extend to twenty lashes and shall also be liable to pay compensation.[303]

219. Whoever voluntarily causes grievous hurt to any person shall be punished:

(a) with *qisas;* or

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[297] Bauchi goes on to say: "and this shall include: [subsections (a) through (g) of what is here §215]." Bauchi thus does not distinguish between hurt and grievous hurt; see also note to §218.

[298] Bauchi: see note to previous section.

[299] PC omits ", taste, small or sound mind".

[300] PC inserts here: "during the space of twenty days".

[301] Bauchi omits "voluntarily".

[302] Bauchi omits this section. PC includes one explanation and one illustration.

[303] Bauchi omits this section, punishing all hurts under what is here the next section on grievous hurt. Kaduna: *ta'azir*. All others as here except Kano and Katsina use "*diyah*" instead of "compensation", and the others use "damages". PC varies the punishments for voluntarily causing hurt depending on whether it is done "on grave and sudden provocation" (1 month/fine of £10/both) or without provocation (1 year/ fine of £20/both); and then a series of PC sections punishes causing either hurt or grievous hurt: by dangerous means (3 years/fine/both for hurt, 14 years and fine for grievous hurt); "by means of poison or any stupefying, intoxicating or unwholesome drug" (10 years and fine simply for administration with intent); for the purpose of extorting property to constrain an illegal act (10 years and fine for hurt, 14 years and fine for grievous hurt); to extort confession or to compel restoration of property (7 years and fine for hurt, 10 years and fine for grievous hurt); to deter public servant from his duty (3 years/fine/both for hurt, 10 years and fine for grievous hurt); by act endangering life or personal safety of others (1 year/fine/both for hurt, 2 years/fine/both for grievous hurt).

(b) where the *qisas* is remitted or not applicable,[304] with the payment of *diyah* as provided under Schedule B of this law and shall also be liable to imprisonment for a term which may extend to six months; or with caning which may extend to twenty lashes or with both.[305]

220. Whoever unintentionally causes grievous hurt to any person shall be punished with the payment of *diyah* under schedule B of this law.[306]

Criminal Force and Assault

221. A person is said to use force to another if he causes motion, change of motion or cessation of motion to that other or if he causes any substance to come into contact with any part of that other's body or with anything which that other is wearing or carrying or with anything so situated that such contact affects that other's sense of feeling where the person causing any effect above mentioned, causes it:

(a) by his own body power; or

(b) by disposing any substance in such a manner that the effect takes place without any further voluntary act on his part or on the part of any other person; or

(c) by means of any animal.[307]

222. Whoever intentionally uses force to any person without that person's consent:

(a) while preparing to commit any offence; or

(b) in the course of committing any offence; or

(c) intending by the use of such force to cause or knowing it to be likely that by the use of such force he will cause injury, fear or annoyance to the person to whom the force is used,

is said to use criminal force to that other.

223. Whoever makes any gesture or any preparation intending or knowing it to be likely that such gesture or preparation will cause any person present to apprehend that he who makes that gesture or preparation is about to use criminal force to that person, is said to commit an assault.[308]

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[304] Only Kaduna has "remitted or". All SPCs except Kebbi add here: "or the act was done by mistake". But Kebbi adds a subsection (c) after this subsection which says: "(c) where the act was done by mistake with the payment of *diyah*"; and see §220.

[305] Bauchi omits any punishment additional to *diyah*. Kano, Katsina: 6 months and 20 lashes. Kaduna: *diyah* and *ta'azir*. PC again varies the punishments for voluntarily causing grievous hurt depending on whether it is done "on grave and sudden provocation" (4 years/fine of £50/both) or without provocation (7 years and fine); and see note to §218.

[306] No SPC has this section, but see note to §219 on mistake. PC: "(1) Whoever causes hurt to any person by doing any act so rashly or negligently as to endanger human life or the personal safety of others, shall be punished with imprisonment for a term which may extend to one year or with fine or with both. (2) Whoever in like manner causes grievous hurt to any person, shall be punished with imprisonment for a term which may extend to two years or with fine or with both."

[307] PC includes eight illustrations, omitted here and in all SPCs.

[308] PC and Sokoto include the following explanation and illustrations: "Explanation. Mere words do not amount to assault, but the words which a person uses may give to his gestures or preparations such a meaning as may make those gestures or preparations amount to an assault. Illustrations. (a) A shakes

224. Whoever assaults or uses criminal force to any person or criminal force otherwise than on grave and sudden provocation given by that person,[309] shall be punished with imprisonment for a term which may extend to one month or with fine or with both.[310]

** [punishment for assault or criminal force with provocation][311]

225. Whoever assaults or uses criminal force to any person being a public servant in the execution of his duty as such public servant or with intent to prevent or deter that person from discharging his duty as such public servant or in consequence of anything done or attempted to be done by such person in the lawful discharge of his duty as such public servant shall be punished with imprisonment for a term which may extend to two years or with fine or with both.[312]

226. Whoever assaults or uses criminal force to any woman intending to outrage or knowing it to be likely that he will thereby outrage her modesty, shall be punished with imprisonment for a term which may extend to one year and shall be liable to caning which may extend to forty lashes.[313]

227. Whoever assaults or uses criminal force to any person in attempting to commit theft of any property which that person is then wearing or carrying, shall be punished with imprisonment for a term which may extend to one year and shall also be liable to caning which may extend to forty lashes.[314]

228. Whoever assaults or uses criminal force to any person in attempting wrongfully to confine that person, shall be punished with imprisonment for a term which may extend to two months or with a fine or with both.[315]

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his fist at Z, intending or knowing it to be likely that he may thereby cause Z to believe that A is about to strike Z. A has committed an assault. (b) A beings to untie the lead of a ferocious dog intending or knowing it to be likely that he may thereby cause Z to believe that he is about to cause the dot to attack Z. A has committed an assault upon Z." PC adds one further illustration.

[309] Gombe, Jigawa, Kaduna, Kano, Katsina, Kebbi, Sokoto, Zamfara: omit the phrase "otherwise than on grave and sudden provocation given by that person".

[310] PC and all SPCs vary the punishment depending on whether hurt is caused. (a): no hurt: PC, Bauchi: 1 year/fine/both. Gombe, Jigawa, Kano, Katsina, Kebbi, Sokoto, Yobe, Zamfara: 1 month/fine/both. Kaduna: *ta'azir*. (b) if grievous hurt (or, in Bauchi, hurt) is caused: PC, Bauchi: 3 years/fine/both. All other SPCs except Kaduna: *qisas*. Kaduna: as under §219 above, see notes thereto. Kebbi adds a subsection (c): "If *qisas* is not applicable, with the payment of *diyah*." Note: PC adds a section following this one on "punishment for assault or criminal force with provocation" (3 months/fine up to £20/both), omitted here and in all SPCs.

[311] PC inserts a section here as follows: "Whoever assaults or uses criminal force to any person on grave and sudden provocation given by that person, shall be punished with imprisonment for a term which may extend to three months or with fine which may extend to twenty pounds or with both."

[312] PC: 3 years/fine/both. Kano, Katsina: 2 years/₦20,000 fine/both. Bauchi adds: "and if hurt is done to any person by such assault or criminal force, under *qisas*."

[313] PC: 3 years/fine/both. Bauchi: 3 years/40 lashes. Kaduna: *ta'azir*.

[314] PC: 3 years/fine/both. Kano, Katsina, Sokoto, Yobe, Zamfara: 1 year/20 lashes. Kebbi: 1 year/fine/both and up to 20 lashes. Kaduna: omits this section.

[315] PC: 2 years/fine/both. Bauchi: 1 year/fine/both. Kano, Katsina: 2 years/₦20,000 fine/both. Kaduna: *ta'azir*.

Kidnapping, Abduction and Forced Labour

229. Whoever takes or entices any person, under fifteen years of age[316] or any person of unsound mind out of the keeping of the lawful guardian of such person without the consent of such guardian or conveys any such person beyond the limits of someone legally authorised to consent to such removal,[317] is said to kidnap such a person.[318]

230. Whoever by force compels or by any deceitful means induces any person to go from any place, is said to abduct such person.

231. (1) Whoever kidnaps any person under the age of seven shall be punished under section 144 for the offence of theft punishable with *hadd.* [319]

(2) Where the person kidnapped is above the age of seven, shall be punished with imprisonment for a term which may extend to three years and shall also be liable to caning which may extend to forty lashes.[320]

232. Whoever abducts any person shall be punished with imprisonment for a term which may extend to three years and shall also be liable to caning which may extend to forty lashes.[321]

233. Whoever kidnaps or abducts any person in order that such person may be killed or may be so disposed of as to be put in danger of being killed, shall be punished with imprisonment for a term which may extend to ten years and shall also be liable to caning of fifty lashes.[322]

234. Whoever, by any means whatsoever, induces any girl or woman[323] to go from any place or to do any act with intent that such girl or woman may be, or knowing that it is likely that she will be, forced or seduced to illicit intercourse with himself or with another person[324] shall be punished with imprisonment for a term which may extend to two years and shall also be liable to caning which may extend to fifty lashes.[325]

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316 Bauchi: "under the age of maturity". Kano, Katsina: "puberty". PC and all other SPCs except Kaduna (which is as here) distinguish the ages for males (14) and females (16).

317 PC, Bauchi, Gombe, Jigawa, Kaduna, Kebbi, Sokoto, Yobe, Zamfara: "beyond the limits of [Northern Nigeria] [the State] without the consent of someone legally authorised . . ." Kano: "beyond the limits of the under limit of *hirz*".

318 PC and Sokoto add: "Explanation. The words 'lawful guardian' in this section include any person lawfully entrusted with the care or custody of such person and authorised to consent to the taking."

319 PC punishes kidnapping and abduction together under the same section: 10 years and fine, without regard to the age of the person kidnapped. Bauchi punishes all kidnappings under the section on theft punishable with *hadd.*

320 Bauchi omits this subsection. Kano, Katsina: also punish these kidnappings under the section on theft punishable with *hadd.* Gombe, Jigawa, Kebbi, Yobe, Zamfara: 7 years/40 lashes. Sokoto: 5 years/40 lashes. Kaduna: *ta'azir.* Kano and Katsina add a subsection (c): "Where the person kidnapped is yet to be taken out of the limits of *hirz*", 1 year/100 lashes.

321 PC omits this section, see note to §231(1). Bauchi: 10 years/40 lashes. Gombe: 10 years/50 lashes. Jigawa, Yobe, Zamfara: 7 years/40 lashes. Kano, Katsina: 7 years/100 lashes. Kebbi: 7 years or fine and up to 40 lashes. Sokoto: 5 years/40 lashes. Kaduna: *ta'azir.*

322 PC: 14 years/fine. Bauchi: life. Kaduna: *ta'azir.* Kano, Katsina: 10 years/100 lashes.

323 PC: "any girl under the age of eighteen years".

324 PC: "intercourse with another person".

325 PC: 2 years/fine. Bauchi: 5 years/40 lashes. Kaduna: *ta'azir.*

235. Whoever imports into the State from any place outside the State any girl or woman[326] with intent that she may be, or knowing it to be likely that she will be, forced or seduced to illicit intercourse with himself or with another person[327] shall be punished with imprisonment for a term which may extend to two years and shall also be liable to caning which may extend to fifty lashes.[328]

236. Whoever knowing that any person has been kidnapped or has been abducted wrongfully conceals or confines such person, shall be punished in the same manner as if he had kidnapped or abducted such person.

237. Whoever buys, sells, hires, lets to hire or otherwise obtains possession or disposes of any person under the age of fifteen years or any person of unsound mind,[329] with intent that such person shall be employed or used for the purpose of prostitution or for any unlawful or immoral purpose or knowing it to be likely that such minor or unsound minded person will be employed or used for any such purpose, shall be punished with imprisonment for a term which may extend to seven years and shall also be liable to caning of fifty lashes.[330]

** [Buying or disposing of slave.][331]

238. (1) Whoever unlawfully compels any person to labour against the will of that person, shall be punished with imprisonment for a term which may extend to one year or with fine or with both.[332]

(2) Without prejudice to sub-section (1) above, the person so compelled to labour against his will shall be entitled to compensation to be determined by the court.[333]

239. Whoever, in order to gratify the passions of another person, procures, entices or leads away, even with her consent, any woman or girl for immoral purposes shall be punished with imprisonment for a term which may extend to two years and shall also be liable to caning which may extend to fifty lashes.[334]

CHAPTER X – TA'AZIR OFFENCES

Criminal Intimidation, Insult and Annoyance

240. Whoever threatens another with any injury to his person, reputation or property or to the person, reputation or property of anyone in whom that person is interested, with intent to cause harm[335] to that person or to cause that person to do any act which he is not legally

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326 PC: "any girl under the age of twenty-one years".
327 PC: "intercourse with another person".
328 PC: 10 years/fine. Bauchi: 5 years/40 lashes. Kaduna: *ta'azir*.
329 PC: "person under the age of eighteen years". Bauchi: "under the age of maturity or of unsound mind". Kano, Katsina: "any person or any person of unsound mind".
330 PC, Bauchi, Gombe, Jigawa, Kebbi, Yobe, Zamfara: 10 years/fine. Kano, Katsina: 10 years/up to ₦100,000 fine. Sokoto: 10 years/50 lashes. Kaduna: *ta'azir*.
331 PC has in this place: "Whoever imports, exports, removes, buys, sells, disposes, traffics or deals in any person as a slave, or accepts, receives or detains against his will any person as a slave, shall be punished with imprisonment for a term which may extend to fourteen years and shall also be liable to fine." No SPC has this.
332 Kano, Katsina: 1 year/₦10,000/both.
333 PC does not have subsection (2).
334 PC: 7 years/fine. Bauchi: 5 years/40 lashes. Kaduna: *ta'azir*.
335 PC and Sokoto: "alarm" instead of "harm". PC also has one explanation and one illustration.

bound to do or to omit to do any act which that person is legally entitled to do as the means of avoiding the execution of such threat, commits criminal intimidation.

241. Whoever commits the offence of criminal intimidation shall be punished:[336]

(a) with imprisonment for a term which may extend to two years or with fine or with both;[337] and

(b) if the threat be to cause death or grievous hurt or to cause the destruction of any property by fire or to cause an offence punishable with death or with imprisonment for a term which may extend to seven years or to impute unchastity to a woman, with imprisonment for a term which may extend to four years and shall also be liable to caning which may extend to forty lashes.[338]

242. (1) Whoever commits the offence of criminal intimidation by an anonymous communication or having taken precaution to conceal the name or abode of the person from whom the threat comes, shall be punished with imprisonment for a term which may extend to two years in addition to the punishment provided for the offence by section 241.[339]

(2) Whoever intending to insult[340] the modesty of any woman utters any word, makes any sound or gesture or exhibits any object, intending that such word or sound shall be heard or that such gesture or object shall be seen by such woman or intrudes upon the privacy of such woman, shall be punished with imprisonment for a term which may extend to one year and shall also be liable to caning which may extend to forty lashes.[341]

Wrongful Restraint and Wrongful Confinement

243. (1) Whoever voluntarily obstructs any person so as to prevent that person from proceeding in any direction in which that person has a right to proceed, is said to restrain that person wrongfully.

(2) The obstruction of a private way over land or water which a person in good faith believes himself to have a lawful right to obstruct, is not within the meaning of this section.[342]

244. Whoever wrongfully restrains any person in such a manner as to prevent that person from proceeding beyond certain circumscribing limits, is said to confine that person wrongfully.[343]

245. Whoever wrongfully restrains any person, shall be punished with imprisonment for a term which may extend to six months or with fine or with both.[344]

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[336] Kaduna does not divide the punishments into two subsections, punishing all criminal intimidations with *ta'azir*.
[337] Bauchi: 1 year/fine/both. Kano, Katsina: 2 years/₦50,000 fine/both. Kaduna: *ta'azir*.
[338] PC, Gombe, Jigawa, Sokoto, Yobe, Zamfara: 7 years/fine/both. Bauchi: 1 year/fine/both. Kano, Katsina: 7 years/₦70,000 fine/both.
[339] Bauchi: 1 year in addition . . . Kebbi: 2 years or fine or both. Kaduna: *ta'azir*.
[340] Kano, Katsina: "Whoever insults".
[341] PC puts this provision in a separate section, and punishes with 1 year/fine/both. Kebbi: 2 years or fine and up to 40 lashes. Kaduna: *ta'azir*.
[342] PC has an illustration following here.
[343] PC has two illustrations following here.

246. Whoever wrongfully confines any person, shall be punished:[345]

(a) with imprisonment for a term which may extend to one year or with fine or with both;[346]

(b) if the wrongful confinement continues for more than a day,[347] with imprisonment for a term which may extend to one year or with fine or with both;[348]

(c) without prejudice to the punishments prescribed in (a) and (b) above, the offender shall be liable to pay compensation to the confined person which shall be determined by the court.[349]

247. Whoever keeps any person in wrongful confinement knowing that a warrant or order or writ for the production or liberation of that person has been duly issued shall be punished with imprisonment for a term which may extend to six months in addition to any term of imprisonment to which he may be liable under any other section of this law.[350]

248. Whoever wrongfully confines any person in such manner as to indicate an intention that the confinement of such person may not be known to any person interested in the person so confined or to any public servant or that the place of such confinement may not be known to or discovered by any such person or public servant as hereinbefore mentioned shall be punished with imprisonment for a term which may extend to one year in addition to any other punishment to which he may be liable for such wrongful confinement.[351]

249. Whoever wrongfully confines any person for the purpose of extorting from the person confined or from any person interested in the person confined any property or document of title or of constraining the person confined or any person interested in such person to do any thing illegal or to give any information which may facilitate the commission of an offence, shall be punished with imprisonment for a term which may extend to two years and shall be liable to caning which may extend to twenty lashes.[352]

250. Whoever wrongfully confines any person for the purpose of extorting from the person confined or any person interested in the person confined any confession or any information which may lead to the detection of an offence or misconduct or for the purpose of constraining the person confined or any person interested in the person confined to

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[344] PC: 1 month/£30 fine/both. Kano, Katsina: 6 months/₦5,000 fine/both. Sokoto, Yobe, Zamfara: 6 months/₦1,000 fine/both. Kaduna: *ta'azir*.

[345] Kaduna does not divide the punishments into three subsections, punishing all wrongful confinements with *ta'azir* "and shall be liable to pay compensation to the confined person which shall be determined by the court."

[346] PC: 1 year/£50 fine/both. Jigawa, Yobe, Zamfara: 1 year/₦1,000/both. Kano, Katsina: 1 year/₦10,000/both. Sokoto: 6 months/₦1,000/both.

[347] PC: "three days or more".

[348] PC: 3 years/fine/both. Kano, Katsina: 2 years/₦20,000/both.

[349] Omitted in PC.

[350] PC: 2 years in addition. Bauchi, Gombe, Jigawa: 1 year in addition. Kebbi: flat 6 months/fine/both. Kaduna: *ta'azir*.

[351] PC: 2 years in addition. Bauchi: 3 years in addition. Kano, Katsina: 2 years in addition and fine of up to ₦20,000. Kebbi: 18 months or fine or both. Kaduna: *ta'azir*.

[352] PC: 3 years/fine. Bauchi: 5 years/20 lashes. Kebbi: 2 years or fine or both and up to 20 lashes. Kaduna: *ta'azir*.

restore, or to cause the restoration of any property or document of title,[353] shall be punished with imprisonment for a term which may extend to two years and shall be liable to caning which may extend to fifty lashes.[354]

Forgery

251. A person is said to make a false document:

(a) who dishonestly or fraudulently makes, signs, seals or executes a document or part of a document or makes any mark denoting the execution of a document with the intention of causing it to be believed that such document or part of a document was made, signed, sealed or executed [by or by the authority of a person by whom or by whose authority he knows that it was not made, signed sealed or executed][355] or at a time at which he knows that it was not made, signed, sealed or executed; or

(b) who without lawful[356] authority dishonestly or fraudulently by cancellation or otherwise alters a document in any material part thereof after it has been made or executed either by himself or by any other person whether such person be living or dead at the time of such alteration; or

(c) who dishonestly or fraudulently causes any person to sign, seal, execute or alter a document knowing that such person by reason of unsoundness of mind or intoxication cannot or that by reason of deception practised upon him he does not know the contents of the document or the nature of the alteration.

252. Whoever makes any false document or part of a document, with intent to cause damage or injury to the public or to any person or to support any claim or title or to cause any person to part with property or to enter into any express or implied contract or with intent to commit fraud or that fraud may be committed, commits forgery; and a false document made wholly or in part by forgery is called a forged document.[357]

253. Whoever commits forgery shall be punished with imprisonment for a term which may extend to five years or with fine or with both.[358]

254. Whoever forges:

(a) a thing which purports to be the public seal of Nigeria or of any State of Nigeria or the great or privy seal of any country or the seal of the President or a Governor of a State or a Chairman of a Local Government Council;[359] or

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353 PC inserts here: "or to satisfy any claim or demand or to give information which may lead to the restoration of any property or document of title".
354 PC: 2 years/fine. Bauchi: 2 years/40 lashes. Kebbi: 2 years or fine or both and up to 20 lashes. Kaduna: *ta'azir*.
355 Sokoto omits the bracketed language.
356 Katsina omits "lawful".
357 PC adds here two explanations and sixteen illustrations.
358 PC: 14 years/fine/both. Kano, Katsina: 5 years/₦50,000/both. Kaduna: *ta'azir*.
359 PC makes extensive reference here to seals of the UK. Gombe, Jigawa, Kebbi, Sokoto, Yobe: "privy seal of any country of the Commonwealth". Gombe, Jigawa, Kaduna, Kebbi, Sokoto, Yobe, Zamfara omit "or a Chairman of a Local Government Council". Yobe puts instead: "or any Government or Organisation".

(b) a document having on it or affixed to it any such seal signet or sign manual, or anything which purports to be or is intended by the person to be understood to be, any such seal, signet or sign manual,

shall be punished with imprisonment for a term of five years and shall also be liable to fine.[360]

255. Whoever fraudulently or dishonestly uses as genuine any document which he knows or has reason to believe to be a forged document, shall be punished in the same manner as if he had forged such document.

256. Whoever makes or counterfeits any seal, plate or other instrument for making an impression intending that the same shall be used for the purpose of committing forgery or with such intent has in his possession any such seal, plate or other instrument knowing the same to be counterfeit, shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.[361]

257. Whoever has in his possession any forged document knowing the same to be forged and intending that the same shall fraudulently or dishonestly be used as genuine, shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.[362]

258. Whoever counterfeits upon or in the substance of any material any device or mark used for the purpose of authenticating any document intending that such device or mark shall be used for the purpose of giving the appearance of authenticity to any document then forged or thereafter to be forged on such material or who with such intent has in his possession any material upon or in the substance of which any device or mark has been counterfeited, shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.[363]

259. Whoever fraudulently or dishonestly or with intent to cause damage or injury to the public or to any person cancels, destroys or defaces or attempts to cancel, destroy or deface or secretes or commits theft in respect of any document which is or purports to be a document of title or a will or commits mischief in respect to any such document, shall be punished with imprisonment for a term which may extend to five years and shall also be liable to caning which may extend to fifty lashes with fine.[364]

260. Whoever, being a clerk, officer or servant or employed or acting in the capacity of a clerk, officer or servant, wilfully and with intent to defraud destroys, alters, mutilates or falsifies any book, paper, writing, document of title or account, which belongs to or is in the

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[360] PC: up to life/fine. Bauchi: 15 years/fine. Gombe, Jigawa, Sokoto, Yobe, Zamfara: 14 years/fine. Kano, Katsina: 14 years/₦140,000. Kebbi: 14 years or fine or both. Kaduna: *ta'azir*.

[361] PC: 14 years/fine. Bauchi: 15 years/40 lashes. Gombe, Jigawa, Sokoto, Yobe, Zamfara: 5 years/fine. Kano, Katsina: 5 years/₦50,000/both. Kebbi: 5 years/fine or up to 40 lashes. Kaduna: *ta'azir*.

[362] PC: 14 years/fine. Bauchi: 15 years/40 lashes. Gombe, Jigawa, Sokoto, Yobe, Zamfara: 5 years/fine. Kano, Katsina: 5 years/₦50,000/both. Kebbi: 5 years/fine or both. Kaduna: *ta'azir*.

[363] PC: 14 years/fine. Bauchi: 15 years/15 lashes. Gombe, Jigawa, Sokoto, Yobe, Zamfara: 5 years/fine. Kano, Katsina: 5 years/₦50,000. Kebbi: 5 years and may be liable to fine or both. Kaduna: *ta'azir*.

[364] PC: 14 years/fine. All SPCs except Kaduna: "shall be punished: (a) with amputation, where the value of the title amounts to *nisab*; or (b) in other cases, with . . .": Bauchi: 15 years/40 lashes. Gombe, Jigawa, Sokoto, Yobe, Zamfara: 5 years/fine. 5 years/₦50,000. Kebbi: 5 years or fine or both. Kaduna punishes all offences under this section with *ta'azir*.

possession of his employer or has been received by him for or on behalf of his employer, or wilfully and with intent to defraud makes or abets the making of any false entry in or omits or alters or abets the omission or alteration of any material particular from or in any such book, paper, writing, document of title or account, shall be punished with imprisonment for a term which may extend to two years and shall also be liable to caning which may extend to fifty lashes with fine.[365]

Property and Other Marks

261. A mark used for denoting that movable property belongs to a particular person is called a property mark.

262. Whoever marks any movable property or goods or uses any case, package or other receptacle containing movable property or goods or uses any case, package or other receptacle having any mark thereon in a manner reasonably calculated to cause it to be believed that the property or goods so marked or any property or goods contained in any such receptacle so marked belong to a person to whom they do not belong, is said to use a false property mark.

263. Whoever uses any false property mark shall, unless he proves that he acted without intent to defraud, be punished with imprisonment for a term which may extend to six months and may also be liable to caning which may extend to twenty-five lashes with fine.[366]

264. Whoever counterfeits any property mark shall be punished with imprisonment for a term which may extend to six months and may also be liable to caning which may extend to twenty-five lashes with fine.[367]

265. Whoever counterfeits any property mark used by a public servant or any mark used by a public servant to denote that any property has been manufactured by a particular person or at a particular time or place that the property is of a particular quality or has passed through a particular office or that it is entitled to any exemption or uses as genuine any such mark knowing the same to be counterfeit, shall be punished with imprisonment for a term which may extend to one year and shall also be liable to caning which may extend to forty lashes.[368]

266. Whoever makes or has in his possession any die, plate or other instrument for the purpose of counterfeiting a property mark or has in his possession a property mark for the purpose of denoting that any goods belong to a person to whom they do not belong, shall be punished with imprisonment for a term which may extend to one year and shall also be liable to caning which may extend to thirty lashes with fine.[369]

267. Whoever makes any false mark upon any case, package or other receptacle containing goods in a manner reasonably calculated to cause any public servant or any other person to

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[365] PC: 7 years or fine or both. Bauchi: 5 years/20 lashes. Gombe, Jigawa, Kebbi, Sokoto, Yobe, Zamfara: 5 years or fine or both. Kano, Katsina: 5 years or ₦50,000 or both. Kaduna: *ta'azir*.

[366] PC, Bauchi, Gombe, Kano, Katsina, Kebbi, Sokoto, Yobe, Zamfara: 1 year or fine or both. Gombe: 2 years or fine or both. Kaduna: *ta'azir*. Jigawa omits this section entirely: its caption, "Punishment for using a false property mark", is attached in the Jigawa SPC to the section on "Counterfeiting a property mark used by another", here §264.

[367] PC, Gombe, Jigawa, Kebbi, Sokoto, Zamfara : 2 years or fine or both. Bauchi: 2 years/10 lashes. Kano, Katsina: 2 years or ₦20,000 or both. Yobe: 1 year or 50 lashes or both. Kaduna: *ta'azir*.

[368] PC, Gombe, Jigawa, Kebbi, Sokoto, Yobe, Zamfara: 3 years/fine. Bauchi: 3 years/10 lashes. Kano, Katsina: 3 years/₦30,000. Kaduna: *ta'azir*.

[369] PC, Gombe, Jigawa, Kebbi, Sokoto, Yobe, Zamfara: 3 years or fine or both. Bauchi: 3 years/15 lashes. Kano, Katsina: 3 years or ₦30,000 or both. Kaduna: *ta'azir*.

believe that such receptacle contains goods which it does not contain or that it does not contain goods which it does contain or that the goods contained in such receptacle are of a nature of quality different from the real nature of quality thereof, shall, unless he proves that he acted without intent to defraud, be punished with imprisonment for a term which may extend to two years and shall also be liable to caning which may extend to fifty lashes with fine.[370]

268. Whoever makes use of any such false mark in any manner prohibited by section 267 shall unless he proves that he acted without intent to defraud, be punished as if he had committed an offence against that section.

269. Whoever removes, destroys, defaces or adds to any property mark intending or knowing it to be likely that he may thereby cause injury to any person, shall be punished with imprisonment for a term which may extend to one year and shall also be liable to caning which may extend to fifty lashes.[371]

Criminal Breach of Contract of Service

270. Whoever, being bound by a lawful contract to render his personal service in conveying or conducting any person or any property from one place to another place or to act as servant to any person during a voyage or journey or to guard any person or property during the voyage or journey, voluntarily omits so to do, except in the case of illness or ill-treatment, shall be punished with imprisonment for a term which may extend to one year or with fine or with both.[372]

271. Whoever, being bound by a lawful contract to attend on or to supply the wants of any person, who by reason of youth or of unsoundness of mind or of disease or bodily weakness is helpless or incapable of providing for his own safety or of supplying his own wants, voluntarily omits so to do, shall be punished with imprisonment for a term which may extend to one year or with fine or with both.[373]

Breach of Official Trust

272. Whoever, by reason or by means of his employment as a public servant acquires any information in respect of which he is under an obligation of secrecy express or implied and at any time communicates or attempts to communicate such information to any person to whom the same ought not in the public interest to be communicated at that time,[374] is said to commit a breach of official trust.

273. Whoever commits a breach of official trust shall:

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[370] All SPCs except Kaduna and Yobe confuse the caption of this section with that of the previous section. As to punishments: PC: 3 years or fine or both. Bauchi: 3 years/15 lashes. Gombe, Jigawa, Kebbi, Sokoto, Yobe, Zamfara: 2 years or fine or both. Kano, Katsina: 2 years or ₦20,000 or both. Kaduna: *ta'azir*.

[371] PC, Gombe, Jigawa, Kebbi, Sokoto, Yobe, Zamfara: 1 year or fine or both. Bauchi: 1 year/10 lashes. Kano, Katsina: 1 year or ₦10,000 or both. Kaduna: *ta'azir*.

[372] PC: 1 month or £5 or both. Bauchi: 6 months/5 lashes. Kano, Katsina: 1 year or ₦10,000 or both. Kaduna: *ta'azir*. PC also has 3 illustrations and one explanation, omitted in all SPCs.

[373] PC: 3 months or £10 or both. Bauchi: "shall (a) pay compensation in a case of negligence and *diyah* where applicable, and (b) shall be punished with imprisonment for a term which may extend to one year and shall also be liable to caning of ten lashes." Kano, Katsina: 1 year or ₦10,000 or both. Kaduna: *ta'azir*.

[374] Kano, Katsina: "to whom he is not authorised to make the communication".

(a) if the communication is made or attempted to be made to the agent of a foreign government, be punished with imprisonment for a term which may extend to three years and shall also be liable to caning which may extend to fifty lashes;[375] or

(b) in any other case shall be punished with imprisonment for a term which may extend to two years and shall also be liable to caning which may extend to thirty lashes.[376]

Offences against the Public Peace

274. An assembly of two or more persons[377] is designated an unlawful assembly if the common object of the persons composing that assembly is:

(a) to overawe by criminal force or show of criminal force the Government or the Government of the Federation or any Government of Nigeria or any public servant in the exercise of his lawful powers; or

(b) to resist the execution of any law or of any legal process; or

(c) to commit any mischief or criminal trespass or other offence of any kind whatsoever;[378] or

(d) by means of criminal force or show of criminal force to enforce any right or supposed right; or

(e) by means of criminal force or show of criminal force to compel any person to do what he is not legally bound to do or to omit to do what he is legally entitled to do.[379]

275. Whoever being aware of facts which render any assembly an unlawful assembly intentionally joins that assembly or continues in it is said to be a member of an unlawful assembly.

276. Whoever is a member of an unlawful assembly shall be punished with imprisonment for a term which may extend to one year and shall also be liable to caning which may extend to forty lashes.[380]

277. Whoever being a member of an unlawful assembly is armed with any deadly weapon or with anything which if used as a weapon of offence is likely to cause death, shall be punished with imprisonment for a term which may extend to two years and shall also be liable to caning which may extend to fifty lashes.[381]

278. Whoever joins or continues in an unlawful assembly knowing that such unlawful assembly has been lawfully commanded to disperse, shall be punished with imprisonment for

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375 PC: 14 years/fine. Bauchi: 15 years/40 lashes. Gombe, Jigawa, Kebbi, Sokoto, Yobe, Zamfara: 14 years and fine or up to 50 lashes. Kano, Katsina: 13 years/50 lashes. Kaduna: *ta'azir*.

376 PC: 2 years or fine or both. Bauchi: 2 years/20 lashes. Kebbi: 2 years or fine or both and up to 30 lashes.

377 PC: 5 or more persons. Gombe: 3 or more.

378 PC omits "of any kind whatsoever".

379 PC has an explanation following this section, omitted in all SPCs.

380 PC, Bauchi, Gombe, Jigawa, Kebbi, Sokoto, Yobe, Zamfara: 1 year or fine or both. Kano, Katsina: 1 year or ₦10,000 or both. Kaduna: *ta'azir*.

381 PC: 2 years or fine or both. Bauchi: 2 years/40 lashes. Jigawa, Sokoto, Yobe, Zamfara: 5 years/50 lashes. Kano, Katsina: 7 years/60 lashes. Kebbi: 5 years or fine or both and up to 50 lashes. Gombe omits this section entirely.

a term which may extend to one year and may also be liable to caning which may extend to thirty lashes.[382]

279. Whenever force or violence is used by an unlawful assembly or by any member thereof in prosecution of the common object of such assembly, every member of such assembly is guilty of the offence of rioting.

280. Whoever is guilty of rioting shall be punished with imprisonment for a term which may extend to two years and shall also be liable to caning which may extend to fifty lashes.[383]

281. Whoever is guilty of rioting being armed with a deadly weapon or with anything which used as a weapon of offence is likely to cause death, shall be punished with imprisonment for a term which may extend to three years and shall also be liable to caning which may extend to sixty lashes.[384]

282 If an offence is committed by any member of an unlawful assembly in prosecution of the common object of that assembly, every person, who at the time of the committing of that offence is a member of the assembly, is guilty of that offence.

283. Whoever promotes or does any act with intent to assist the promotion of an unlawful assembly, shall be punishable as a member of such unlawful assembly and for any offence which may be committed by any member thereof in the same manner as if he had himself been a member of such unlawful assembly.

284. Whoever joins or continues in any assembly of five or more persons[385] likely to cause disturbance of the public peace knowing that such assembly has been lawfully commanded to disperse, shall be punished with imprisonment for a term which may extend to one year and may also be liable to caning which may extend to thirty lashes.[386]

285. Whoever wears, carries or displays in public any emblem, flag, article of clothing or other token or device in such manner or on such occasion or in such circumstances as:

(a) to constitute an offence under any other section of this law, or of any other subsisting Act or Law; or

(b) to cause or be likely to cause annoyance to the public or any section thereof, or a breach of the peace, or disturbance of the public peace, or the commission of an offence,

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[382] PC: 5 years or fine or both. Bauchi: 2 years or fine or both. Gombe, Jigawa, Kebbi, Sokoto, Yobe, Zamfara: 1 year or fine or both. Kano, Katsina: 2 years or ₦20,000 or both. Kaduna: *ta'azir*.

[383] PC, Gombe, Jigawa, Sokoto, Yobe, Zamfara: 3 years or fine or both. Bauchi: 3 years/40 lashes or fine or both. Kano, Katsina: 3 years or ₦30,000 or both. Kaduna: *ta'azir*. Kebbi: omits this section entirely, attaching the title of this section to the next on rioting armed with deadly weapon, which is repeated twice.

[384] PC: 5 years or fine or both. Bauchi: 5 years/40 lashes. Gombe, Jigawa, Kebbi, Sokoto, Yobe, Zamfara: 5 years/60 lashes. Kano, Katsina: 7 years/60 lashes. Kaduna: *ta'azir*.

[385] Gombe: 3 or more persons.

[386] PC, Gombe: 1 year or fine or both. Bauchi: 2 years or 20 lashes or both. Jigawa, Kebbi, Sokoto, Yobe, Zamfara: 2 years or fine or both. Katsina, Kano: 1 year or ₦10,000 or both. Kaduna: *ta'azir*. PC adds an explanation omitted in all SPCs.

shall be punished with imprisonment for a term which may extend to six months or with fine or with both,[387] and in addition the emblem, flag, article of clothing or other token or device in respect of which an offence under this section has been committed shall be liable to forfeiture.

286. Whoever assaults or threatens to assault or obstructs or attempts to obstruct any public servant in the discharge of his duty as such public servant in endeavouring to disperse an unlawful assembly or to suppress a riot or affray, or uses or threatens or attempts to use criminal force to such public servant, shall be punished with imprisonment for a term which may extend to two years and shall also be liable to caning which may extend to fifty lashes and with fine.[388]

287. Whoever in a public place disturbs the public peace shall be punished with imprisonment for a term which may extend to two years and with caning which may extend to fifty lashes and with fine.[389]

288. Whoever does any act with intent to cause or which is likely to cause a breach of the peace or disturb the public peace shall be punished with imprisonment for a term which may extend to three years and shall also be liable to caning which may extend to sixty lashes and in addition shall be liable to fine.[390]

Offences by or Relating to Public Servants

289. Whoever being or expecting to be[391] a public servant accepts or obtains or agrees to accept or attempts to obtain from any person for himself or for any other person any gratification whatever whether pecuniary or otherwise, other than lawful remuneration, as a motive or reward:

(a) for doing or forbearing to do any official act; or

(b) for showing or forbearing to show in the exercise of his official functions favour or disfavour to any person; or

(c) for rendering or attempting to render any service or disservice to any person with any department of the public service or with any public servant as such,

shall be punished:

(i) with imprisonment for a term which may extend to three years and shall also be liable to caning which may extend to thirty lashes;[392]

(ii) if such public servant is a public servant in the service of the Government of the State or of the Government of the Federation acting in a judicial capacity or carrying

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387 Bauchi: 6 months or 5 lashes or both. Kaduna: *ta'azir*.

388 PC: 5 years or fine or both. Bauchi: 3 years/20 lashes. Gombe, Jigawa, Kano, Katsina, Kebbi, Sokoto, Yobe, Zamfara: 5 years/50 lashes. Kaduna: *ta'azir*.

389 PC: 1 year or £50 or both. Bauchi: 1 year or fine or 10 lashes. Gombe, Jigawa, Sokoto, Yobe, Zamfara: 2 years or ₦5,000 or both. Kano, Katsina: 2 years or ₦20,000 or both. Kebbi: 2 year or fine or both and 30 lashes. Kaduna: *ta'azir*.

390 PC: 2 years or fine or both. Bauchi: 2 years with fine or 20 lashes. Gombe, Jigawa, Sokoto, Yobe, Zamfara: 3 years or ₦5,000 or both. Kano, Katsina: 3 years or ₦30,000 or both. Kebbi: 3 years or fine or both. Kaduna: *ta'azir*.

391 Katsina omits "or expecting to be".

392 PC: 7 years or fine or both. Bauchi: 10 years/40 lashes. Gombe, Jigawa, Sokoto, Yobe, Zamfara: 5 years/30 lashes. Kano, Katsina: 7 years/30 lashes. Kebbi: 5 years or fine or both and 30 lashes. Kaduna: *ta'azir*.

out the duties of a police officer, with imprisonment for a term which may extend to five years and shall also be liable to caning which may extend to fifty lashes.[393]

Explanation 1:

If a person not expecting to be in office obtains a gratification by deceiving others into a belief that he is a about to be in office and that he will serve them, he may be guilty of cheating but he is not guilty of an offence under this section.

Explanation 2:

A public servant who receives a gratification as a motive for doing what he does not intend to do or as a reward for doing what he has not done, is guilty of an offence under this section..[394]

290. Whoever accepts or obtains or agrees to accept or attempts to obtain from any person for himself or for any other person any gratification whatever whether pecuniary or otherwise or as a motive or reward for inducing by corrupt or illegal means any public servant:

(a) to do or forbear to do any official act; or

(b) in the exercise of the official functions of such public servant to show favour or disfavour to any person; or

(c) to render or attempt to render any service or disservice to any person with any department of the public service or with any public servant as such,

shall be punished with imprisonment for a term which may extend to two years and shall also be liable to caning which may extend to twenty lashes.[395]

291. Whoever being a public servant, in respect of whom an offence under section 290 is committed, abets the offence, shall be punished with imprisonment for a term which may extend to two years and shall on conviction, be liable to the punishment provided for such offence.[396]

292. Whoever offers or gives or agrees to give any gratification whatever whether pecuniary or otherwise in the circumstances and for any of the purposes mentioned in sections 289 and 290 shall be punished with imprisonment for a term which may extend to two years and shall also be liable to caning which may extend to thirty lashes and in either case shall also be liable to fine.[397]

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[393] PC: 14 years or fine or both. Bauchi: 15 years/40 lashes. Gombe, Jigawa, Sokoto, Yobe, Zamfara: 7 years/50 lashes. Kano, Katsina: 14 years/70 lashes. Kebbi: 7 years or fine or both and 50 lashes. Kaduna: *ta'azir*. Gombe uniquely adds: "and shall be liable to disciplinary action as regards his conduct."

[394] Gombe omits both explanations. PC adds 3 illustrations omitted in all SPCs.

[395] PC: 3 years or fine or both. Bauchi: 3 years/40 lashes. Kebbi: 2 years or fine or both and 20 lashes. Kaduna: *ta'azir*. Gombe uniquely adds: "and shall be liable to disciplinary action as regards his conduct."

[396] PC: 3 years or fine or both. Bauchi: 3 years/20 lashes. Gombe: 2 years/30 lashes "and shall be liable to disciplinary action as regards his conduct." Jigawa, Sokoto, Yobe, Zamfara: 2 years/20 lashes. Kano, Katsina: "shall on conviction, be liable to the punishment provided for such offence." Kebbi: 2 years or fine or both. Kaduna: *ta'azir*.

[397] PC: 3 years or fine or both. Bauchi: 3 years/40 lashes "and in either case shall also be liable to fine." Kano, Katsina: 7 years. Kebbi: 2 years or fine or both "and may be liable to 30 lashes." Kaduna: *ta'azir*. Gombe: as here and adds "and shall be liable to disciplinary action as regards his conduct."

293. Whoever being a public servant accepts or obtains or agrees to accept or attempts to obtain for himself or for any other person any valuable thing without consideration or for a consideration which he knows to be inadequate:

(a) from any person whom he knows to have been or to be or to be likely to be concerned in any proceeding or business transacted or about to be transacted by such public servant or having any connection with the official functions of himself or of any public servant to whom he is subordinate; or

(b) from any person whom he knows to be interested in or related to the person so concerned,

shall be punished with imprisonment for a term which may extend to three years and shall also be liable to caning which may extend to thirty lashes.[398]

294. Whoever in any of the circumstances mentioned in section 293 offers or gives or agrees to give to any public servant or to any person, in whom a public servant is interested or to whom he is related, any valuable thing without consideration or for a consideration which he knows to be inadequate, shall be punished with imprisonment for a term which may extend to three years and shall also be liable to caning which may extend to thirty lashes.[399]

295. Whoever knowingly profits by any gratification or benefit obtained in any of the circumstances mentioned in sections 289, 290 or 293 but does not take any active part in obtaining such gratification or benefit, shall be punished with imprisonment for a term which may extend to one year and shall also be liable to caning which may extend to twenty lashes.[400]

296. Whoever being a public servant in his capacity as such dishonestly receives from any person any money or other property which he is not authorised to receive or which is in excess of the amount which he is authorised to receive shall be punished with imprisonment for a term which may extend to two years and shall be liable to caning which may extend to twenty lashes.[401]

297. Whoever being a public servant knowingly disobeys any direction of the law as to the way in which he is to conduct himself as such public servant intending thereby or knowing himself to be likely thereby:

(a) to cause injury to any person or to the public; or

(b) to save any person from legal punishment or to subject him to a less punishment than that to which he is liable or to delay the imposition on any person of any legal punishment; or

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398 PC: 5 years or fine or both. Bauchi: 5 years/30 lashes. Kano, Katsina: 3 year or 30 lashes or both. Kebbi: 3 years or fine or both and up to 30 lashes. Kaduna: *ta'azir*. Gombe: as here and adds "and shall be liable to disciplinary action as regards his conduct."

399 PC: 2 years or fine or both. Bauchi: 3 years/40 lashes. Kebbi: 3 years or fine or both and up to 30 lashes. Kaduna: *ta'azir*. Gombe: as here and adds "and shall be liable to disciplinary action as regards his conduct."

400 PC: 1 year or fine or both. Bauchi: 6 months/20 lashes. Jigawa: 1 year/30 lashes. Kebbi: 1 year or fine or both and up to 20 lashes. Kaduna: *ta'azir*. Gombe: as here and adds "and shall be liable to disciplinary action as regards his conduct."

401 PC: 5 years of fine or both. Bauchi: 2 years/40 lashes. Kebbi: 2 years or fine or both and up to 20 lashes. Kaduna: *ta'azir*. Gombe: as here and adds "and shall be liable to disciplinary action as regards his conduct."

(c) to save any property from forfeiture or from any seizure or charge to which it is liable by law or to delay the forfeiture or seizure of any property or the imposition or enforcement of any charge upon any property,

shall be punished with imprisonment for a term which may extend to two years and shall also be liable to caning which may extend to twenty lashes.[402]

298. Whoever, being a public servant, and being as such public servant charged with the preparation or translation of any document, frames or translates that document in a manner which he knows and believes to be incorrect, intending thereby to cause or knowing it to be likely that he may thereby cause injury to any person, shall be punished with imprisonment for a term which may extend to three years and shall also be liable to caning which may extend to thirty lashes.[403]

299. Whoever, being a public servant knowing that he is likely to cause injury to any person or intending unlawfully to give any person an advantage makes or pronounces in any stage of a judicial proceeding any report, order, judgment or decision which he knows to be contrary to law, shall be punished with imprisonment for a term which may extend to three years and shall also be liable to caning which may extend to thirty lashes.[404]

300. Whoever, being a public servant authorised by law to commit persons for trial or to confinement or to keep persons in confinement, commits any person for trial or to confinement or keeps any person in confinement:

(a) knowing that he is acting contrary to law; and

(b) knowing that he is likely to cause injury to any person or intending unlawfully to give any person an advantage,

shall be punished with imprisonment for a term which may extend to three years and shall be liable to caning which may extend to thirty lashes.[405]

301. Whoever, being a public servant whose duty it is as such public servant to arrest any person or to keep any person in confinement or custody, intentionally omits to arrest such person or intentionally suffers such person to escape or intentionally aids such person in escaping or attempting to escape from such confinement or custody, shall be punished as follows:[406]

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[402] PC: 2 years or fine or both. Kano, Katsina: 2 years/20 lashes and "restitution of the property illegally acquired by such person." Kebbi: 2 years or fine or both and up to 20 lashes. Kaduna: *ta'azir*. Gombe: as here and adds "and shall be liable to disciplinary action as regards his conduct."

[403] PC: 3 years or fine or both. Kano, Katsina: 3 years/20 lashes. Kebbi: 3 years or fine or both and up to 30 lashes. Kaduna: *ta'azir*. Gombe: as here and adds "and shall be liable to disciplinary action as regards his conduct."

[404] PC: 7 years or fine or both. 7 years/40 lashes. Gombe, Jigawa, Kano, Katsina, Sokoto, Yobe, Zamfara: 5 years/30 lashes. Kebbi: 5 years or fine or both and up to 30 lashes. Kaduna: *ta'azir*. Gombe: adds "and shall be liable to disciplinary action as regards his conduct."

[405] PC: 7 years or fine or both. Bauchi: 7 years/30 lashes. Gombe, Jigawa, Kano, Katsina, Sokoto, Yobe, Zamfara: 5 years/30 lashes. Kebbi: 5 years or fine or both and up to 30 lashes. Kaduna: *ta'azir*.

[406] There is much variation in the breakdown of the punishments here. PC: (a) if the person is under sentence of death: up to 14 years with or without fine. (b) if the person is under sentence of imprisonment for 10 years or more or is charged with or liable to arrest for an offence punishable with death: up to 7 years with or without fine. (c) if the person is under sentence of imprisonment for less than 10 years or is charged with or liable to arrest for an offence punishable with imprisonment for up

(a) where the person allowed to escape is to serve a term of imprisonment, with the same penalty that the person allowed to escape or attempt to escape from lawful custody is liable to, such public servant being deemed an accomplice;

(b) where the person allowed to escape is awaiting death penalty the public servant shall be subject to a term of imprisonment which may extend to five years;

(c) in any other case, with a term of imprisonment which shall extend to any such time that the person who was allowed to escape from lawful custody is re-apprehended;

(d) nothing in this section shall prevent the additional punishment of caning which may extend to fifty lashes.

302. Whoever, being a public servant whose duty it is as such public servant to arrest any person or to keep any person in confinement or custody, negligently omits to arrest that person or negligently suffers that person to escape from confinement or custody, shall be punished with a term of imprisonment which may extend to one year and shall be liable to caning which may extend to twenty lashes.[407]

303. Whoever, being a public servant wilfully omits to perform any duty pertaining to his office which he is legally bound to perform, shall if such omission causes or tends to cause danger to human life, health or safety or causes or tends to cause a riot, be punished with imprisonment for a term which may extend to one year and shall also be liable to caning which may extend to forty lashes.[408]

304. Whoever, being a public servant, abandons[409] his duties in prearranged agreement with two or more other such public servants[410] shall, if the intention or effect of such abandonment is to interfere with the performance of public service to an extent that will cause an injury or damage or grave inconvenience to the community,[411] be punished with a

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to 10 years: 3 years or fine or both. (d) other cases: 2 years or fine or both. Gombe, Jigawa, Kano, Katsina, Kebbi, Sokoto, Yobe, Zamfara: "(a) with the same penalty that the person allowed to escape or attempt to escape from lawful custody is liable to, such public servant being deemed an accomplice; (b) where the person allowed to escape is awaiting death penalty the public servant shall be subject to a term of imprisonment which may extend to life [except that Gombe omits the last 5 words]; (c) with a term of imprisonment which shall extend to any such time that the person who was allowed to escape from lawful custody is reapprehended. (d) Nothing in this section shall prevent the additional punishment of caning which may extend to 50 lashes [but Sokoto and Kebbi omit (d)." Bauchi: does not have subsections, saying only: "shall be punished with a term of imprisonment which shall extend to any such time that the person who was allowed to escape from lawful custody is reapprehended: provided the aggregate term of imprisonment where appropriate shall not be higher than the term of the original, actual offender shall have served"; and Bauchi allows a further 40 lashes. Kaduna: *ta'azir*.

[407] PC: 2 years or fine or both. Bauchi: 2 years/20 lashes. Gombe: 1 year/30 lashes. Kaduna: *ta'azir*.

[408] All SPCs except Kaduna and Yobe omit this section. Yobe makes this section a subsection of what is here §302. Yobe punishes with 1 year/20 lashes, Kaduna with *ta'azir*. PC: 2 years or fine or both.

[409] PC: "wrongfully abandons". All SPCs except Kaduna and Yobe: "wilfully abandons".

[410] All SPCs except Kaduna and Yobe: "whether acting alone or in prearranged agreement with two or more other such public servants".

[411] All SPCs except Kaduna and Yobe: "if the intention is to cause danger to human life, health or safety, or tends to cause a riot or any injury or damage or grave inconvenience to the community".

term of imprisonment which shall not be less than one year and shall also be liable to caning which shall extend to fifty lashes.[412]

305. Whoever, being a public servant and being legally bound as such public servant not to purchase or bid for certain property, purchases or bids for that property in his own name or in the name of another jointly or in shares with others, shall be punished:[413]

(a) with imprisonment for a term which may extend to two years;[414] and

(b) with caning which may extend to forty lashes;[415] and

(c) with forfeiture of all property unlawfully purchased or bade.

306. Whoever pretends to hold any particular office as a public servant knowing that he does not hold such office, or falsely personates any other person holding such office, or wears any dress or carries any token resembling any dress or token used by that class of public servant with the intention that it may be believed that he belongs to that class of public servant, shall be punished with imprisonment for a term which may extend to three years and shall also be liable to caning which may extend to thirty lashes.[416]

Contempts of the Lawful Authority of Public Servants

** [Absconding to avoid service of summons, notice or order.][417]

307. Whoever in any manner:

(a) absconds from, or intentionally, prevents the serving on himself or on any other person of any summons, notice or order proceeding from any public servant legally competent as such public servant to issue such summons, notice or order or other legal process;[418] or

(b) intentionally prevents the lawful affixing to any place of any such summons, notice or order; or

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412 Bauchi, probably in error, puts this section as a subsection of what is here §302. As to punishment: PC: up to 2 years or fine or both. Bauchi: not less than 5 years and exactly 40 lashes. Gombe: up to 1 year and up to 50 lashes. Jigawa: up to 3 years and exactly 50 lashes. Kano, Katsina: not less than 1 year and up to 50 lashes. Kebbi: not less than 1 year or fine or both and exactly 50 lashes. Kaduna: *ta'azir*.

413 PC and Kaduna do not split the punishments into subsections. PC: 2 years or fine or both. Kaduna: *ta'azir*.

414 Sokoto: 1 year.

415 Sokoto omits this subsection.

416 PC splits this section into two: personating a public servant "and in such assumed character does or attempts to do any act under colour of such office", punished with up to 3 years or fine or both; and wearing dress or carrying token used by public servant with intent as here, punished with up to 6 months or up to £20 fine or both. All SPCs join the two offences in one as here. Punishments: Bauchi: 3 years/40 lashes. Kebbi: 3 years or fine or both and up to 30 lashes. Kaduna: *ta'azir*.

417 PC, Gombe and Sokoto have here the following section: "Whoever absconds in order to avoid being served with a summons, notice or order proceeding from any public servant legally competent as such public servant to issue such summons, notice or order, shall be punished – (a) with imprisonment for a term which may extend to one month or with fine which may extend to ten pounds or both [Gombe, Sokoto: up to 1 month and up to 20 lashes]; or (b) if the summons or notice or order is to attend in person or by agent or to produce a document in a court of justice, with imprisonment for a term which may extend to six months or with fine which may extend to twenty pounds or both [Gombe, Sokoto: up to 6 months and up to 40 lashes]."

418 Only Kano and Katsina include the last phrase, "or other legal process".

(c) intentionally removes any such summons, notice or order from any place to which it is lawfully affixed; or

(d) intentionally prevents the lawful making of any proclamation under the authority of any public servant legally competent as such public servant to direct such proclamation to be made,

shall be punished:[419]

(i) with imprisonment for a term which may extend to one month or with caning which may extend to twenty lashes;[420] or

(ii) if the summons, notice, order or proclamation is to attend in person or by agent or to produce a document in a court of justice, with imprisonment for a term which may extend to six months or with caning which may extend to forty lashes.[421]

308. Whoever, having been required by a summons, notice, order or proclamation proceeding from any public servant[422] legally competent as such public servant to issue the same to attend in person or by agent at a certain time and place, intentionally and without reasonable cause refuses or omits to attend at the place and time or departs from that place before the time at which it is lawful for him to depart, shall be punished with:[423]

(a) a term of imprisonment which may extend to one month, or with caning which may extend to twenty lashes; [424]or

(b) if the summons, notice, order or proclamation is to attend in person or by agent in a court of justice, with imprisonment for a term which may extend to six months or with caning which may extend to thirty lashes.[425]

309. Whoever, having been required by a summons, notice, order or proclamation proceeding from a public servant[426] legally competent as such public servant to issue the same to produce or deliver up any document or other thing, intentionally omits so to produce or deliver up the same, shall be punished:[427]

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[419] Kaduna does not divide the punishments into two sections, punishing all these offences with *ta'azir*.
[420] PC: up to 1 month or up to £10 fine or both. Bauchi: up to 6 months and up to 20 lashes. Gombe, Jigawa, Kebbi, Sokoto, Yobe, Zamfara: up to 1 month and up to 20 lashes. Kano, Katsina: up to 6 months and up to 40 lashes.
[421] PC: up to 6 months up to £20 fine or both. Bauchi: up to 6 months and up to 20 lashes. Gombe, Jigawa, Kebbi, Sokoto, Yobe, Zamfara: up to 6 months and up to 40 lashes. Kano, Katsina: up to 1 month and up to 20 lashes.
[422] Kano, Katsina: "Whoever is required by a summons, notice, order or other legal process from any public servant . . .".
[423] Kaduna does not divide the punishments into two sections, punishing all these offences with *ta'azir*.
[424] PC: up to 1 month or up to £10 fine or both. Bauchi: up to 6 months and up to 10 lashes. Gombe, Jigawa, Kano, Katsina, Yobe, Zamfara: up to 1 month and up to 20 lashes. Kebbi: 1 month/fine/both and up to 20 lashes. Sokoto: up to 3 months.
[425] PC: up to 6 months or up to £20 fine or both. Bauchi: up to 6 months and up to 20 lashes. Gombe, Jigawa, Kano, Katsina, Yobe, Zamfara: up to 6 months and up to 30 lashes. Sokoto: up to 6 months. Kebbi: up to 6 months or fine or both and up to 30 lashes.
[426] Kano, Katsina: "Whoever is required by a summons, notice, order or other legal process from any public servant . . .".
[427] Kaduna does not divide the punishments into two sections, punishing all these offences with *ta'azir*.

(a) with imprisonment for a term which may extend to one month or with caning which may extend to twenty lashes;[428] or

(b) if the document is to be produced or delivered up to a court of justice, with imprisonment for a term which may extend to six months or with caning which may extend to thirty lashes or with fine.[429]

310. Whoever, being legally bound[430] to give any notice or to furnish information on any subject to any public servant as such, intentionally omits to give such notice or to furnish such information in the manner and at the time required by law shall be punished:[431]

(a) with imprisonment for a term which may extend to one month or with caning which may extend to twenty lashes or with fine;[432] or

(b) if the information which he is legally bound to give is in respect of the commission of an offence or is required for the purpose of preventing the commission of an offence or in order to arrest an offender, with imprisonment which may extend to six months or with caning which may extend to thirty lashes or with fine.[433]

311. Whoever, being legally bound[434] to furnish information on any subject to any public servant as such, furnishes as true information on the subject which he knows or has reason to believe to be false, shall be punished:[435]

(a) with imprisonment for a term which may extend to six months or with caning which may extend to thirty lashes or with fine;[436]

(b) if the information which he is legally bound to give is in respect of the commission of an offence or is required for the purpose of preventing the commission of an offence or in order to arrest an offender, with imprisonment for a

[428] PC: up to 1 month or up to £10 fine or both. Bauchi: up to 6 months and up to 10 lashes. Gombe, Jigawa, Kano, Katsina, Yobe, Zamfara: up to 1 month and up to 20 lashes. Sokoto: up to 1 month and fine. Kebbi: up to 1 month or fine or both and up to 20 lashes.

[429] PC: up to 6 months or up to £20 fine or both. Bauchi: up to 6 months and up to 20 lashes. Gombe, Jigawa, Kano, Katsina, Yobe, Zamfara: up to 6 months and up to 30 lashes. Sokoto: up to 6 months and fine. Kebbi: up to 6 months or fine or both and up to 30 lashes.

[430] Kano, Katsina: "Whoever is legally bound . . .".

[431] Kaduna does not divide the punishments into two sections, punishing all these offences with *ta'azir*.

[432] PC: up to 1 month or up to £10 fine or both. Bauchi: up to 6 months and up to 10 lashes. Gombe, Jigawa, Katsina, Yobe, Zamfara: up to 1 month and up to 20 lashes. Kano: up to 6 months and up to 30 lashes. Sokoto: up to 3 months. Kebbi: up to 1 month or fine or both and up to 20 lashes.

[433] PC: up to 6 months or up to £20 fine or both. Bauchi: up to 6 months and up to 20 lashes. Gombe, Jigawa, Yobe, Zamfara: up to 6 months and up to 30 lashes. Kano, Katsina: up to 1 year and up to 40 lashes. Sokoto: up to 6 months or fine or both. Kebbi: up to 6 months or fine or both and up to 30 lashes.

[434] Kano, Katsina: "Whoever is legally bound . . .".

[435] Kaduna does not divide the punishments into two sections, punishing all these offences with *ta'azir*.

[436] PC: up to 6 months or up to £20 fine or both. Bauchi: up to 6 months and up to 20 lashes. Gombe, Jigawa, Kano, Katsina, Sokoto, Yobe, Zamfara: up to 6 months and up to 30 lashes. Kebbi: 6 months or fine or both and up to 30 lashes.

term which may extend to one year or with caning which may extend to forty lashes or with fine.[437]

312. Whoever gives to any public servant any information which he knows or believes to be false, intending thereby to cause or knowing it to be likely that he will thereby cause such public servant:

(a) to do or to omit anything which such public servant ought not to do or omit if the true state of facts respecting such information is given were known by him; or

(b) to use the lawful power of such public servant to the injury or annoyance of any person,

shall be punished with a term of imprisonment which may extend to one year, or with caning which may extend to thirty lashes or with fine.[438]

** [Refusing oath or affirmation when duly required by public servant to make it.][439]

313. Whoever being legally bound[440] to answer questions put to him on any subject by any public servant in the exercise of the lawful powers of such public servant, refuses to answer any such question, shall be punished with imprisonment for a term which may extend to six months or with caning which may extend to twenty lashes or with fine.[441]

314. Whoever refuses to sign any statement made by him when required to sign that statement by a public servant legally competent to require that he shall sign that statement,

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[437] PC: up to 2 years or fine or both. Bauchi: up to 2 years and up to 40 lashes. Gombe, Jigawa, Kano, Katsina, Sokoto, Yobe, Zamfara: up to 1 year and up to 40 lashes. Kebbi: up to 1 year or fine or both and up to 40 lashes.

[438] PC: up to 1 year or up to £20 fine or both. Bauchi: up to 1 year and up to 40 lashes. Gombe, Jigawa, Kano, Sokoto, Yobe, Zamfara: up to 1 year and up to 30 lashes. Kebbi: up to 1 year or fine or both and up to 30 lashes. Kaduna: *ta'azir*. Katsina appears to have omitted some words from the published version of its statute, saying: "such person shall also be liable to caning which may extend to thirty lashes." PC has 3 illustrations following this section, of which Sokoto includes the second: "A falsely informs a public servant that Z has contraband goods in a secret place knowing such information to be false and knowing that it is likely that the consequence of the information will be a search of Z's premises attended with annoyance to Z. A has committed an offence under this section."

[439] PC has here a section, omitted in all SPCs, that reads as follows: "(1) Whoever refuses to bind himself by an oath or affirmation to state the truth when required so to bind himself by a public servant legally competent to require that he shall so bind himself, shall be punished with imprisonment for a term which may extend to six months or with fine which may extend to twenty pounds or with both. (2) The provisions of this section shall not apply to a witness in a judicial proceeding who, having been called upon to take an oath or make a solemn affirmation that he will speak the truth under subsection (1) of section 229 of the Schedule to the Criminal Procedure Code Law, refuses to take such oath or make such affirmation under the provisions of section 230 of the Schedule to the Criminal Procedure Code Law."

[440] Kano, Katsina: "Whoever is legally bound . . .".

[441] PC: up to 6 months or up to £20 fine or both. Bauchi: up to 3 months and up to 10 lashes. Gombe, Jigawa, Katsina, Sokoto, Yobe, Zamfara: up to 6 months and up to 20 lashes. Kebbi: up to 6 months or fine or both and up to 20 lashes. Kaduna: *ta'azir*. Kano: up to 6 months and up to 30 lashes; and Kano adds a second subsection as follows: "(b) If the information which he is legally bound to give [is] in respect of the commission of an offence or is required for the purpose of preventing the commission of an offence or in order to arrest an offender shall be punished with imprisonment for a term which may extend to one year and shall also be liable to caning which may extend to forty lashes."

shall be punished with imprisonment for a term which may extend to three months or with caning which may extend to twenty lashes or with fine.[442]

315. Whoever offers any resistance to the taking of any property by the lawful authority of any public servant, knowing or having reason to believe that he is such public servant, shall be punished with imprisonment for a term which may extend to six months or with caning which may extend to thirty lashes or with fine.[443]

316. Whoever intentionally obstructs any sale of property offered for sale by the lawful authority of any public servant as such shall be punished with imprisonment for a term which may extend to one month or with caning which may extend to twenty lashes or with fine.[444]

317. Whoever, when any property has been attached or taken by the lawful authority of any public servant, knowingly and with intent to hinder or defeat the attachment or process receives, removes, retains, conceals, or disposes of such property, shall be punished with imprisonment for a term which may extend to two years or with caning which may extend to fifty lashes or with fine.[445]

318. Whoever at any sale of property held by the lawful authority of a public servant as such purchases or bids for any property on account of any person whether himself or any other, whom he knows to be under legal incapacity to purchase that property at that sale, or bids for such property not intending to perform the obligations under which he lays himself by such bidding, shall be punished with imprisonment for a term which may extend to six months, or with caning which may extend to thirty lashes or with fine.[446]

319. Whoever voluntarily obstructs any public servant in the discharge of his public functions shall be punished with imprisonment for a term which may extend to two years or with caning which may extend to forty lashes or with fine.[447]

320. Whoever voluntarily obstructs any public servant in the discharge of his public functions under any written law or voluntarily obstructs any person engaged in the discharge of any duty imposed on him by any written law shall be punished with imprisonment for a

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[442] PC: up to 3 months or up to ₤10 fine or both. Bauchi: up to 3 months and up to 10 lashes. Gombe, Jigawa, Kano, Katsina, Sokoto, Yobe, Zamfara: up to 3 months and up to 20 lashes. Kebbi: up to 3 months or fine or both and up to 20 lashes. Kaduna: *ta'azir*.

[443] PC: up to 6 months or up to ₤20 fine or both. Bauchi: up to 6 months and up to 20 lashes. Gombe, Jigawa, Kano, Katsina, Yobe, Zamfara: up to 6 months and up to 30 lashes. Kebbi: up to 6 months or fine or both and up to 30 lashes. Sokoto: up to 6 months or up to 30 lashes. Kaduna: *ta'azir*.

[444] PC: up to 1 month or up to ₤10 fine or both. Bauchi: up to 2 months and up to 10 lashes. Gombe, Jigawa, Kano, Katsina, Sokoto, Yobe, Zamfara: up to 1 month and up to 20 lashes. Kebbi: up to 1 month or fine or both and up to 20 lashes. Kaduna: *ta'azir*.

[445] PC: up to 3 years or fine or both. Bauchi: up to 1 year and up to 20 lashes. Gombe, Jigawa, Kano, Katsina, Yobe, Sokoto, Zamfara: up to 2 years and up to 50 lashes. Kebbi: up to 2 years or fine or both and up to 50 lashes. Kaduna: *ta'azir*.

[446] PC: up to 1 month or up to ₤10 fine or both. Bauchi: up to 6 months and up to 20 lashes. Gombe, Kano, Katsina, Sokoto, Yobe, Zamfara: up to 6 months and up to 30 lashes. Jigawa: up to 1 month and up to 30 lashes. Kebbi: up to 6 months or fine or both and up to 30 lashes. Kaduna: *ta'azir*.

[447] PC: up to 3 months or up to ₤20 fine or both. Bauchi, Sokoto: up 1 year and up to 40 lashes. Gombe, Jigawa, Kano, Katsina, Yobe, Zamfara: up to 2 years and up to 40 lashes. Kebbi: up to 2 years or fine or both and up to 40 lashes. Kaduna: *ta'azir*.

term which may extend to two years or with caning which may extend to forty lashes or with fine.[448]

321. Whoever, being legally bound to render or furnish assistance to any public servant in the execution of his public duty, intentionally omits to give such assistance, shall be punished with imprisonment for a term which may extend to six months or with caning which may extend to thirty lashes or with fine.[449]

322. Whoever being legally prohibited from residing in any district, or being legally ordered to reside in any district, intentionally disobeys any such prohibition or order shall be punished with imprisonment for a term which may extend to six months or with caning which may extend to thirty lashes or with fine.[450]

323. Whoever, knowing that by an order promulgated by a public servant legally empowered to promulgate such order he is directed to abstain from a certain act, or to take certain action with respect to certain property in his possession or under his management, disobeys such direction, shall:[451]

> (a) if such disobedience causes or tends to cause obstruction, annoyance or injury or risk of obstruction, annoyance or injury to any person lawfully employed, be punished with imprisonment for a term which may extend to three months or with caning which may extend to twenty lashes or with fine;[452]
>
> (b) if such disobedience causes or tends to cause danger to human life, health or safety or causes or tends to cause riot or affray, shall be punished with imprisonment for a term which may extend to six months or with caning which may extend to thirty lashes or with fine;[453]

324. Whoever holds out any threat of injury to any public servant or to any person in whom he believes that public servant to be interested, for the purpose of inducing that public servant to do any act or to forbear or delay to do any act connected with the exercise of the public functions of such public servant, shall be punished with imprisonment for a term which may extend to two years or with caning which may extend to forty lashes or with fine.[454]

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[448] PC: up to 2 years or fine or both. Bauchi: up to 1 year and up to 40 lashes. Gombe, Jigawa, Kano, Katsina, Sokoto, Yobe, Zamfara: up to 2 years and up to 40 lashes. Kebbi: up to 2 years or fine or both and up to 40 lashes. Kaduna: *ta'azir*.

[449] PC: up to 6 months or up £20 fine or both. Bauchi: up to 3 months and up to 10 lashes. Gombe, Jigawa, Kano, Katsina, Yobe, Zamfara: up to 6 months and up to 30 lashes. Sokoto: up to 6 months or fine or both. Kebbi: up to 6 months or fine or both and up to 30 lashes. Kaduna: *ta'azir*.

[450] PC: up to 6 months or up £50 fine or both. Bauchi: up to 6 months and up to 20 lashes. Gombe, Jigawa, Kano, Katsina, Sokoto, Yobe, Zamfara: up to 6 months and up to 30 lashes. Kebbi: up to 6 months or fine or both and up to 30 lashes. Kaduna: *ta'azir*.

[451] Kaduna does not divide the punishments into two sections, punishing all these offences with *ta'azir*.

[452] PC: up to 3 months or up £20 fine or both. Bauchi: up to 3 months and up to 10 lashes. Gombe, Jigawa, Kano, Katsina, Sokoto, Yobe, Zamfara: up to 3 months and up to 20 lashes. Kebbi: up to 3 months or fine or both and up to 20 lashes.

[453] PC: up to 6 months or up £50 fine or both. Bauchi, Katsina: up to 6 months and up to 20 lashes. Gombe, Jigawa, Sokoto, Yobe, Zamfara: up to 6 months and up to 30 lashes. Kano: up to 6 months and up to 40 lashes. Kebbi: up to 6 months or fine or both and up to 30 lashes.

[454] PC: up to 2 years or fine or both. Bauchi, Jigawa, Kano, Katsina, Yobe, Zamfara: up to 2 years and up to 40 lashes. Gombe, Sokoto: up to 1 year and up to 40 lashes. Kebbi: up to 2 years or fine or both and up to 40 lashes. Kaduna: *ta'azir*.

325. Whoever holds out any threat of injury to any person for the purpose of inducing that person to refrain or desist from applying for protection against any injury to any public servant legally empowered as such to give such protection or to cause such protection to be given, shall be punished with imprisonment for a term which may extend to one year or with caning which may extend to forty lashes or with fine.[455]

326. Whoever intentionally offers any insult or causes any interruption to any public servant while such public servant is sitting in any stage of a judicial proceeding shall be punished with imprisonment for a term which may extend to six months or with caning which may extend to twenty lashes or with fine.[456]

False Evidence and Offences Relating to the Administration of Justice

327. Whoever makes any statement, verbally or otherwise, which is false in a material particular and which he either knows or believes to be false or does not believe to be true, is said to give false evidence.[457]

Explanation:

A material particular within the meaning of this section means a particular which is material to any question then in issue or intended to be raised in that proceeding.[458]

328. Whoever causes any circumstance to exist or makes any false entry in any book or record or makes any document containing a false statement intending that such circumstance, false entry or false statement may appear in evidence or be used in a judicial proceeding or in a proceeding taken by law before a public servant as such or before an arbitrator and that such circumstance, false entry or false statement so appearing in evidence or so used may cause any person, who in such proceeding is to form an opinion upon the circumstance, entry or statement to entertain an erroneous opinion touching any point material to the result of such proceeding, is said to fabricate false evidence.[459]

329. (1) Whoever intentionally gives false evidence in any stage of a judicial proceeding or fabricates false evidence for the purpose of its being used in any stage of a judicial proceeding shall be punished with imprisonment for a term which may extend to five years and shall also be liable to caning of sixty lashes.[460]

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[455] PC: up to 1 year or fine or both. Bauchi, Jigawa: up to 2 years and up to 40 lashes. Gombe, Kano, Katsina, Sokoto, Yobe, Zamfara: up to 1 year and up to 40 lashes. Kebbi: up to 1 year or fine or both and up to 40 lashes. Kaduna: *ta'azir*.

[456] PC: up to 6 months or up to £20 fine or both. Bauchi, Gombe, Jigawa, Kano, Katsina, Sokoto, Yobe, Zamfara: up to 6 months and up to 20 lashes. Kebbi: up to 6 months or fine or both and up to 20 lashes. Kaduna: *ta'azir*.

[457] PC: "Whoever, being legally bound by an oath or by any express provision of law to state the truth or being bound by law to make a declaration upon any subject, makes any statement . . .".

[458] PC adds one other explanation and four illustrations, omitted here and in all SPCs.

[459] PC has three illustrations to this section, omitted here and in all SPCs.

[460] PC: 14 years/fine. Bauchi, Jigawa, Kano, Katsina, Yobe, Zamfara: 10 years/60 lashes. Gombe: 60 lashes. Sokoto: 5 years/30 lashes. Kebbi: up to 3 years or fine or both and up to 60 lashes. Kaduna: *ta'azir*.

(2) Whoever intentionally gives or fabricates false evidence in any other case, shall be punished with imprisonment for a term which may extend to three years and shall also be liable to caning which may extend to forty lashes.[461]

** [false evidence causing another to lose property][462]

330. (1) Whoever gives or fabricates false evidence intending thereby to cause or knowing it to be likely that he will thereby cause any person to be convicted of an offence which is punishable with death shall be punished with imprisonment for a term which may extend to five years and shall also be liable to caning of sixty lashes.[463]

(2) If an innocent person is convicted and executed in consequence of such false evidence, the person who gave or fabricated such false evidence shall be punished with *qisas.*[464]

(3) If an innocent person is convicted and is caused to suffer the punishment of amputation in consequence of such false evidence, the person who gave or fabricated such false evidence shall be punished with *qisas.*[465]

331. Whoever gives or fabricates false evidence intending thereby to cause or knowing it to be likely that he will thereby cause any person to be convicted of an offence which is not punishable with death but is punishable with any term of imprisonment or caning[466] shall be punished as a person convicted of that offence would be liable to be punished.

332. Whoever uses or attempts to use as true or genuine evidence any evidence which he knows to be false or fabricated, shall be punished in the same manner as if he gave or fabricated false evidence.

333. Whoever issues or signs any certificate required by law to be given or signed or relating to any fact of which such certificate is legally admissible in evidence knowing or believing that such certificate is false in any material point, shall be punished in the same manner as if he gave false evidence.

334. Whoever uses or attempts to use any certificate[467] as a true certificate knowing the same to be false in any material point, shall be punished in the same manner as if he gave false evidence.

335. (1) Whoever in any declaration made or subscribed by him, which declaration any court of justice or any public servant or other person is bound or authorised by law to receive as evidence of any fact, makes any statement which is false and which he

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461 PC: 7 years/fine. Bauchi, Gombe, Jigawa, Kano, Yobe, Zamfara: 5 years/40 lashes. Katsina: 10 years/60 lashes. Sokoto: 2 years/20 lashes. Kebbi: 2 years or fine or both and up to 40 lashes. Kaduna omits this subsection altogether. Gombe, no doubt in error, puts it as a separate section.

462 Kebbi adds a third subsection here, as follows: "(3) Whoever intentionally gives or fabricates false evidence and cause another person to lose his property shall pay an amount equal to the lost property." PC adds an illustration omitted here and in all SPCs.

463 PC: life/fine. Bauchi: 15 years/40 lashes. Jigawa, Kano, Kebbi, Sokoto, Yobe, Zamfara: 10 years/60 lashes. Katsina: 6 months/60 lashes. Kaduna: *ta'azir*. Gombe, no doubt in error, has what is subsection (2) of the previous section here and in all other codes, as the first unnumbered section of this one.

464 PC: death.

465 PC omits this subsection.

466 PC: "punishable with any term of imprisonment for a term of seven years or upwards".

467 PC and all SPCs except Kano and Katsina: "any certificate mentioned in [the previous section]".

neither knows nor believes to be false or does not believe to be true,[468] touching any point material to the object for which the declaration is made or used, shall be punished in the same manner as if he gave false evidence.

(2) Whoever uses or attempts to use as true any such declaration knowing the same to be false in any material point, shall be punished in the same manner as if he gave false evidence.

Explanation:

A declaration, which is inadmissible merely upon the ground of some informality, is a declaration within the meaning of this section.

336. Whoever knowingly makes a false translation of the evidence of a witness or of the statement of an accused person or of a party to a civil suit or makes a false translation or copy of any document with the intention that such translation or copy shall be used in any manner in any judicial proceeding or knowing that it is likely to be so used, and whoever knowingly uses such translation or copy in any manner in any judicial proceeding, shall be punished in the same manner is if he gave false evidence.

337. Whoever secretes or destroys any document, which he may be lawfully compelled to produce as evidence in a court of justice or in any proceeding lawfully held before a public servant as such, or obliterates or renders illegible the whole or any part of such document with the intention of preventing the same from being produced or used as evidence before such court or public servant as aforesaid or after he shall have been lawfully summoned or required to produce the same for that purpose, shall be punished with imprisonment for a term which may extend to five years and shall also be liable to caning which may extend to fifty lashes.[469]

Screening of Offenders

338. Whoever, knowing or having reason to believe that an offence has been committed, causes any evidence of the commission of the offence to disappear with the intention of screening the offender from legal punishment, or with a like intention of intending to prevent his arrest gives any information respecting the offence which he knows or believes to be false or harbours or conceals a person whom he knows or has reason to believe to be the offender shall be punished:

(a) with imprisonment for a term which may extend to five years and shall also be liable to caning which may extend to forty lashes;[470] and

(b) in addition where the offender causes evidence to disappear the offender shall be caused to remit the evidence so caused to disappear or be punished with an additional term of imprisonment which may extend to one year.[471]

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[468] PC: "which is false and which he either knows or believes to be false or does not believe to be true". But all SPCs except Katsina, Kebbi, Sokoto, and Yobe are as here. Katsina: "which is false or does not believe to be true". Kebbi, Sokoto, Yobe: "which is false and which he neither knows or believes to be false or does not believe to be true".

[469] PC: 2 years or fine or both. Bauchi: 7 years/40 lashes. Kebbi: up to 5 years or fine or both and up to 50 lashes. Kaduna: *ta'azir*. Katsina's code probably intends 5 years/50 lashes but the words "shall also be liable to caning which may extend to fifty lashes" are missing.

[470] PC: 5 years/fine. Kano: 2 years/20 lashes. Kebbi: up to 5 years or fine or both and up to 40 lashes. Kaduna with *ta'azir*.

339. Whoever accepts or attempts to obtain or agrees to accept any gratification for himself or any other person or any restitution of property to himself or any other person, in consideration of his concealing an offence or of his screening any person from legal punishment for any offence or of his not proceeding against any person for the purpose of bringing him to legal punishment, shall be punished with imprisonment for a term which may extend to five years and shall also be liable to caning which may extend to fifty lashes.[472]

340. Whoever gives or causes or offers or agrees to give or cause any gratification to any other person or to restore or cause the restoration of any property to any other person, in consideration of that other person's concealing an offence or of his screening any person from legal punishment for any offence or of his not proceeding against any person for the purpose of bringing him to legal punishment, shall be punished with imprisonment for a term which may extend to five years and shall also be liable to caning which may extend to fifty lashes.[473]

Explanation:

In sections 338 to 340 the word "offence" includes any act done outside the State which if done in the State would be an offence and the punishment for the offence shall be deemed to be the same as the punishment would be if the act were done in the State.[474]

** [Punishment for intermediary on gratification][475]

341. Whoever, knowing or having reason to believe that any person or persons are about to commit or have recently committed the offence of *hirabah,*[476] harbours them or any of them with the intention of facilitating the commission of such offence of *hirabah* or of screening them or any of them from punishment, shall be punished with the punishment provided for the offence of *hirabah.*[477]

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[471] PC and Kaduna both omit this second subsection. Bauchi increases the punishment to 3 years. PC and all SPCs add the following explanation: "In this section the word 'offence' includes any act done outside [the state] which if done in [the state] would be an offence and the punishment for the offence shall be deemed to be the same as the punishment would be if the act were done in [the state]." PC and Sokoto also add the following illustration: "A, knowing that B has murdered [Sokoto: killed] Z, assists B to hide the body with the intention of screening B from punishment. A is liable to imprisonment for five years and also to fine [Sokoto: caning]."

[472] PC: 5 years/fine. Bauchi: 5 years/40 lashes. Jigawa, Kano: 3 years/30 lashes. Gombe, Katsina, Yobe, Zamfara: 7 years/50 lashes. Kebbi: up to 7 years or fine or both and up to 50 lashes. Kaduna: *ta'azir*. PC adds a subsection (2): " This section shall not extend to any case in which the offence may be lawfully compounded". PC and all SPCs also add the same explanation as the one to §338(b) above.

[473] PC: 7 years/fine. Bauchi: 5 years/40 lashes. Gombe, Jigawa, Katsina, Yobe, Zamfara: 7 years/50 lashes. Kano: 7 years/20 lashes. Kebbi: up to 7 years or fine or both and up to 50 lashes. Kaduna: *ta'azir*. PC adds a subsection (2): " This section shall not extend to any case in which the offence may be lawfully compounded".

[474] As noted, this explanation is distributed to the various individual sections in PC and all SPCs.

[475] Kano and Katsina add a section here as follows: "The agent who facilitates offering gratification between the receiver and the giver shall be imprisoned for [Kano: 2 years; Katsina: 7 years] and shall also be liable to caning which shall extend to fifty lashes."

[476] PC has "robbery or brigandage" in place of "the offence of *hirabah*" in this section.

[477] PC: up to 7 years and fine. Bauchi: up to 7 years and up to 40 lashes. Gombe, Jigawa, Kebbi, Sokoto, Yobe, Zamfara: up to 7 years and up to 50 lashes. Kano, Katsina: up to 15 years and up to 70 lashes. Kaduna: as here, except refers to section on punishment for *hirabah*.

Explanation:

For the purpose of this section it is immaterial whether the hirabah is intended to be committed or has been committed within the State or elsewhere.

Resistance to Arrest, and Escape

342. Whoever intentionally offers any resistance or illegal obstruction to the lawful arrest of any other person or rescues or attempts to rescue any other person from any confinement or custody in which that person is lawfully detained, shall be punished:[478]

(a) with imprisonment for a term which may extend to two years or with caning which may extend to fifty lashes, or with fine;[479] and

(b) if such other person is under sentence of death, shall be punished with imprisonment for a term which may extend to five years and shall also be liable to caning which may extend to twenty lashes.[480]

343. Whoever intentionally offers any resistance or illegal obstruction to the lawful arrest of himself for any offence with which he is charged or of which he has been convicted or escapes or attempts to escape from any custody in which he is lawfully detained for any such offence, shall be punished with imprisonment for a term which may extend to two years and shall be liable to caning which may extend to thirty lashes.[481]

344. Whoever in any case not provided for in section 343 above intentionally offers any resistance or illegal obstruction to the lawful arrest of himself or escapes or attempts to escape from any custody in which he is lawfully detained, shall be punished with imprisonment for a term which may extend to one year and shall be liable to caning which may extend to twenty lashes. [482]

Fraudulent Dealings with Property

345. Whoever, with intent to prevent any property of himself or any other person or any interest therein:

(a) from being taken as a forfeiture or in satisfaction of a fine under a sentence which has been pronounced or which he knows to be likely to be pronounced by a court of justice or other competent authority; or

(b) from being taken in execution of a decree or order, which has been made or which he knows to be likely to be made by a court of justice; or

(c) from being distributed according to law amongst the creditors of himself or such other person; or

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[478] Kaduna does not divide the punishments into two sections, punishing all these offences with *ta'azir*.
[479] PC: up to 7 years or fine or both. Bauchi: up to 7 years and up to 40 lashes. Gombe, Jigawa, Kano, Katsina, Sokoto, Yobe, Zamfara: up to 5 years and up to 50 lashes. Kebbi: 5 years or fine or both and up to 50 lashes.
[480] PC: up to life and fine. Bauchi: 14 years/40 lashes. Gombe, Jigawa, Yobe, Zamfara: 14 years/20 lashes. Kano: 14 years/60 lashes. Katsina: 14 years/30 lashes. Sokoto: 10 years/20 lashes. Kebbi: 7 years or fine or both and up to 20 lashes.
[481] PC: up to 7 years or fine or both. Bauchi: 7 years/30 lashes. Katsina: 2 years/20 lashes. Kebbi: 2 years or fine or both and up to 30 lashes. Kaduna: *ta'azir*.
[482] PC: up to 2 years or fine or both. Bauchi: 2 years/20 lashes. Gombe, Jigawa, Kano: 2 years/30 lashes. Kebbi: 1 year or fine or both and up to 20 lashes. Kaduna: *ta'azir*. Katsina omits this section entirely.

(d) from being available according to law for payment of the debts of himself or such other person,

dishonestly or fraudulently removes or conceals or assists in removing or concealing such property or dishonestly or fraudulently transfers, delivers or releases such property or any interest therein to any person or practices any deception touching the same or accepts or dishonestly or fraudulently accepts, receives or claims such property or any interest therein, knowing that he has no right or rightful claim thereto, shall be punished with imprisonment for a term which may extend to six months, or with fine [sic: caning] which may extend to twenty lashes or with both.[483]

Explanation:

In this section "property" includes rights of action and property of every other description whether movable or immovable and whether corporeal or incorporeal.[484]

346. Whoever fraudulently causes or suffers a decree or order to be passed against him at the suit of any person for a sum not due or for a larger sum than is due to such person or for any property or interest in property to which such person is not entitled or fraudulently causes or suffers a decree or order to be executed against him after it has been satisfied or for anything in respect of which it has been satisfied, shall be punished with imprisonment for a term which may extend to two years or with fine or with both.[485]

347. Whoever fraudulently obtains a decree or order against any person for sum not due or for a larger sum than is due or for any property or interest in property to which he is not entitled or fraudulently causes a decree or order to be executed against any person after it has been satisfied or for anything in respect of which it has been satisfied or fraudulently suffers or permits any such act to be done in his name, shall be punished with imprisonment for a term which may extend to two years or with fine or with both.[486]

348. Whoever dishonestly or fraudulently signs, executes or becomes a party to any deed or instrument, which purports to transfer or subject to any charge any property or any interest therein and which contains any false statement relating to the consideration for such transfer or charge or relating to the person or persons for whose use or benefit it is really intended to operate, shall be punished:[487]

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[483] PC, Gombe: 2 years/fine/both. Bauchi, Jigawa, Kano, Katsina, Sokoto, Yobe, Zamfara: 1 year/20 lashes/both. Kebbi: 1 year or fine or both or up to 20 lashes or both. Kaduna: *ta'azir*.

[484] Gombe, Kano, Katsina omit this explanation.

[485] Kano: 2 years/₦50,000 fine/both and forfeiture of property acquired fraudulently. Katsina: as Kano, but omits forfeiture provision. Kaduna: *ta'azir*. Sokoto adds a proviso: "Nothing shall preclude the court from ordering for payment of restitution." PC and Sokoto add an illustration: "A institutes a suit against Z. Z knowing that A is likely to obtain a decree against him fraudulently suffers a judgment to pass against him for a larger amount at the suit of B, who has no just claim against him, in order that B, either on his own account or for the benefit of Z, may share in the proceeds of any sale of Z's property which may be made under A's decree. Z has committed an offence under this section." Gombe omits this section entirely.

[486] Kano, Katsina: 2 years/₦50,000 fine/both and forfeiture of property acquired fraudulently. Kaduna: *ta'azir*. Gombe omits this section entirely.

[487] PC, Bauchi, Kaduna do not divide the punishments into two subsections, punishing as follows: PC, Bauchi: 2 years or fine or both. Kaduna: *ta'azir*.

(a) with imprisonment for a term which may extend to one year or with fine or with both;[488] or

(b) with caning which may extend to twenty lashes.[489]

Miscellaneous

349. Whoever, knowing or having reason to believe that an offence has been committed, gives any information respecting that offence which he knows or believes to be false, shall be punished:[490]

(a) with imprisonment for a term which may extend to six months or with fine or with both;[491] or

(b) with caning which may extend to thirty lashes.

350. Whoever falsely personates another, whether that other is an actual or fictitious person, and in such assumed character makes any admission or statement, or causes any process to be issued or becomes bail or security, or does any other act in any suit or criminal prosecution, shall be punished:[492]

(a) with imprisonment for a term which may extend to one year;[493] or

(b) with caning which may extend to thirty lashes or with fine or with both.[494]

351. Whoever with intent to cause injury to any person institutes or causes to be instituted any criminal proceeding against that person or falsely charges any person with having committed an offence knowing that there is not just or lawful ground for such proceeding or charge against that person, shall be punished:[495]

(a) with imprisonment for a term which may extend to two years or with fine or with both and twenty lashes;[496] and

(b) where such criminal proceeding is instituted on a false charge of an offence punishable with death or imprisonment for three years or upwards,[497] with imprisonment for a term which may extend to three years and shall also be liable to caning which may extend to thirty lashes.[498]

352. Whoever takes or agrees or consents to take any gratification under pretence or on account of helping any person to recover any movable property of which he shall have been

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[488] Kano, Katsina: 2 years/₦20,000 fine/both.
[489] Gombe, Kano, Katsina: 30 lashes.
[490] PC, Kaduna do not divide the punishments into two subsections, punishing as follows: PC: 2 years or fine or both. Kaduna: *ta'azir*.
[491] Kano, Katsina: 6 months/₦5,000 fine/both.
[492] PC, Kaduna do not divide the punishments into two subsections, punishing as follows: PC: 3 years or fine or both. Kaduna: *ta'azir*.
[493] Bauchi: 2 years. Kano, Katsina: 2 years/up to ₦20,000/both.
[494] Kano, Katsina: up to 45 lashes.
[495] Kaduna does not divide the punishments into subsections, punishing all these offences with *ta'azir*.
[496] PC, Bauchi, Gombe, Jigawa, Sokoto, Yobe, Zamfara: 2 years/fine/both. Kano, Katsina: 2 years/₦20,000 fine/both.
[497] PC, Gombe, Jigawa, Kano, Kebbi, Sokoto, Yobe, Zamfara: 7 years or upwards. Bauchi: 1 year or upwards. Katsina: any offence punishable with imprisonment.
[498] PC: 7 years or fine or both. Kano: 3 years/40 lashes. Katsina: 3 years/20 lashes.

deprived by any offence, shall, unless he uses all means in his power to cause the offender to be brought to justice, be punished:[499]

(a) with imprisonment for a term which may extend to one year or with fine or with both;[500] and

(b) with caning which may extend to thirty lashes.

Explanation:

In this section the word "offence" includes any act done outside the State which if done in the State would be an offence.

353. Whoever with intent to influence the course of justice in any civil or criminal proceeding does any act whereby the fair hearing, trial or decision of any matter in that proceeding may be prejudiced shall be punished with imprisonment which may extend to two years and with caning which may extend to thirty lashes.[501]

Public Nuisance

354. (1) A person is guilty of a public nuisance who does an act or is guilty of an illegal omission which causes any common injury, danger or annoyance to the public or to the people in general who dwell or occupy property in the vicinity, or which must necessarily cause injury, obstruction, danger or annoyance to persons who may have occasion to use any public right.[502]

(2) Where premises on which a public nuisance has occurred are occupied by two or more persons in common each of such persons shall be liable to conviction on account of the nuisance in the absence of sufficient evidence that he has not been guilty of the offence.

** [Katsina: punishment subsection][503]

Explanation 1:

A public nuisance does not cease to be an offence because it causes some convenience or advantage.

Explanation 2:

Whether an act or omission is a public nuisance is a matter of fact, which may depend on the character of the neighbourhood.[504]

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[499] PC, Kaduna do not divide the punishments into two subsections, punishing as follows: PC: 7 years or fine or both. Kaduna: *ta'azir*.

[500] Kano: 1 year/₦20,000 fine/both. Katsina: 1 year/₦10,000 fine/both.

[501] PC, Bauchi: up to 2 years or fine or both. Gombe, Jigawa, Kebbi, Sokoto, Yobe, Zamfara: up to 2 years or fine or up to 30 lashes. Kano, Katsina: up to 2 years or up to ₦20,000 fine or up to 30 lashes. Kaduna: *ta'azir*.

[502] Kano adds here: "and shall on conviction be liable to imprisonment which may extend to six months or fine of ₦5,000 or both." Kano then omits what is here §369, on punishment for public nuisance in cases not otherwise provided for.

[503] Katsina adds subsection (3) as follows: "Whoever commits public nuisance shall be liable to imprisonment for a term of two years or a fine of ₦2,000 or with both." Katsina then omits what is here §369, on punishment for public nuisance in cases not otherwise provided for.

[504] PC adds and illustration, omitted here and in all SPCs.

355. Whoever adulterates any article of food or drink or abstracts from any article of food or drink or any part thereof so as to affect injuriously the quality, substance or nature, intending to sell such article as food or drink without notice to the purchaser or knowing that it is likely that the same will be sold as food or drink without notice to the purchaser, shall be punished:[505]

(a) with imprisonment for a term which may extend to one year; or

(b) with caning which may extend to ten lashes, and with fine;[506] and

(c) with forfeiture of the adulterated food or drink.[507]

356. Whoever sells any article of food or drink which is not of the nature, substance and quality demanded by the purchaser or the article which the seller represents it to be, shall be punished:[508]

(a) with imprisonment for a term which may extend to one year;[509] or

(b) with caning which may extend to ten lashes, and with fine;[510] and

(c) with forfeiture of the adulterated food or drink.[511]

357. Whoever sells or offers or exposes for sale any article of food or drink, with which any admixture has been fraudulently made to increase the bulk, weight or measure of such article or to conceal the inferior quality thereof, or any article of food or drink, from which any part has been intentionally abstracted so as to affect injuriously its quality, substance or nature, without notice to the purchaser, shall be punished:[512]

(a) with imprisonment for a term which may extend to one year;[513] or

(b) with caning which may extend to ten lashes and with fine;[514] and

(c) with forfeiture of the adulterated food or drink.[515]

358. Whoever sells or offers or exposes for sale as food or drink any article which has been rendered or has become noxious or is in a state unfit for food or drink, knowing or having reason to believe that the same is noxious as or unfit for food or drink, shall be punished:[516]

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[505] PC, Kaduna do not divide the punishments into subsections, punishing as follows: PC: 1 year or fine not exceeding £100. Kaduna: *ta'azir*.

[506] Bauchi: up to 20 lashes or fine or both. Gombe, Jigawa, Kebbi, Sokoto, Yobe, Zamfara: up to 10 lashes or fine or both. Kano: up to 55 lashes. Katsina: up to 40 lashes or up to ₦10,000 fine or both.

[507] Kano and Katsina put this subsection on forfeiture first.

[508] PC, Kaduna do not divide the punishments into three subsections, punishing as follows: PC: up to £10 fine. Kaduna: *ta'azir*.

[509] Bauchi, Kano, Katsina: up to 6 months.

[510] Bauchi: up to 20 lashes or fine or both. Gombe, Jigawa, Kebbi, Sokoto, Yobe, Zamfara: up to 10 lashes or fine or both. Kano, Katsina: up to 30 lashes or fine or both.

[511] Kano and Katsina put this subsection on forfeiture first.

[512] PC, Kaduna do not divide the punishments into subsections, punishing as follows: PC: up to 6 months or fine not exceeding £50 or both. Kaduna: *ta'azir*.

[513] Bauchi: up to 3 months. Kano: up to 2 years or ₦20,000 fine. Katsina: up to 2 years.

[514] Bauchi, Gombe, Jigawa, Kebbi, Sokoto, Yobe, Zamfara: up to 10 lashes or fine or both. Kano: up to 50 lashes or both [evidently the provision on fine having strayed into the wrong subsection here]. Katsina: up to 50 lashes or ₦20,000 fine or both.

[515] Kano and Katsina put this subsection on forfeiture first.

(a) with imprisonment for a term which may extend to two years; or[517]

(b) with caning which may extend to thirty lashes and with fine.[518]

** [forfeiture][519]

359. Whoever adulterates any drug or medical preparation in such a manner as to lessen the efficacy or change the operation of such drug or medical preparation or to make it noxious, intending that it shall be sold or used for or knowing it to be likely that it would be sold or used for any medicinal purpose as if it had not undergone such adulteration, shall be punished:[520]

(a) with imprisonment for a term which may extend to three years; and[521]

(b) with caning which may extend to forty lashes and with fine.[522]

** [forfeiture][523]

360. Whoever, knowing any drug or medical preparation to have been adulterated or to have expired[524] in such a manner as to lessen its efficacy or change its operation or render it noxious, sells the same or offers or exposes it for sale or issues it from any dispensary for medicinal purposes as unadulterated or causes it to be used for medicinal purposes by any person not knowing of the adulteration, shall be punished:[525]

(a) with imprisonment for a term which may extend to three years; and[526]

(b) with caning which may extend to forty lashes and with fine.[527]

** [forfeiture][528]

361. Whoever knowingly sells or offers or exposes for sale or issues from a dispensary for medicinal purposes any drug or medical preparation as a different drug or medical preparation, shall be punished:[529]

(a) with imprisonment for a term which may extend to three years;[530] and[531]

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[516] Kano and Katsina omit this section entirely. PC, Kaduna do not divide the punishments into subsections, punishing as follows: PC: up to 2 years or fine or both. Kaduna: *ta'azir*.

[517] Bauchi has "and' instead of 'or'.

[518] Bauchi: up to 40 lashes or fine or both. Gombe, Jigawa, Sokoto, Yobe, Zamfara: up to 30 lashes or fine or both. Kebbi: up to 30 lashes "or with both."

[519] Bauchi adds a subsection (c): "with forfeiture of the adulterated food or drink in any case."

[520] Kano and Katsina omit this section entirely. PC, Kaduna do not divide the punishments into subsections, punishing as follows: PC: up to 6 months or fine up to £50 or both. Kaduna: *ta'azir*.

[521] Gombe, Jigawa, Kebbi, Sokoto, Yobe, Zamfara: have 'or' instead of 'and'.

[522] All SPCs except Kaduna: up to 40 lashes or fine or both.

[523] Bauchi adds a subsection (c): "with forfeiture of the adulterated drugs in any case."

[524] PC does not have "or to have expired".

[525] PC, Kaduna do not divide the punishments into subsections, punishing as follows: PC: up to 6 months or fine up to £50 or both. Kaduna: *ta'azir*.

[526] Gombe, Jigawa, Kano, Katsina, Kebbi, Sokoto, Yobe, Zamfara have 'or' instead of 'and'.

[527] Gombe, Jigawa, Kebbi, Sokoto, Yobe, Zamfara: up to 40 lashes or fine or both. Kano, Katsina: up to 50 lashes or ₦30,000 fine or both.

[528] Bauchi and Kano add a subsection – in Kano this is (a), in Bauchi (c): "with forfeiture of the adulterated drugs [Bauchi: in any case]".

[529] PC, Kaduna do not divide the punishments into subsections, punishing as follows: PC: up to 6 months or fine up to £50 or both. Kaduna: *ta'azir*.

(b) with caning which may extend to forty lashes and with fine.[532]

** [forfeiture][533]

362. Whoever voluntarily corrupts or fouls the water of any public well or reservoir or other public water supply so as to render it less fit for the purpose for which it is ordinarily used, shall be punished:[534]

(a) with imprisonment for a term which may extend to five years;[535] and[536]

(b) with caning which may extend to sixty lashes and with fine.[537]

** [forfeiture][538]

363. Whoever voluntarily vitiates the atmosphere in any place so as to make it noxious to the health of persons in general dwelling or carrying on business in the neighbourhood or passing along a public way, shall be punished:[539]

(a) with imprisonment for a term which may extend to two years;[540] or[541]

(b) with caning which may extend to thirty lashes.[542]

364. Whoever exhibits any false light, mark or buoy intending or knowing it to be likely that such exhibition will mislead any navigator, shall be punished:[543]

(a) with imprisonment for a term which may extend to two years;[544] or[545]

(b) with caning which may extend to thirty lashes.[546]

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530 Kano: 1 year. Katsina: 5 years.
531 Gombe, Jigawa, Kano, Katsina, Kebbi, Sokoto, Yobe, Zamfara have 'or' instead of 'and'.
532 Bauchi, Gombe, Jigawa, Kebbi, Sokoto, Yobe, Zamfara: up to 40 lashes or fine or both. Kano, Katsina: up to 50 lashes or ₦10,000 [Katsina: ₦50,000] fine or both.
533 Bauchi and Katsina add a subsection. In Katsina this is (a): "with forfeiture of the different drug or medical preparation". In Bauchi it is (c): "with forfeiture of the adulterated drugs in any case".
534 PC, Kaduna do not divide the punishments into subsections, punishing as follows: PC: up to 2 years or fine or both. Kaduna: *ta'azir*.
535 Bauchi, Gombe, Jigawa, Sokoto, Yobe, Zamfara: 2 years. Kano, Kebbi: 3 years.
536 Gombe, Jigawa, Katsina, Kebbi, Sokoto, Yobe, Zamfara have 'or' instead of 'and'.
537 Bauchi: up to 40 lashes or fine or both. Gombe, Jigawa, Kebbi, Sokoto, Yobe, Zamfara: up to 30 lashes or fine or both. Kano: up to 40 lashes or ₦50,000 fine or both. Katsina: up to 60 lashes or ₦50,000 fine or both.
538 Bauchi: "(c) with forfeiture of the adulterated drugs in any case."
539 PC, Kaduna do not divide the punishments into subsections, punishing as follows: PC: up to 6 months or fine or both. Kaduna: *ta'azir*.
540 Katsina: 3 years.
541 Kano has 'and' instead of 'or'. Katsina omits the connective entirely.
542 Bauchi, Gombe, Jigawa, Kebbi, Sokoto, Yobe, Zamfara: up to 30 lashes or fine or both. Kano: up to 30 lashes or ₦30,000 fine or both. Katsina: up to 50 lashes or ₦30,000 fine or both.
543 PC, Kaduna do not divide the punishments into subsections, punishing as follows: PC: up to 7 years or fine or both. Kaduna: *ta'azir*.
544 Bauchi: 5 years.
545 Bauchi, Kano have 'and' instead of 'or'.
546 Bauchi, Gombe, Jigawa, Kebbi, Sokoto, Yobe, Zamfara: up to 30 lashes or fine or both. Kano: up to 30 lashes or ₦50,000 fine or both. Katsina: up to 30 lashes or ₦20,000 fine or both.

365. Whoever by doing any act or by omitting to keep in order any property in his possession or under his charge causes obstruction to any person in any public way or public line of navigation, shall be punished with imprisonment for a term which may extend to one year or with fine or twenty lashes.[547]

366. Whoever being an employee engaged in any work connected with the public health or safety or with any service of public utility ceases from such work in pre-arranged agreement with two or more[548] other such employees without giving to his employer twenty-one days notice[549] of his intention so to do, shall, if the intention or effect of such cessation is to interfere with the performance of any general service connected with public health, safety or utility to an extent which will cause injury or damage or grave inconvenience to the community, be punished with imprisonment for a term which may extend to six months, or with fine, or with caning which may extend to twenty lashes.[550]

367. Whoever does any act in a manner so rash or negligent as to endanger human life or to be likely to cause hurt or injury to any person or property, or knowingly or negligently omits to take such order with any property or substance in his possession or under his control or with any operations under his control as is sufficient to guard against probable danger to human life from such property, substance or operations, shall in addition to any other punishment under this law be punished with imprisonment for a term which may extend to one year or with fine, or with caning which may extend to thirty lashes.[551]

368. Whoever knowingly or negligently omits to control any animal in his possession sufficiently to guard against any probable danger to human life or grievous hurt from such animal, shall be punished with imprisonment for a term which may extend to one year or with fine, or with caning which may extend to twenty lashes.[552]

369. Whoever commits a public nuisance in any case not otherwise punishable by this law, shall be punished:[553]

(a) with imprisonment for a term which may extend to one year;[554] or

(b) with caning which may extend to thirty lashes or with fine or with both.[555]

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[547] PC, Bauchi: 2 years/fine/both. Gombe, Jigawa, Kebbi, Sokoto, Yobe, Zamfara: 1 year/fine/both. Kano: 1 year/₦20,000 fine/both. Katsina: 2 years/₦20,000 fine/both. Kaduna: *ta'azir*.

[548] Bauchi: 1 or more.

[549] PC: 15 days.

[550] Kano and Katsina omit this section entirely. Punishments: PC: 6 months/fine/both. Bauchi: up to 1 year or fine and up to 20 lashes. Kaduna: *ta'azir*.

[551] PC: up to 6 months or up to £50 or both. Bauchi: up to 1 year with fine and up to 20 lashes. Gombe, Jigawa, Kebbi: up to 1 year with fine or up to 30 lashes. Kano: up to 6 months or ₦5,000 fine or up to 30 lashes. Kaduna: "shall in addition to any other punishment under this code be liable to *ta'azir* punishment."

[552] PC: up to 6 months or up to £20 or both. Kano and Katsina divide the punishments into two subsections: Kano: (a) up to 1 year or up to ₦10,000 fine or up to 40 lashes or all. (b) "but if the injury inflicted by the animal is so serious, shall pay (*diyah*)". Katsina: (a) up to 1 year or up to ₦10,000 fine, or (b) up to 40 lashes. Kaduna: *ta'azir*.

[553] Kano and Katsina omit this section entirely, see notes to §354. Gombe also omits the section, without otherwise providing for these cases as do Kano and Katsina. PC and Kaduna do not divide the punishments into subsections, punishing as follows: PC: 1 year or fine or both. Kaduna: *ta'azir*.

[554] Bauchi: 6 months.

[555] Bauchi: 40 lashes/fine/both.

370. Whoever repeats or continues a public nuisance, having been ordered by any public servant who has lawful authority to give such order not to repeat or continue such nuisance, shall be punished with imprisonment for a term which may extend to one year, or with fine, or with caning which may extend to thirty lashes.[556]

371. Whoever invades the privacy of any person by prying into his house without his permission or without lawful justification,[557] to eavesdrop on him or read his letters or discover his secrets, shall be punished with imprisonment for a term which may extend to one year or with fine and in either case with caning which may extend to twenty lashes.[558]

372. Whoever to the annoyance of others[559] does any obscene or indecent act in a private or public place,[560] or acts or conducts himself in an indecent manner or in a manner contrary to morality or wears indecent or immoral clothing or uniform which causes annoyance or resentment to others shall be punished with caning which may extend to forty lashes.[561]

373. Whoever keeps or manages a brothel or runs a place for prostitution or rents premises or allows its use knowing or having reason to believe it will be used for prostitution or any activity connected thereto,[562] shall be punished with imprisonment for a term which may extend to one year and shall also be liable to caning which may extend to seventy lashes.[563]

374. (1) Whoever sells or distributes, imports or prints or makes for sale or hire or wilfully exhibits to public view any obscene book, pamphlet, paper, gramophone record or similar article, drawing, painting, representation, or figure or attempts to or offers so to do or has in his possession any such obscene book or other thing for the purpose of sale, distribution or public exhibition, shall be punished with imprisonment for a term which may extend to one year or with fine or with caning which may extend to twenty lashes.[564]

(2)Whoever deals in materials contrary to public morality or manages an exhibition or theatre or entertainment club or show house or any other similar place and presents or displays therein materials which are obscene, or contrary to public policy shall be punished with imprisonment for a term which may extend to one year and with caning which may extend to twenty lashes.[565]

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[556] PC: 3 years/fine/both. Bauchi: one year/fine and up to 30 lashes. Kano, Katsina: 1 year/₦10,000 fine/45 lashes. Gombe omits this section entirely. Kaduna: *ta'azir*.

[557] Kano, Katsina: "spying into his house without lawful justification".

[558] Bauchi: 3 years/fine/both. Gombe, Jigawa, Kebbi, Sokoto, Yobe, Zamfara: 1 year/fine/both. Kano, Katsina: 1 year/₦10,000 fine/both. Kaduna: *ta'azir*. PC omits this section entirely.

[559] Katsina omits "to the annoyance of others".

[560] PC: "in a public place"; PC then omits all the subsequent language up to the punishment provision.

[561] PC: up to 2 years/fine/both. Kaduna: *ta'azir*.

[562] PC: "Whoever keeps or manages a brothel shall be punished . . .".

[563] PC: 1 year or fine or both. Bauchi: 5 years/40 lashes. Kaduna: *ta'azir*. Kano and Katsina omit this section entirely.

[564] PC: 2 years/fine/both. Bauchi: up to 2 years and with fine and with caning up to 20 lashes. Kano: up to 2 years or ₦20,000 fine or up to 45 lashes and "the property be seized and destroyed". Katsina: up to 2 years or ₦20,000 fine or up to 20 lashes. Kaduna: *ta'azir*.

[565] Bauchi: 2 years/40 lashes. Gombe up to 1 year or fine or 20 lashes. Jigawa, Kebbi, Sokoto, Yobe, Zamfara: up to 1 year or up to 20 lashes. Kaduna: *ta'azir*. Kano and Katsina have this subsection as a separate section of their SPCs. Punishments: Kano: up to 1 year or up to 45 lashes or ₦20,000 fine "or

375. Whoever to the annoyance of others sings, recites, utters or reproduces by any mechanical or electronic means[566] any obscene song or words in or near any place,[567] shall be punished with imprisonment for a term which may extend to one year or with fine or with caning which may extend to twenty lashes.[568]

Vagabonds

376. In this chapter:

(1) The term "idle person" shall include-

(a) any person who being able wholly or in part to maintain himself or his family wilfully neglects or refuses to do so;

(b) any person who wanders abroad or places himself in any street or public place to get or gather alms or causes or encourages children to do so unless from age[569] or infirmity he is unable to earn his living;

(c) any person who has no settled home and has no ostensible means of subsistence and cannot give a satisfactory account of himself;

(d) any prostitute[570] behaving in a disorderly or indecent manner in a public place or persistently importuning or soliciting persons for the purpose of prostitution;

(e) any person playing at any game of chance for money or money's worth in any public place;[571]

(f) any person who in any street or place of public resort[572] or within sight or hearing of any person therein disturbs the peace by quarrelling or attempting to quarrel or by using any insolent, scurrilous or abusive term of reproach;

(g) any person who in any street or place of public resort[573] or within sight or hearing of any person therein with the intention of annoying or irritating any person, sings or otherwise utters[574] any scurrilous or abusive songs or words whether any person be particularly addressed therein or not;

(h) any person who in any street or place of public resort is guilty of any riotous, disorderly or insulting behaviour to the obstruction or annoyance of any person lawfully using such street or place or any place in the neighbourhood thereof; and

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all after the closure of the theatre." Katsina: up to 2 years or up to 45 lashes. PC omits subsection (2) entirely.

566 Only Kaduna includes the words "or electronic".

567 PC and Sokoto have "in or near any public place".

568 PC: 3 months/fine/both. Bauchi: 1 year/fine and up to 20 lashes. Kano: 1 year/₦10,000 fine/30 lashes. Katsina: 1 year/₦10,000 fine/20 lashes. Gombe has this section as a subsection of the previous one.

569 Kano, Katsina: "old age".

570 PC and all SPCs except Kano and Katsina: "common prostitute".

571 Kano, Katsina: "in any place".

572 Katsina omits "public".

573 Katsina omits "public".

574 PC omits "or otherwise utters".

(i) any person who in any private or enclosed place is guilty of any riotous, disorderly or insulting behaviour to the annoyance of any person lawfully using any place in the neighbourhood thereof.

(2) The term "vagabond" shall include-

(a) any person who after being convicted as an idle person commits any of the offences which would render him liable to be convicted as such again;

(b) any person who is found in possession of housebreaking implements with intent to commit any of the offences defined in sections 179-183 inclusive of this law;

(c) any suspected person or reputed thief who by night frequents or loiters about any shop, warehouse, dwelling-house, dock or wharf with intent to commit any offence under Chapters VIII or IX of this law;

(d) any male person who knowingly lives wholly or in part on the earning of a prostitute or in any public place solicits or importunes for immoral purposes;

(e) any male person who dresses or is attired in the fashion of a woman in a public place or who practises sodomy as a means of livelihood or as a profession.[575]

** [women dressing as men][576]

(3) An "incorrigible vagabond" shall mean any person who after being convicted as a vagabond[577] commits any of the offences which will render him liable to be convicted as such again.

Explanation:[578]

A nomad cannot be convicted under this chapter because he has no settled home if he has an apparent means of subsistence or gives a satisfactory account of himself.

377. Whoever is convicted as being an idle person shall be punished with imprisonment for a term which may extend to one year and shall also be liable to caning which may extend to twenty lashes.[579]

378. Whoever is convicted as being a vagabond shall be punished with imprisonment for a term which may extend to one year and shall be liable to caning which may extend to thirty lashes.[580]

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[575] Kano, Katsina omit "or who practises sodomy as a means of livelihood or as a profession."
[576] Kano, Katsina insert here a subsection (f): "any female person who dresses or is attired in the fashion of a man in a public place."
[577] Kano, Katsina: "after having been convicted in subparagraphs (1) and (2) as a vagabond".
[578] Only PC, Kano and Katsina have this explanation. PC places it after subsection (1) of this section, rather than after subsection (2).
[579] PC: 1 year or fine or both. Kano: 4 months/25 lashes. Katsina: 4 months/20 lashes. Kaduna: *ta'azir*.
[580] PC: 1 year or fine or both. Kano: 8 months/35 lashes. Kaduna: *ta'azir*.

379. Whoever is convicted as being an incorrigible vagabond shall be punished with imprisonment for a term which may extend to two years and shall be liable to caning which may extend to fifty lashes.[581]

** [Prohibition of praise singing, drumming, begging, playing cards, etc.][582]

380. For the purposes of this chapter in proving the intent to commit an offence it shall not be necessary to show that the person suspected was guilty of any particular act tending to show this purpose or intent and[583] he may be convicted if from the circumstances of the case and from his known character as proved to the court before which he is brought it appears to the court that his intent was to commit such offence.[584]

Illustration:[585]

A man who has been convicted of theft is found by night crouching in the shadow of a locked shop and seeing a policeman at once runs away. He is arrested in possession of a large bundle of keys. It need not be shown that he was trying the keys or attempting to enter the shop.

Mischief

381. Whoever, with intent to cause or knowing that he is likely to cause wrongful loss or damage to the public or to any person causes the destruction of any property or any such change in any property or in the situation thereof as destroys or diminishes its value or utility or affects it injuriously, commits mischief.[586]

382. Whoever commits mischief shall be punished with imprisonment for a term which may extend to one year or with fine or with caning which may extend to thirty lashes or with any two of the above.[587]

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581 PC: 2 years or fine or both. Bauchi: 2 years/40 lashes. Kano: 1 year/50 lashes. Kaduna: *ta'azir*.

582 Bauchi inserts at this point the following provision (§376 of the Bauchi Sharia Penal Code): "Prohibition of praise singing, drumming, begging, playing cards, etc. Any person who in any street or place of public resort or within sight or hearing of any person or in any social, public or private ceremony, engages in praise singing (*roko*), begging (*bara*), playing cards (*karta*), *wasan maciji*, *wasa da kura*, *wasan wuta*, *wasan wuka*, *wasan bori*, etc. is guilty of an offence and liable on conviction to imprisonment for a term which may extend to one year and a fine of not less than ₦5,000.00 and shall also be liable to canning of twenty lashes."

583 All SPCs have "or he may be convicted" instead of "and".

584 Kano and Katsina omit this section entirely.

585 No SPC has this illustration.

586 PC, Kano, Katsina, Sokoto have two explanations following this section, as follows: (1) "It is not essential to the offence of mischief that the offender should intend to cause loss or damage to the owner of the property injured or destroyed. It is sufficient if he intends to cause or knows that he is likely to cause wrongful loss or damage to any person by injuring any property whether it belongs to that person or not." (2) "Mischief may be committed by an act affecting property belonging to the person who commits the act or to that person and other jointly." PC adds 5 illustrations, of which Sokoto has two: "(a) A voluntarily burns a document of title belonging to Z intending to cause wrongful loss to Z. A has committed mischief. (b) A causes cattle to enter upon a field belonging to Z intending to cause or knowing that he is likely to cause damage to Z's crop. A has committed mischief."

587 PC: 2 years/fine/both. Katsina, Sokoto as above, but omit "or with any two of the above". Kaduna: *ta'azir*.

383. Whoever commits mischief by maiming or rendering useless[588] any animal or animals[589] shall be punished with imprisonment for a term which may extend to one year and shall also be liable to caning which may extend to thirty-five lashes.[590]

384. Whoever commits mischief by doing any act which renders or which he knows to be likely to render any installation for the supply or distribution of water less efficient for its intended purpose or which causes or which he knows to be likely to cause a diminution of the supply of water for animals which are the subject of ownership or for any domestic, agricultural or commercial purpose shall be punished with imprisonment for a term which may extend to two years or with fine and in either case shall be liable to caning which may extend to fifty lashes.[591]

385. Whoever commits mischief by doing any act which renders or which he knows to be likely to render any public road, bridge, navigable river or navigable channel natural or artificial or pipeline[592] impassable or less safe for travelling or conveying property, shall be punished with imprisonment for a term which may extend to five years or with fine and caning which may extend to fifty lashes.[593]

386. Whoever commits mischief by doing any act which causes or which he knows to be likely to cause an inundation or an obstruction to any public drainage system attended with injury or damage, shall be punished with imprisonment for a term which may extend to five months and shall also be liable to caning which may extend to twenty-five lashes.[594]

387. Whoever commits mischief by doing any act, which renders or which he knows to be likely to render any installation for generating, storing, transmitting or distributing electricity or any telegraph or telephone installation less efficient for its intended purpose or which causes or which he knows to be likely to cause a diminution of any supply of electricity, shall be punished with imprisonment for a term which may extend to three years and shall also be liable to caning which may extend to fifty lashes.[595]

388. Whoever commits mischief by destroying or moving any level mark[596] fixed by the authority of a public servant or by any act which renders such land mark less useful as such,

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[588] PC and all SPCs except Kaduna: "by killing, poisoning, maiming or rendering useless".

[589] PC: "any camel, horse, donkey, mule, bull, cow, or ox whatever may be the value thereof". Bauchi: "any domestic animal or animals".

[590] PC: 5 years or fine or both. Bauchi: 7 years/40 lashes. Kano: 1 year/20 lashes "and the court shall order compensation or restitution of the animal." Katsina as here, but adds the compensation/restitution provision as Kano. Kaduna: *ta'azir*.

[591] PC: 5 years/fine/both. Bauchi: 10 years/fine/40 lashes. Gombe, Kebbi, Sokoto, Yobe: 5 years/fine/35 lashes. Jigawa: 3 years/35 lashes. Zamfara: "for a term which and in either case shall be liable to caning which may extend to 35 lashes" [sic]. Kano: up to 5 years and up to 45 lashes, "in addition the court shall order compensation." Katsina as Kano but omits compensation provision. Kaduna: *ta'azir*.

[592] Only Kaduna includes "or pipeline".

[593] PC, Kebbi, Sokoto, Yobe, Zamfara: up to life or fine or both. Bauchi: 10 years/fine/both. Gombe: up to 14 years. Jigawa: 5 years/35 lashes. Kano: exactly 10 years or exactly ₦100,000 fine or both. Katsina: up to 10 years or exactly ₦100,000 fine or both. Kaduna: *ta'azir*.

[594] PC: 5 years or fine or both. Bauchi: 5 years/40 lashes. Kano: 1 year/75 lashes. Katsina: 5 years/75 lashes. Sokoto: 5 years/25 lashes. Kaduna: *ta'azir*.

[595] PC: 5 years or fine or both. Bauchi: 21 years/40 lashes. Gombe, Jigawa, Kebbi, Sokoto, Yobe, Zamfara: 5 years/30 lashes. Kaduna: *ta'azir*. Kano and Katsina omit this section entirely.

[596] PC and Jigawa, Kano, Katsina, Sokoto, Yobe, Zamfara: "land mark".

shall be punished with imprisonment for a term which may extend to one year or with fine or with both.[597]

389. Whoever commits mischief by fire or any explosive substance intending to cause or knowing it to be likely that he will thereby cause damage to any property shall be punished:[598]

(a) with imprisonment for a term which may extend to five years; or[599]

(b) with caning which may extend to forty lashes;[600] and

(c) with restitution of the destroyed or damaged property.

390. Whoever commits mischief by fire or any explosive substance intending to cause or knowing it to be likely that he will thereby cause the destruction of any building which is ordinarily used as a place of worship or as a human dwelling or as a place of custody of property, shall be punished with imprisonment for five years or for any less term or fine and fifty lashes.[601]

391. Whoever commits mischief[602] to any decked vessel or any vessel of a burden of twenty tons or upwards[603] intending to destroy or render unsafe or knowing it to be likely that he will thereby destroy or render unsafe that vessel, shall be punished with imprisonment for a term which may extend to five years or with fine and fifty lashes.[604]

392. Whoever commits or attempts to commit by fire or any explosive substance such mischief as is described in section 391 shall be punished with imprisonment for a term which may extend to five years and shall also be liable to caning which may extend to fifty lashes.[605]

393. Whoever intentionally runs any vessel aground or ashore intending to commit theft of any property contained therein or to misappropriate any such property dishonestly or with intent that such theft or misappropriation of property may be committed shall be punished with imprisonment for a term which may extend to three years and shall also be liable to caning which may extend to forty lashes.[606]

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[597] Bauchi: 3 years/fine/both. Kano: 1 year/₦10,000 fine/both "and an order for the restitution of the public land mark." Katsina as Kano but omitting the restitution provision. Kaduna: *ta'azir*.

[598] Kebbi omits this section entirely. PC, Kaduna do not divide the punishments into subsections, punishing as follows: PC: up to 7 years and fine. Kaduna: *ta'azir*.

[599] Bauchi: 20 years, "and". Gombe, Jigawa, Kano, Katsina, Sokoto, Yobe, Zamfara: 7 years, "or".

[600] Kano, Katsina: 50 lashes.

[601] PC, Bauchi, Jigawa, Katsina, Kebbi, Sokoto, Yobe, Zamfara: life and fine. Gombe: 14 years and fine. Kano: life and fine "and an order for the restitution of the destroyed or damaged property." Kaduna: *ta'azir*.

[602] Kano, Katsina: "mischief by fire"; cf. note to §392.

[603] Gombe, Kano, Katsina: omit "of a burden of twenty tons or upwards".

[604] PC, Bauchi, Gombe, Jigawa, Kebbi, Sokoto, Yobe, Zamfara: 14 years or fine or both. Kano, Katsina: 5 years or ₦50,000 fine or both. Kaduna: *ta'azir*.

[605] Kano and Katsina omit this section; cf. first note to §391. PC, Jigawa, Kebbi, Sokoto, Yobe, Zamfara: life and fine. Bauchi: "imprisonment for life or for a term which may extend to twenty years and shall also be liable to fine." Gombe: 14 years and fine. Kaduna: *ta'azir*.

[606] PC: 14 years/fine. Bauchi: 20 years/40 lashes. Gombe, Jigawa, Kebbi, Sokoto, Yobe, Zamfara: 5 years/40 lashes. Kano, Katsina: 5 years/50 lashes. Kaduna: *ta'azir*.

394. Whoever commits mischief having made preparation for causing to any person death or hurt or wrongful restraint or fear of death or of hurt or of wrongful restraint[607] shall be punished with imprisonment for a term which may extend to five years and shall also be liable to caning which may extend to fifty lashes.[608]

Lotteries and Gaming Houses

395. In this chapter:

"Lottery" includes any game, method or device (whether in private or public)[609] whereby money or money's worth is distributed or allotted in any manner depending upon or to be determined by chance, or lot;

"Lottery ticket" includes any paper, ticket, token or other article whatsoever which either expressly or tacitly entitles or purports to entitle any person to receive any money or money's worth on the happening of any event or contingency connected with any lottery.

** ["public lottery"][610]

396. Whoever keeps any house or place to which persons are admitted for the purpose of betting or gambling[611] or playing any game of chance or keeps any office or place for the purpose of drawing any lottery or assists in the conduct of any such house or place or office shall be punished with imprisonment for a term which may extend to six months or with caning of fifteen lashes or with fine or with any two of the above.[612]

** [proviso and subsection (2)][613]

397. Whoever

** [playing game of chance][614]

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[607] Kaduna omits "or fear of death or of hurt or of wrongful restraint".

[608] PC: 5 years/fine. Bauchi: 20 years/40 lashes. Gombe, Jigawa, Kano, Katsina, Kebbi, Sokoto, Yobe, Zamfara: 7 years/50 lashes. Kaduna: *ta'azir*.

[609] PC omits "whether in private or public".

[610] PC has a further definition omitted here and in all SPCs: "'public lottery'" means a lottery to which the public or any class of the public has, or may have, access, and every lottery shall, until the contrary is proved, be deemed to be a public lottery."

[611] PC omits "or gambling".

[612] PC: 2 years/fine/both. Bauchi: 1 year/exactly 20 lashes/fine/any two. Kano: 5 years/exactly 30 lashes/exactly ₦500,000 fine "or both". Katsina: 2 years/exactly 30 lashes/exactly ₦5,000 fine "or both". Kebbi: as here, but leaving off "or with any two of the above". Sokoto: 6 months or exactly 15 lashes and fine. Kaduna: *ta'azir*.

[613] PC adds a proviso and a subsection (2), as follows: "Provided always that nothing herein contained shall make illegal the use of a totalisator by a race club recognised by the Government at a race meeting, with the approval of the Provincial Commissioner of the province or the Administrator of Kaduna as the case may be. (2) In this section the word 'totalisator' means the instrument, machine or contrivance, commonly known as a totalisator, and any other instrument, machine or contrivance of a like nature, or any scheme for enabling any number of persons to make bets with one another on the like principles."

[614] Kano, Katsina have as subsection (a): "plays a game of chance or delegates another to play on his behalf, or plays on behalf of another person; or".

(a) gives or sells or offers for sale or delivers any lottery ticket or pays or receives directly or indirectly any money or money's worth for or in respect of any chance in or event or contingency connected with a lottery[615]; or

(b) draws, throws, declares or exhibits expressly or otherwise the winner or winning number, ticket, lot, figure, design, symbol or other result of any lottery[616]; or

(c) writes, prints, publishes or causes to be written, printed or published any lottery ticket or any announcement relating to a lottery[617]; or

(d) advances, furnishes or receives money for the purpose of a lottery[618],

shall be punished with imprisonment for a term which may extend to six months or with caning of fifteen lashes or with fine or with any two of the above.[619]

** [exceptions][620]

398. On conviction of an offence under section 396 or section 397 the court may in addition to any other penalty, make an order for the forfeiture of all equipment, instruments, money or money's worth and proceeds obtained and used in furtherance of the offences mentioned in sections 395 to 397 of this law.[621]

Cruelty to Animals

399. Whoever cruelly beats, tortures or otherwise wilfully ill-treats any tame or domestic animal or any wild animal which has previously been deprived of its liberty or arranges, promotes or organises fights between cocks, birds, rams, or other domestic animals shall be punished with imprisonment for a term which may extend to three months or with fine or with both.[622]

400. Whoever wantonly overrides, overdrives or overloads any animal or wantonly employs any animal which by reason of age, sickness, wounds or infirmity is not in a condition to do

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615 PC: "public lottery".
616 PC: "public lottery".
617 PC: "public lottery".
618 PC: "public lottery".
619 PC: 6 months/fine/both. Bauchi: 1 year/exactly 40 lashes/fine/any two. Kano: 5 years/exactly 40 lashes/₦50,000 fine. Katsina: 5 years/exactly 15 lashes/₦50,000 fine. Kebbi: as here, but leaving off "or with any two of the above". Sokoto: 6 months or exactly 15 lashes and fine. Kaduna: *ta'azir*.
620 PC adds a subsection (2): "Nothing in this subsection shall apply: (a) to the sale by raffle or lottery of articles exposed for sale at any gathering held for the purpose of raising funds in aid of any institution of a public character where permission for such sale shall have been given in writing by the Governor; (b) to any lottery or sweepstake organised or controlled at or in connection with any race meeting held under the auspices of any race club or association in Northern Nigeria which has been exempted from the provisions of this section by the Governor by notice in the Northern Nigeria Gazette; (c) to any club to which the Governor has granted a licence authorising a lottery to be promoted as an incident of entertainment by members of the club on the premises of the club and subject to any conditions contained in the licence; (d) to any lottery or sweepstake organised and controlled by any race club in Northern Nigeria to which the Governor may by notice in the Northern Nigeria Gazette extend the provisions of this section, or in any connection with any race meeting held under the auspices of any such club or association."
621 PC omits this section.
622 PC: 1 year/£50 fine/both. Gombe, Jigawa, Sokoto, Yobe, Zamfara: 3 months/₦1,000 fine/both. Kano, Katsina: 6 months/₦5,000 fine/both. Kaduna: *ta'azir*.

work, or neglects any animal in such a manner as to cause it unnecessary suffering shall be punished with imprisonment for a term which may extend to three months or with fine or with both.[623]

401. On conviction of an offence under section 399 or section 400 the court may, in addition to or in substitution for any penalty, make an order for the temporary custody by the police or by any person or authority[624] of the animal in respect of which such offence has been committed and may order the person convicted to pay such sum meanwhile as the court thinks fit for the maintenance and treatment of such animal and such sum shall be recoverable in the same manner as a fine inflicted under this law; or, if such animal is suffering from incurable disease or injury as may be certified by a veterinary doctor/expert,[625] order it to be destroyed.

Offences Relating to Religion

402. Whoever by any means publicly insults or seeks to incite contempt of any religion in such a manner as to be likely to lead to a breach of the peace, shall be punished with imprisonment for a term which may extend to two years or with fine and shall be liable to caning which may extend to thirty lashes.[626]

** [insulting the Holy Qur'an or any Prophet][627]

403. Whoever destroys, damages or defiles any place of worship or any object held sacred by any class of persons with the intention of thereby insulting the religion of any class of persons or with the knowledge that any class of persons is likely to consider such destruction, damage or defilement as an insult to their religion, shall be punished with imprisonment for a term which may extend to two years or with fine and shall be liable to caning which may extend to thirty lashes.[628]

404. Whoever voluntarily causes disturbance to any assembly lawfully engaged in the performance of religious worship or religious ceremonies, shall be punished with imprisonment for a term which may extend to one year and shall also be liable to caning which may extend to thirty lashes.[629]

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[623] PC: 1 year/£50 fine/both. Gombe, Jigawa, Sokoto, Yobe, Zamfara: 3 months/₦1,000 fine/both. Kano, Katsina: 6 months/₦5,000 fine/both. Kaduna: *ta'azir*.

[624] PC, Jigawa omit "or by any person or authority".

[625] PC, Jigawa omit "as may be certified by a veterinary doctor/expert".

[626] PC, Gombe, Kebbi, Sokoto, Yobe, Zamfara: 2 years/fine/both. Bauchi: 3 years/fine/both. Kano: 1 year/exactly ₦20,000 fine/all. Katsina: 1 year/fine/both. Kaduna: *ta'azir*.

[627] Kano adds a subsection (b) and an explanation: "(b) Whoever by any means publicly insult by using word or expression in written or verbal by means of gesture which shows or demonstrate any form of contempt or abuse against the Holy Qur'an or any Prophet shall on conviction be liable to death. EXPLANATION: Religious insult includes using words or expressions in writing, verbal or by means of gesture which shows or demonstrates any form of contempt or abuse against such religion or doing any other similar act contrary to this code or Sharia generally. Religious insult also includes using blasphemous books or instructions or materials on that religion or Prophet which may incite riot. Moreover, the religious insult includes defiling any place of worship or sacred object." Cf. §406 below.

[628] PC, Gombe, Kebbi, Sokoto, Yobe, Zamfara: 2 years/fine/both. Bauchi: 7 years/fine/both. Jigawa: 5 years/30 lashes. Kano: 2 years/exactly ₦10,000 fine/both. Katsina: 2 years/exactly ₦20,000/both. Kaduna: *ta'azir*.

[629] PC, Gombe, Kebbi, Sokoto, Yobe, Zamfara: 1 year/fine/both. Bauchi: 7 years/fine/both. Jigawa: 2 years/20 lashes. Kano, Katsina: 2 years/exactly ₦20,000 fine/both. Kaduna: *ta'azir*.

405. Whoever, with the intention of wounding the feelings of any person or of insulting the religion of any person or with the knowledge that the feelings of any person are likely to be wounded or that the religion of any person is likely to be insulted thereby, commits any trespass in any place of worship or in any place of burial or offers any indignity to any human corpse or causes disturbance to any person assembled for the performance of funeral ceremonies, shall be punished with imprisonment for a term which may extend to two years and shall be liable to caning which may extend to thirty lashes.[630]

406. (1) Whoever by any means whatsoever intentionally abuses, insults, derogates, humiliates or seeks to incite contempt of the holy Prophet Muhammad (SAW) or his prophethood or any other prophet of Allah recognised by the religion of Islam shall be punished with death.

(2) Whoever destroys, damages or defiles the Holy Qur'an in whatever form or manner with the intention, thereby, of insulting, humiliating, derogating or disrespecting the Holy Qur'an or the religion of Islam or with the knowledge that Muslims are likely to consider such utterances or acts as insulting, abusive, derogatory to the Holy Qur'an or the religion of Islam, shall be punished with death.[631]

Offences Relating to Ordeal, Witchcraft and Juju

407. Whoever presides at or takes part in[632] any unlawful trial by ordeal[633] shall be punished:[634]

(a) with imprisonment for a term which may extend to five years or with caning which may extend to fifty lashes or with both;[635] and

(b) if such trial results in the death of or any bodily injury to any party to the proceeding, shall be punished under *qisas*.[636]

408. The worship or invocation of any juju shall be unlawful.[637]

Explanation:

"Juju" includes the worship or invocation of any object or being other than Allah (SWT).

409. Whoever:[638]

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[630] PC, Gombe, Jigawa, Kebbi, Sokoto, Yobe, Zamfara: 2 years/fine/both. Bauchi: 3 years/fine/both. Kano, Katsina: 2 years/exactly ₦20,000 fine/30 lashes. Kaduna: *ta'azir*.

[631] Only Kaduna has this section (including both subsections); but see second note to §402 above.

[632] PC, Bauchi, Jigawa, Kebbi, Sokoto, Yobe, Zamfara: "Whoever presides or is present at". Gombe: "Whoever presides or participates at". Kano, Katsina: "Whoever attends or takes part in". Kaduna: "Whoever presides at or takes part in or is present at".

[633] Gombe: "any trial by ordeal". Kano, Katsina: "any ordeal, dodo, bori, or any form of witchcraft".

[634] Kano, Katsina, Kaduna do not divide the punishments into subsections. Kano and Katsina punish with up to 2 years or up to 50 lashes or both. Kaduna: *ta'azir*.

[635] PC: 10 years/fine/both. Bauchi: 10 years/40 lashes/both.

[636] PC omits "or any bodily injury to", and punishes offences under this subsection with death. As noted above, Kano, Katsina and Kaduna omit this subsection. PC also adds an explanation after this section, which is omitted here and in all SPCs.

[637] PC: "The Governor in Council may by order declare the worship or invocation of any juju to be unlawful." Bauchi omits this section entirely, but this is evidently inadvertent, because the section is listed in the tables of contents of its code. Kano, Katsina: omit this section entirely, cf. note to §407. Gombe combines the section with the following explanation as follows: "'Juju' means the worship or invocation of any object or being other than Allah and shall be unlawful."

(a) by his statements or actions represents himself to be a witch or to have the power of witchcraft;[639] or

** [accusing others of witchcraft][640]

(b) makes or sells or uses or has in his possession or represents himself to be in possession of any juju, drug or charm which is intended to be used or reported to possess the power to prevent or delay any person from doing an act which such person has a legal right to do, or to compel any person to do an act which such person has a legal right to refrain from doing or which is alleged or reported to possess the power of causing any natural phenomenon or any disease or epidemic;[641] or

(c) presides at or takes part in[642] the worship or invocation of any juju which has been declared unlawful under the provisions of section 408;[643] or

(d) is in possession of or has control over any human remains which are used or are intended to be used in connection with the worship or invocation of any juju;[644] or

(e) makes or uses or assists in making or using or has in his possession anything whatsoever the making, use, or possession of which has been declared unlawful under the provisions of section 408

shall be punished with death.[645]

410. [646] Whoever:

(a) unlawfully accuses or threatens to accuse any person with being a witch or having the power of witchcraft; or

(b) attends any place where the offence of trial by ordeal or the offences relating to witchcraft and juju are being committed,

shall be punished with imprisonment for a term which may extend to one month and may also be liable to caning which may extend to twenty lashes.

411. Whoever with intent does any act of witchcraft or juju which causes the death of a human being shall be punished with death.[647]

412. ** [unlawful sexual behaviours under the guise of medical treatment][648]

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[638] Kano, Katsina omit this section entirely, cf. note to §407.
[639] Bauchi adds: "or engages in the practice of sorcery or witchcraft".
[640] PC and all SPCs (except those which omit this entire section) have the following inserted here as subsection (b): "accuses or threatens to accuse any person with being a witch or with having the power of witchcraft". For this provision in this code see §410(a) below.
[641] Bauchi omits this subsection.
[642] PC and all SPCs which have this section: "presides at or is present at or takes part in".
[643] Bauchi: "or invocation of any object of witchcraft or sorcery".
[644] Bauchi: "or invocation of any object of witchcraft or sorcery".
[645] PC: 2 years/fine/both.
[646] Neither PC nor any SPC has this section. Subsection (a) is included in most other codes as subsection (b) of what is here §409, see note in that place, and subsection (b) is to a large extent covered in other codes in what is here §407.
[647] Neither PC nor any SPC has this section.
[648] Kano and Katsina divide this section on "criminal charms" into two subsections, the first of which, included in no other code, reads as follows: "(1) Whoever engages in unlawful sexual behaviours under the guise of offering medical treatment, invocation [sic: ?] under the guise of curing an illness or

Whoever knowingly has in his possession any fetish[649] or charm which is pretended or reputed to possess power to protect a person[650] in the committing of any offence shall be punished with imprisonment for a term of six months and shall also be liable to caning which may extend to fifty lashes.[651]

413. Whoever knowingly eats or consumes or receives for the purpose of eating or consumption[652] of any part of human flesh or blood[653] shall be punished with death.[654]

414. Whoever receives or has in his possession[655] human blood or remains or any part thereof[656] with the intention that such human blood or remains or any part thereof shall be possessed by any person as a trophy, juju or charm[657] shall be punished with death.[658]

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causing a favour to a person shall be imprisoned for five years or sentenced to a fine of fifty thousand naira and shall also be liable to caning of sixty [Katsina: 50] lashes." Kano and Katsina then have the section on criminal charms common to all codes, as subsection (2).

649 Kano, Katsina: "fetish object".

650 Kano, Katsina: "to protect or give illegal benefit to any person".

651 PC: 5 years/fine/both. Jigawa: 2 years/50 lashes/both. Kano, Katsina: exactly 6 months or ₦5,000 fine or both. Kebbi, Sokoto, Yobe, Zamfara: death. Bauchi and Kaduna omit this section entirely.

652 PC, Bauchi, Kano, Katsina, Kebbi, Sokoto, Yobe, Zamfara: "Whoever knowingly eats or receives for the purpose of eating".

653 PC, Kano, Katsina, Kebbi, Sokoto, Yobe, Zamfara: "any part of [a] human corpse". Bauchi: "any human part".

654 PC: 2 years or fine or both. Kano, Katsina: exactly life and 70 lashes.

655 Bauchi: "Whoever receives, sells, or has in his possession".

656 PC: "a human head or skull within six months of the same having been separated from the body or skeleton". Bauchi: "human corpse or any human part". Gombe, Jigawa, Kano, Katsina, Kebbi, Sokoto, Yobe, Zamfara: "human corpse or any part thereof"; and all codes reinsert the same language subsequently in this section.

657 Bauchi: "shall be possessed by any person as a trophy or as instrument of witchcraft or sorcery".

658 PC: 5 years or fine or both. Jigawa: death or life imprisonment and 70 lashes. Kano, Katsina: exactly life and 70 lashes. Note: Kano and Katsina combine this section with the previous one on cannibalism, making cannibalism subsection (1) and this section subsection (2). Kaduna omits this section entirely. PC adds an explanation to the section, omitted here and in all SPCs.

SCHEDULE B[659]

PART A: Cases that warrant the penalty of *qisas.*[660]

1. The intentional causing of death.[661]

2. The intentional severing or dismembering of joints or limbs such as:

   (a) the arm or any joint thereof even of the phalanges of fingers;
   (b) the leg from the pelvis even of the phalanges of the toes;
   (c) the eye that is possessed of the power of sight;
   (d) the part of the nose formed of cartilage;
   (e) the ear;
   (f) the lip;
   (g) the testicle;
   (h) the labia majora and minora of a female;
   (i) the tongue;
   0) the tooth;
   (k) the breast of the male or female even if it be the nipple thereof;
   (1) the finger and toe nail if gouged out intentionally;
   (m) defective joints or members that are lame or infirm because of-
      (i) old age; or
      (ii) act of God; or
      (iii) previous injury before the case at hand;
   (n) the penis, be it the shaft or the glans;
   (o) the buttock of the female.

   ** [Kaduna has here a subsection (p), which repeats, obviously in error, what is here subsection (e) of §409 = Kaduna §401(f).]

PART B: Cases that warrant the full amount of *diyah.*

1. Mistaken impairing of the functions of both members or limbs that are paired, such as both:

   (a) hands;
   (b) legs;
   (c) eyes, or the useful eye in the case of the one-eyed person;
   (d) lips;
   (e) ears;
   (f) breasts;
   (g) testicles.

2. Mistaken severing or dismembering of joints and limbs enumerated under Part A of this Schedule.

3. Where the right to exact *qisas* falls in the cases enumerated under Part A of this Schedule.

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659 PC has no such schedule.
660 Only Kaduna uses '*qisas*' here, all other SPCs use 'retaliation'.
661 Only Kaduna divides Part A into two paragraphs and makes the first "the intentional causing of death" as here; all other SPCs begin with what is here ¶2.

4. Dismembering or destruction of the function of an organ or joint that is single and not paired, such as:

   (a) the nose;
   (b) the tongue whether it be from the base, or a part thereof if it prevents speech;
   (c) the penis even if it be from the glans.[662]

5. Destruction of the function of senses without dismembering such limb, or without necessarily disfiguring such limb or organ, such as:

   (a) sight;
   (b) smell;
   (c) hearing;
   (d) speech;
   (e) taste;
   (f) sensation;
   (g) sound mind.

PART C: Cases that warrant triple payment of the full *diyah*.[663]

A victim is entitled to the full *diyah* compensation up to three times for one injury if that injury amounts to the loss of three faculties where each of the faculties lost is capable of earning the full *diyah*.

PART D: Cases that warrant the payment of half of the full *diyah*.

1. Where one organ or member out of a pair is severed or dismembered or impaired intentionally and the right of *qisas* is remitted; or caused to lapse; and
2. Where one organ or member out of a pair is severed or dismembered or impaired by mistake or accident.

PART E: Cases that warrant the payment of one-third of the full *diyah*.[664]

1. wounds to the head that reach the tissues under the skull *(ma'mumah);*
2. wounds that bore deep into the abdomen whether from the front or the rear *(ja'fah);*
3. the lower lip.

PART F: Cases that warrant the payment of one-tenth of the full *diyah*.[665]

1. each finger;
2. each toe.

PART G: Cases that warrant the payment of one-twentieth of the full *diyah*.

1. a phalange[666] of the thumb or big toe;
2. the tooth;[667]

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[662] Kano, Katsina: "the penis."
[663] All SPCs except Jigawa omit the heading to this Part. Jigawa has: "Cases that warrant the full *diyah* compensation up to three times for one injury".
[664] Jigawa includes this heading for Part E, but then puts the content of what is here Part F under the heading. The content of what is here Part E is omitted. The heading for Part F is then also omitted.
[665] Jigawa omits the heading for Part F, putting the content of Part F under the heading for Part E, see previous note.
[666] Bauchi here has 'phalanx', having put 'phalange' previously, as in Part A(2)(a) and (b)
[667] Jigawa omits "2. the tooth".

3. the wound that exposes the bone *(mudihah);*
4. causing miscarriage of child in the womb.

PART H: Cases that warrant the payment of one-thirtieth of the full *diyah.*[668]

The *diyah* for a phalange of the finger or toe shall be one-thirtieth of the full *diyah.*

PART I: Cases that warrant the payment of three-twentieths of the full *diyah.*

1. wounds that fracture a bone of the head or face (*hashimah)*;
2. wounds that cause a compound fracture to the bone of the head or face (*munaqqilah).*

PART J: Cases that do not warrant the payment of *diyah* but are subject to computation of damages only (*hukumah).*

1. plucking out of the hairs of the scalp, beards, eyebrows and eye lashes if they fail to regrow;
2. cutting off of the shaft of the penis if the victim had already suffered severance of the glans thereof and had received *diyah* for that previous offence;
3. plucking out of the finger or toe nails if the act was done by mistake or accident.
4. causing the fracture of a rib or thigh bone;
5. cutting off of the buttock of the male;
6. causing the dribbling of urine through the vagina of a woman;
7. destroying the sixth (extra) finger or toe if it is limp or inactive;
8. wounds that do not expose the bone if they heal after the offence.

Made at _____ this _____ day of _____ , _____

[668] All SPCs except Jigawa omit the heading to this Part. Bauchi again has 'phalanx' instead of 'phalange'.

Chapter 4 Part IV

The Niger State Penal Code (Amendment) Law 2000[1]

A LAW TO MAKE PROVISIONS FOR THE AMENDMENT OF THE PENAL CODE LAW CAP. 94 LAWS OF NIGER STATE IN ORDER TO REVIEW THE PUNISHMENT THEREIN AND FOR CONNECTED PURPOSES

BE IT ENACTED by the House of Assembly of Niger State of Nigeria and by the authority of the same in this present State Assembly as follows:

1. This Law may be cited as the Penal Code (Amendment) Law 2000 and shall come into force on 4th day of May 2000.

2. In this law unless the context otherwise requires:
   "adultery" includes sodomy;
   "Penal Code Law Cap 94" means the Penal Code Law Cap 94 Laws of Niger State of Nigeria;
   "Principal Law" means the Penal Code Law Cap. 94.

3. Subsection (2) of section 3 of the Penal Code Law is repealed.

4. Section 68(1) of the Penal Code is amended by deleting "." After "caning" in paragraph (f) and substituting "," and thereafter by adding "(g) amputation".

5. The Penal Code is amended by adding immediately after section 68 the following section:

68A (1) If a person of the Muslim faith is convicted of an offence in the first column of subsection (2) of this section and the case against him was proved in accordance with subsection (3), of this section his punishment shall be as specified in the second column of section (2), but if:–
   (i) the offence for which a Muslim was convicted is not in the first column;
   (ii) the punishment is not in the second column; and
   (iii) the offence was not proved in accordance with subsection (3),
the convict's punishment shall be as specified in the section under which he was convicted or as specified elsewhere in the Penal Code.

(2)

First Column	*Second Column*
(a) Theft contrary to sections 287, 288, 289, or 290 of the Penal Code:	If the value of the property stolen is not less than ₦20,000.00 and the property was stolen from proper custody, the punishment is amputation of the right hand.
(b) Robbery contrary to sections 298, 299, 300, 301, 302, 303 or 304 of the	The punishment irrespective of the value of the property involved is death if death was

[1] Niger State of Nigeria Gazette No. 8, Vol. 25 9th March 2000, pp. B29-B36.

Penal Code:	caused, if death was not caused but property was stolen or previous hurt caused in the course of the robbery whether hurt was caused or not, the punishment is amputation of hand and foot on the alternate side (i.e. the right hand and left foot or vice versa).
(c) Adultery contrary to sections 387 or 388 of the Penal Code:	The punishment in the case of married convict is stoning to death and in the case of unmarried convict is 100 lashes in public.
(d) Defamation contrary to section 392 of the Penal Code:	If the word uttered falsely accuses a person of adultery, the punishment is 80 lashes in public.
(e) Drinking or Drunkenness in public or private place contrary to sections 401, 402 or 403 of the Penal Code:	The punishment is 40 or 80 lashes in public.
(f) Culpable Homicide contrary to sections 221 or 223 of the Penal Code:	If the nearest relative of the deceased victim waives punishment of death, the sum of not less than ₦4 million shall be paid as compensation to the relatives in substitution of sentence of death on the accused.
(g) Culpable Homicide in any other case other than sections 221 or 223 of the Penal Code:	The punishment shall be the payment of ₦4 million as compensation to the nearest relatives of the deceased victim.
(h) Rape contrary to section 283 of the Penal Code:	In addition to the punishment specified in the section under which the accused was convicted, the punishment is 100 lashes for an unmarried convict and 100 lashes for a married convict either of which shall be inflicted in public.
(i) Causing hurt or grievous hurt contrary to sections 245, 247, 248, 250(2), 251(2), 252 or 253(2) of the	In addition to the punishment specified in the sections under which the accused was convicted the convict shall pay a sum of not

Penal Code:	less than ₦10,000.00 as compensation to the victim.

(3) A convict shall not be punished under subsection (2) unless the case against him was proved
   (a) in the case of offences contrary to sections 221, 223, 245, 247, 248, 250 (2), 252, 253 (2), 287, 288, 289, 290, 298, 299, 300, 301, 302, 303, 304, 392, 401 or 402 of the Penal Code, by the confession of the convict or by the evidence of 2 male witnesses of truth or 4 female witnesses of truth;
   (b) in the case of offences contrary to sections 283, 387 or 388 of the Penal Code, by the confession of the convict or by the evidence of 4 male witnesses of truth or 8 female witnesses of truth, who at the same time saw the convict commit adultery;
   (c) in the case of offence contrary to section 392 of the Penal Code, the convict:
      (i) must be a chaste person; and
      (ii) must in proving the truth of his statement, fail to obtain the evidence of 4 male witnesses of truth or 8 female witnesses of truth whom at the same time saw the person defamed commit adultery.

(4) When a convict indicates his intention to appeal against his conviction or sentence, execution of the sentence shall be stayed and the convict remanded in prison custody pending the determination of his appeal.

6. Section 201 of the Penal Code is amended by deleting the phrase "which may extend to one year or with fine or with both" and substituting it with "for a term of not less than seven years or with fine of not less than one million naira and revocation of the Right or/Certificate of Occupancy in respect of the brothel."

7. Section 283 of the Penal Code is amended by deleting "for any less term and shall also be liable to fine" and substituting "any term not less than twenty-four years."

8. Section 287 of the Penal Code is amended by deleting the phrase "which may extend to five years or with fine" and substituting "of not less than five years or with fine of not less than fifty thousand naira or both".

9. Section 288 of the Penal Code is amended by deleting the phrase "which may extend to ten years" and substituting "of not less than three years."

10 Section 289 of the Penal Code is amended by deleting the phrase " which may extend to seven years or with fine" and substituting "of not less than three years or with fine of not less than fifty thousand naira."

11. Section 290 of the Penal Code is amended by deleting the phrase "which may extend to fourteen years and shall also be liable to a fine" and substituting "of not less than seven years and shall also be liable to fine of not less than fifty thousand naira."

12. Section 298 of the Penal Code is amended:
   (a) in paragraph (a) by deleting the phrase "which may extend to ten years and

shall also be liable to fine;" and substituting "of not less than five years and shall also be liable to fine of not less than twenty thousand naira."

(b) In paragraph (b) by deleting the phrase, "which may extend to fourteen years and shall also be liable to fine" and substituting "of not less than seven years and shall also be liable to fine of not less than fifty thousand naira."

(c) In paragraph (c) by deleting the paragraph.

13. Section 299 of the Penal Code is amended by deleting the phrase "which may extend to seven years and shall also be liable to fine" and substituting " of not less than three years and shall also be liable to fine of not less than fifty thousand naira."

14. Section 300 of the Penal Code is amended by deleting the phrase "which may extend to fourteen years and shall also be liable to fine" and substituting "of not less than seven years and shall also be liable to fine of not less than fifty thousand naira."

15. Section 301 of the Penal Code is amended by deleting the phrase "which may extend to fourteen years and shall also be liable to fine" and substituting "of not less than seven years and shall also be liable to fine of not less than fifty thousand naira."

16. Section 304 of the Penal Code is amended by deleting the phrase "which may extend to ten years and shall also be liable to fine" and substituting "of not less than seven years and shall also be liable to fine of not less than fifty thousand naira."

17. Section 305 of the Penal Code is amended by deleting the phrase "which may extend to fourteen years and shall also be liable to fine" and substituting "of not less than seven years and shall also be liable to fine of not less than fifty thousand naira."

18. Section 306 of the Penal Code is amended by deleting the phrase "which may extend to seven years and shall also be liable to fine" and substituting "of not less than three years but not more than and shall also be liable to fine of not less than thirty thousand naira."

FIRST SCHEDULE

I assented this 22nd day of February 2000 Time 11.05 hours.

(sgd)_____
Engr. Abdulkadir A. Kure, Governor of Niger State

SECOND SCHEDULE

I withhold assent this … … … day of … … … 2000 Time … … … hours.

Chapter 4 Part V

Katsina State Islamic Penal System (Adoption) Law 2000[724]

A LAW TO PROVIDE FOR THE ADOPTION OF ISLAMIC PENAL SYSTEM FOR THE STATE

Enactment

BE IT ENACTED by the House of Assembly of Katsina State of Nigeria as follows:

Short title and commencement

1. This Law may be cited as the Islamic Penal System (Adoption) Law, 2000 and shall come into operation on the 1st day of August 2000.

2. In this Law:

"Criminal Procedure Code" means the Criminal Procedure Code Law, Cap. 37 Laws of Katsina State of Nigeria;

"Islamic Law" means the law governing the religion of Islam;

"Penal Code" means the Penal Code Law Cap. 96 Laws of Katsina State of Nigeria;

"Sharia Court" means court established under the Shari'a Court Law;

"State" means the Katsina State of Nigeria.

Proceedings according to Islamic law

3. (1) Notwithstanding any provision contained in the Penal Code and the Criminal Procedure Code, proceedings for the determination of any civil or criminal matter before any Sharia Court shall be governed in accordance with the primary sources of Islamic Law, that is to say: -

(a) Qur'an and
(b) Hadith

(2) Subject to the provisions contained in the texts mentioned in subsection (1) of this section, a Shari'a Court is empowered, in any proceedings before it to refer to and utilize the texts in the Maliki School of Law; *provided that* they are in consonance with the Qur'an and Hadith.

Offences triable under this Law

4. Offences committed on or after the date of commencement of this Law shall be tried in accordance with the provisions of this Law.

MADE AT Katsina this 31st day of July 2000

…….
ALHAJI UMARU MUSA YAR'ADUA

Governor

Katsina State of Nigeria

[724] Katsina State of Nigeria Gazette No. 5 Vol. 11, 10th August, 2000, Supplement Part A pp. A97-98.

Chapter 4 Part VI

Conversion Table:
Penal Code of 1960 to CILS Harmonised Sharia Penal Code

PC §	SPC §	Remarks
CAP. I: GENERAL EXPLANATIONS AND DEFINITIONS		
1	1	
2	2	
3	3	
4	4	
5	5	
6	6	
7	omitted	Magistrate
8	7	
9	8	
10	9	
11	10	
12	11	
13	12	
14	13	
15	14	
16	15	
17	16	
18	17	
19	18	
20	19	
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23	22	
24	23	
25	24	
26	25	
27	26	
28	27	
29	28	
30	29	
31	30	
32	31	
33	32	
34	33	
35	34	
36	35	
37	36	
38	omitted	Provocation
39	38	
40	39	
41	62	
42	63	
CAP. II: CRIMINAL RESPONSIBILITY		
43	65	
44	66	
45	67	
46	68	
47	69	
48	70	
49	71	
50	72	
51	73	PC: Act of a person of unsound mind SPC: Act of person of unsound mind or person asleep
52	74	
53	75	
54	76	
55	77	
56	78	
57	79	
58	82	
The Right of Private Defence		
59	84	
60	85	
61	86	
62	87	
63	88	
64	89	
65	90	
66	91	
67	92	
CAP. III: PUNISHMENTS AND COMPENSATION		
68	93	
69	94	
70	omitted	Fractions of term of punishment
71	95	

72	96	
73	97	
74	98	
75	omitted	Fine not discharged by death or service of sentence in default of payment
76	99	
77	100	
78	37, 102	PC: Compensation SPC: Restitution or compensation
CAP. IV: JOINT ACTS		
79	104	
80	105	
81	106	
82	107	
CAP. V: ABETMENT		
83	108	
84	109	
85	110	
86	111	
87	112	
88	113	
89	114	
90	115	
91	116	
92	117	
93	118	
94	119	
CAP. VI: ATTEMPTS TO COMMIT OFFENCES		
95	120	
CAP. VII: CRIMINAL CONSPIRACY		
96	121	
97	122	
97A	123	
97B	124	
CAP. VIII: BREACH OF OFFICIAL TRUST		
98	272	
99	273	
CAP. IX: OFFENCES AGAINST THE PUBLIC PEACE		
100	274	
101	275	
102	276	
103	277	
104	278	
105	279	
106	280	
107	281	
108	282	
109	283	
110	284	
111	285	
112	286	
113	287	
114	288	
CAP. X: OFFENCES BY OR RELATING TO PUBLIC SERVANTS		
115	289	
116	290	
117	291	
118	292	
119	293	
120	294	
121	295	
122	296	
123	297	
124	298	
125	299	
126	300	
127	301	
128	302	
129	303	
130	304	
131	305	
132	306	SPC combines PC §§on "personating a public servant" and "wearing dress or carrying token used by public servant".
133		
CAP. XI: CONTEMPTS OF THE LAWFUL AUTHORITY OF PUBLIC SERVANTS		
134	307	
135	omitted	Preventing service or publication of summons, etc.
136	308	
137	309	
138	310	
139	311	
140	312	
141	omitted	Refusing oath or affirmation when duly required by public servant to make it
142	313	

143	314	
144	315	
145	316	
146	317	
147	318	
148	319	
149	320	
150	321	
151	322	
152	323	
153	324	
154	325	
155	326	
CAP. XII: FALSE EVIDENCE AND OFFENCES RELATING TO THE ADMINISTRATION OF JUSTICE		
Offences Relating to Evidence		
156	327	
157	328	
158	329	
159	330	
160	331	
161	332	
162	333	
163	334	
164	335	
165	336	
166	337	
Screening of Offenders		
167	338	
168	339	
169	340	
170	341	
Resistance to Arrest, and Escape		
171	342	
172	343	
173	344	
Fraudulent Dealings with Property		
174	345	
175	346	
176	347	
177	348	
Miscellaneous		
178	349	
179	350	
180	351	
181	352	
182	353	
CAP. XIII: PUBLIC NUISANCE		
183	354	
184	355	
185	356	
186	357	
187	358	
188	359	
189	360	
190	361	
191	362	
192	363	
193	364	
194	365	
195	366	
196	367	
197	368	
198	369	
199	370	
200	372	
201	373	
202	374	
203	375	
CAP. XIV: LOTTERIES AND GAMING HOUSES		
204	395	
205	396	
206	397	
CAP. XV: CRUELTY TO ANIMALS		
207	399	
208	400	
209	401	
CAP. XVI: OFFENCES RELATING TO RELIGION		
210	402	
211	403	
212	404	
213	405	
CAP. XVII: OFFENCES RELATING TO ORDEAL, WITCHCRAFT AND JUJU		
214	407	
215	408	
216	409	

217	412	
218	413	
219	414	PC: Unlawful possession of human head SPC: Unlawful possession of human corpse or any part thereof
CAP. XVIII: OFFENCES AFFECTING THE HUMAN BODY		
Offences Affecting Life		
220	198-201 203	PC: Culpable homicide defined; when and when not punishable with death; punishment when not punishable with death; causing death of person other than intended; causing death when intending to cause hurt only; death caused in act of committing offence SPC: Intentional and unintentional homicide defined and punishments prescribed
221		
222		
223		
224		
225		
226		
227	205(a)	Abetment of suicide of child or insane person
228	omitted	Abetment of suicide
229	204	PC: attempts to commit culpable homicide punish-able with death and not punishable with death SPC: Attempts to commit intentional homicide
230		
231	omitted	Attempt to commit suicide
Causing Miscarriage, Injuries to Unborn Children, Exposure of Infants, Cruelty to Children and Concealment of Births		
232	206	
233	208	
234	207	
235	209	
236	210	
237	211	
238	212	
239	213	
Hurt		
240	214	
241	215	
242	216	
243	217	
244	218-220	PC: varies punishments for hurt and grievous hurt, depending on motive, means used, and whether with or without provocation.
245		
246		
247		
248		SPC punishes for voluntarily causing hurt or grievous hurt (§§218, 219) and for unintentionally causing grievous hurt (§220) without further distinction
249		
250		
251		
252		
253		
Wrongful Restraint and Wrongful Confinement		
254	243	
255	244	
256	245	
257	246	
258	247	
259	248	
260	249	
261	250	
Criminal Force and Assault		
262	221	
263	222	
264	223	
265	224	
266	omitted	Punishment for assault with provocation
267	225	
268	226	
269	227	
270	228	
Kidnapping, Abduction and Forced Labour		
271	229	
272	230	
273	231, 232	PC: punishment for kidnapping and abduction in one section; SPC splits into two.
274	233	
275	234	PC: Procuration of minor girl SPC: Procuration of girl or woman
276	235	PC: Importation of girl from foreign country SPC: Importation of girl or woman from any place outside the State
277	236	
278	237	
279	omitted	Buying or disposing of slave
280	238	
281	239	

Rape and Unnatural and Indecent Offences against the Person		
282	127	
283	128	
284	129-130 133-136	PC: Unnatural offences SPC: Sodomy, lesbianism, bestiality
285	137	
CAP. XIX: OFFENCES AGAINST PROPERTY		
Theft		
286	143, 145, 146	PC: theft defined. SPC: defines theft punishable with *hadd* and theft not punishable with *hadd*
287	144, 147	PC: various punishments for theft depending on circumstances. SPC: *hadd* and non-*hadd* punishments
288		
289		
290		
Extortion		
291	155	
292	156	
293	157	
294	158	
295	159	
Robbery and Brigandage		
296	151	PC: definitions of robbery and brigandage SPC: definition of *hirabah*
297		
298	152	PC: punishment for robbery and brigandage under various circumstances SPC: punishment for *hirabah* under various circumstances
299		
300		
301		
302		
303		
304	153	
305	154	PC: belonging to gang of brigands, gang of thieves, or assembling for purpose of committing brigandage SPC: belonging to gang of persons associated for purpose of committing *hirabah*
306		
307		
Criminal Misappropriation		
308	160	
309	161	
310	162	
Criminal Breach of Trust		
311	163	
312	164	
313	165	
314	166	
315	167	
Receiving Stolen Property		
316	168	
317	169	
318	omitted	Dishonestly receiving property stolen in commission of brigandage
319	170	
319A	171	
Cheating		
320	172	
321	173	
322	174	
323	175	
324	176	
325	177	
Mischief		
326	381	
327	382	
328	-	PC §328 repealed in 1960
329	383	Mischief by killing or maiming animal
330	omitted	Mischief by killing or maiming cattle etc. Not distinguished in SPC from mischief by killing or maiming any animal as defined in previous section.
331	384	
332	385	
333	386	
334	387	
335	388	
336	389	
337	390	
338	391	
339	392	
340	393	
341	394	
Criminal Trespass		
342	178	
343	179	
344	180	
345	181	
346	182	

347	183	
348	184	
349	185	
350	186	
351	187	
352	188	
353	189	
354	190	
355	191	
356	192	
357	193	
358	194	
359	195	
360	196	
361	197	
CAP. XX: FORGERY		
362	251	
363	252	
364	253	
365	254	
366	255	
367	256	
368	257	
369	258	
370	259	
371	260	
Property and Other Marks		
372	261	
373	262	
374	263	
375	264	
376	265	
377	266	
378	267	
379	268	
380	269	
CAP. XXI: CRIMINAL BREACH OF CONTRACTS OF SERVICE		
381	270	
382	271	
CAP. XXII: OFFENCES RELATING TO MARRIAGE AND INCEST		
383	omitted	Deceitfully inducing belief of lawful marriage
384	omitted	Marrying again during lifetime of husband or wife
385	omitted	Re-marriage with concealment of former marriage
386	omitted	Marriage ceremony fraudulently gone through without lawful marriage
387	125, 126	PC: adultery by a man, adultery by a woman
388		SPC: *zina* defined and punishment prescribed
389	omitted	Enticing or taking away or detaining with criminal intent a married woman
390	131, 132	Incest and punishment therefor
CAP. XXIII: DEFAMATION		
391	141	
392	142	
393	omitted	Injurious falsehood
394	omitted	Printing matter known to be defamatory
395	omitted	Sale of substance containing defamatory matter
CAP. XXIV: CRIMINAL INTIMIDATION, INSULT AND ANNOYANCE AND DRUNKENNESS		
396	240	
397	241	
398	242(1)	Criminal intimidation by anonymous communication
399	omitted	Intentional insult with intent to provoke beach of peace
400	242(2)	Word, gesture or act intended to insult the modesty of woman
401	150	PC splits punishments for drunkenness in public and private places into two sections; SPC combines them in one.
402		
403	148	
404	omitted	Effect of previous convictions under 401-403
CAP. XXV: VAGABONDS		
405	376	
406	377	
407	378	
408	379	
409	380	

Chapter 4 Part VII

Conversion Table:
CILS Harmonised Sharia Penal Code to Penal Code of 1960

SPC §	PC §	Remarks
CAP. I: GENERAL EXPLANATIONS AND DEFINITIONS		
1	1	
2	2	
3	3	
4	4	
5	5	
6	6	
7	8	
8	9	
9	10	
10	11	
11	12	
12	13	
13	14	
14	15	
15	16	
16	17	
17	18	
18	19	
19	20	
20	21	
21	22	
22	23	
23	24	
24	25	
25	26	
26	27	
27	28	
28	29	
29	30	
30	31	
31	32	
32	33	
33	34	
34	35	
35	36	
36	37	
37	78	Compensation
38	39	
39	40	
40	omitted	In SPC this is a series of definitions beginning with 'genital', continuing with '*zina*' and 'married', and then with a series of Arabic words used subsequently in the Code.
41	omitted	
42	omitted	
43	omitted	
44	omitted	
45	omitted	
46	omitted	
47	omitted	
48	omitted	
49	omitted	
50	omitted	
51	omitted	
52	omitted	
53	omitted	
54	omitted	
55	omitted	
56	omitted	
57	omitted	
58	omitted	
59	omitted	
60	omitted	
61	omitted	
62	41	
63	42	
CAP. II: CRIMINAL RESPONSIBILITY		
64	omitted	Basic criminal responsibility
65	43	
66	44	
67	45	
68	46	
69	47	
70	48	
71	49	
72	50	
73	51	
74	52	
75	53	

76	54	
77	55	
78	56	
79	57	
80	omitted	Non-voluntary act
81	omitted	Act of necessity
82	58	
83	omitted	Presumption of right of *diyah*, damages, etc.
The Right of Private Defence		
84	59	
85	60	
86	61	
87	62	
88	63	
89	64	
90	65	
91	66	
92	67	
CAP. III: PUNISHMENTS AND COMPENSATION		
93	68	
94	69	
95	71	
96	72	
97	73	
98	74	
99	76	
100	77	
101	omitted	Punishment for misdemeanours
102	78	
103	omitted	Closure of premises
CAP. IV: JOINT ACTS		
104	79	
105	80	
106	81	
107	82	
CAP. V: ABETMENT		
108	83	
109	84	
110	85	
111	86	
112	87	
113	88	
114	89	
115	90	
116	91	
117	92	
118	93	
119	94	
CAP. VI: ATTEMPTS TO COMMIT OFFENCES		
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Incest		
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133	284	SPC: Lesbianism
134		PC: unnatural offences
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135	284	SPC: Bestiality
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False Accusation of Zina (Qadhf)		
138	omitted	*Qadhf* defined
139	omitted	Punishment for *qadhf*
140	omitted	Remittance of *qadhf*
Defamation		
141	391	
142	392	
Theft (Sariqah)		
143	286-290	SPC: defines theft

144		punishable with and without *hadd* and gives punishments therefor. PC: defines theft and gives punishments therfor under various circumstances
145		
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148	403	
149	omitted	Punishment for dealing in alcoholic drinks
150	401, 402, 404	SPC: punishment for drunkenness in a public or private place. PC splits these into two crimes, and in §404 increases the punishment for repeat offenders
Hirabah – (Robbery)		
151	296, 297	SPC: definition of *hirabah* PC: definitions of robbery and brigandage
152	298-303	SPC: punishment for *hirabah* under various circumstances PC: punishment for robbery and brigandage under various circumstances
153	304	
154	305-307	SPC: belonging to gang of persons associated for purpose of *hirabah* PC: belonging to gang of brigands, gang of thieves, or assembling for purpose of committing brigandage
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155	291	
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Criminal Misappropriation		
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Criminal Trespass		
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CAP. IX: *QISAS* AND *QISAS*-RELATED OFFENCES		
Homicide		
198	220-226	SPC: intentional and unintentional homicide defined and punishments prescribed PC: culpable homicide defined; when and when not punishable with death; punishment when not punishable with death; causing death of person other than intended; causing death when intending to cause hurt; death caused in act of committing offence
199		
200		
201		
202	omitted	*Waliyy al-damm* causing death of suspect
203	222	SPC: remittance of *qisas*

		PC: when culpable homicide is not punishable with death
204	229, 230	SPC: attempts to commit intentional homicide PC: attempts to commit culpable homicide punishable with death and not punishable with death
205	227	SPC: abetment in cases of homicide PC: abetment of suicide of child or insane person
Causing Miscarriage etc.		
206	232	
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209	235	
210	236	
211	237	
212	238	
213	239	
Hurt		
214	240	
215	241	
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217	243	
218	244, 246, 248-253	SPC: punishment for causing hurt. PC varies punishment depending on motive, means used, and whether with or without provocation
219	245, 247, 248-253	SPC: punishment for causing grievous hurt. PC varies punishment as with causing hurt
220	omitted	punishment for unintentionally causing grievous hurt
Criminal Force and Assault		
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225	267	
226	268	
227	269	
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Kidnapping, Abduction and Forced Labour		
229	271	
230	272	
231 232	273	SPC: splits punishments for kidnapping and abduction into two sections; PC combines in one
233	274	
234	275	
235	276	
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237	278	
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CAP. X: *TA'AZIR* OFFENCES		
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240	396	
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242	398	
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Property and Other Marks		
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Breach of Official Trust		
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Offences Against the Public Peace		
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278	104	
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280	106	
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284	110	
285	111	
286	112	
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288	114	
Offences by or Relating to Public Servants		
289	115	
290	116	
291	117	
292	118	
293	119	
294	120	
295	121	
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298	124	
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300	126	
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302	128	
303	129	
304	130	
305	131	
306	132, 133	SPC combines two PC §§on personating public servant

Contempts of the Lawful Authority of Public Servants		
307	134	
308	136	
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False Evidence; Offences Relating to the Admin. of Justice		
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Resistance to Arrest and Escape		
342	171	
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Fraudulent Dealings with Property		
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Miscellaneous		
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351	180	
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353	182	
Public Nuisance		
354	183	
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361	190	
362	191	
363	192	
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365	194	
366	195	
367	196	
368	197	
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370	199	
371	omitted	Invasion of privacy
372	200	
373	201	
374	202	
375	203	
Vagabonds		
376	405	
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378	407	
379	408	
380	409	
Mischief		
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391	338	
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394	341	
Lotteries and Gaming Houses		
395	204	
396	205	
397	206	
398	omitted	Power to order forfeiture of lottery equipment etc.
Cruelty to Animals		
399	207	
400	208	
401	209	
Offences Relating to Religion		
402	210	
403	211	
404	212	
405	213	
406	omitted	Blasphemous acts, utterances, etc.
Offences Relating to Ordeal, Witchcraft and Juju		
407	214	
408	215	
409	216	
410	214, 216	Attending places of witchcraft or trial by ordeal: substantially covered in PC §§214 and 216
411	omitted	Causing death by witchcraft or juju
412	217	
413	218	
414	219	SPC: unlawful possession of human corpse or any part thereof PC: unlawful possession of human head

Chapter 4 Part VIII

Sections of the Penal Code of 1960 Omitted in the CILS Harmonised Sharia Penal Code

1. Summary. The Penal Code of 1960 (PC) is divided into 409 sections. Of these, 19 are omitted from the CILS Harmonised Sharia Penal Code (HSPC) outright (i.e. they do not seem to be covered, even impliedly, by other HSPC sections), and 23 more are left out by virtue of the collapsing of distinctions made in PC but not in HSPC. By this calculation 367 out of 409, or 90 % of PC sections are included in the HSPC.

2. PC sections omitted outright from HSPC.

A. Definitions.

7. The word "Magistrate" denotes a Magistrate under the Criminal Procedure Code.

38. Such grave and sudden provocation as under any section of this Penal Code modifies the nature of an offence or mitigates the penalty which may be inflicted shall not be deemed to include:
   (i) provocation sought or voluntarily provoked by the offender as an excuse for committing an offence;
   (ii) provocation given by anything done in obedience to the law or by a public servant in the lawful exercise of the powers of such public servant;
   (iii) provocation given by anything done in the lawful exercise of the right of private defence.[725]

B. Fractions of term of punishment

70. In calculating fractions of terms of punishment, imprisonment for life shall be reckoned as equivalent to imprisonment for twenty years.

C. Fine not discharged by death or service of sentence in default of payment

75. Where a fine or any part thereof remains unpaid the offender or his estate, if he is dead, is not discharged from liability to pay the fine or the unpaid part thereof notwithstanding that he has served a term of imprisonment in default of payment of the fine.[726]

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[725] Three illustrations follow this section in PC. Related to the omission of the PC definition of 'provocation' from the HSPC, are (1) omission of the definition of "culpable homicide not punishable with death" (PC §222, see ¶3A below), which among other things remits death "if the offender whilst deprived of the power of self control by grave and sudden provocation causes the death of the person who gave the provocation or causes the death of any other person by mistake or accident"; (2) omission of variations on the punishments for causing hurt with or without provocation (PC §§244-247, see ¶3C below), (3) omission of PC §266, quoted in its place in this ¶2 below, on "punishment for assault or criminal force with provocation", and (4) omission of PC §399, also quoted in its place in this ¶2 below, on "intentional insult with intent to provoke breach of the peace", which uses the notion of provocation.

[726] This provision is contained in the SPCs of Gombe, Jigawa, Kebbi, Sokoto, Yobe, and Zamfara states. Bauchi has the same provision but changes "not discharged" to "discharged". Kaduna, Kano and Katsina omit the provision entirely.

D. Contempts of the lawful authority of public servants: preventing service or publication of summons, etc.; refusing oath or affirmation when duly required by public servant to make it.

135. Whoever in any manner:
(a) intentionally prevents the serving on himself or on any other person of any summons, notice or order proceeding from any public servant legally competent as such public servant to issue such summons, notice or order; or
(b) intentionally prevents the lawful affixing to any place of any such summons, notice or order; or
(c) intentionally removes any such summons, notice or order from any place to which it is lawfully affixed; or
(d) intentionally prevents the lawful making of any proclamation under the authority of any public servant legally competent as such public servant to direct such proclamation to be made,

shall be punished:
(i) with imprisonment for a term which may extend to one month or with fine which may extend to ten pounds or with both; or
(ii) if the summons, notice, order or proclamation is to attend in person or by agent or to produce a document in a court of justice with imprisonment for a term which may extend to six months or with fine which may extend to twenty pounds or with both.

141. (1) Whoever refuses to bind himself by an oath or affirmation to state the truth when required to so bind himself by a public servant legally competent to require that he shall so bind himself, shall be punished with imprisonment for a term which may extend to six months or with fine which may extend to twenty pounds or with both.
(2) The provisions of this section shall not apply to a witness in a judicial proceeding who, having been called upon to take an oath or make a solemn affirmation that he will speak the truth under subsection (1) of section 229 of the Schedule to the Criminal Procedure Code Law, refuses to take such oath or make such affirmation under the provisions of section 230 of the Schedule to the Criminal Procedure Code Law.

E. Abetment of suicide; attempt to commit suicide.

228. If any person commits suicide, whoever abets the commission of such suicide shall be punished with imprisonment for a term which may extend to ten years and shall also be liable to fine.

231. Whoever attempts to commit suicide and does any act towards the commission of such offence, shall be punished with imprisonment for a term which may extend to one year or with fine or with both.

F. Punishment for assault or criminal force with provocation

266. Whoever assaults or uses criminal force to any person on grave and sudden provocation given by that person, shall be punished with imprisonment for a term which may extend to three months or with fine which may extend to twenty

pounds or with both.[727]

G. Buying or disposing of slave.

279. Whoever imports, exports, removes, buys, sells, disposes, traffics or deals in any person as a slave, or accepts, receives or detains against his will any person as a slave, shall be punished with imprisonment for a term which may extend to fourteen years and shall also be liable to fine.

H. Offences Relating to Marriage: deceitfully inducing belief of lawful marriage; marrying again during life-time of husband or wife; re-marriage with concealment of former marriage; marriage ceremony fraudulently gone through without lawful marriage; enticing or taking away or detaining with criminal intent a married woman.

383. Every man who by deceit causes any woman who is not lawfully married to him to believe that she is lawfully married to him and to cohabit or have sexual intercourse with him in that belief, shall be punished with imprisonment for a term which may extend to ten years and shall also be liable to fine.

384. (1) Whoever having a husband or wife living marries in any case in which such marriage is void by reason of its taking place during the life of such husband or wife, shall be punished with imprisonment for a term which may extend to seven years and shall also be liable to fine.

(2) This section shall not extend:

(a) to any person whose marriage with such husband or wife has been legally dissolved; nor

(b) to any person who contracts a marriage during the life of a former husband or wife, if such husband or wife at the time of the subsequent marriage shall have been continually absent from such person for the space of seven years and shall not have been heard of by such person as being alive within that time, provided the person contracting such subsequent marriage shall, before such marriage take place, inform the person with whom such marriage is contracted of the real state of facts so far as the same are within his or her knowledge.

385. Whoever commits the offence defined in section 384 having concealed from the person with whom the subsequent marriage is contracted the fact of the former marriage, shall be punished with imprisonment for a term which may extend to ten years and shall also be liable to fine.

386. Whoever dishonestly or with a fraudulent intention goes through the ceremony of being married knowing that he is not thereby lawfully married, shall be punished with imprisonment for a term which may extend to seven years and shall also be liable to fine.

389. Whoever takes or entices away any woman, who is and whom he knows or has

[727] In PC this section is preceded with a section, which HSPC also has, on "Punishment for assault or criminal force without provocation." Here is HSPC's version of this section = HSPC §224: "Whoever assaults or uses criminal force to any person or criminal force otherwise than on grave and sudden provocation given by that person, shall be punished with imprisonment for a term which may extend to one month or with fine or with both." One wonders whether HSPC intends not to punish at all assault or criminal force with provocation. Is it perhaps to be excused under HSPC §80 (non-voluntary act) or §81 (act of necessity)?

reason to believe to be the wife of any other man, from that man or from any person having the care of her on behalf of that man with intent that she may have illicit intercourse with any person or conceals or detains with that intent any such woman, shall be punished with imprisonment for a term which may extend to two years or with fine or with both.

I. Injurious falsehood; printing or engraving matter known to be defamatory; sale of printed or engraved substance containing defamatory matter.

393. (1) Whoever, save as hereinafter excepted, by words either spoken or reproduced by mechanical means or intended to be read or by signs or by visible representations makes or publishes any false statement of fact, intending to harm or knowing or having reason to believe that such false statement of fact will harm the reputation of any person or class of persons or of the Government or of any Native Authority in Northern Nigeria or of any Local Government Authority in Northern Nigeria shall be punished with imprisonment for a term which may extend to two years or with fine or with both.

(2) It is not an offence under this section to make or publish in good faith a false statement of fact which the accused had reasonable grounds for believing to be substantially true and proof that he had such reasonable grounds shall lie on the accused.

394. Whoever prints or engraves any matter or prepares or causes to be prepared any record for the purpose of mechanical reproduction of any matter, knowing or having good reason to believe that such matter is defamatory of any person, shall be punished with imprisonment for a term which may extend to two years or with fine or with both.

395. Whoever sells or offers for sale any printed or engraved substance containing defamatory matter or any record prepared for the purpose of the mechanical reproduction of defamatory matter, knowing that such substance or record contains such matter, shall be punished with imprisonment for a term which may extend to two years or with fine or with both.

J. Intentional insult with intent to provoke breach of the peace.

399. Whoever intentionally insults and thereby gives provocation to any person intending or knowing it to be likely that such provocation will cause him to break the public peace or to commit any other offence, shall be punished with imprisonment for a term which may extend to two years or with fine or with both.

3. PC sections omitted from HSPC by virtue of collapsing of distinctions made in PC but not HSPC. In sum: same ground covered, but in fewer sections.

A. Homicide. PC has 7 sections, the ground of which is covered by 5 in HSPC:

PC:

220 Culpable homicide defined
221 Culpable homicide punishable with death
222 When culpable homicide is not punishable with death
223 Culpable homicide causing death of person other than person whose death was intended

224 Culpable homicide not punishable with death
225 Death caused when intention is to cause hurt only
226 Death caused in act of committing offence

HSPC:
198 Intentional homicide defined
199 Punishment for intentional homicide
200 Unintentional homicide defined
201 Punishment for unintentional homicide
203 Remittance of *qisas*

B. Attempts to commit homicide. PC has 2 sections, the ground of which is covered by 1 in HSPC:

PC:
229 Attempts to commit culpable homicide
230 Attempt to commit culpable homicide not punishable with death

HSPC:
204 Attempts to commit intentional homicide

C. Punishment for causing hurt. PC has 10 sections, the ground of which is covered by 3 in HSPC:

PC:
244 Voluntarily causing hurt on provocation
245 Voluntarily causing grievous hurt on provocation
246 Voluntarily causing hurt without provocation
247 Voluntarily causing grievous hurt without provocation
248 Voluntarily causing hurt or grievous hurt by dangerous means
249 Causing hurt by means of poison with intent to commit an offence
250 Voluntarily causing hurt to extort property or to constrain to an illegal act
251 Voluntarily causing hurt to extort confession or to compel restoration of property
252 Voluntarily causing hurt or grievous hurt to deter public servant from his duty
253 Causing hurt by endangering life or personal safety of others

HSPC:
218 Punishment for causing hurt
219 Punishment for causing grievous hurt
220 Punishment for unintentionally causing grievous hurt

D. Punishment for theft. PC has 4 sections, the ground of which is covered by 2 in HSPC:

PC:
287 Punishment for theft
288 Theft in dwelling house etc.
289 Theft by clerk or servant of property in possession of master

290 Theft after preparing to cause death, hurt or restraint in order to commit theft

HSPC:

144 Punishment for theft punishable with *hadd*
147 Punishment for theft not punishable with *hadd*

E. Robbery and brigandage (*hirabah*). PC has 12 sections, the ground of which is covered in 4 in HSPC:

PC:

296 Robbery defined
297 Brigandage defined
298 Punishment for robbery
299 Punishment for attempted robbery
300 Voluntarily causing hurt in committing robbery
301 Brigandage
302 Brigandage with culpable homicide punishable with death
303 Robbery or brigandage with attempt to cause death or grievous hurt
304 Making preparation to commit brigandage
305 Belonging to a gang of brigands
306 Belonging to a gang of thieves
307 Assembling for the purpose of committing brigandage

HSPC:

151 *Hirabah* defined
152 Punishment for *hirabah*
153 Making preparation to commit *hirabah*
154 Belonging to a gang of persons associated for the purpose of committing *hirabah*

F. Receiving stolen property. PC has 5 sections, the ground of which is covered in 4 in HSPC:

PC:

316 Stolen property defined
317 Dishonestly receiving stolen property
318 Dishonestly receiving property stolen in the commission of brigandage
319 Assisting in concealment of stolen property
319A Possessing thing reasonably suspected of having been stolen

HSPC:

168 Stolen property defined
169 Dishonestly receiving stolen property
170 Assisting in concealment of stolen property
171 Possessing thing reasonably suspected of having been stolen

It will be observed that in this case the omission involves no reorganisation of the underlying ideas; HSPC simply does not single out "dishonestly receiving property stolen in the commission of brigandage" for special punishment.

G. Drunkenness. PC has 3 sections, the ground of which is covered in 1 in HSPC:

PC:

401 Drunkenness in a public place
402 Drunkenness in private place
404 Effects of previous convictions under section 401, 402 or 403

HSPC:

150 Punishment for drunkenness in a public or private place

Chapter 4 Part IX

Sections of the CILS Harmonised Sharia Penal Code Omitted in the Penal Code of 1960

1. Summary. The CILS Harmonised Sharia Penal Code (HSPC) is divided into 414 sections. Of these, 36 are omitted from the Penal Code (PC) outright (i.e., they do not seem to be covered, even impliedly, by other PC sections), and 10 more are left out by virtue of the collapsing of distinctions made in HSPC but not in PC. By this calculation 368 out of 414, or 89% of HSPC sections are included in the PC.

2. HSPC sections omitted outright from PC.

A. Definitions.

40. The word "genital" includes the vagina and the rectum.
41. The word *"zina"* includes adultery and fornication.
42. The word "married" means having ever consummated a valid marriage, such consummation not being done whilst in a state of fasting or seclusion thereof (*i'tikaf*), or in a state of ritual consecration of pilgrimage (*ihram*), or in a state of menstruation.
43. The words *"sadaq al-mithli"* denote the dower due to brides within the same social, educational and family background.
44. The word *"rajm"* means the penalty of stoning or pelting to death of a Muslim convicted for the offence of "*zina"*, rape, incest or sodomy.
45. The word *"hirz"* denotes any location, place or means that is customarily understood to represent safe keeping or custody or protection.
46. The word *"nisab"* denotes the minimum amount of property, or its value not below a quarter of a *dinar* or three *dirhams* which, if stolen, shall attract *hadd* punishment.
47. The word *"taklif"* denotes the age of attaining legal and religious responsibilities.
48. The word *"mukallaf"* denotes a person possessed of full legal and religious capacity.
49. The words *"waliyy al-damm"* include male agnatic heirs, daughters, full sisters, paternal aunts and consanguine sisters.
50. The words *"qatl al gheelah"* denote the act of luring a person to a secluded place and killing him to take away his property.
51. The word "*wa'az*" denotes admonishing a person who has committed an offence.
52. The word *"tashheer"* denotes public disclosure of a person convicted of an offence.
53. The word *"hajar"* " denotes social boycott of the offender by the public.
54. The word *"al-musadarah"* denotes confiscation of property owned by the offender.
55. The word *"ghurrah"* denotes compensation which is paid in respect of causing miscarriage of fetus.
56. The word *"ta'azir*" denotes any punishment applied or fixed by the State for an offence the punishment of which is not specified by way of *hadd or qisas*.
57. The word *"hudud"* denotes offences or punishments that are fixed under the Sharia and includes offences or punishments as provided under sections 125, 126, 127, 128, 129, 130, 131, 132, 138, 139, 143, 144, 148, 150, 151, 152 and 341 of this law.
58. The word *"qisas"* includes punishments inflicted upon offenders by way of retaliation for causing death/injuries to a person.
59. The word *"tawbikh"* denotes a severe rebuke or reprimand for misdemeanours.

60. The word *"diyah"* denotes a fixed amount of money paid to a victim of bodily hurt or to the deceased's legal heirs in homicide cases.

61. The word *"hukumah"* denotes the amount of compensation short of *arsh* payable to a victim of bodily injuries of unspecified quantum, based on the discretion of the court.

B. Basic criminal responsibility.

64. (1) There shall be no criminal responsibility except upon a *mukallaf*.
(2) There shall be no criminal responsibility unless an unlawful act or omission is done intentionally or negligently.[728]

C. Non-voluntary act; act of necessity.

80. No act is an offence which is done by a person involuntarily and without the ability of controlling his act by reason of act of God or sudden illness which makes him incapable of avoiding that act.

81. It shall not be an offence if an act is done by a person who is compelled by necessity to protect his person, property or honour, or person, property or honour of another from imminent grave danger which he has not wilfully caused or wilfully exposed himself or other persons to and which he or that other person is not capable of avoiding.

D. Presumption of right of *diyah*, damages etc.

83. Nothing contained in the provisions of sections 66–81 shall prejudice the right of *diyah* or damages in appropriate cases.

E. Punishment for misdemeanours; closure of premises.

101. A sentence of reprimand *(tawbikh),* or warning *(tahdid),* exhortation (*wa'az*) or boycott *(hajar)* may be passed by any court whether trying the case summarily or otherwise on any offender in lieu of, or in addition to any other punishment to which he might be sentenced for any offence not punishable with death, or offences falling under *hudud* or *qisas*.

103. The court may order the closure of any premises used in conducting in any way any business in contravention of the provisions of this law for a period of not less than one month and not exceeding one year.

F. False accusation of *zina* (*qadhf*)

138. Whoever by words either spoken or reproduced by mechanical or electronic means or intended to be read or by signs or by visible representations makes or publishes any false imputation of *zina* or sodomy concerning a chaste person or contests the paternity of such person even where such person is dead, is said to commit the offence *of qadhf*.

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[728] See also HSPC §72: "No act is an offence which is done: (a) by a child under seven years; or (b) in cases of *hudud* and *qisas*, by a child below the age of *taklif*." Compare PC §50: "No act is an offence which is done: (a) by a child under seven years of age; or (b) by a child above seven years of age but under twelve years of age who has not attained sufficient maturity of understanding to judge the nature and consequence of such act."

Provided that a person is deemed to be chaste who has not been convicted of the offence of *zina or* sodomy.

139. Whoever commits the offence of *qadhf* shall be punished with caning of eighty lashes.

140. The offence of *qadhf* shall be remitted in any of the following cases:
   (a) where the complainant *(maqdhuf)* pardons the accuser *(qadhf)*
   (b) where a husband accuses his wife of *zina* and undertakes the process of mutual imprecation (*li'an*);
   (c) where the complainant *(maqdhuf)* is a descendant of the accuser *(qadhf)*.

G. Punishment for dealing in alcoholic drinks.

149. Whoever prepares alcohol by either manufacturing, pressing, extracting or tapping whether for himself or for another; or transports, carries or loads alcohol whether for himself or for another; or trades in alcohol by buying or selling or supplying premises by either leasing or storing or leasing out premises for the storing or preserving or consumption or otherwise dealing or handling in any way alcoholic drinks or any other intoxicant shall be punished with caning which may extend to forty lashes or with imprisonment for a term which may extend to six months or with both.

H. Punishment for unintentionally causing grievous hurt.

220. Whoever unintentionally causes grievous hurt to any person shall be punished with the payment of *diyah* under schedule B of this law.

I. Invasion of privacy

371. Whoever invades the privacy of any person by prying into his house without his permission or without lawful justification, to eavesdrop on him or read his letters or discover his secrets, shall be punished with imprisonment for a term which may extend to one year or with fine and in either case with caning which may extend to twenty lashes.

J. Power to order forfeiture of lottery equipment, proceeds, etc.

398. On conviction of an offence under section 396 or section 397 the court may in addition to any other penalty, make an order for the forfeiture of all equipment, instruments, money or money's worth and proceeds obtained and used in furtherance of the offences mentioned in sections 395 to 397 of this law.

K. Blasphemous acts, utterances, etc.

406. (1) Whoever by any means whatsoever intentionally abuses, insults, derogates, humiliates or seeks to incite contempt of the holy Prophet Muhammad (S.A.W.) or his prophethood or any other prophet of Allah recognised by the religion of Islam shall be punished with death.
(2) Whoever destroys, damages or defiles the Holy Qur'an in whatever form or manner with the intention, thereby, of insulting, humiliating, derogating or disrespecting the Holy Qur'an or the religion of Islam or with the knowledge that Muslims are likely to consider such utterances or acts as insulting, abusive, derogatory to the Holy Qur'an or the religion of Islam, shall be punished with death.

3. HSPC sections omitted from PC by virtue of collapsing of distinctions made in HSPC but not PC. In sum: same ground covered, but in fewer sections.

A. Sodomy, lesbianism, and bestiality. HSPC has 6 sections, the ground of which is covered in 1 in PC:

HSPC:
- 129 Sodomy defined
- 130 Punishment for sodomy
- 133 Lesbianism defined
- 134 Punishment for lesbianism
- 135 Bestiality defined
- 136 Punishment for bestiality

PC:
- 284 Unnatural offences

B. Definition of theft. HSPC has 3 sections, the ground of which is covered in 1 in PC:

HSPC:
- 143 Theft punishable with *hadd* defined
- 145 Theft not punishable with *hadd* defined
- 146 Remittance of the *hadd* for theft

PC:
- 286 Theft defined

C. Punishment for homicide. HSPC has 2 special sections making distinctions among homicides that are not included in PC:

HSPC:

202 *Waliyy al-damm* causing death of suspect:

> "Whoever being a *waliyy al-damm* of a deceased person causes the death of the suspect alleged to have killed the deceased shall be punished:
> (a) with imprisonment for a term of six months and shall also be liable to caning which may extend to fifty lashes, if it was proved that the person killed was the one who caused the death of the deceased; or
> (b) where it was not proved that the suspect was the one who caused the death of the deceased, or it was proved that the death of the deceased was caused by the suspect but with legal justification the *waliyy al-damm* shall be deemed to have committed intentional homicide punishable under section 199."

411 Causing death by witchcraft of juju:

> "Whoever with intent does any act of witchcraft or juju which causes the death of a human being shall be punished with death."

D. Punishments for kidnapping and abduction: HSPC has 2 sections, the ground of which is covered in 1 by PC:

HSPC:

231 Punishment for kidnapping
232 Punishment for abduction

PC:

273 Punishment for kidnapping (also covering abduction)

Note: HSPC apparently splits the sections because in its section on punishment for kidnapping, it varies the punishment depending on the age of the person kidnapped: if the person is under seven years of age, the kidnapper is "punished under section 144 for the offence of theft punishable with *hadd*."

CHAPTER 5

THE SHARIA CRIMINAL PROCEDURE CODES

I.

Introduction to Chapter 5: Nigeria's Sharia Criminal Procedure Codes

Philip Ostien

1. Brief history of the law of criminal procedure in the Northern States of Nigeria.

a. The colonial period. The extreme legal pluralism practised in the Northern Region during the colonial period – even extending to the field of criminal law – has already been described.[1] This phenomenon affected not only the substantive law applied but also the rules of procedure followed in criminal matters in the various Northern courts.

i. The English courts. For the "English" courts – the Magistrates' and High Courts – there was, to go along with the essentially English Criminal Code applied in these courts, a Criminal Procedure Ordinance, first enacted in the earliest days of British rule in Nigeria.

> [T]he Protectorate of Northern Nigeria decided to codify its criminal law and procedure and Gollan, the Chief Justice, proceeded to draft two Codes. The first, one of Criminal Procedure, was modelled on the Gold Coast Ordinance of 1876 and was enacted in 1903…
>
> In 1914 the Protectorates of Northern and Southern Nigeria were amalgamated and the bodies of law operative in the two protectorates had to be synthesised. Criminal procedure presented no problem. In the South there was the Criminal Procedure Ordinance of 1876 originally enacted when Lagos was part of the Colony of the Gold Coast, and in the North there was Gollan's Criminal Procedure Proclamation of 1903 modelled on the 1876 Ordinance. All that was needed was to replace these with a consolidating Ordinance and the Nigerian Criminal Procedure Ordinance was accordingly enacted in 1914.[2]

The Criminal Procedure Ordinance governed not only procedure in criminal cases prosecuted in the English courts, but also some of the wider matters covered by the modern law of criminal procedure, including certain police procedures and allowable measures for the prevention of offences. In 1945 the old Ordinance – by then much amended – was repealed and replaced with a new one.[3] The new Criminal Procedure Ordinance continued in force throughout Nigeria up to 1960. As from time to time and

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[1] In the Introduction to Chapter 4, this volume 3-4.

[2] H.F. Morris, "A History of the Adoption of Codes of Criminal Law and Procedure in British Colonial Africa, 1876-1935", *Journal of African Law*, 18 (1974), 6-23 at 9. The Gold Coast Ordinance of 1876, and hence the first Nigerian Criminal Procedure Ordinance, was based on models from British jurisdictions in China, Japan, Hong Kong, the Straits Settlements, Fiji and the Leeward Islands. Id. at 7-8. As up till then amended it appeared as Cap. 20 of the 1923 Laws of Nigeria.

[3] Ordinance No. 42 of 1945, Cap. 43 of the Laws of Nigeria 1948.

from place to place amended, it is still in force in the Nigerian States carved out of the old Eastern and Western Regions of the country.[4]

ii. The Native Courts. In the North's Native Courts – where "in point of fact more than ninety per cent of all criminal cases were tried"[5] – the Criminal Procedure Ordinance did not apply. The Native Courts instead were charged to administer "the native law and custom prevailing in the area of the jurisdiction of the court", to the extent it was not "repugnant to natural justice, equity and good conscience".[6] Along with the substantive rules applied, "the practice and procedure of native courts shall be regulated in accordance with native law and custom."[7] "'Native law and custom' includes Moslem law".[8] In the Muslim courts of the North it was therefore according to rules of procedure as found primarily in the classical Maliki books of *fiqh* that Islamic penal law was applied throughout the colonial period. In the non-Muslim courts, the much vaguer and more communal procedures according to which the penal customs of the various ethnic groups were applied were somewhat formalised and perpetuated under the tutelage of the British. The non-Muslim Native Courts are off our point here; there is a literature on them to which the reader is referred.[9]

iii. Criminal procedure in the Muslim courts. Several of the documents reproduced in this work give a sense of the procedures followed in criminal cases in Northern Nigeria's Muslim courts in the colonial period.

Begin with the books of *fiqh* most often consulted to help find the law. Parts II and III of this chapter are reports of committees appointed by the Governor of Sokoto State in 1999 and 2000 to advise him on what to do to implement Sharia in the State; the parts of the reports printed in Parts II and III relate to bringing back Islamic criminal

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[4] Now called the Criminal Procedure Act, it appears as Cap. C41 LFN 2004; cf. Cap. 80 LFN 1990, Cap. 43 Laws of the Federation and Lagos 1958, Cap. 43 Laws of Nigeria 1948. Scholarly discussions include L. Brett and I. McLean, *Criminal Law and Procedure of Lagos, Eastern Nigeria and Western Nigeria* (London: Sweet & Maxwell, 1963), and O. Doherty, *Criminal Procedure in Nigeria: Law and Practice* (London: Blackstone Press, 1990) (discussing both the CPA and the Northern Criminal Procedure Code).

[5] J.N.D. Anderson, *Law Reform in the Muslim World* (London: Athlone Press, 1976), 28.

[6] Native Courts Ordinance of 1934, Cap. 142 of the Laws of Nigeria 1948, §10(1)(a); Native Courts Law of 1956, Laws of the Northern Region of Nigeria 1956, §20(1)(a), in both cases without distinction between civil and criminal matters.

[7] 1934 Ordinance §14; 1956 Law §26(1). Rules of practice and procedure were also subject to the repugnancy doctrine; for a case in which a Muslim rule of criminal procedure was struck down see Chapter 4, p. 4 supra, n. 4 and accompanying text.

[8] 1956 Law §2. Cf. E.A. Keay and S.S. Richardson, *The Native and Customary Courts of Nigeria* (London: Sweet & Maxwell; Lagos: African Universities Press, 1966), 228: "In the statutes applying in the Northern Region the term 'native law and custom'…was used exclusively in pre-1955…statutes but never defined therein… This is because 'native law and custom' has always included Moslem law…"

[9] See e.g. the book of Keay and Richardson cited in the previous note. A fuller sense of the non-Muslim Native Courts in action is conveyed in the social anthropologist Paul Bohannan's *Justice and Judgment Among the Tiv* (Oxford: Oxford University Press for the International African Institute, 1957). The other literature on customary law and customary courts in Nigeria and elsewhere in Africa is easily locatable using the standard bibliographical resources.

procedure in the Sharia Courts. Both reports include lists of Islamic authorities consulted by the committees or recommended for consultation. Prominent among them are the works of the great Maliki legal scholars of the Middle Ages early and late: the following outline shows principal authors mentioned – most of them from Al-Andalus or the Maghreb – and commentators on them:[10]

Ibn Abi Zayd (of Qayrawan, in present-day Tunisia; d. 996): *Risala*

- Al-Azhari (15th century (?)): *Thamaruddani*
- Ibn Ghunaym (d. 1714): *Fawakihud Dawani*
- Adawi (d. 1775): *Hashiyatul Adawi* and *Khirshi*

Ibn Juzayy (of Granada; d. 1340): *Qawaninul Fiqhiyyah*

Khalil (of Cairo; d. 1365): *Mukhtasar*

- Al-Azhari (15th century (?)): *Jawahirul Iklili*
- Hattab (d. 1547): *Mawahibul Jalili.*
- Al-Dardir (d. 1786): *Sharh al-Kabir*

Ibn Farhun (of Madina; d. 1397): *Tabsiratul Hukkami*

Ibn Asim (of Granada; d. 1427): *Tuhfatul Hukkam*

- Al-Kafi (d. 1426): *Ihkamul Ahkam*
- Mayyara (d. 1426): *Mayyara*
- Al-Tawudi (d. 1795): *Al-Tawudi*
- Al-Tusuli (d. 1842/3): *Bahjah*

Al-Zaqqaq (from Fez; d. 1506): *Lamiyyat al-Zaqqaq*

- al-Tawudi (d. 1795): *Sharh al-Tawudi li Lamiyat al-Zaqqaq*
    - Al-Sinhaji (d. 1946): *Mawahibul Khallaq*

A major missing person from this particular list is Ibn Rushd (Averroës, d. c. 1198), the great Maliki philosopher and jurist so influential on Christian thinking in the Middle Ages. He was born in Córdoba, in c. 1126,

> into a family of prominent judges and lawyers; his grandfather, bearing the same name, served as the chief *qadi* (judge) of Córdoba, and there is a tradition that his father carried out the same duties. (In Muslim society a *qadi*'s professional concepts and practical duties were simultaneously civil and religious. Thus, a "lawyer" had expert knowledge of divine law).[11]

The *Bidayatul Mujtahid* of Ibn Rushd, published in English under the title *The Distinguished Jurist's Primer and the Intermediate Jurist's Goal*, "is a source of solace for jurists world-wide" and is still much read in Nigeria today.[12] Readers familiar with these various works will

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[10] For further information on the works listed here see the "Bibliography of Islamic Authorities", Part IV of Chapter 6 of this work (Vol. V). The short titles used here are those in common use in Northern Nigeria, as in the bibliography; full titles are also given in the bibliography.

[11] S. MacClintock, entry on "Averroës" in P. Edwards, ed. in chief, *The Encyclopedia of Philosophy* (New York: Macmillan, 1967), 1, 220.

[12] For further information on *Bidayatul Mujtahid* as used in Nigeria see the entry on it in the bibliography in Chapter 6. The quotation in this sentence is from M.B. Uthman, "Protecting the

understand what was the law of criminal procedure applied in Northern Nigeria's Muslim courts in the colonial period, and now again to some extent today.

For readers not familiar with the *fiqh* a sense of its character can be gained from the report reproduced in Part II of this chapter: the part, relating to criminal procedure, of the 16th December 1999 "Final Report of the Committee set up to Advise the State Government on the Implementation of Sharia in Sokoto State". This is not the sort of thing found in the subsequently drafted and adopted Sokoto State Sharia Criminal Procedure Code, as to which see Parts III and IV of this chapter. Part II is rather an instance of the classical Muslim discourse on criminal procedure, in which some of its characteristics and particular rules can be observed. For instance, the interweaving, in the discussion, of the law of procedure with the substantive law and with the law of evidence: thus procedure is discussed separately as to each category of substantive offence (*hudud, qisas, ta'azir*) and within the first two categories as to each particular offence; and much of the discussion relates to evidence. The requirement of the testimony of definite numbers of witnesses of particular reputations to establish particular charges, and the use of oath-taking to complete otherwise insufficient proof or in defence. The discrimination among categories of potential witnesses, based not only on their reputations in the community but on whether they are male or female, Muslim or non-Muslim, free or slave. These rules and others from the same sources were the rules of procedure applied in the Muslim courts in colonial days – with greater or lesser rigour from time to time, from place to place and from one alkali to another. They do not enter explicitly into the new Sharia Criminal Procedure Codes which it is the primary purpose of this chapter to document. But that many of these rules, along with the classical texts that support them, are still very much in view in the new Sharia Courts, is evident from the records of proceedings and court judgments in the two *zina* cases of Safiyatu Hussaini and Amina Lawal that are reproduced in Chapter 6.[13]

Rights of Accused Persons Through the Proper Implementation of the Sharia Procedural Guarantees in Northern Nigeria" in J.N. Ezeilo et al., eds., *Sharia Implementation in Nigeria: Issues and Challenges on Women's Rights and Access to Justice* (Enugu: Women's Aid Collective, 2003), 177-200 at 183.

[13] The reader is also referred to the papers on criminal procedure presented at various of the Sharia conferences that have been held in Nigeria since 1999. The previous note cites one of them; in the same book at pp. 164-176 see also A.B. Ahmed, "Administration of Islamic Criminal Law and Justice in a Constitutional Democracy: Problems and Prospects". An entire conference on "Correct Sharia Criminal Procedure, a Must for Effective Implementation of Sharia Criminal Law in Northern Nigeria", sponsored by the Centre for Islamic Legal Studies, ABU, Zaria, was held at Abuja 8th and 9th March, 2006: one paper, by Justice Muntaka-Commassie of the Court of Appeal, was on "The Sharia Criminal Procedure in *Qisas* Offences"; another, by M.B. Uthman of the Faculty of Law, Ahmadu Bello University, was on "Criminal Procedure in *Ta'azir* Cases". Two related papers were presented at the Seventh Annual Judges' Conference organised by the Centre for Islamic Legal Studies and held at Zaria on 14th-17th December 2005: B. Babaji, "Applying Islamic Law of Evidence (*Murafa'at*) in Criminal Proceedings: Problems and Prospects", and U.D. Keffi, "Criminal Trials of an Accused Person in Respect of *Qisas* (Offence Against Human Body): The Sharia Perspective". Copies of all these papers are in the possession of the author.

Finally, the reader is referred to Chapter 1 of this work, particularly Part III thereof, the "Report of the Panel of Jurists Appointed by the Northern Region Government to Examine the Legal and Judicial Systems of the Region", dated 10th September 1958. There will be found a discussion of the problems which were felt – by the Panel of Jurists and many others – to result from the existence of so much legal pluralism in the Northern Region of that day, particularly as to criminal law and procedure. Criminal procedure in the Muslim courts was of especial concern to non-Muslims living within the areas of their jurisdiction: we quote here from the 1958 *Report of the Commission appointed to enquire into the fears of Minorities and the means of allaying them* (the Minorities or Willink Commission) on which the Panel of Jurists in part relied:[14]

> 2. Northern Nigeria is peculiar in that there are at work side by side three distinguishably different systems of law: in the first place, Nigerian law based on the Common Law of England as modified by Nigerian and British Statute; Native Law other than Muslim Law; and finally Muslim Law, which in its turn is divided into the strictly Koranic Law known as *Shari'a* and the law arising from the prerogative of the ruler, which is known as *Siyasa*… [S]ome consideration must be given to the nature of those fears regarding the law which are felt by minorities.
>
> 3. These fears are in the main of two kinds. There are those arising from the fact that Muslim Law makes a distinction between Muslims and non-Muslims, and there is also a group of fears based on the belief that the judiciary is at present closely associated with the executive and that in the future this association may become closer. As to the first of these sets of fears, we are aware than in many Muslim courts the distinctions are not observed and we have been impressed by the fact that more than one Emir or Chief has spoken to us of being the father of all his people, not exclusively of those of his own religion or tribe, while it is the declared ideal of the Government of the Northern Region to be "One North, One People" and to make no distinction on account of religion or tribe….
>
> 4. It is in procedural rather than substantive law that the distinction between Muslims and non-Muslims is most clearly made. In theory – though as we have said, courts do not always insist on this – the evidence of a male Muslim is of greater value than that of a woman, a Christian or a pagan; indeed, in some traditions the only evidence that is admissible in any degree is that of an adult male Muslim who is regular in his observance of religious duties. Some courts, we understand, do observe this distinction at present, and, since there is no doubt that it does form part of the legal tradition, it is understandable that minorities should be afraid that its observance may spread. Secondly, it is open to the court to give a Muslim accused the option of swearing on the Koran that he is innocent; if he accepts this challenge he is discharged, being left, if he is really guilty, to the vengeance of Heaven. This alternative, however, is not in theory open to a Christian or a pagan, although there are, we understand, some

[14] *Report of the Commission appointed to enquire into the fears of Minorities and the means of allaying them* (London: Her Majesty's Stationary Office, 1958), 66-68. For the reference to the Report of the Minorities Commission by the Panel of Jurists see Chapter 1 of this work (in Vol. I), 28.

courts which admit a similar oath on the Bible or on a fetish. But this is irregular and is frowned on by the orthodox.

5. There is a further distinction. If homicide is proved or admitted, the court normally asks the nearest relative of the deceased whether he wishes a life to be exacted for a life; if the relative decides to waive the right of exacting a life, the punishment may be as little as one year's imprisonment, 100 "symbolic" lashes, and the payment of compensation to the relative. This compensation varies from Emirate to Emirate and although it has recently been increased, is widely regarded as in any case too low, even if the deceased is a Muslim. But if the deceased is a Christian, the texts of the Maliki school prescribe that the compensation shall be half as much as for a Muslim, while if the deceased is a pagan, the amount is one-fifteenth.

* * *

8. Again, we recognise that in practice injustice arising from these various anomalies has occurred less often than might be expected and that most of the courts have not acted rigidly according to the letter of the law. This however is partly due to the presence of a body of [British] executive officers, from the Resident downwards, whose outlook is based on the Common Law of England and who have enjoyed wide powers of revision. But it is surely in itself anomalous, and indeed objectionable, that the judicial system should depend for its efficient working on the interference of the executive and it seems likely that an autonomous government would wish to modify this system. Again, from a practical viewpoint there is likely to be at first a shortage of experienced executive officers in the Nigeria of the future [independence was just around the corner] and the Government will wish to reduce their burdens as far as possible. It seems therefore probable that powers of revision will be reduced or removed and that this important factor in the practical working of the present system should therefore be discounted.

One of the solutions recommended by the Minorities Commission was that Nigeria incorporate into its Constitution judicially enforceable provisions guaranteeing certain fundamental rights;[15] this was subsequently done. Other means of reducing the fears of minorities in respect of Muslim law were also recommended:

(i) Non-Muslims to have the option of being dealt with by non-Muslim courts;

(ii) A regional service of Alkalai to be instituted who would be appointed and administered by a judicial commission [as opposed to leaving them under control of the local Emirs and Chiefs];

(iii) Prisoners' Friends [i.e. legal counsel of a sort] to be permitted, and improved arrangements made to facilitate appeals and to ensure that copies of court records are not delayed.[16]

The first of these recommendations – allowing non-Muslims to "opt out" of Muslim courts – was tried for a brief period beginning in 1958; a similar right was allowed to

[15] Report of the Minorities Commission, 97-103.
[16] Ibid, 70.

Muslims who objected to trial by non-Muslim courts. But this device led to problems; in any case it became superfluous after the criminal law reforms of 1960; and it was quickly abandoned.[17] The other two recommendations of the Minorities Commission – regionalisation of the entire judiciary, including the judges of the Native Courts, under the control of a central Judicial Service Commission, and giving defendants in criminal cases the right to representation by counsel, were both implemented, not immediately, but over the course of subsequent years, and have now become permanent fixtures of the law throughout Nigeria. Control of the judiciary is off our point here, but the evolution of the right to counsel is part of the story we still have to tell.

b. Constitutionalisation of the law of criminal procedure. Separate guarantees of fundamental human rights first entered Nigerian law on 24 October 1959, with the coming into operation of the Nigeria (Constitution) (Amendment No. 3) Order in Council of that year. This Order amended Nigeria's 1954 Constitution, among other things by inserting therein a new chapter on fundamental rights; this chapter was then carried forward into the new Independence Constitution that came into force on 1 October 1960.[18] All subsequent Nigerian constitutions have followed suit, the chapter on fundamental rights growing in scope as time has gone on. Without elaboration, here are the fundamental rights closely related to criminal procedure contained in Chapter III of the 1960 Constitution:

> §17: no person to be deprived of his life save in execution of the sentence of a court in respect of a criminal offence of which he has been found guilty.
>
> §18: no person to be subjected to torture or inhuman or degrading punishment or other treatment. **Except that** any punishment lawful and customary on 1 November 1959 was exempted from this rule.
>
> §19: no person to be required to perform forced labour except in consequence of the sentence or order of a court or in limited other circumstances.
>
> §20: no person to be deprived of his personal liberty except in specified circumstances and in accordance with a procedure permitted by law.
>
> §21: every person, in the determination of his civil rights and obligations, entitled to a fair hearing within a reasonable time by a court or other tribunal established by law and constituted in such manner as to secure its independence and impartiality. This right specifically includes criminal matters, and as to such matters specifically includes:
>
> - the requirement that all criminal offences be defined and the penalty therefor prescribed in a written law (except in cases of contempt of court).

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[17] "Opting out" is discussed in Chapter 1 at 36 (Report of Panel of Jurists 1958), 52 (Government of Northern Nigeria White Paper 1958), and 66-69 (Memorandum of Attorney-General to returning Panel of Jurists 1962, describing in detail the opting out procedure, the problems it gave rise to, and its abrogation in 1961). See also S.S. Richardson, "Opting Out: An Experiment with Jurisdiction in Northern Nigeria", *Journal of African Law*, 8 (1964), 20-28.

[18] The chapter on fundamental rights included in Nigeria's Independence Constitution was derived primarily from the European Convention on Human Rights of 1950. See further this volume p. 5 n. 5.

- the ban on retroactive criminal legislation.
- the right of an accused to be informed promptly, in detail, in a language he understands, of the nature of the offence charged; to be given adequate time and facilities to prepare his defence; to defend himself in person or by legal representatives of his own choice – **except that** all of Nigeria's Regions were permitted to prohibit the appearance of legal counsel in their Native and Customary Courts – ; to examine witnesses called by the prosecution; to obtain the attendance of and to examine his own witnesses; and to have without payment the assistance of an interpreter if necessary.
- the right to have proceedings held in public with certain exceptions.
- the presumption of innocence.
- the right of the accused not to give evidence at the trial.
- the requirement that a record of all proceedings be kept and made available to the accused upon request.
- the ban on double jeopardy.

§22: every person entitled to respect for his private and family life, his home and his correspondence.

§27: no person to be discriminated against on the basis of membership of a particular community, tribe, place of origin, religion or political opinion. **Except that** discriminations "reasonably justifiable in a democratic society having regard to their nature and to special circumstances pertaining to the persons to whom they applied" were exempted from this rule.

The reader will note the three exceptions. The first and third, to §§18 and 27, were inserted at the request of the Northern Region, to permit *haddi* lashing and the residual religion-based discrimination inherent in the Northern Penal Code of 1960, respectively.[19] The second exception, to §21, permitted all Regions to exclude lawyers from their Native and Customary Courts, which, in the first years after Independence, all initially did.[20] All three of these exceptions to the general constitutional rules were omitted in Nigeria's 1979 Constitution and have never since reappeared.

c. The Criminal Procedure Code of 1960. Pursuant to the Settlement of 1960 (see Chapter 1), on 30 September 1960, Independence Day Eve, all varieties of criminal law theretofore applicable in Northern Nigeria were abrogated. This doom fell not only on all varieties of native criminal law and custom applied in the Native Courts, including Muslim criminal law, but also on the English Criminal Code and Criminal Procedure Ordinance theretofore applied in the Magistrates' and High Courts. All were replaced the same day by two new laws thenceforward to be applied (1) in all courts of the Northern Region, from the High Court down to the lowliest Grade D Native Court, and (2) to all people accused of committing crimes against the laws of the Region, without regard to

[19] See p. 6 supra nn. 10 and 11 and accompanying text.

[20] Keay and Richardson, *The Native and Customary Courts of Nigeria*, 364. The one exception was "that in the Western Region a party may be represented by a legal practitioner at any stage of proceedings before a customary court of Grade A or any other customary court required to be presided over by a legal practitioner." Ibid.

community, tribe, place of origin, or religion; sex entered the list of banned categories only in 1979.[21] The era of legal pluralism as to criminal law and procedure in the North was at an end. The two laws that replaced it were the Penal Code of 1960, see Chapter 4, and the Criminal Procedure Code of 1960.

The new Criminal Procedure Code (CPC) was not based on far-eastern models as the old Criminal Procedure Ordinance had been. Rather, the Panel of Jurists recommended that

> the Sudan Penal Code and its accompanying Code of Criminal Procedure should be introduced, as soon as possible, as the criminal law of the Northern Region, after such minor amendments have been made therein as the circumstances of this Region may require.[22]

This was accepted by the Government of the Northern Region, [23] and work then started on the adaptation of the Sudan Penal and Criminal Procedure Codes to the Northern Nigerian situation. The Penal Code was the first to be tackled and took the longest to agree on.[24] After that was finished,

> [w]ork was then put in hand on the preparation of the following further Bills: the Criminal Procedure Code Bill, the Evidence (Amendment) Bill, the Native Courts (Amendment) Bill, the Northern Region High Court (Amendment) Bill, the District Courts Bill, the Sharia Court of Appeal Bill, the Court of Resolution Bill, the Coroners (Amendment) Bill, and the Adaptation of Legislation Bill.[25]

The then-Attorney-General of the Northern Region, Hedley Marshall, described the process to the Panel of Jurists on their return visit in 1962:

> From the very first, there was continuous contact with the Chief Justice and the members of the Judicial Department on these Bills, with the Moslem jurists who had considered the Penal Code Bill, and with other persons representing the varied interests of the Nigerian public. The negotiations and conferences with the Moslem jurists and the representatives of non-Moslem interests were lengthy, but not nearly so difficult as had been those during which the provisions of the Penal Code Bill were discussed. On this occasion, much less criticism came from the representatives of the Moslem world and the native courts' judges and native authority representatives, since the procedures provided for in the Criminal Procedure Bill were far more familiar to the Moslem lawyers and non-Moslem native courts personnel than they were to the members of the English judiciary. It was with the members of the English judiciary that there were protracted discussions, voluminous correspondence and difficult negotiations extending over the period from 16th June, 1959, to early October, 1959. During the course of these negotiations, objection was taken by the late Chief Justice to certain parts of the new procedure whereby the

[21] See §39 of the 1979 Constitution.
[22] Report of the Panel of Jurists 1958, Chapter 1, 34.
[23] Government White Paper 1958, Chapter 1, 51 and 55-56.
[24] The process is described at length in the 1962 Memorandum of the Attorney-General to the returning Panel of Jurists, Chapter 1, 58-60.
[25] Ibid, 60.

> magistrate took cognizance of a case from the very beginning of the case and directed the police investigations. The Chief Justice also communicated direct with the Colonial Office on several occasions with regard to the Bill. After much correspondence and negotiation, the terms of the draft Bill were finally settled at a conference between the Attorney-General, the Chief Justice and representatives of the Legal and Judicial Departments at the end of September, 1959. The provisions of the Bill were accepted by the judiciary with some amendments on the clauses to which objection had been taken. The main provisions of the new procedure remained substantially unaltered. It appears that many of the difficulties which arose during the course of the discussions with the Chief Justice had been inspired by Mr. A.J. Price, a magistrate who had taken up a strong attitude towards the Bill and had opposed many of its provisions. (He has since left the country. He made an attack on the Codes and on the Northern judicial reforms generally in an article in the Modern Law Review of May, 1961,[26] which was inaccurate, but to which a complete and comprehensive reply was given in the same issue of the same publication by Professor Anderson, a member of the Panel of Jurists[27]). Negotiations also took place with Mr. Bovell, the Inspector-General of Nigeria Police and with the local Nigeria Police officers, as a result of which certain clauses were amended to meet their wishes. The Bill was duly approved by Executive Council and was presented to the House of Assembly in April, 1960, together with the other Bills mentioned above. These were all debated at length…. The Bills were also debated in the House of Chiefs…. All the Bills were subsequently assented to by His Excellency and are now Laws No. 10, 11, 12, 13, 14, 15, 16, 17 and 18 of 1960. They were not brought into force until 30th September, 1960 for the reasons explained below.[28]

It would be most interesting to pursue the investigation of this whole episode further – for instance by tracing the records, which must exist somewhere, of the Government's negotiations over the CPC with the Muslim jurists on the one hand and with the English judiciary on the other. More work for some enterprising researcher to do.

Most of the CPC of 1960 can be read in Part IV of this chapter. Part IV is not the CPC, but is rather the Harmonised Sharia Criminal Procedure Code (HSCPC) prepared in recent years by the Centre for Islamic Legal Studies, ABU Zaria. But by the calculation explained in Part VII of this chapter, 88% of the CPC has been copied more or less verbatim into the HSCPC; what has been left out and what has been changed are all accounted for in the annotations to the HSCPC and in Parts VI - IX of this chapter, which, together, show the relationships between the CPC and the HSCPC in detail.. We call the reader's attention here to just a few features of the CPC of 1960 which are centrally relevant to this chapter.

i. Different rules for different courts. The Conversion Table given in Part VI shows the chapter and sub-chapter headings of the CPC. Chapter II, on THE

[26] A.J. Price, "Retrograde Legislation in Northern Nigeria?", *Modern Law Review*, 24 (1961), 604-11.
[27] J.N.D. Anderson, "A Major Advance", *Modern Law Review*, 24 (1961), 616-25.
[28] Memorandum of the Attorney-General, Chapter 1, 60-61. See also discussion of the A.J. Price criticisms of the CPC and their consequences in the Introduction to Chapter 1 at 4-7 and notes.

CONSTITUTION OF CRIMINAL COURTS, names six classes of criminal courts in Northern Nigeria: the High Court, four classes of Magistrates' Courts, and "native courts established or deemed to have been established in Northern Nigeria under any law." Chapter III, on THE POWERS OF CRIMINAL COURTS, specifies in great detail (in conjunction with Appendix A to the Code, a lengthy table) the different powers of the six classes of courts to try offences and to impose sentences of varying severity. Chapter XVII, on PRELIMINARY INQUIRY AND COMMITMENT FOR TRIAL TO THE HIGH COURT, defines the "inquisitorial" powers of Magistrates' Courts so much objected to by certain elements of the English judiciary in 1959 and publicly criticized by A.J. Price subsequently. Chapter XVIII deals with TRIALS BY THE HIGH COURT. Chapter XXXIII deals with TRIALS IN NATIVE COURTS. So it was not entirely true that uniform procedures in criminal matters were imposed on all Northern courts by the CPC of 1960.

ii. Guidance. The Panel of Jurists frankly recognised that it would be impossible for most judges of the Native Courts – most by far of whom had no training in English law whatsoever – to immediately apply the complex new Penal and Criminal Procedure Codes being imposed on them. This led to the principle of "guidance".

> The Panel is of the opinion…that it would be premature, at this juncture, to provide that the Native Courts must be bound by these Codes in all particulars, and that it would be preferable to prescribe that all such courts should for an initial or interim period, be "guided" by them. This expression is not intended to imply that any other law prevails in the Region, or can properly be applied by Native Courts, in any criminal matter; it merely recognises the fact that at first – and until the schemes for training recommended in another part of this Report can not only be implemented but have had their cumulative effect – a broad and sympathetic view must be taken of courts which are in process of learning a wholly new technique.[29]

The principle of guidance and its meaning in relation to the Penal Code, the Criminal Procedure Code, and subsequently the Evidence Ordinance, are discussed at length in the documents reprinted in Chapter 1 of this work, to which the reader is referred.[30] As to criminal procedure, the guidance principle was enacted as follows in the CPC of 1960:

> **386**. (1) In any matter of a criminal nature a native court shall be guided in regard to practice and procedure by the provisions of this Criminal Procedure Code other than those provisions which relate only to any court other than a native court.
>
> (2) Notwithstanding the provisions of subsection (1), all native courts shall be bound by the provisions of sections 388, 389, 390, 391, 392, 393, 394 and 395.[31]

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[29] Report of the Panel of Jurists 1958, Chapter 1, 34.

[30] In Chapter 1 see: Report of the Panel of Jurists 1958, 34-35 and 43-44; Government White Paper 1958, 51-52 and 55-56; Memorandum of the Attorney-General 1962, 63-65; Memorandum of the Ag. Chief Justice, 82-83; Memorandum of S.S. Richardson, 96; Report of the Panel of Jurists 1962, 140-141, 153 ("the principle of 'guidance' should be continued indefinitely, but a rising standard of guidance should be required"); Government White Paper 1962, 159, 160, 162.

[31] These are all sections of the CPC chapter on TRIALS IN NATIVE COURTS. §388: Procedure on conviction in native courts when no formal charge made. §389: Right of accused to state case and

> (3) The fact that a native court has not been guided or properly guided by the provisions of this Criminal Procedure Code shall not entitle any person to be acquitted or any order of the court to be set aside.
>
> (4) Where a native court has not been guided or properly guided by the provisions of this Criminal Procedure Code an appellate court or reviewing authority shall apply to the case the principles contained in sections 288 and 382 of this Criminal Procedure Code and the provisions of the Native Courts Law [in sum: no interference with any finding, sentence or order even if there was error or irregularity, unless the appellate court or reviewing authority thinks that a failure of justice was in fact occasioned thereby].

As to evidence, the guidance principle was enacted by the Evidence (Amendment) Law, No. 12 of 1960, which

> provided that in judicial proceedings in any criminal cause or matter in or before a Native Court, such court should be "guided" by the provisions of the Evidence Ordinance in accordance with the provisions of Chapter XXXIII of the Criminal Procedure Code. Some apprehension had been felt at the time of the preparation of this rather far-reaching measure that it would be the subject of considerable opposition from various quarters in the Region and that it would be opposed and criticised in the debates in the Legislature. This, however, was not the case, and the Bill passed through the House of Assembly and the House of Chiefs with virtually no debate at all [citing to the records of the debates in the House of Assembly and House of Chiefs].[32]

The principle of guidance, despite supposedly being an "interim" measure, has persisted as to the North's Area Courts – the successors to the Native Courts – up to this day, and is also to be found, as we shall see, in some but not all of the new Sharia Criminal Procedure Codes now in effect in the Sharia States.

iii. Witnesses; oaths. The Panel of Jurists' recommendations were clear:

> All witnesses, without discrimination, must be heard. They would not, normally, be put on oath before beginning their testimony, but only regarding the truth of that part of their evidence which is material to the determination of the case. Even so, however, their testimony should not be accepted without the court doing its best to test its reliability by questioning them and by inviting the accused to suggest such questions as he would wish the court to put on his behalf. The case would then be decided, not by some self-operating rule regarding what witnesses are, or are not, admissible, but on the basis of the court's considered opinion regarding the credibility of these witnesses and the conclusion to which all the available evidence leads. An oath proffered to the accused would, in suitable circumstances, constitute one factor in this evidence. That for a court thus to ascertain the truth by every suitable means in order to

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adduce evidence. §390: Counsel not admitted to native court. §391: Examination of witnesses. §392: Making of finding. §393. Court to record wishes of deceased's relative in capital cases. §394: Procedure in capital cases. §395: Records in native court.

[32] Memorandum of the Attorney-General, Chapter 1, 65.

> effect impartial justice is in no way contrary to the Principles of Islam was emphasised by members of the Panel.[33]

These recommendations were endorsed by the Government of the Northern Region[34] and enacted as several different sections of the Criminal Procedure Code. In a distinct departure from Maliki law, §236 (for guidance of Native Courts only) laid down that "An accused person shall be a competent witness on his own behalf". The same rule already existed in the Evidence Ordinance, by which the Native Courts were now also to be guided.[35] Section 178 of the Evidence Ordinance also laid down that "no particular number of witnesses shall in any case be required for the proof of any fact" (with exceptions not relevant here). Sections 389, 391 and 392 of the CPC – unlike §236, all binding on the Native Courts – went on to detail the rights of the accused to call witnesses, to have the assistance of the court in procuring their attendance, and to put questions to witnesses through the court; the right of the court to invite any witness to take an oath as to the truth of his evidence and, if the invitation is refused, to "draw such inference…as it thinks just"; and the duty of the court to "make its findings…upon the evidence which is before it and in making such findings nothing shall be taken into consideration which is not supported by the evidence." Another interesting study for someone to do would be to investigate the interplay, in the early days of the CPC and of Native Court guidance by the Evidence Ordinance, between the Islamic rules of procedure and evidence the alkalis had previously been accustomed to apply, and the new rules now imposed on them; and for how long and to what extent Maliki rules of procedure and evidence continued to play a role in criminal proceedings as time went on. A place to start would be the High and Supreme Court cases interpreting and enforcing the CPC and the Evidence Ordinance in cases coming up on appeal from the Native/Area Courts.[36]

iv. Representation by counsel. The rule in the North's Native Courts had for long been that:

> No legal practitioner may appear or act for or against any party before a native court; but a native court may permit the husband, wife, or guardian, or any servant, or the master, or any inmate of the household of any plaintiff or defendant, who shall give satisfactory proof that he or she has authority in that behalf, or a relative of a person administering the estate of a native who was

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[33] Report of the Panel of Jurists 1958, Chapter 1, 35.

[34] Government White Paper 1958, Chapter 1, 52.

[35] Evidence Ordinance, Cap. 62 LF&L 1958 §159: "Every person charged with an offence shall be a competent witness for the defence at every state of the proceedings, whether the person so charged is charged solely or jointly with any other person" (with several detailed provisos following); this section became §160 of the Evidence Act, Cap. 112 LFN 1990 and Cap. E14 LFN 2004.

[36] For early cases see Memorandum of the Attorney-General, Chapter 1, 83. See also J.R. Jones, *Criminal Procedure Code in the Northern States of Nigeria* (Zaria: Gaskiya Corporation Ltd., 2nd ed. 1978) (annotated commentary based on Nigerian cases and showing amendments to 1978); B. Shani, *Notes on Some Aspects of Criminal Procedure in Northern Nigeria* (Zaria: ABU Press, 1988) (annotated commentary based on Nigerian cases and arguing in the Introduction for abolition of the guidance principle).

> subject to the jurisdiction of a native court, to appear for such plaintiff or defendant.[37]

Notwithstanding the other impending changes in criminal law and procedure, the Panel of Jurists recommended that advocates – i.e. legal practitioners – still should not be permitted in the Native Courts – not even the Prisoner's Friends suggested by the Minority Commission Report.[38] The Government agreed:

> The Panel have recommended against Advocates being admitted to Native Courts. Only a professional court can be expected to admit Advocates and ensure that both parties to the dispute have a fair chance to present their case with legal representation. Nor should Prisoner's Friends be permitted because their introduction would make litigation more expensive and possibly cloudy. On appeal from Native Courts, however, Advocates are now allowed to appear in the High Court and this practice should continue.[39]

This decision was enacted as §390 of the CPC of 1960: "No legal practitioner shall be permitted to appear to act for or to assist any party before a native court." As we have seen, this provision was licensed under the 1960 Constitution by an exception – made for Native Courts – to the general rule that criminal defendants had the fundamental right to be represented by legal practitioners of their choice. But that exception was omitted from Nigeria's 1979 Constitution;[40] in 1982 it was held that under 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";[41] and since then legal practitioners have been permitted to appear in all types of matters in all courts. The same is true in the North's Sharia Courts today, see §195 of the HSCPC, in Part IV below: "A legal practitioner shall have the right to practise in the Sharia Court in accordance with the provisions of the Legal Practitioners Act, 1990." The Sharia Criminal Procedure Codes of all the Sharia States today are in accord.

Much more could be said about the Criminal Procedure Code of 1960, which, as variously amended, still remains in force in all Northern States; but this discussion must not be prolonged further. Let us simply quote the conclusion of a close observer of the code's operation in its first five years – the long-time Chief Registrar of the High Court of the Northern Region and subsequently a judge of the same court, T.H. Williams:

> Mr. Price and others who shared his doubts, will be glad to know, that this Code does not furnish "a most efficient instrument of oppression," but is rather a Code, which, in spite of or perhaps even because of its not being an exact copy of English criminal procedure, is looked upon as their own by Northern

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[37] Native Courts Law, Cap. 142 Laws of Nigeria 1948, §24; cf. §28 of the 1956 Native Courts Law of the Northern Region (same) and §28 of the 1967/68 Area Courts Edicts of the then-Northern States (same).

[38] Report of the Panel of Jurists 1958, Chapter 1, 38, 46.

[39] Government White Paper 1958, Chapter 1, 54.

[40] See §33.

[41] *Peter Uzodinmma v. Commissioner of Police*, (1982) N.C.L.R. 325 (High Court of Benue State).

Nigerians and which on the whole is administered with some pride and with increasing impartiality and efficiency.[42]

d. The new Sharia Criminal Procedure Codes. As we saw in Chapter 4, eleven of the Sharia States have enacted lengthy new Sharia Penal Codes for application in their Sharia Courts, running in parallel with the Penal Code of 1960, which is still applied in the Magistrates' and High Courts; only Niger State adopted a different strategy, instead amending its Penal Code to include new Islamic offences and punishments therein.[43] The approaches to reinstatement of "Sharia criminal procedure" have been more various.

- In six Sharia States – Gombe, Jigawa, Kaduna, Kebbi, Sokoto and Zamfara – lengthy new Sharia Criminal Procedure Codes have been put in place for application in the Sharia Courts. Based substantially on the CPC and covering most of the same territory (but omitting Chapters VII and VIII on PRELIMINARY INQUIRY [in Magistrates' Courts] AND COMMITMENT FOR TRIAL TO THE HIGH COURT and on TRIALS IN THE HIGH COURT), they run in parallel to the CPC, which still applies in the Magistrates' and High Courts.

- In two States – Kano and Niger – the old CPC has merely been amended; as amended it still applies in all courts – High, Magistrates' and Sharia. Kano's amending law replaced the old Chapter XXXIII of the CPC, on TRIALS IN NATIVE [subsequently Area] COURTS, with a new Chapter XXXIII, on TRIALS BY SHARIA COURTS. Niger's amending law did less, essentially only raising the sentencing limits of certain courts; but the situation in Niger has become a bit confused; this is discussed further in the introduction to Part IV below.

- One State – Bauchi – followed Kano's strategy in a different form, enacting a separate new Sharia Criminal Procedure Code, quite short, which essentially limits itself to the governance of trials in the State's Sharia Courts and closely tracks Kano's new CPC Chapter XXXIII. Presumably in Bauchi, as in Kano, the Sharia Courts continue to apply the CPC if and when they must deal with matters not covered by the brief statute now governing trails before them.

- Three States – Borno, Katsina, and Yobe – had at the time of this writing (July 2007) still not enacted any new laws governing criminal procedure in their Sharia Courts at all – beyond the general rule laid down in their Sharia Courts statutes – discussed further below – that the courts are to apply Islamic law as to both substance and procedure. In all these States variants of the lengthy new Sharia Criminal Procedure Codes already enacted elsewhere have been pending in the Houses of Assembly for some time but never passed and signed into law. In the meantime the old CPC – including the old Chapter XXXIII on trials in the

[42] T.H. Williams, "The Criminal Procedure Code of Northern Nigeria: The First Five Years", *Modern Law Review*, 29 (1966), 258-272 at 272, quoted in Chapter 1, 7. On the CPC see also S.S. Richardson and T.H. Williams, *The Criminal Procedure Code of Northern Nigeria* (London: Sweet & Maxwell; Lagos: African Universities Press, 1963), and the works of Keay and Richardson, Jones, Shani, and Doherty already cited.

[43] See discussion in the Introduction to Chapter 4, this volume, 6-7 supra.

Native/Area Courts – is still being used to guide criminal proceedings in their new Sharia Courts.

- Finally, in all Sharia States the statutes establishing the new Sharia Courts all contain a provision essentially like this one:[44]

> 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) *Ijmah*;
> (d) *Qiyas*;
> (e) *Masalahah-Mursala*
> (f) *Istihsan*;
> (g) *Istishab*;
> (h) *Al-Urf*;
> (i) *Mashabul-Sahabi*; and
> (j) *Shar'u Man Kablana*.
>
> The interplay between this general provision and other applicable law relating to criminal procedure and evidence is discussed further below.

2. What this chapter comprises.

The purpose of this chapter is to document the new laws put in place by the Sharia States relating to criminal procedure in their Sharia Courts. This is done in several ways.

a. The Harmonised Sharia Criminal Procedure Code annotated. The large Sharia Criminal Procedure Codes already enacted in six states and pending in three others are voluminous – with close to 350 sections each – so they can not all be published here. Instead we publish one of them, with annotations, section by section, showing variations between it and the ones not published. The code we have elected to annotate and publish, in Part IV of this chapter, is in fact not one of those actually enacted by any State, but a "harmonised" version prepared by the Centre for Islamic Legal Studies (CILS) of Ahmadu Bello University, Zaria. The CILS Harmonised Sharia Criminal Procedure Code (HSCPC) is in effect a model law, recommended by CILS for adoption by the States – in six States, in place of the various lengthy codes they adopted in the early days of Sharia implementation, in the three states where such bills are still pending, for adoption now, and in Kano, Bauchi and Niger States, presumably for their further consideration. In fact Zamfara State has already replaced its first Sharia Criminal Procedure Code with the HSCPC. We decided to use the CILS code here for two main

[44] This is §7(i) of Zamfara State's first Sharia-related piece of legislation, its Sharia Courts (Administration of Justice and Certain Consequential Changes) Law, No. 5 of 1999, assented to by the Governor on 8th October, 1999, published in Zamfara State of Nigeria Gazette Vol. 1 No. 1, 15th June 2000, A1-A30. The Sharia Courts Laws of all other Sharia States have provisions closely tracking this one, as the annotations to Zamfara's law to be included in the chapter of this work on "Court Reorganisation" will show.

reasons: it may be the coming thing, and, more practically, CILS very generously let us have a digital copy to work with, so we did not have to retype. We are grateful both to CILS and to the MacArthur Foundation, which provided the funding which made it possible for CILS to prepare it, for their permission to use the HSCPC in this way.

b. Relations to the Criminal Procedure Code of 1960. The main source for all the lengthy new Sharia Criminal Procedure Codes was the Criminal Procedure Code of 1960. This is documented in three ways:

i. The annotations to the HSCPC, Part IV, note variations between it and the CPC, as well as between it and the Sharia Criminal Procedure Codes of the States – seven enacted, including Bauchi's, and one pending, namely Borno's.

ii. Two conversion tables are provided, one from the CPC to the HSCPC, Part VI, the other from the HSCPC to the CPC, Part VII. Besides facilitating comparison of the codes section by section, these tables show at a glance how extensive the relations between them are.

iii. Two lists of sections included in one code but omitted in the other are provided, Parts VIII and IX. These distinguish between sections omitted outright and sections omitted because of the collapsing of distinctions made in one code but not in the other; the first sort of omitted sections are quoted in full, the second sort are merely listed by section title. Simple calculations result in estimates of the percentages of sections of the CPC included in the HSCPC (88%) and percentages of sections of the HSCPC included in the CPC (99%).

c. Kano State's new CPC chapter XXXIII annotated. Kano's Criminal Procedure Code (Amendment) Law 2000, replacing the CPC chapter on trials in the Native/Area Courts with a new chapter on trials in the Sharia Courts, is reproduced in full in Part V of this chapter. As has been noted Bauchi's brief new Sharia Criminal Procedure Code closely tracks Kano's new Chapter XXXIII; variations between Kano and Bauchi are shown in section-by-section annotations to Kano's new chapter; thus Bauchi's code is annotated twice.

d. The making of the Sokoto State Sharia Criminal Procedure Code. Part III of this chapter is the "Report of the Committee Appointed to Prepare [Sharia] Criminal Procedure Code for Sokoto State", submitted to the Governor of Sokoto State in late September or early October 2000 along with the draft Code, which was subsequently enacted and signed into law on 25th January 2001. The Code itself is among those annotated in Part IV. The Report of the Committee that prepared it gives interesting background on the steps the Committee took in doing its work; it may be read in conjunction with I.N. Sada's essay in Chapter 4 on "The Making of the Zamfara and Kano State Sharia Penal Codes".

e. Underlying uncodified Islamic rules of criminal procedure and evidence. As has already been discussed, the report reproduced in Part II of this chapter – the part, relating to criminal procedure, of the 16th December 1999 "Final Report of the Committee set up to Advise the State Government on the Implementation of Sharia in Sokoto State" – is an instance of the classical Muslim discourse on criminal procedure

and evidence, in which some of its characteristics and particular rules can be observed. These rules are not visible in the enacted Sharia Criminal Procedure Codes, but they are nevertheless to a considerable extent now again being applied in the Sharia Courts.

f. This introduction. Finally, this introduction has tried so far to place the new Sharia Criminal Procedure Codes in their historical context; the rest of the discussion brings out some of their interesting features and some of the questions they raise.

3. Comments on the new Sharia Criminal Procedure Codes.

a. Interplay of the Codes with uncodified Islamic rules of procedure and evidence. A word to begin with on the use of the word 'uncodified' in what follows. "Uncodified Islamic rules" means rules articulated in the classical Islamic sources of law, including the *fiqh*, but not explicitly set forth in codes or other statutes enacted under the Constitution and laws of Nigeria. This will perhaps become clearer from the discussion.

i. The applicability of uncodified Islamic rules in the Sharia Courts. Section 7(i) of Zamfara State's Sharia Courts Law, providing that "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", has already been quoted; there are similar provisions in the Sharia Courts laws of all the Sharia States. These provisions cannot be the whole story about the law applicable in the Sharia Courts, of course, because other laws and rules, including for instance the Sharia Courts Laws themselves, the Sharia Penal Codes, the Sharia Criminal Procedure Codes, and the Federal Evidence Act – to say nothing of the Nigerian Constitution – also apply in the Sharia Courts in criminal proceedings, despite the fact that they are largely not "as prescribed under Islamic law". Nevertheless a very important component of the whole body of law being applied in criminal matters in the Sharia Courts is Islamic law as found in the classical sources including the classical books of *fiqh*. In most States this is done under authority of the general provisions of the Sharia Courts laws. Bauchi State uniquely makes the point explicit in its Sharia Criminal Procedure Code itself. Section 3 of the enacting provisions provides in part that:

> (2) Where [this Law] is silent on any issue or criminal matter, the presiding judge is at liberty to resort to the primary sources of Islamic law and any other work of recognised Islamic jurists and proceed accordingly.

Then again, even more strongly, §44 of the Bauchi Code provides in part that:

> (4) A judge is at liberty to resort to any Arabic text of recognised Islamic jurists on any procedure notwithstanding the provisions of this Code if the text to be referred to is more in conformity with the primary sources of Sharia….
>
> (5) The provisions of the Qur'an, Sunnah and *Ijma* being the primary sources of Sharia are supreme, accordingly any provision in this Code that is inconsistent with any of the provisions of the said primary sources shall, to the extent of the inconsistency be void.[45]

[45] Bauchi's Sharia Criminal Procedure Code, signed into law on 15th February 2002, was still not gazetted as of July 2006 when we last checked for it. A signed copy is in the possession of the author.

The question of which is supreme, the uncodified Islamic rules or the enacted codes and other laws of Nigeria, is discussed further below.

ii. Examples of the application of uncodified Islamic rules. The records of proceedings and judgments in the two *zina* cases of Safiyatu Hussaini and Amina Lawal, published in full in Chapter 6 of this work, provide many interesting examples of Islamic rules of procedure and evidence, articulated in the *fiqh* but not in the enacted laws of the Sharia States, that are at work in the Sharia Courts today. Let us mention a few:

- By whom may a charge of *zina* be brought? Under the CPC as still applicable in Katsina State, and under Sokoto State's new Sharia Criminal Procedure Code, the Nigeria Police have wide powers to receive information concerning the commission of offences, to conduct investigations, and to prosecute alleged offenders in the Sharia Courts – which is exactly how the cases against both Safiyatu Hussaini and Amina Lawal were started. But according to the Sharia Court of Appeal of Sokoto State, Islamic law is stricter than that, essentially restricting, to the guilty person him- or herself, the power to start a *zina* prosecution – by coming forward in a voluntary act of self-submission to the punishment prescribed by Allah for the sin committed. The Court said: "it is *haram* to initiate an action against a person for *zina* based on other people's reports…. The way the police went to Safiyatu's house just because they heard that she had committed *zina* is contrary to Islamic law."[46]

- If a charge of *zina* is brought before a court, how may it be proved? Here there is agreement among Maliki scholars: *zina* may be proved either (i) by the eyewitness testimony of four male Muslims of good character to the very act of penetration; or (ii) by the confession of the guilty person; or, in the case of a female, (iii) by her pregnancy if she is unmarried. But further questions arise; the answers given by the Sharia Courts of Appeal in Safiyatu's and Amina's cases are given in parentheses:
    - if the proof is based on the confession of the accused, may she retract the confession? (Yes.) At what stage or stages of the proceedings may she retract it? (At any stage, right up to the moment of execution of the judgment.) May she retract it through her representative or must she do so in person? (Either.) Must she give a particular kind of reason for the retraction? (No.) Finally, if she retracts it, does her prior confession have any further probative value? (None whatsoever.)
    - if the proof is based on the pregnancy of an unmarried woman, what, if any, is the effect, on the probative value of the pregnancy, of the accused's prior marriage, if any? (Answer: if the accused was divorced less than five years before she gave birth (some authorities say seven

[46] Chapter 6, 48. Note that HSCPC §141, patterned on CPC §142, would prohibit any court to take cognizance of a charge of *zina* except on the complaint of the woman's husband or, if she is unmarried, her father or guardian, or in their absence of some person who had care of the woman on his behalf at the time when the offence was committed. For some reason this restriction was left out of all the actually-enacted SCPCs, which is what permitted the prosecutions of Safiyatu and Amina to go forward at the instance of the police.

> years) the pregnancy and resulting child will be attributed to her former husband, and the value of the pregnancy to prove *zina* following the divorce is zero.)

On all these issues, all raised, argued and ruled on in Safiyatu's and Amina's appeals, the Sharia Courts of Appeal ruled favourably to the accuseds, based strictly on Islamic law as found in the classical sources. No doubt many other uncodified Islamic rules of procedure and evidence, governing many other particular issues, are being applied every day in the Sharia Courts all across the North.

iii. Potential conflicts between uncodified Islamic rules and other applicable law. Conflicts between the uncodified rules of Islamic procedure and evidence which the Sharia Courts are directed by the Sharia Courts Laws to apply, and other – enacted – laws which they must also apply, are inevitable.

We have already noted one, as to who is permitted to investigate and bring charges of criminal offences: at least as to *zina*, at least in Sokoto State, it appears that the otherwise plenary powers of the police in these regards, even under the State's Sharia Criminal Procedure Code, are to be restricted by the much narrower uncodified rule of Islamic law announced and relied on by the Sharia Court of Appeal.

A different conflict arose in Amina Lawal's case, and the ruling went the other way. In classical Islamic law a *qadi*'s court is constituted by a single judge – in Northern Nigeria called an alkali – sitting alone. But under Katsina State's Sharia Courts Law "A Sharia Court shall be properly constituted if presided over by an alkali sitting with two members."[47] In Amina's trial a single alkali, sitting alone, without members, heard and ruled on the entire case. When this defect – under the statute – was raised by counsel for Amina Lawal on appeal, State Counsel argued that there was no defect – under Islamic law – which, he argued, should, in the Sharia Courts at least, prevail over any man-made law in case of conflict. The Sharia Court of Appeal held otherwise, saying that:

> the law that established the courts and the judges was not complied with. It is not possible to apply one section of the law and reject other sections simply because their provisions do not conform with one's wishes…. The non-compliance with this law renders the judgment null and void.[48]

Two conflicts of laws, two rulings in opposite senses, one applying the uncodified Islamic rule instead of the enacted statute, the other applying the statute instead of the Islamic rule. Both rulings, it will be observed, went in favour of the accused. The rulings are from different cases, so defence counsel – in fact two different defence counsel – did not take inconsistent positions before the same court. In Safiyatu's case, the fact that the manner in which the case was commenced was in perfect compliance with Sokoto's Sharia Criminal Procedure Code was not really argued by State Counsel or considered by the Sharia Court of Appeal; State Counsel argued instead that the case was properly commenced under Islamic law, to which the Sharia Court of Appeal said no. How the

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[47] §4(1) of Katsina State's Sharia Courts Law 2000, see Katsina State of Nigeria Gazette No. 5, Vol. 11, 10th August 2000, A83-95. "Members", sometime called "muftis", are there to observe the proceedings and to advise the alkali, but rulings and judgment are for the alkali alone.
[48] Chapter 6, 103.

conflict of laws issue would have been resolved had it been squarely argued and considered is of course unknowable. But most likely the outcome, in most cases, will be that enacted statutes, and the Nigerian Constitution, will be made to prevail in the Sharia Courts over uncodified Islamic rules in cases of conflict, as happened in Amina's case. As the Katsina State Sharia Court of Appeal said, the Sharia Courts are creatures of the laws of Nigeria, to which they must conform – or face consequences imposed under the same laws that created them – consequences that might range from reversal of their rulings and judgments to outright abolishment of the Sharia Courts if they were causing too many problems. In common-law jurisdictions like Nigeria, the general rule is that statutes prevail over the unenacted common law, with which the uncodified Islamic rules will perhaps be grouped for this purpose. Specific rules, as found in the Sharia Criminal Procedure Codes and the Evidence Act, prevail over general admonitions like those found in the Sharia Courts laws to "apply Islamic law".[49] Federal law prevails over State law. The governments of all the Sharia States from the outset declared their submission to the Constitution and laws of Nigeria, and the Federal Courts are there to enforce compliance if need be. As I have written before, "the Muslims of Northern Nigeria are saying that they want to implement as much of their law as they possibly can within the Constitution and laws of the Federation. That attitude is entirely politically correct."[50]

b. Further comments on the Sharia Criminal Procedure Codes themselves.

i. Classes of Sharia Courts and their powers. Following the pattern of the CPC, the Sharia Criminal Procedure Codes define "classes of Sharia Criminal Courts" for their States and specify in detail (in conjunction with Appendices A to the Codes, lengthy tables) the different powers of the classes of Sharia Courts to try offences and to impose sentences of varying severity. The reader is referred to Chapters II and III of the HSCPC and the annotations thereto, infra, for details.

All the Sharia States except Bauchi confine the applicability of their new Sharia Criminal Procedure Codes to the Sharia Courts themselves; in the Magistrates' and High Courts, the old CPC applies.[51] Bauchi again provides an interesting variant. In §4 of its brief new Sharia Criminal Procedure Code it includes the State High Court among "the classes of the criminal courts in the State under this Code" (the Magistrates' Courts are not mentioned); and then it provides in §5(b) that the "High Court shall conduct the trial of the accused persons, being Muslims, in accordance with Islamic law" – i.e. apparently under the Sharia Criminal Procedure Code together with the "primary sources of Sharia" and the "Arabic texts of recognised Islamic jurists" which the Code incorporates by reference. The High Court is thus purportedly turned into a Sharia Court when it is Muslims who are on trial there. But it is only in the actual Sharia Courts, created under

[49] How Bauchi State's explicit statutory provisions to the contrary, in the case of criminal procedure in the Sharia Courts, might affect the operation of these rules, is a fascinating question we cannot pursue further here.

[50] P. Ostien, "Ten Good Things about the Implementation of Shari'a in Some States of Northern Nigeria", *Swedish Missiological Themes*, 90 (2002), 163-74 at 166-67, where the concession by the Sharia State governments of the supremacy of the Federal Constitution and laws is also documented.

[51] Kano's new CPC Chapter XXXIII of course applies only per its title: TRIALS BY SHARIA COURTS.

the Sharia Courts Law, that Bauchi's Sharia *Penal* Code is being applied – the Penal Code of 1960 being applied in the Magistrates' and High Courts; and in fact the judges of Bauchi State's High Court are not conducting trials of Muslims under the Sharia Criminal Procedure Code or "in accordance with Islamic law", but in accordance with the CPC and the Evidence Act which they have always been used to apply. In practice therefore these interesting variant provisions of Bauchi's Sharia Criminal Procedure Code so far remain a dead letter.[52]

ii. Witnesses; oaths. Consider first §202(1) of the Harmonised Sharia Criminal Procedure Code – the HSCPC – in Part IV below. This provides that:

> An accused person shall not be a competent witness on his own behalf in any trial, whether he is accused solely or jointly with another person or persons, but he may be a competent witness in proceedings against any person or persons tried jointly with him.

All six of the large Sharia Criminal Procedure Codes enacted in Gombe, Jigawa, Kaduna, Kebbi, Sokoto and Zamfara States, and the one pending in Borno, are in accord. This reverses CPC §236 and restores the position under classical Maliki law. It appears to be in direct conflict with §160 of the Federal Evidence Act, by which the Sharia Courts are at a minimum to be "guided":[53]

> Every person charged with an offence shall be a competent witness for the defence at every state of the proceedings, whether the person so charged is charged solely or jointly with any other person….

But the rule against an accused testifying in his own behalf is softened by other provisions of the Sharia Criminal Procedure Codes, which appear to give the accused, as his trial progresses, large scope to get his point of view and the evidence for it across. The following sections of the HSCPC outline the procedure:

> §§152, 200 and 209: the accused is to be present during the whole of the trial; all evidence in the trial is to be taken in his presence; and he is to be taken on any view or visit during the trial to the place where the offence is alleged to have been committed or to any other place, where the court "may take any evidence or hear any statement or explanation by the accused on the spot."
>
> §155: when the accused is first brought before the court "the particulars of the offence of which he is accused [note: the formal charge comes later] shall be stated

[52] Based on interivews with several of the judges of the Bauchi State High Court.

[53] See Evidence Act §1: "… (2) This Act shall apply to all judicial proceedings in or before any court established in the Federal Republic of Nigeria [with exceptions not relevant here]. (3) In judicial proceedings in any criminal cause or matter in or before an Area Court [which will likely be read to include the new Sharia Courts] the Court shall be guided by the provisions of this Act…. (4) Nothwithstanding anything in this section, an Area Court shall, in judicial proceedings in any criminal cause or matter, be bound by the provisions of sections 138 [burden of proof beyond reasonable doubt], 139 [burden of proof as to particular fact], 140 [burden of proving fact to be proved to make evidence admissible], 141 [burden of proof in criminal cases], 142 [proof of facts especially within knowledge] and 143 [exceptions need not be proved by prosecution] of this Act."

to him and he shall be asked if he has any cause to show why he should not be convicted."

§157: if the accused says he intends to show cause why he should not be convicted, then the court proceeds to "hear the complainant, if any, and take all such evidence as may be produced in support of the prosecution". During this process the accused may cross-examine the witnesses for the prosecution. Under §166 he may also ask the court to put questions to witnesses on his behalf, which the court must do unless the questions bear only on immaterial facts.

§201: also in this initial stage of the proceedings, or at any other:

> (1) For the purpose of enabling the accused to explain any circumstances appearing in the evidence against him the court may, if the accused so agrees…after explaining to the accused the effect of subsections (2) and (3), put such questions to him as the court considers necessary and in such case shall for the purpose aforesaid question him generally on the case after the witnesses for the prosecution have been examined and before he is called on for his defence.
>
> (2) The accused shall not render himself liable to punishment by refusing to answer such questions or by giving false answers to them; but the court may draw such inference from such refusal or answers as it thinks just.
>
> (3) The answers given by the accused may be taken into consideration in the trial.
>
> (4) The sole purpose of such examination shall be to discover the line of defence and to make clear to the accused the particular points in the case for the prosecution which he has to meet in his defence and there shall be nothing in the nature of a general cross-examination for the purpose of establishing the guilt of the accused.
>
> (5) No oath shall be administered to the accused for the purposes of an examination under this section.[54]

Under §200(2) any such examination of the accused and his statements in response thereto are to be recorded in writing like the evidence of any other witness.

§206: this somewhat opaque provision appears to make any statement made by the accused during an examination under §201 "admissible for or against himself and any of the other accuseds" in cases where the accused is tried jointly with others.

§198: although no oath is to be administered to the accused for the purposes of an examination under §201, under this section the classical oaths may be administered to persons of the Islamic faith, apparently including, in appropriate circumstances, the oath of *tuhuma*.[55]

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[54] Kebbi and Sokoto omit this section entirely.

[55] *Tuhuma*: the "oath of innocence", offered to an accused against whom the proof required under Islamic law is incomplete. If the accused takes the oath he is discharged.

§159: if after all this "the court is of opinion that there is ground for presuming that the accused has committed an offence triable under this chapter, which such court is competent to try and [adequately punish], the court shall frame a charge declaring with what offence [under the Sharia Penal Code or other written law] the accused is charged and shall then proceed as hereinafter provided."

§160: the formal charge is read and explained to the accused and he is once again asked whether he is guilty or has any defence to make.

§161: if the accused "pleads not guilty or makes no plea or refuses to plead" he is asked whether he wishes to impeach or cross-examine or further cross-examine any of the witnesses for the prosecution; if so they are recalled for this purpose; any further witnesses for the prosecution are called and subjected to the accused's cross-examination and impeachment; and then the accused is called on "to enter upon his defence and produce his evidence." "If the accused puts in any written statement, the court shall file it with the record."

§162: the accused may call any witnesses for his defence, and the court must assist him with the issuance of process "for compelling the attendance of any witness…or the production of any document or other thing" unless the accused's application therefor "is made for the purpose of vexation or delay or of defeating the ends of justice." The prosecution has the right to cross-examine and impeach defence witnesses.

§167: the court must make its finding "upon the evidence which is before it and in making such finding nothing shall be taken into consideration which is not supported by the evidence."

§§163, 168, 169: if the accused is found guilty the court then announces its finding, hears any evidence bearing on what the sentence should be, and pronounces sentence.

It seems doubtful that, if this procedure had been correctly followed in a given case, an appellate court would find that a failure of justice had been occasioned by any failure of the trial court to be guided or rightly guided by §160 of the Evidence Act, giving every accused person the right "to be a competent witness for the defence at every state of the proceedings."

There is nothing in the HSCPC, or in the large Sharia Penal Codes it harmonises, about definite numbers of witnesses being required to prove particular offences. Kano however has included such a provision in its new CPC chapter on trials in its Sharia Courts, reprinted in full in Part V below. Section 396 provides that:

> After taking at least 4 unimpeached witnesses in the case of offences under SS … to …[56] and at least 2 witnesses in other offences, if court is satisfied that a prima facie case has been established by the prosecution/complainant the court shall call upon the accused person to enter his defence.

[56] Sic. The intended references are apparently to the sections of Kano's Sharia Penal Code dealing with *zina* and perhaps related offences.

This again appears to be in direct conflict with §179 of the Evidence Act, which provides (for Sharia Court guidance) that "no particular number of witnesses shall in any case be required for the proof of any fact." But the rule of at least two witnesses and of four in some cases runs in favour of the accused; it is difficult to see how a failure of justice, at least to the accused, can be occasioned thereby; and the rule can be circumvented by the prosecution by the completion of otherwise insufficient proof by the Islamic system of oathtaking by complainants or others. That these rules are being applied in the Sharia Courts even in States where the criminal procedure codes do not specifically incorporate them is demonstrated by the famous case of Sani Rodi, tried for murder in a Sharia Court in Katsina State in 2001. The evidence against Rodi was strong but circumstantial. The prosecution completed it with the *qasama* oaths (sworn 50 times by relatives of the victims) discussed in Part II below at pp. 205-207. Rodi was duly convicted and sentenced to *qisas* – that is, execution by stabbing to death with the same knife that he had used to kill his victims. In the end he was hanged, not stabbed to death; this procedural deviation is discussed further below.[57]

There is nothing in any of the Sharia Criminal Procedure Codes about discrimination among potential witnesses based on character, religion or sex. The extent to which these uncodified Islamic rules are being applied in the Sharia Courts today is not known. Their former applicability in the Muslim courts of the Northern Region was one of the factors that led the Minorities Commission to recommend, and the Northern Region briefly to adopt, the procedure discussed above allowing non-Muslims to "opt out" of trial in Muslim courts. Today the position of non-Muslims is different: the rule in all Sharia States is that they are not subject to trial in the Sharia Courts unless they expressly *opt in*.[58] Today it is Muslims, presumptively triable in the Sharia Courts, who seem to have the privilege, not infrequently exercised, of opting out. This interesting point is discussed further in the chapter of this work on "Court Reorganisation", forthcoming.

iii. Guidance. All six of the large Sharia Criminal Procedure Codes enacted in Gombe, Jigawa, Kaduna, Kebbi, Sokoto and Zamfara States, the one pending in Borno, and the HSCPC, include the following provision:

> In any matter of a criminal nature a Sharia Court shall be bound by the provisions of this Sharia Criminal Procedure Code.[59]

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[57] On Rodi's trial and conviction see e.g. *The Guardian*, 15th November 2001. On his hanging see *BBC World News*, 4th January 2002, Internet edition, both cited in G. Weimann, "Judicial Practice in Islamic Criminal Law in Nigeria 2000 to 2004 – A Tentative Overview", *Islamic Law & Society*, 14/2 (2007), 240-286 at 258.

[58] The rule of §3 of the enacting provisions of the Harmonised Sharia Penal Code Law, see Chapter 4, supra, is typical: "Every person who is a Muslim and/or every other person who voluntarily consents to the exercise of the jurisdiction of any of the Sharia Courts established under the Sharia Courts Law shall be liable to punishment under this law for every act or omission contrary to the provisions thereof of which he shall be guilty within the State." Similar provisions occur in the Sharia Courts laws themselves, some of which require that the consent of a non-Muslim to the jurisdiction of a Sharia Court be given in writing.

[59] This provision is contained in the enacting provisions of all the Sharia Criminal Procedure Code Laws, not in the Schedules which constitute the SCPCs themselves. See e.g. HSCPC, infra, §4(3) of the enacting provisions. Bauchi omits this subsection; and see Bauchi's §42 = Kano §410 after 2001 amendments: "(1) In any matter of criminal nature the Sharia Court shall be guided in

This is a departure from the guidance principle of the CPC, and probably should be welcomed as a stiffening of the rules the Sharia Courts in these States are required to follow. What its practical effect will be, however, is open to question, as all of the same Sharia Criminal Procedure Codes at the same time continue the rules of the CPC, here quoted from the HSCPC, Part IV infra, that:

> **255**. A court exercising appellate jurisdiction shall not…interfere with the finding or sentence or other order of the lower court on the ground only that evidence has been wrongly admitted or that there has been a technical irregularity in procedure, unless it is satisfied that a failure of justice has been occasioned by such admission or irregularity.[60]

and that:

> **345**. [N]o finding, sentence or order passed by a court of competent jurisdiction shall be reversed or altered on appeal or review on account of any error, omission or irregularity in the complaint, summons, warrant, charge, public summons, order, judgment or other proceedings before or during trial…unless the appeal court or reviewing authority thinks that a failure of justice has in fact been occasioned by such error, omission or irregularity.

Whether the Sharia Courts are formally bound by the rules or only required to be guided by them may be a moot point, if the enforcing bodies – the appellate courts – ask the same question under either regime – whether "a failure of justice has in fact been occasioned" by any instance of non-compliance.

Kano and Bauchi States continue the old principle of guidance from the CPC, here quoted from §410 of Kano's Criminal Procedure Code (Amendment) Law, Part V infra:

> (1) In any matter of criminal nature the Sharia Court shall be guided in regard to practice and procedure by the provisions of this Law.
>
> (2) The fact that a Sharia Court has not been guided by the provisions of the Criminal Procedure Code in any criminal trial shall not entitle any person to be acquitted or any order of the court to be set aside.

Kano adds, in a separate section omitted by Bauchi, that:

> **411**. Notwithstanding the provision of subsection (1) of this section [sic: section 410, of which §411 was probably supposed to be subsection (3)], the Sharia Courts shall be bound by the provisions of Chapter XXXIII [sections] 385 to 413 of the CPC [i.e. all sections of Cap. XXXIII].

In Kano State therefore the Sharia Courts are formally bound by the whole of the new chapter on TRIALS BY SHARIA COURTS; in Bauchi State they are bound by none of it but only required to be guided. Again this may be a distinction without a difference, as

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regard to practice and procedure by the provisions of this law. (2) The fact that the Sharia Court has not been so guided by the provisions of this Sharia Criminal Procedure Code shall not entitle any person to be acquitted or any order of the court to be set aside."

[60] All the actually-enacted SCPCs omit from this section the words "that evidence has been wrongly admitted or that".

reviewing courts in both States still operate under the CPC rules quoted above: no interference with what a lower court of competent jurisdiction has done, based on its non-compliance with the rules of procedure and evidence, unless a failure of justice has been occasioned.

iv. Representation by counsel. The right of all accused persons to be represented by legal practitioners of their choice, enshrined in the Nigerian Constitution and now in all the new Sharia Criminal Procedure Codes, has already been noted. The problem is not with the right but with its realisation, particularly, in the Sharia States, in the Sharia Courts.[61] At no stage of the criminal justice process are the authorities – police, prosecutors, or courts – required to advise a questioned, arrested, or accused person of his right to be represented by counsel, despite the fact that many such persons, probably most, are quite unaware of this right. In any case, particularly outside the cities and large towns, lawyers are scarce on the ground, and even where they are available most people do not have the money to pay their fees. There is a Federal agency, the Legal Aid Council, with branches in all State capitals, whose purpose is to provide legal representation for indigent accuseds in serious cases.[62] But the Legal Aid Council lawyers are badly overworked and underfunded – finding it difficult, for example, for lack of funds, to move outside the cities where they are based – and it is only a small fraction of all eligible cases in which they ever become involved. In fact most persons tried in the Sharia Courts never have the benefit of representation by a legal practitioner, depending instead on the advice and assistance of family, friends, or the local Court Inspectors.[63]

The situation is better in the High Courts, where in serious cases the judges have the power to appoint private practitioners, at State expense, to represent indigent accuseds. Indeed, under the CPC, in capital cases coming before them the High Courts are required to do so:

> **186**. Where a person is accused of an offence punishable with death if the accused is not defended by a legal practitioner the court shall assign a legal practitioner for his defence.

Since under the CPC the only courts with power to try capital cases and to impose sentences of death have for many years been the High Courts,[64] this provision has long operated to ensure representation by counsel at least for all persons on trial for capital offences.

But now the situation has changed in the Sharia States. The Sharia Penal Codes define a number of capital offences, including a number, like *zina* by a person who is or has formerly been married, not included in the Penal Code of 1960.[65] The Sharia Penal Codes are enforced only in the Sharia Courts, the highest grades of which, under the

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[61] Precisely the same problem exists in all States, in the courts descended from the old Native and Customary Courts.

[62] The Legal Aid Council was first established by the Legal Aid Decree, No. 56 of 1976, which became the Legal Aid Act, Cap. 205 LFN 1990 and now Cap. L9 LFN 2004. The classes of cases in which Council lawyers may come in are defined in the Act.

[63] The Native/Area/Sharia Court Inspectorates are an institution dating from colonial days. They are discussed further in the chapter of this work on "Court Reorganisation", forthcoming.

[64] For further details on this point see Chapter 6, 10.

[65] For several such offences in addition to *zina*, see the table on p. 15 of this volume.

Sharia Criminal Procedure Codes, have the power to impose any sentence including death.[66] But although the Sharia Criminal Procedure Codes are based substantially on the old CPC, one CPC section left out was §186. This was part of the CPC chapter on TRIALS BY THE HIGH COURT. With the elimination from the Sharia Criminal Procedure Codes of that chapter, and of §186 of that chapter in particular,[67] the requirement that counsel be appointed to defend, at least, persons accused of capital offences, has been left out of the rules applicable in the Sharia Courts.

All of this is clearly visible in the records of proceedings and judgments in the cases of Safiyatu Hussaini and Amina Lawal reproduced in Chapter 6, as supplemented by Aliyu Musa Yawuri's article, also in that chapter, "On Defending Safiyatu Hussaini and Amina Lawal". Both women were on trial for their lives in Sharia Courts in remote villages. Neither was represented at her trial by a legal practitioner or advised that she had the right to be represented. It was only after their sentences of *rajm* – stoning to death – were reported in the newspapers that others – principally two NGOs, the Women's Rights Advancement and Protection Alternative (WRAPA) and BAOBAB for Women's Human Rights – stepped in to help them by providing legal practitioners to prosecute their appeals and with other support. When the issue of right to counsel was raised in Safiyatu's appeal – her lawyer arguing that she should at least have been advised of this constitutional right by the trial court – the Sharia Court of Appeal said no:

> It is not the responsibility of the court to inform the accused to engage the services of a lawyer on a matter before the court. Therefore, we will not say anything further about this ground of appeal.[68]

After this rebuff the issue was not even raised in Amina's appeal. One may think that this is a point on which the Sharia States need to reconsider their position and think of amending their Sharia Criminal Procedure Codes, to ensure the realisation of the right to counsel at least in the more serious criminal cases coming before the Sharia Courts.

v. The imposition and mode of execution of certain types of sentences. A great many sentences of "caning" are being imposed by the Sharia Courts; it is worthwhile therefore to call the reader's attention to the detailed provisions for the mode of execution of such sentences contained in all the large new Sharia Criminal Procedure Codes, quoted here from HSCPC §273(2):

> (2) Whenever a sentence of caning is to be executed the court shall ensure that the caning be carried out in the following manner:
>
> (a) the whip to be used shall be a light, supple leather whip which is one-tailed;
>
> (b) the convict shall be made to sit up;
>
> (c) the male convict shall be bared except for his underpants;

[66] Cf. HSCPC §14: "An Upper Sharia Court alkali may pass any sentence authorised by law."
[67] Two sections of the CPC chapter on TRIALS BY THE HIGH COURT have in fact been included in the large new Sharia Criminal Procedure Codes, see Part VIII infra. Why §186 was left out is not known.
[68] Judgment of the Sokoto State Sharia Court of Appeal in Safiyatu's case, Chapter 6, 42.

(d) the female convict shall be relieved only of heavy outer garments that in the opinion of the court may negate the effect of lashes;

(e) the convict shall not be bound unless it becomes clear that the punishment cannot otherwise be carried out;

(f) the executioner shall be of moderate physique;

(g) the lashes shall be of moderate force so as not to cause lacerations to the skin of the convict;

(h) the executioner shall hold the whip with the last three fingers; the first finger and the thumb are to be held loosely and the whip emerges between the middle finger and the first finger;

(i) the executioner shall strike only the back and the shoulders of the convict and where the convict is a female recourse shall be made to strict modesty and decency.

These rules suggest the quasi-symbolic nature of this punishment under Maliki law. Similar rules were issued in 1960 to govern *haddi* lashing under §307 of the CPC – but not "caning" under §308.[69] Whether, in the six Sharia States where the larger Sharia Criminal Procedure Codes have not (yet) been enacted – those old rules are still being applied today in cases of *haddi* lashing proper, or in all cases in which sentences of "caning" or "lashes" are imposed – is not known.

The imposition and execution of sentences of *qisas* is dealt with in several sections of the large new codes. First, as to the wishes of the victim of the crime or, in cases of homicide, his relatives (quoted here from HSCPC):

170. A Sharia Court having jurisdiction over *qisas* offences shall, before passing a sentence, invite the blood relatives of the deceased person, or the complainant as the case may be, to express their wishes as to whether retaliation should be carried out, or *diyah* should be paid or the accused should be forgiven and the court shall record such wishes in the record of proceedings.

The effect of the wishes of the victim or his relatives is different in different States. In Kano and Bauchi, "the court shall be bound by the wishes so expressed".[70] But under all the large Sharia Criminal Procedure Codes the case comes under the section on the compounding of offences (quoted here from HSCPC):

303. Subject to the provisions of the Sharia Penal Code, other provisions of this Sharia Criminal Procedure Code, or any other written law, the offences punishable by *qisas* or *ta'azir* under the Sharia Penal Code may be compounded by the blood relations of the deceased victim or in any case by the person affected by the offence *provided that* the compounding must be before the court trying the offence, and upon the application of the person affected if the court

[69] See Jones, *Criminal Procedure in the Northern States of Nigeria*, 202, note to CPC §307(1): "Haddi lashing is a symbolic punishment intended to inflict disgrace rather than pain. It must be administered in accordance with the Criminal Procedure (Haddi Lashing) Order in Council 1960, NRLN 85 1960" – which is then quoted in full; the provisions are quite similar to HSCPC §273(2), quoted above.

[70] Kano Cap. XXXIII §405, Bauchi SCPC §38.

> sees reason to allow the offence to be compounded and thereafter discharge the accused person.

The "provisions of the Sharia Penal Code" referred to are, for example, that in cases of intentional homicide, where the relatives of the victim remit both *qisas* and *diyah*, the offender shall nevertheless be punished with caning of one hundred lashes and with imprisonment for one year.[71] Where the victim or his relatives refuse to remit *qisas*, then other provisions come into play. As to injuries short of death:

> **242**. When a person is sentenced to suffer *qisas* for injuries the sentence shall direct that the *qisas* be carried out in the like manner the offender inflicted such injury on the victim.

In homicide cases:

> **241**. When a person is sentenced to death the sentence shall direct that:
>
> * * *
>
> (b) in case of *qisas*, he be caused to die in the like manner he caused the death of his victim except such manner that is contrary to Sharia.[72]

It was under this rule, although still uncodified in Katsina State, that Sani Rodi was sentenced to be stabbed to death with the same knife he had used to kill his victims. As has been indicated, however, Rodi was not stabbed to death in Katsina State where he had committed his crime, but was taken to Kaduna and hanged (the sole method of execution of death sentences specified by §273 of the CPC): it was reported at the time that this was done for fear that execution of the sentence of *qisas* might have sparked off rioting.[73] Several other sentences of *qisas* have been reported. In Katsina State in May 2001, a complainant

> asked for the removal of Ahmed Tijjani's right eye in retaliation for the loss of his own eye in a fight with the defendant. The judge ruled that Tijjani should have either one of his eyes removed or pay a compensation of 50 camels. The plaintiff insisted on retaliation. The execution of the sentence was not reported.[74]

Then from Bauchi State:

> Two cases of grievous bodily harm were reported: in March 2004, a gang member named Sabo Sarki was arrested and tried. He was accused of having forcefully removed the eyes of a teenage boy to sell them to another man who intended to use them in a ritual. Sarki was sentenced to pay compensation of 5.5 million naira (ca. 27,500 US$). However, the victim rejected the compensation and insisted on retaliation. The second case of grievous bodily harm involved a

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[71] See Harmonised Sharia Penal Code, Chapter 4, §199.

[72] Kaduna has an illustration to this subsection: "Illustration. A kills B by way of juju or sodomy: A will not be executed in the like manner he caused the death of B because to do so is contrary to Sharia."

[73] BBC World News, 4th January 2002, Internet Edition, cited in Weimann, "Judicial Practice in Islamic Criminal Law in Nigeria", 258.

[74] Weimann, "Judicial Practice in Islamic Criminal Law in Nigeria, 259 (footnotes omitted).

> jealous husband who cut off his wife's right leg with a machete. The wife demanded *qisas*. In January 2003, after a trial that lasted several months, Adamu Hussaini Maidoya was sentenced to have his right leg amputated under the knee without anaesthesia. The judge pointed out that Maidoya had to experience the same pain that he had inflicted on his wife. In August 2006, three and a half years after the verdict of first instance, the Bauchi State Sharia Court of Appeal rejected Maidoya's appeal. The three khadis unanimously [ruled] that the verdict of the Upper Sharia Court was correct since Maidoya had confessed to committing the crime.[75]

It does not appear that any of these sentences has actually been executed. The reasons for this are discussed in the next (and final) subsection of this introduction.

The sentence of amputation of Adamu Hussaini Maidoya's leg just discussed was a matter of *qisas*. Many other sentences of amputation, of the hand for theft (probably 100-200 of these) and at least one of a hand and a foot for *hirabah*, have also been imposed, as a matter of *hadd*. It appears that only three amputations, of the hand, have actually been executed.[76] There is nothing in the Sharia Criminal Procedure Codes about how such sentences are to be executed if and when the time comes. It appears that the amputations of hands that have been carried out were done by surgeons.

Finally for this subsection, we merely record the other provisions of HSCPC §241 on the mode of execution of sentences of death:

> **241**. When a person is sentenced to death the sentence shall direct that:
>
> (a) in case of *zina*, he be stoned to death; and
>
> * * *
>
> (c) in case of *hirabah*, he be caused to die by crucifixion.

Again, although several sentences of stoning to death have been imposed, none has been executed.[77]

vi. <u>The requirement of the Governor's consent to the execution of certain sentences</u>. We have noted that under the CPC the power to try capital cases and to impose sentences of death has long been limited to the High Courts. Under the CPC no sentence of death can then be executed, until the High Court has made a full report on the case to the State Governor, and the Governor has decided whether or not to exercise any power conferred on him by the provisions of the Nigerian Constitution on the prerogative of mercy.[78] The Constitution permits a Governor to grant a pardon to "any person concerned with or convicted of any offence created by any Law of a State", to grant a period of respite from the execution of any punishment imposed on such person, to substitute a less severe form of punishment for any punishment imposed, or to remit

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[75] Ibid., 277 (footnotes omitted).

[76] Ibid., passim. Weimann's article comprehensively surveys what is publicly known about the imposition and execution of such sentences in the years 2000 to 2004.

[77] See ibid.

[78] For this procedure see CPC §§294-299, as amended after the coming into force of the 1979 Constitution, in which the mode of exercising the prerogative mercy was somewhat altered; further details are off our point here.

the whole or any part of any punishment. These powers of a Governor "shall be exercised by him after consultation with such advisory council of the State on prerogative of mercy as may be established by the Law of the State."[79]

All of the new Sharia Criminal Procedure Codes, including Kano State's new CPC Chapter XXXIII on TRIALS BY SHARIA COURTS, impose on the Sharia Courts the same reporting requirement in death cases as is imposed by the CPC on the High Courts, and expand it to other classes of cases as well. The effect is that no sentence of the designated kinds can be executed until the Governor has fully considered the case and given his consent to execution of the sentence. The reason why so few sentences of death, amputation whether as *hadd* or as *qisas*, or other serious sentences of *qisas*, although they are being imposed by the Sharia Courts, are being executed, is that the Governors are refusing their consent.

The SCPCs show interesting variations as to the procedure under discussion.

As to the classes of cases that must be reported to the Governor: all codes except Kano's include those involving sentences of death, amputation and *qisas* – with some of the codes in some sections but not others limiting the *qisas* cases to those involving "*qisas* of the limbs"; query whether that would include the plucking out of eyes. Kano does not mention *qisas* at all, requiring the reporting only of "cases falling under sections 124-134 Sharia P.C., where death sentence [as *hadd* for *zina*] or amputation of hand [for theft] is passed"; but why has Kano omitted sentences under §134B, 140, and 141 of its Sharia Penal Code, which also impose the *hadd* of amputation, and why has it omitted sentences of death for homicide, to say nothing of other cases of *qisas* involving mutilation?[80]

What must the Governor do after the case is reported to him? (1) As is indicated in the annotations to §261 of HSCPC, all the large SCPCs, except Kebbi's, require the Governor to consult with someone: the State Executive Council, the State Council of Ulama, the State Advisory Committee on Religions Affairs, or in some States two of the above. Bauchi and Kano, like Kebbi, do not require that the Governor consult with anyone. (2) And after the consultation, if any? Three of the large SCPCs, along with the HSCPC (see §261 and annotations), say the Governor *may* then affirm the sentence; they do not say what happens if he does not affirm it. Four of the large SCPCs say the Governor *shall* then affirm the sentence, apparently giving him no choice in the matter. Bauchi and Kano requiring no consultations, both say that after all avenues of appeal are exhausted, the Governor "*shall* make an order for the execution of [the] sentence" (see Kano §407 and annotation).

What of the prerogative of mercy? Five States and the HSCPC apparently attempt to limit its exercise by the Governor with this provision or some variant thereof (see HSCPC §261(2) and annotations):

> The Governor, in the public interest, may in consultation with the Executive Council pardon any convicted person of the offence punishable with death other than *hudud* or *qisas*.

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[79] For prerogative of mercy of State Governors see §192 of the 1979 Constitution and §212 of the 1999 Constitution; the quotation in the last sentence is from subsection (2) of §212.

[80] For all States except Kano see HSCPC §§260, 261 and 264 and annotations thereto. As to Kano see §406.

Three States – Bauchi, Gombe and Kano – do not mention the prerogative of mercy at all. Only Kaduna (in §255(2) of its SCPC) concedes the Governor the power which in any event he clearly has under the Constitution:

> The Governor may, in the public interest, and in consultation with the Body of Islamic Jurists, pardon any convicted person in accordance with section 212 of the Constitution of the Federal Republic of Nigeria, 1999.

Of course under §212 of the Constitution the Governor may not only pardon, he may also show mercy in any one of several other ways short of pardon; and these acts of mercy may extend to "any person concerned with or convicted of any offence created by any Law of a State". The apparent attempts of most SCPCs to limit this power, at least where sentences of *hudud* and *qisas* are involved, will surely be held ineffective if ever brought before the higher courts for their consideration.

The confused state of the SCPC sections on the reporting to the Governors of sentences of death, amputation and *qisas* and on what is supposed to happen after they are reported, betray a real ambivalence on the part of the drafters about allowing the Governors to interfere with the administration of Islamic law by the Sharia Courts. No doubt what was feared was what has actually come to pass. The Governors' immediate constituencies are the mostly-Muslim populations of their States, yes. But the Governors, more than most other citizens, are brought face to face with the wider interests of their States within the Nigerian Federation and internationally, where many pressures have been brought to bear against permitting the execution of types of sentences viewed in most of the rest of the Federation and in much of the rest of the world as outmoded and inhumane. Moreover many of the Sharia State Governors – including Alhaji Ahmad Sani of Zamfara State, who started the Sharia implementation ball rolling – have harboured ambitions for national office, including the Presidency;[81] and they must have recognised that to permit execution of the many sentences of amputation for theft, stoning to death for *zina* and severe forms of *qisas* that the Sharia Courts have imposed would ruin their hopes. The result has been that with the exception of the three amputations for theft carried out in the very early days of Sharia implementation, the persons on whom such sentences have been imposed have quietly been dealt with in other ways. This whole subject is considered in further detail in the chapter of this work on "Crimes and Punishments", forthcoming.

The Sharia Criminal Procedure Codes offer many further interesting subjects for analysis and debate. But this introduction to them has gone on long enough. Without further ado the reader is commended to the primary materials contained in the rest of the chapter.

[81] Six of the Sharia State Governors – Mu'azu of Bauchi, Makarfi of Kaduna, Yar'adua of Katsina, Bafarawa of Sokoto, Ibrahim of Yobe, and Sani of Zamfara – were mentioned or contended for the nominations of their parties as candidates for President in the 2007 elections; two were actually on the ballot – Bafarawa and Yar'adua –; and of course Yar'adua is now the President.

Chapter 5 Part II

On Islamic Criminal Procedure

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:

* * *

c. **Islamic Criminal Law Procedure**

The Islamic Criminal Law Procedure was carefully drafted and recommended by the committee to the State Government for adoption. Refer to Annex B for detailed procedure.

d. ***Ta'aziratu* (Correctional Punishments)**

Islamic Law has identified some offences that require correctional punishment, which were carefully reviewed by the committee and recommended to the State Government for adoption. Refer to Annex C for detail.

* * *

Annex B

Procedure on Islamic Criminal Law Offences under Islamic Law

The position of Islamic law on enforcement of punishment [is] aimed at preventing the accused from committing further or similar offence and deterring others from drawing near such offence. Islamic law legalises the punishment of an offender for an offence to which no defined or standard punishment had been prescribed. This is known as *ta'azir* (correctional punishment). Under this type of punishment a judge is allowed to use his discretion in awarding appropriate punishment where the offence does not warrant *hadd* punishment.

Rationale behind *hadd* punishment: The reason behind *hadd* punishment is to prevent the vandalisation or destroying all those things recognised by all revealed religions on the need to protect them such as lives, religion, sanity, wealth and property.

The following are the essence of *hadd* punishment:

(a) Revenge execution of death sentence, prevent occurrence of homicide and bodily injuries.
(b) Amputation of a thief's hand is a protection of wealth of others.
(c) Stoning to death or caning adulterer purifies affinity.
(d) The punishment for an alcoholic protects sanity.
(e) Punishment for defamation is a protection of integrity.
(f) Punishment for apostasy guards against religious abuse.

Offences and the Procedure to be Followed in Proving their Commission

There are seven types of criminal offences under Islamic law (Sharia) and each has a procedure to be followed in proving its commission before sentence.

1. *Qisas*[82]

a. Homicide[83]

The rule is that a person shall not be sentenced to death unless under the following circumstances.

i. There must be two reliable male witnesses: evidence of a single male and two females are not sufficient to convict in homicide cases. But such evidence is enough in payment of compensation provided there is no contradiction in the evidence of the two witnesses as to how the killing occurred.

Example:

Where one of the witnesses said "I saw him burn him" and the other witness said "I saw him slaughter him" if the suspect denies this, the punishment cannot be carried out provided the representatives of the person killed have accepted the evidence of the two witnesses above.

But where the representatives accept the evidence of only one of the two witnesses, then they will swear (*qasama* oath) and the suspect will be executed. This is because both the suspect and the complainants did not accept the evidence of one of the witnesses.

But where the accused confessed that he had slaughtered the deceased but the complainants are convinced on the evidence that said the deceased was burnt, if in the opinion of the judge the evidence carried weight, they will be asked to swear and based on this evidence the accused will be burnt in accordance with the view that

[82] Spelled 'kisas' in the report here reproduced.
[83] There is no subsection *b*: perhaps it would have covered the subject of hurts or woundings, the other main subdivision of the law of *qisas*.

qisas can be carried out on a person by way of burning him if the death he caused was by fire.

Where however, the other evidence that said the deceased was slaughtered corroborated with the confession of the accused, then he will be asked to swear and will then be slaughtered.

ii. Where the accused person confessed the commission of the offence provided he is sane, and not an infant, then the sentence will be carried out.

iii. By way of *qasama* oaths:

(a) Where the deceased made a dying declaration (*lausi*) i.e. where the accused [sic: deceased] before his death named somebody as the one who killed him.
(b) Where there is one witness who witnessed the killing of the deceased by the accused.
(c) Where there are two witnesses who testified that the accused caused injury that resulted to the death of the deceased.

In all these circumstances the accused will be killed.

Procedure for *qasama* oaths

This oath (*qasama*) is initiated where the person wounded made a dying declaration before his death. There are seven conditions to be satisfied before an accused can be sentenced to death under this procedure.

1. That the complainant alleges that it is the accused that killed the deceased with convincing evidence of one witness where the accused did not confess.
2. That the person killed is not a slave.
3. That the person killed is a Muslim.
4. That the complainants allege killing not injury.
5. That the complainants allege intentional killing.
6. That all the complainants have attained puberty.
7. That they are all sane.
8. That all complainants demand the revenge of the death of the deceased.
9. There should not be less than two complainants alleging intentional killing.
10. That along [with] their allegation there are other things to support their allegation such as evidence of one reliable person who saw when the deceased was killed or saw the deceased lying in a pool of blood while the suspect was still near him with an indication that he indeed did the killing.
11. That the complainant(s) must swear fifty (50) times before retaliation. It's the same oath if they are asking for compensation on an unintentional killing.

Exception

Qasama oaths cannot be administered in the following cases:

(a) Where retaliation of injury is demanded if there are two witnesses on intentional injury, in this case retaliation is allowed.

If it is unintentional then compensation is allowed. But where there is only one witness, the complainant(s) should swear to qualify to receive compensation

if the cause of the injury occurred by mistake. But where it is intentional, *qasama* oath will be administered and revenge effected.

(b) There shall be no *qasama* oaths for a slave and a non-Muslim.
(c) There shall also be no *qasama* oaths where the deceased is found in between two congregations, one of Muslims and the other for non-Muslims and the killer not identified.

Prove

To secure conviction the following must be proved:

(a) That the accused is sane and not an infant.
(b) That he is not an enemy of war.
(c) He is not a slave.
(d) He is a Muslim.
(e) He indeed beat the deceased to whom he was not father.
(f) That deceased is not the one who is legally permitted to be killed.

2. Robbery (*hirabah*)

This is to mount a roadblock in order to forcefully confiscate the wealth of others, in such a way that it will be difficult for:

(a) A victim to escape;
(b) Or to use anything that will terrify a person for the purposes of taking away his belongings;
(c) Or to deceive an infant by taking him to a strange place to kill him in order to take away what he possesses;
(d) Or to stay in the night or day time in a hidden place for the purposes of confiscating other people's wealth forcefully or killing another person instantly without his knowledge. The punishment for any of these is that the accused should be killed.

But where the accused did not kill his victim, the judge has discretion to order for any of the following:

(a) To kill him; or
(b) To kill him and then crucify him;
(c) Or to amputate his hand and leg diagonally in order to restrain him;
(d) To banish him.

3. Adultery

The offence of adultery can only be established:

(a) Where the accused confessed the commission of the offence and did not retract up to the time he is to be executed.
(b) Presentation of four reliable witnesses that witnessed the penetration of a male organ (penis) into the female organ (vagina) at one act. Where three out of the four witnesses testified the above but the other one witness did not, the three witnesses will be subjected to punishment for defamation.

(c) The existence of pregnancy on an unmarried woman will subject her to *hadd* punishment even if she alleges that she was compelled unless if:
   (i) she produces at least one reliable witness who testified that he saw somebody forcefully carrying her away;
   (ii) or that he saw her crying holding whosoever she alleges had sexual intercourse with her; or
   (iii) he saw her bleeding (from her private part).

In all these 3 circumstances she will not be subjected to *hadd* punishment for adultery.

Conditions to prove adultery

The punishment for adultery can only be enforced if the following conditions are satisfied:

(1) That the accused is a matured person.
(2) He is sane.
(3) He is a Muslim.
(4) That the offence is voluntarily committed.
(5) That the offence was committed on or with a human being not an animal.
(6) That the female co-accused is up to the recognised age for such cohabitation.
(7) That the male co-accused must not have any claim or right over the female he was accused with or that he knows that the sexual relationship with her is prohibited.
(8) That the female is not an enemy to the accused or a trusted unbeliever (under a treaty).
(9) That the female with whom the offence was committed must not be dead.

4. Stealing (*sariqah*)

Dishonestly taking away the property of another without his knowledge with intention of depriving him of it.

a. Punishment of stealing

The punishment for stealing is *hadd* punishment by way of amputating the hand of the accused from the wrist, if the following conditions are satisfied. Amputation for stealing can only take place if:

(i) That the accused is sane.
(ii) That he has attained puberty or reached the age of 18.
(iii) He is not a slave of the person he steals from.
(iv) He is not a father to the person he steals from.
(v) The stealing must not be out of necessity such as hunger.
(vi) That the property must be the type that can be lawfully sold.
(vii) That the property stolen must not be in possession of the accused such as stealing his mortgaged property or stealing something equivalent to his due for a service rendered to his employer.
(viii) That the property stolen must be up to the measure of ¼ of dinar or 3 dirhams or their naira equivalent.

(ix) That the property stolen is kept in a place suitable for its custody such as a house, shop or on an animal or ship. It must not be placed where custom does not permit.
(x) The property must have been removed from its original place of custody.
(xi) The property must be stolen not confiscated.

b. Justification for carrying out the punishment

(i) Right of Allah (SWT). It's a divine injunction that a thief's hand be amputated from the wrist of the right hand. If he repeats, the left leg will be amputated. If he repeats further his left hand will be amputated. If he commits it further, his right leg will be amputated. If he repeats further he will be beaten and detained.
(ii) Right of individual. It is the right of the individual whose property was stolen to be compensated.

c. Conditions to prove stealing

(i) Confession by the accused; or
(ii) Presentation of two reliable male witnesses where a male and two females are presented or only one witness and oath, they are sufficient for payment of compensation.

5. <u>Intoxication</u>

Voluntary consumption of a substance by a Muslim, which leads to the loss of senses.

i. Prove for the offence of intoxication

(a) Presentation of witnesses that saw the accused while drinking alcohol or that smelled it. The witness must be one who knows what is alcohol. Evidence of one witness is sufficient.

(b) Confession by the drinker.

ii. Punishment

He will receive 80 strokes of cane if he is not a slave. If he is a slave he will receive 40 lashes.

iii. Conditions for proof

There are seven conditions to be satisfied before the punishment can be carried out on a drinker:

(a) He must have attained puberty or reached the age of 18.
(b) He must be a Muslim.
(c) He must be sane.
(d) That the drinking was not for any reason or condition.
(e) He knows what he drunk was alcohol.
(f) That the drinking was voluntary.

iv. Procedure for punishing a drunken person

The lashing is done with a moderate cane that is neither soft nor hard. The accused will kneel down and will not be tied. He will be beaten on his back and shoulder but if he refuses to stay at one place, he can be tied up so that he can feel the effect of the beating.

Woman can be beaten on a wrapper that will not prevent her from feeling the pains of the beating.

A drunkard will not be caned until he regained his senses so also a sick person until he recovered. Similarly, lashing cannot be effected during a hot or a seriously cold weather for fear of the life of the accused.

The executioner must hold his fingers tied leaving second to the last and last fingers free (not stretched them) advancing his right leg and suspending his left leg then bend his forefinger up to the palm and then place his thumb on the cane to hold it while beating.

The cane described by Sheikh Jazuli should be made from single leather not two and should be soft.

6. Apostasy (*ridda*)

This is renunciation of Islam by a Muslim. The punishment is execution by death after the accused had been given 3 days to re-embrace Islam and he refused. He will be killed as unbeliever, with no funeral or bath and will not be buried in a Muslim's burial ground.

7. Defamation (*qadhf*)

This is to attribute to a person regarded as a complete gentleman, Muslim, adult or a virgin of marriageable age that they are adulterers or that they have no affinity or that they are a product of adultery, etc.

There are certain conditions that a person defamed should satisfy:

(i) That he is a Muslim.
(ii) That he is not a bastard and not a slave.
(iii) If the defamation suggests the denial of affinity he must prove that he is an adult, sane, of good behaviour and possesses male organ, if the defamation is to the effect that he is an adulterer.

Punishment

If these conditions are satisfied, or proved by way of evidence, the defamer will be given eighty strokes of cane.

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Annex C

Ta'aziratu (Correctional Punishments)

Under Islamic law, there are no specific provisions regarding *ta'azir* punishment. It has not limited the extent of punishment to be awarded to an accused person, unlike *hadd* punishment for intentional murder or payment of compensation.

Example:

- Islamic law has prescribed as punishment for alcoholism, 80 strokes of cane.
- The killing of one who kills another intentionally and a revenge where injuries are inflicted, provided it did not amount to killing the accused.
- Islamic law has also stipulated how the payment of compensation is done.

On the other hand, Islamic law had identified certain offences that require correctional punishment and had vested powers to prevent or deter the commission of certain acts or to enforce the performance of certain things on the leaders for the purpose of protecting the rights of others and the right to live in peace etc.

Provided that those things prevented or enforced are not those that are prohibited or mandatory under Islamic law or renown aspect of it or a principle of Islamic law.

The rule is that punishments are classified according to offence. It starts punishment from a lesser to a most grave punishment and vested in the judge the discretion to punish the offender commensurate to his offence.

This rule does not apply where there exists a limit on the discretion of a judge to choose the type of punishment to be awarded on the offence or that the judge suggests a punishment which in his opinion is the type of punishment for what he perceived as an offence. A judge can only be permitted to enforce the punishment where the offence is established or where there has been prescribed, for every offence some punishments from which the judge will choose one and punish the offence based on it

There is also nothing that prevents *ulul-amr* (Muslim leaders) from prescribing punishment of lesser magnitude while prescribing, which the judge must follow in awarding punishment.

REFERENCES[84]

Fawakihud Dawani commentary on *Risala*
Mawahibul Jalili commentary on *Mukhtasar Khalil*
Mawahibul Khallaq commentary on *Lamiyyat al-Zaqqaq*
Al-Tashri'u al-Jana'i al-Islami vols. 1-2
Qawaninal Fiqhiyyah by Ibn Juzayy
Al-Ahkam al-Sultaniyyah by Abi Ya'la
Al-Ahkam al-Sultaniyyah [by Mawardi]
Ihkamul Ahkam commentary on *Tuhfa*

[84] For further information on the works listed here see the "Bibliography of Islamic Authorities", Part IV of Chapter 6 of this work. The short titles given here are as in the bibliography.

Chapter 5 Part III

Report of the Committee Appointed to Prepare [Sharia] Criminal Procedure Code for Sokoto State

Submitted to His Excellency, Alh. Attahiru Dalhatu Bafarawa (Garkuwan Sokoto)
The Executive Governor of Sokoto State
October, 2000

1.0 INTRODUCTION

1.1 On the 7th September, 2000, His Excellency, the State Executive Governor, Alhaji Attahiru Dalhatu Bafarawa (Garkuwan Sokoto) approved the appointment of this committee to prepare a Criminal Procedure Code for use in the State.

1.2 MEMBERSHIP. The Committee was constituted with ten members and a Co-Secretary was co-opted later. They are:

i.	Alhaji Muh'd Aminu Ahmad	-	Chairman
ii.	Hon. Justice Bello Abbas	-	Member
iii.	Hon. Kadi Bello Muh'd Rabah	-	Member
iv.	Barrister Abdulkadir Imam Ibrahim	-	Member
v.	Malami Umar D/Daji	-	Member
vi.	Sheikh Muh'd Isa T/Mafara	-	Member
vii.	Muhammad U. Falke	-	Member
viii.	Malam Sidi A. Sidi	-	Member
ix.	Muhammad Danjuma Ali	-	Co-Secretary
x.	Nura Garba (co-opted)	-	Co-Secretary
xi.	Umar Faruk Ladan	-	Secretary

1.3 TERMS OF REFERENCE. The Committee has the following terms of reference:

a. To draft a Criminal Procedure Code for use in the State;
b. To advise the State Government on anything that will facilitate its successful implementation;
c. The committee was given one month within which to finish its assignment and submit a report.

2.0 METHODOLOGY

2.1 On Friday, 8th September, 2000 the committee held its inaugural meeting during which strategies for successful conduct of the assignment were discussed extensively. It was resolved that preparation of a Criminal Procedure Code for Sharia legal system (like that of Sharia Penal Code) is an extensive legal research and drafting exercise requiring a wide range of background and supporting literature. The committee therefore recognised the importance of consultations especially with renowned and learned personalities, institutions and government agencies. It was finally resolved that the committee would visit Zamfara State to meet and discuss with the State Grand Kadi and Attorney-General/Commissioner of Justice, Faculties of Law, Usmanu Danfodio University

Sokoto, Bayero University Kano, Ahmadu Bello University and Centre for Islamic Legal Studies Congo, Zaria.

2.2 The committee also resolved to consult the following principal sources:[85]

i. Constitution of the Federal Republic of Nigeria 1999
ii. Criminal Procedure Code for Northern Nigeria (Annotated)
iii. Penal Code of Northern Nigeria
iv. Sokoto State Draft Sharia Penal Code
v. *Qawaninul Fiqhiyyah*
vi. *Al-Tashri'u al-Jina'i* by Abdulkadir Oudah
vii. Zamfara State draft Sharia Criminal Procedure Code
viii. Sokoto State Sharia Courts Law 2000
ix. Area Courts Law
x. *Tabsiratul Hukkami* by Ibn Farhun
xi. *Al-Fiqhu al-Islami* by Dr. Wahabat al-Zuhayli
xii. *Tuhfatul Hukkam* (*Jagorar Masu Hukunci*)
xiii. *Al-Ishraf ala Madhahib Ahl al-Ilm* Vols. I & II
xiv. *Al-Mawrid al-Qarib* by Baalbakki

2.3 The above named and other literatures on Sharia legal system were made available to the members to enable them study same with a view to extracting relevant information in respect of the given assignment.

3.0 REPORT ON THE VISITS MADE BY THE COMMITTEE MEMBERS

3.1 Members of the committee met and discussed at length with the Zamfara State Grand Kadi on their mission. The Grand Kadi briefly traced the history of Sharia implementation in Zamfara State paying special attention to the events relevant to the committee's mission.

3.2 According to him, Zamfara State had ordered for the codification of the Sharia Criminal Procedure Code and the draft code has been passed by the State House of Assembly but was yet to be assented to by the State Governor.

3.3 On the procedure being used by the Sharia Court alkalis in Zamfara State, the Grand Kadi explained that, an accused is only punished with *hadd*, if the following procedure is followed:

a) Confession by the accused who is certified to be sane and without any form of coercion.
b) Testimonies of at least two witnesses in addition to fulfilling all the conditions of the case (in the case of theft it must reach the "*nisab*" and stolen from a confined place).
c) In the case of *zina*, testimonies of at least four witnesses must be obtained before the accused can be convicted, unless he voluntarily confesses the

[85] Two of the works in this list are entered twice in the original document; these redundancies have been eliminated here. For further information on the works in Arabic, see the "Bibliography of Islamic Authorities", Part IV of Chapter 6 of this work. The short titles given here are as in the bibliography.

commission of the offence. If any of the conditions is not fulfilled then *hadd* punishment cannot be inflicted on the accused, but a Sharia Court alkali may apply an appropriate *ta'azir* punishment on the convict as he thinks fit.

3.4 Most of those conditions are found in Islamic books, a situation which may present some difficulties to the alkalis and thus the need to conduct extensive research on the subject with a view to extracting and codifying them for easy reference.

3.5 The Grand Kadi also drew the attention of the members of the committee to another offence "defamation". This, he said has many categories: lineage, trade, personal honour each of which requires a different form of punishment. He also cautioned the committee on certain areas that are exclusive reserve of the federal government; law of evidence.

3.6 Both the visiting members of the committee and their host agreed on the need to establish a law reporting committee to be charged with the responsibilities of reporting cases tried in the Sharia Courts periodically. The Grand Kadi also disclosed his intention to the committee to compile past cases which have peculiar nature and conduct workshops for the Sharia Court alkalis on them, with a view to acquainting them with those peculiarities.

4.0 VISIT TO CENTRE FOR ISLAMIC LEGAL STUDIES, ZARIA

4.1 The Director of the Centre, Dr. Ibrahim Suleiman informed members of the committee that both Zamfara Sharia Penal Code and the Zamfara Sharia Criminal Procedure Code were drafted by the Centre in conjunction with the Faculty of Law (ABU Zaria). The procedure adopted in carrying out the work was amending the relevant sections of the Criminal Procedure Code to conform with the Islamic criminal procedure.

4.2 The Director also expressed the readiness of the Centre to assist any State wishing to implement Sharia in training all categories of judicial personnel to be used in the implementation of Sharia legal system.

4.3 He advised all the States implementing Sharia to embark on massive enlightenment programmes to educate the people at the grass root level. He advocated for the use of trained Islamic preachers in educating people in the rural areas.

4.4 It was finally agreed that, the process of Sharia implementation in Nigeria has to be gradual in order to succeed. The meeting also emphasised on the importance of education, patriotism and exemplary life on the part of the leaders.

5.0 VISIT TO KANO STATE

5.1 The committee members visited and held discussions with the Kano State Grand Kadi, Solicitor General and representative of the Dean, Faculty of Law, Bayero University Kano.

5.2 The committee had fruitful discussions with the Kano State Grand Kadi. He briefed the members of the committee on the progress so far made on Sharia implementation in Kano State. According to him, the State constituted the Sharia Implementation Committee which was subsequently divided into four subcommittees. One of those

committees was entrusted with the task of producing Sharia Criminal Procedure Code to be used by the Sharia Courts in the State.

5.3 On the issue of payment of *diyah* (blood money), the procedure was divided into three:

a) If the actual offender is in the position to pay for the full *diyah*, the Sharia Court compels him to pay it.
b) In a situation where the offender is incapable of paying the *diyah*, then his kith and kin are required to pay the *diyah* on his behalf.
c) In circumstances, when both 'a' and 'b' above proved incapable of paying for the *diyah* within the period of time allowed by the Sharia, the State Government (as a last resort) would be approached for the settlement of the *diyah*.

5.4 On the categories and jurisdiction of Sharia Courts in Kano State, one of the Kadis of the Sharia Court of Appeal, who is also a member of the Sharia Implementation Committee, explained that all the Area Courts in the State have been repealed and replaced with Sharia Courts.

5.5 Finally, there was emphasis on the need for the establishment of a joint committee by all the States operating Sharia legal system in order to harmonise the penal and procedural laws and make them uniform throughout the States.

5.6 The Kano State Solicitor General informed the members of the committee that the subcommittee assigned to draft a Sharia Criminal Procedure Code for Kano State Sharia Courts has almost completed the assignment. According to him, the pattern of the existing Criminal Procedure Code was adopted but amendments of relevant sections were made to conform with Sharia legal system.

5.7 The members of the Kano State Sharia Implementation Committee advised that all the States implementing Sharia legal system should take adequate care of the welfare of Sharia Court alkalis in addition to rehabilitating all court buildings to make them suitable for the new role.

5.8 At the Faculty of Law, Bayero University Kano, the committee members met with the representatives of the dean. The representatives of the dean drew the attention of the committee members to some complex areas and advised them to be cautious while dealing with such areas. They finally promised to assist the committee whenever there is need for such assistance; particularly in the areas of personnel training and reviewing of legal documents.

6.0 COMMENTS ON THE SOKOTO STATE CRIMINAL PROCEDURE CODE

6.1 Using both the written and oral literature obtained, the committee carefully drafted the Sharia Criminal Procedure Code and a report comprising advice and recommendations for presentation to Your Excellency.

6.2 The Sharia Criminal Procedure Code has been arranged in nine parts made up of 31 chapters in all. The nine parts include:

- Preliminary
- The constitution and powers of Sharia criminal courts

- Arrest and process
- The prevention of crime
- Information to the police and their powers to investigate
- Proceedings in prosecutions
- Proceedings subsequent to judgment
- Special proceedings
- Supplementary provisions.

6.3 For the purpose if clarity, a lot of explanations and illustrations have been incorporated in the code, whenever the sections appear to be ambiguous. Some of them were not only adopted but localised to further make the sections plain for its application by our alkalis and kadis in the State.

7.0 GENERAL OBSERVATIONS AND RECOMMENDATIONS

7.1 To ensure efficiency in the dispensation of justice in the State, there is need to reactivate and equip the Inspectorate Division of the State Judiciary/Sharia Court of Appeal with all the facilities necessary for effective supervision of the Sharia Courts, particularly means of transportation.

7.2 The welfare of the Sharia Court personnel and prosecutors need to be adequately taken care of particularly in the areas of provision of accommodation, means of transportation, remuneration and allowances.

7.3 There is need to translate both the Sharia Penal and the Sharia Criminal Procedure Codes for the benefit of both the judicial personnel and the general public. The translated codes also need to be produced in large quantity to be distributed to all the Sharia Courts in the State.

7.4 The State Government through the State judiciary need to organise induction courses, seminars and workshops for the Sharia Court alkalis and other court personnel.

7.5 There is need for the establishment of an advisory council by whatever name called, on religious affairs and back it up with a legislation in which its establishment, composition, functions and powers would be clearly spelt out.

7.6 The State Government is also advised to as a matter of urgency, produce white paper on all the reports submitted to it by the previous committees appointed in respect of the implementation of Sharia in the State.

7.7 The committee in consideration of the heavy responsibilities to be shouldered by the State Ministry of Justice (particularly in the areas of training of legal personnel to be used as prosecutors in our Sharia Courts, organising workshops, seminars and induction courses on Sharia legal system) recommends for the resuscitation of the Ministry to enable it carry out the additional responsibilities effectively.

7.8 In view of the great importance attached to publicity there is need for the State to make use of the NTA, Sokoto, Rima Radio and the PATH in publicising activities on Sharia implementation in the State.

7.9 The committee also recommends for the amendment of the Sharia Courts Law 2000 in the following sections:

a. The term "Lower Sharia Court" used in the "Law to Establish Sharia Courts to apply Sharia Law in Sokoto State", Law No. 2 of 2000, needs to be re-framed to "Sharia Court" simpliciter.
b. The Upper Sharia Court and Sharia Court of Appeal shall have appellate and supervisory jurisdiction over the Sharia Courts.
c. The Upper Sharia Court shall have original jurisdiction to try any or all the offences listed in Appendix 'A' to the Sharia Criminal Procedure Code.
d. This law shall only apply to persons of Muslim faith or persons who voluntarily subject themselves in writing to the jurisdiction of the Sharia Courts.

8.0 ACKNOWLEDGEMENT AND CONCLUSION

8.1 The committee is grateful to Almighty Allah for giving His Excellency, Alh. Attahiru Dalhatu Bafarawa (Garkuwan Sokoto) the wisdom and courage to initiate and make possible all arrangements for the implementation of Sharia in Sokoto State. The committee wishes to register its gratitude to His Excellency, the Executive Governor and the people of Sokoto State for giving it the opportunity and support to serve in this noble assignment. The contributions of the various committees appointed by the State Government on the implementation of Sharia in the State are all worth noting. The committee would like to extend its deep appreciation to those who contributed in one way or the other to the successful implementation of this assignment.

May the Almighty Allah (SWA) continue to guide, help and protect us all, Amin.

Dated this…….day of September, 2000.

1.	Alhaji Muh'd Aminu Ahmad	-	Chairman	[sgd]
2.	Hon. Justice Bello Abbas	-	Member	[sgd]
3.	Hon. Kadi Bello Muh'd Rabah	-	Member	[sgd]
4.	Malami Umar D/Daji	-	Member	_____
5.	Barrister Abdulkadir Imam Ibrahim	-	Member	_____
6.	Sheikh Muh'd Isa T/Mafara	-	Member	[sgd]
7.	Muhammad U. Falke	-	Member	[sgd]
8.	Malam Sidi A. Sidi	-	Member	[sgd]
9.	Barrister Muh'd Danjuma Ali	-	Co-Secretary I	[sgd]
10.	Nura Garba (co-opted)	-	Co-Secretary II	[sgd]
11.	Umar Faruk Ladan	-	Secretary	[sgd]

Chapter 5 Part IV

The Centre for Islamic Legal Studies' Harmonised Sharia Criminal Procedure Code Annotated

What follows for the next hundred pages or so is the "Harmonised Sharia Criminal Procedure Code" produced by the Centre for Islamic Legal Studies (CILS) of Ahmadu Bello University, Zaria, annotated to show variations between it and the Criminal Procedure Code of 1960 on the one hand, and the enacted – except in the case of Borno State – Sharia Criminal Procedure Codes of seven of the Sharia States, on the other hand.

1. List of codes included in the annotations, in approximate order of their signing into law. Unfortunately even the gazetted copies of many of these laws do not give the dates of their signing into law or of their coming into operation.

CPC: Criminal Procedure Code Law, Northern Region of Nigeria No. 11 of 1960, coming into operation on 30 September 1960**,** as amended to 1963; as found in Chapter 30, *Laws of Northern Nigeria* 1963.

Zamfara: Sharia Criminal Procedure Code Law 2000, Law No. 18 of 2000, signed into law on 27 January 2000, coming into operation on 27 January 2000, Zamfara State Gazette Vol. 4 No. 1, 27th January 2001.

Sokoto: Sharia Criminal Procedure Code Law 2000, signed into law on 25th January 2001, coming into operation on 31st January 2001, gazetted as a separate volume given no number or date.

Jigawa: Sharia Criminal Procedure Code Law 2001, Law No. 7 of 2001, signed into law on ????, coming into operation on ????, Jigawa State Gazette Vol. 1 No. 7, 21st November 2001.

Gombe: Sharia Criminal Procedure Code Law 2001, signed into law on 23rd November 2001, coming into operation on ????, working with photocopy of signed original, no gazette information available.

Bauchi: Sharia Criminal Procedure Code, signed into law on 15th February 2002, coming into operation on ????, working with photocopy of signed original, still not gazetted as of July 2006.

Kaduna: Sharia Criminal Procedure Code Law 2002, Law No. 5 of 2002, signed into law on 21st June 2002, coming into operation on 21st June 2002, Kaduna State Gazette No. 17 Vol. 36, 4th July 2002 pp. A109-A289, a separate bound volume (with Sharia Penal Code).

Kebbi: Sharia Criminal Procedure Code Law 2002, Law No. 5 of 2002, signed into law on ????, coming into operation on ????, Kebbi State Gazette Vol. 1 No. 1, 8th August 2003, a separate bound volume.[86]

[86] 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 we have assumed to be accurate.

Borno: Executive Bill for a Law to Provide for Sharia Criminal Procedure Code in Borno State, presented to the Borno State House of Assembly in March 2002. As of April 2006 the bill still had not been enacted; the House of Assembly was studying the Harmonised Sharia Criminal Procedure Code it had in the meantime received from CILS and considering whether and how to adapt the bill pending before it to the CILS model. It is the still-pending bill that is annotated here.

2. Not included in the annotations:

Kano: Criminal Procedure Code Cap. 37 (Amendment) Law 2000, No. 6 of 2001, signed into law on 27th November 2001, coming into operation on 27th November 2001, Kano State Gazette No. 8 Vol. 33, 27th December 2001, pp. A39-A51.

Niger: Criminal Procedure Code (Amendment) Law 2000, N.S.L.N. No. 9 of 2000, signed into law on ????, coming into operation on ????, Niger State Gazette No. 9 Vol. 25, 9th March 2000, pp. B37-B45.

Zamfara: Sharia Criminal Procedure Code Law 2005, No. 6 of 2005, signed into law on 23rd November 2005, no date of coming into operation given, no gazette information available, photocopy of signed original in possession of editor.

Kano's Criminal Procedure Code Cap. 37 (Amendment) Law 2000 adds a new Chapter XXXIII to Kano's Criminal Procedure Code, on "Trials by Sharia Courts"; it is printed in its entirety as part V of this chapter. Bauchi's Sharia Criminal Procedure Code closely tracks Kano's new Chapter XXXIII; variations between Kano and Bauchi are shown in section-by-section annotations to Kano's new chapter; thus Bauchi's code is annotated twice.

The principal purpose of Niger's Criminal Procedure Code (Amendment) Law 2000 was to raise the limits of the sentencing powers of the State's Magistrate and Area Courts; this requires no special comment. There is also an interesting provision – section 4 of the law – which says that all and only Muslims accused of criminal offences for which they are liable to separate Sharia-inspired punishment under the new section 68A of Niger's amended Penal Code (as to which see part IV of Chapter 4, *supra*), must be tried in the Area Courts; all other criminal matters, including those involving Muslims, are for trial in the Magistrate Courts, at least in towns where Magistrate Courts exist. The trouble is that the Area Courts were subsequently abolished in Niger State, apparently making this provision moot; and the law that abolished the Area Courts – the Niger State Sharia (Administration of Justice) Law 2001 – does not similarly limit trials of offences to which section 68A of the Penal Code applies to the new Sharia Courts which replaced them. The very interesting questions raised by all of this have little to do with criminal procedure per se; they will be discussed rather in the chapter of this work on "Court Reorganisation", forthcoming.

The Zamfara Sharia Criminal Procedure Code of 2005 is the CILS code published and annotated here (except for certain changes subsequently made to the CILS code which are reflected here but not in Zamfara's new code).

3. Katsina and Yobe. These two States are evidently still using the Criminal Procedure Code of 1960 in their Sharia Courts. A Sharia Criminal Procedure Code bill has been under discussion in the Katsina State House of Assembly for some time, as in Borno, but we did not obtain a copy. Apparently no such bill is even being discussed in Yobe.

4. Some comments on the annotations. As with the Harmonised Sharia Penal Code Annotated, in making our annotations to the Harmonised Sharia Criminal Procedure Code we have ignored what we considered to be clearly typographical errors, unless the meaning was unclear, in which case we noted it. We have also ignored what we considered to be immaterial variations. In general the Criminal Procedure Codes presented many fewer problems of annotation than the Penal Codes.

5. Omission of section titles in the body of the code. The titles of the code sections are given at the beginning under the heading "Arrangement of Sections". In order to save space we have not repeated the titles in the body of the code; anyone wanting to know the title of a particular section can refer to the list at the beginning.

6. The CILS Harmonised Sharia Criminal Procedure Code Annotated follows.

HARMONISED SHARIA CRIMINAL PROCEDURE CODE BASED ON THE HARMONISED SHARIA PENAL CODE

CENTRE FOR ISLAMIC LEGAL STUDIES
AHMADU BELLO UNIVERSITY
ZARIA

October, 2005

THE SHARIA CRIMINAL PROCEDURE CODE LAW 200_

Arrangement of sections:

1. Short title.
2. Establishment of Sharia Criminal Procedure Code.
3. Saving existing appointments.
4. Trial of offences under Sharia Penal Code.
5. Delegation of powers of Attorney-General.

SCHEDULE

Arrangement of sections:

PART 1 – PRELIMINARY

CHAPTER 1

1. Interpretation.
2. Illegal omissions.
3. Words to have same meaning as in Sharia Penal Code.

PART II – THE CONSTITUTION AND POWERS OF SHARIA CRIMINAL COURTS

CHAPTER II – THE CONSTITUTION OF SHARIA CRIMINAL COURTS

4. Classes of the State Sharia criminal courts.
5. Power to divide the State into districts.

6. Establishment and jurisdiction of Sharia Courts in each district or populated area.
7. Presiding officer not to exceed powers.
8. Appointment of Sharia Court alkali.
9. Territorial jurisdiction of alkalis.
10. Power of Upper Sharia Court alkali to direct a subordinate alkali.
11. Appointment of the justices of the peace.

CHAPTER III – THE POWERS OF SHARIA CRIMINAL COURTS

12. Offences under the Sharia Penal Code and jurisdiction of Sharia Courts.
13. Offences under other laws.
14. Jurisdiction of Upper Sharia Court alkali.
15. Jurisdiction of Higher Sharia Court alkali.
16. Jurisdiction of Sharia Court alkali.
17. Powers of alkali to order restitution.
18. Order to pay compensation.
19. Powers of Governor to increase jurisdiction of Sharia Courts.
20. Combination of sentences.
21. Imprisonment in default of payment of fine.
22. Power to inflict fine in lieu of imprisonment.
23. Sentences in case of convictions of several offences at one trial.
24. Power to bind parties to be of good behaviour.

PART III – ARREST AND PROCESS

CHAPTER IV – ARREST

A – Arrest

25. When police may arrest.
26. Powers in regard to suspected persons.
27. When private person may arrest.
28. Arrest for offence committed in presence of justice of the peace.
29. Arrest by or in presence of justice of the peace or superior police officer.
30. Resisting endeavour to arrest.
31. Power to seize offensive weapons.
32. When public are bound to assist in arrest.
33. Search of place entered by person sought to be arrested.
34. Pursuit of offender into other jurisdictions.
35. Power to break out of any place for purpose of liberation.
36. No unnecessary restraint to arrested persons.
37. Notification of cause of arrest.

B – Procedure after Arrest

38. Procedure after arrest by a private person.
39. Person arrested to be taken before a court or officer in charge of police station.
40. Procedure when an offender has refused to give his name and address.
41. Person arrested without warrant not to be detained more than twenty-four hours.
42. Police to report arrest.
43. Search of arrested person.
44. Discharge of arrested person.
45. Register of arrest.

CHAPTER V – PROCESSES TO COMPEL APPEARANCE

A – Summons

46. Power to issue summons.
47. Summons by whom served.
48. Manner of serving summons.
49. Service on corporation.
50. Service on Local Government.
51. Service when person summoned cannot be found.
52. Inability of person served to sign or seal.
53. Service of summons outside local limits.
54. Proof of service.

B – Warrant of Arrest

55. Form of warrant of arrest.
56. Court may direct security to be taken.
57. Warrant to whom directed.
58. Re-direction of warrant.
59. Notification of substance of warrant.
60. Power to arrest without warrant.
61. Person arrested to be brought before the court without delay.
62. Where warrant may be executed.
63. Warrant forwarded for execution outside jurisdiction.
64. Procedure for arrest executed outside jurisdiction.
65. Procedure on arrest under warrant outside jurisdiction.

C – Public Summons and Attachment

66. Public summons for person absconding.
67. Attachment of property of person absconding.
68. Restoration of attached property.

D – Other Rules Regarding Process

69. Issue of warrant in lieu of or in addition to summons.
70. Power to take bond for appearance.
71. Provision of this chapter generally applicable to summons and warrant.

CHAPTER VI – MEANS TO SECURE THE PRODUCTION OR DISCOVERY OF DOCUMENTS OR OTHER THINGS AND FOR THE DISCOVERY AND LIBERATION OF PERSONS UNLAWFULLY CONFINED

A – Summons

72. Summons to produce document or other things.

B – Searches and Orders for Production and Liberation of Persons

73. Issue of search warrant by court or justice of the peace.
74. Application for search warrant.
75. Search for stolen property, etc.
76. Search for person wrongfully confined.
77. Search to be made in presence of witnesses.

78. Searching of women's quarters.
79. Occupant of place searched may attend.
80. Search of person found in place.
81. Mode of searching women.
82. Execution of search warrants outside jurisdiction.
83. Provision as to warrants of arrest to apply to search warrants.
84. Justice of the peace may direct search in his presence.
85. Impounding of document, etc.

PART IV – THE PREVENTION OF CRIME

CHAPTER VII – SECURITY FOR KEEPING THE PEACE AND FOR GOOD BEHAVIOUR

A – Security for Keeping the Peace and for Good Behaviour on Conviction

86. Security on conviction.

B – Security for Keeping the Peace and for Good Behaviour in Other Cases

87. Security in other cases.
88. Security for good behaviour from habitual offenders.
89. Warrant for arrest may issue if breach of peace likely.
90. Contents of summons or warrant under section 87, 88 or 89.
91. Inquiry as to truth of information.
92. Order to give security.
93. Discharge of person informed against.

C – Proceedings in all Cases Subsequent to Order to Furnish Security

94. Commencement of period for which security is required.
95. Contents of bond.
96. Imprisonment in default of security.
97. Power to reject sureties.
98. Power to release persons imprisoned for failure to give security.
99. Power to cancel bond.

CHAPTER VIII – UNLAWFUL ASSEMBLIES AND RIOTS

100. Assembly to disperse on command for the justice of peace, police or commissioned officer.
101. Use of civil force to disperse.
102. Protection against prosecution for act done under this chapter.

CHAPTER IX – PUBLIC NUISANCE

103. Conditional order for removal of nuisance.
104. Service of order.
105. Person to whom is addressed to obey or appear before court.
106. Consequences of failure to obey order or to appear.
107. Procedure where person appears.
108. Consequences of disobedience to order made absolute.
109. Order pending inquiry.
110. Prohibition of repetition of continuance of nuisances.

CHAPTER X – PREVENTIVE ACTION BY POLICE AND PUBLIC

111. Prevention by police and others of offences and inquiry to public property.
112. Public to assist justice of the peace, etc.

CHAPTER XI – DUTY OF PUBLIC AND OF AREA HEADS TO GIVE INFORMATION

113. Public to give information of certain offences.
114. Area head bound to report certain matters.
115. Investigation by area head on receiving information under section 114.

PART V – INFORMATION TO THE POLICE AND THEIR POWERS TO INVESTIGATE

CHAPTER XII

A – Procedure in Cases where the Police may Arrest without a Warrant

116. Information in cases where the police may arrest without a warrant.
117. Procedure where warrant is not required for arrest.
118. Manner of submitting First Information Report.
119. Power of court on receiving First Information Report.
120. Case diary to be kept by police.
121. Use of case diary.
122. Power of police to summon and examine.
123. No inducement to be offered.
124. Confession to justice of the peace.
125. Confession to police officer.
126. Medical examination of suspect.
127. Taking of fingerprint, etc.
128. Remand of person in custody.
129. Procedure where police consider investigation should be terminated without trial.
130. Procedure where police consider after investigation that accused be charged to court.
131. Attendance of accused and bonds for attendance of witnesses.

B – Procedure in Cases where the Police may not Arrest without a Warrant

132. Procedure where warrant is required for arrest.

PART VI – PROCEEDINGS IN PROSECUTIONS

CHAPTER XIII – PLACE OF TRIAL

133. Ordinary place of trial.
134. Place of trial when scene of offence is uncertain.
135. Offence committed on a journey.
136. The Grand Kadi to decide in case of doubt court in which trial shall take place.
137. Power to transfer.
138. Power to issue summons or warrant for offence committed beyond local jurisdiction.

CHAPTER XIV – SANCTIONS NECESSARY FOR THE INITIATION OF CERTAIN PROCEEDINGS

139. Prosecution or contempt of lawful authority of public servants.
140. Prosecution for breach of contract, *qadhf* and defamation.
141. Prosecution for *zina*.

CHAPTER XV – INITIATION OF JUDICIAL PROCEEDINGS BEFORE A COURT

142. Cognisance of offences by court.

143. Power of court to give directions.
144. Power of court to advise person the subject of a complaint.
145. Examination of complaint.
146. Transfer of cases by court.
147. Power of court to order further investigation.
148. Inquiry by court of complaint by person other than police officer.
149. Court may refuse to proceed.
150. Procedure by court not competent to take cognisance of case.
151. Trial.
152. Presence of accused at trial.
153. Process to compel attendance of accused.

CHAPTER XVI – TRIALS AND OTHER JUDICIAL PROCEEDINGS BEFORE SHARIA COURTS

154. Procedure in summary trials.
155. Substance of accusation to be stated.
156. Conviction on admission of truth of accusation.
157. Evidence for prosecution.
158. Discharge of accused.
159. Charge to be framed when offence appears to have been committed.
160. Plea.
161. Defence.
162. Process for compelling production of evidence at instance of accused.
163. Procedure after finding.
164. Absence of complainant or prosecutor.
165. Frivolous or vexatious accusation.
166. Examination of witness.
167. Making of findings.
168. Announcement of findings.
169. Sentence.
170. Court to record wishes of complainant or deceased's relatives in *qisas* cases.
171. Records in Sharia Courts.
172. Duties of justice of the peace.

CHAPTER XVII – CHARGES

173. Form of charges.
174. Contents of charges.
175. Effect of errors.
176. Variation of charges.
177. Court may alter charge.
178. When court may proceed with trial immediately after altering, adding to or framing charges.
179. When new trial may be directed or trial suspended.
180. Recall of witness when charge revised.
181. Separate charges for distinct offences.
182. Offences of like character may be charged together.
183. Acts forming the same transaction.
184. When it is doubtful on which occasion an offence has been committed.
185. When it is doubtful what offence has been committed.

186. When person charged with one offence may be convicted of another.
187. Conviction of lesser offence where greater offence is charged.
188. Conviction for attempt not separately charged.
189. Withdrawal of remaining charges on conviction one of several charges.
190. What persons may be charged jointly.
191. Effect of material error.

CHAPTER XVIII – PREVIOUS CONVICTIONS

192. Person once convicted not to be tried for same offence.
193. Previous conviction when to be proved.

CHAPTER XIX – GENERAL PROVISIONS AS TO TRIALS AND OTHER JUDICIAL PROCEEDINGS IN SHARIA COURTS

194. Court to be open.
195. Right of appearance of legal practitioner.
196. Representation of the State, Government Departments and Local Governments.
197. General procedure in trials by Sharia Courts.
198. Oath taking.
199. Protection of witnesses.
200. Taking and recording of evidence.
201. Power to examine the accused.
202. Evidence of accused.
203. Powers to summon material witnesses or call persons present.
204. Evidence of person confined.
205. When evidence given at any judicial proceedings may be admissible.
206. Admissibility of statements by accused.
207. Language not understood by accused.
208. Interpreter bound to interpret truthfully.
209. View or visits to locus in quo.
210. Determination of age.
211. Power to take evidence from persons dangerously ill.
212. Commission to take evidence.
213. Examination of witness on commission.
214. Return of commission.
215. Evidence taken abroad by interrogatories.
216. Deposition of medical witness.
217. Report of scientific expert.
218. Report under section 216 or 217 of Sharia Criminal Procedure Code.
219. Record of evidence in absence of absconding accused.
220. Record of evidence when offender unknown.
221. Stay of proceedings by Attorney-General.
222. No influence to be used to induce disclosure.
223. Power to postpone or adjourn proceedings.
224. Procedure of court in cases it cannot dispose.
225. Procedure when court cannot pass sentence sufficiently severe.
226. Conviction on other charges pending.
227. Joint trial may be stayed and accused tried separately.
228. Reference on points of law.

229. Procedure when accused does not understand proceedings.
230. Delivery of judgment when alkali, etc., unavoidably absent.
231. Opinion of majority to prevail.
232. Procedure when court evenly divided.
233. Every member to give opinion.
234. Order of taking opinions.

CHAPTER XX – THE JUDGMENT

235. Definition for Chapter XX.
236. Language and mode of delivering judgment.
237. Contents of judgment.
238. *Hudud* and *qisas* penalties not imposed under the age of *taklif*.
239. Procedure when person is convicted of *hadd* or *qisas* offence committed while under the age of *taklif*.
240. Procedure when person is convicted of *hadd* or *qisas* offence alleged to be pregnant.
241. Sentence of death.
242. Sentence of retaliation for injuries.
243. Cases in which appeal lies.
244. Court not to alter judgment.
245. Copy of judgment or translation to be given to accused on application.
246. Original judgment to be filed.

PART VII – PROCEEDINGS SUBSEQUENT TO JUDGMENT

CHAPTER XXI – APPEAL AND REVIEW

247. Appeals from Sharia Courts.
248. Procedure on appeal.
249. Memorandum of grounds of appeal.
250. Grounds of appeal.
251. Giving security to prosecute the appeal from Sharia Courts.
252. Power of Grand Kadi to examine proceedings.
253. Accused, etc. not entitled to be heard on examination of proceeding under section 252.
254. Sentence to take effect pending appeal.
255. Appellate court not to send back judgment for technical error in procedure.
256. Enforcing of judgment.
257. Court member not to hear appeals from judgments.
258. Abatement of appeal.

CHAPTER XXII – EXECUTION

259. Definitions for Chapter XXII.
260. Upper Sharia Court to report death sentence to Governor.
261. Affirmation of sentence of death, etc.
262. When death sentence to be carried into effect.
263. Governor to inform Upper Sharia Court or Sharia Court of Appeal.
264. Order for execution of death sentence.
265. Copy of order to be sent to the sheriff.
266. When woman sentenced to death is alleged to be pregnant.
267. Procedure for granting of pardon.

268. Execution of sentence of imprisonment.
269. Conditions attaching to detention during pleasure.
270. Warrant for levy of fine.
271. Who may issue a warrant.
272. Powers of court when offender sentenced to fine only.
273. Execution of sentence of caning.
274. Stay of execution of sentence of caning.
275. Stay of execution of sentence of caning to allow time for appeal.
276. Execution of sentence on escaped convict.
277. Sentence on offender already sentenced for another offence.
278. Return of warrant on execution of sentence.

PART VIII – SPECIAL PROCEEDINGS

CHAPTER XXIII – PROCEEDINGS IN CASE OF CERTAIN OFFENCES AFFECTING THE ADMINISTRATION OF JUSTICE

279. Procedure in cases mentioned in section 139.
280. Procedure in certain cases of contempt.
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SHARIA CRIMINAL PROCEDURE CODE

A LAW TO ESTABLISH A CODE OF SHARIA CRIMINAL PROCEDURE FOR ..... STATE

1. This Law may be cited as the Sharia Criminal Procedure Code Law.

2. The provisions contained in the schedule to this Law shall be the law of the State with respect to the several matters therein dealt with and the said schedule may be cited as, and is hereinafter called, the Sharia Criminal Procedure Code.

3. Nothing in this Law shall affect the status, appointment or tenure of office of:

(a) any justice of the peace holding office as such within the State before the commencement of this Law, and such justice of the peace shall be deemed to have been appointed as such under this Law and thereafter to be subject to the provisions of this Law;

(b) any officer performing duties in connection with a court constituted under any written law before the commencement of this Law, and such officer shall be deemed to have been appointed as such under this Law and shall thereafter be subject to the provisions of this Law.

4. (1) All offences under the Sharia Penal Code shall be investigated, inquired into and otherwise dealt with according to the provisions contained in the Sharia Criminal Procedure Code.[87]

(2) All offences against any other law shall be investigated, inquired into, tried and otherwise dealt with according to the same provisions, but subject to any law for the time being in force regulating the manner or place of investigating, inquiring into, trying or otherwise dealing with such offences.[88]

(3) In any matter of a criminal nature a Sharia Court shall be bound by the provisions of this Sharia Criminal Procedure Code.[89]

5. The powers of the Attorney-General under this Law may be exercised by him in person or through members of his staff or any other person of the legal profession appointed by him, acting under and in accordance with his general or special instructions.[90]

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[87] Bauchi inserts a subsection after this one, as follows: "Where the Sharia Penal Code is silent on any issue or criminal matter, the presiding judge is at liberty to resort to the primary sources of Islamic law and any other work of recognised Islamic jurists and proceed accordingly." This is contained in no other SCPC.

[88] Bauchi: "All offences against any other law but in which Muslim are directly involved shall be investigated and inquired into in accordance to the same provision of that law but tried and dealth with in accordance with Islamic law."

[89] Bauchi omits this subsection; and see Bauchi's §42 = Kano §410 after 2001 amendments: "(1) In any matter of criminal nature the Sharia Court shall be guided in regard to practice and procedure by the provisions of this law. (2) The fact that the Sharia Court has not been so guided by the provisions of this Sharia Criminal Procedure Code shall not entitle any person to be acquitted or any order of the court to be set aside."

[90] Bauchi: "The State Attorney-General may delegate his powers of prosecution to any of his staff, private legal practitioners, private citizens or group as the case may be."

SCHEDULE

PART 1 - PRELIMINARY

CHAPTER I

1. In this Sharia Criminal Procedure Code[91]:

"accused person" includes an arrested person, and a person the subject of a complaint or a First Information Report or a police report,[92] even though any such person may not be the subject of a formal charge;

"Sharia Court" means a court established or deemed to have been established under the Sharia Courts Law; [93]

"area head" means a person appointed as district, village or ward head under the Local Government Law;[94]

"complaint" means the allegation made orally or in writing to a court with a view to its taking action under this Sharia Criminal Procedure Code that some person whether known or unknown has committed an offence but except where the context otherwise requires but does not include a police report;[95]

["complainant"][96]

"charge" includes any head of charge when the charge contains more heads than one;[97]

"court" means any court of civil or criminal jurisdiction established by any law or deemed to be so established;[98]

"High Court" means the High Court of Justice of the State;[99]

"inquiry" includes every inquiry, other than a trial,[100] conducted under this Sharia Criminal Procedure Code by a Sharia Court alkali;[101]

"investigation" includes all proceedings under this Code[102] for the collection of evidence by a police officer;[103]

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[91] Kebbi adds: "unless the context otherwise requires".
[92] Bauchi adds: "or a Hisba report,".
[93] Borno, Jigawa, Kaduna, Zamfara define ' "Sharia Court" or "court" ', but using the same definition as here. CPC and Gombe omit this definition entirely, including only what is here the subsequent definition of 'court', see below.
[94] CPC, Bauchi, Borno, Jigawa omit this definition.
[95] Bauchi: "'Complaint' means the allegation made directly to the court by individual or group orally or in writing with a view to taking action under this Code that some person(s) whether known or unknown has/have committed an offence."
[96] Bauchi also includes a definition of 'complainant': "includes prosecutor authorised by this Code as defined".
[97] Bauchi omits the definition of 'charge'.
[98] Bauchi and Kaduna omit this definition. Borno, Gombe, Jigawa, Kebbi, Sokoto and Zamfara use "established by the Sharia Courts Law" instead of "any law".
[99] Bauchi, Kebbi, Sokoto omit the definition of 'High Court'.
[100] Bauchi: "other than a court trial".
[101] CPC: "by a justice of the peace or court".
[102] CPC: "under chapter XII or section 149".

"local limits of the jurisdiction" of a justice of the peace or court[104] means the local limits of the administrative district or populated area or judicial division[105] in which the justice of the peace or court ordinarily exercises his or its functions,[106] but a Sharia Court alkali[107] except in so far as his powers are limited by the terms of his appointment or otherwise may exercise his powers in any part of the State[108] in which he happens to be;[109]

["native court" and subsequently "area court"][110]

"Sharia Court of Appeal" means the Sharia Court of Appeal of the State;[111]

"alkali" means a judge of any of the Sharia Courts;[112]

"kadi" means a judge of the Sharia Court of Appeal of the State;[113]

"State" means ……..[114]

"*taklif*" means the age of puberty in a person;[115]

"*hudud"* means offences or punishments that are fixed under the Sharia and includes offences or punishments in Section 57 of Sharia Penal Code;[116]

'*qisas"* means punishments inflicted upon the offenders by way of retaliation for causing death of or injuries to a person;[117]

["*mukallaf*"][118]

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[103] Bauchi: "'Investigation' means and shall include all proceedings under chapter XII of the Criminal Procedure Code Law Cap 38 laws of the Bauchi State of Nigeria 1991 or Section 149 thereof for the collection of evidence by the police but the trial proper must be conducted in accordance with Islamic law."

[104] CPC: "of a justice of the peace or court".

[105] CPC: "local limits of the administrative province, division or district or judicial division or magisterial district". Jigawa: "local limits of the judicial division".

[106] Jigawa omits everything after the word 'functions'.

[107] CPC: "justice of the peace". Gombe: "judge".

[108] Borno: "the locality".

[109] Bauchi omits the definition of 'local limits of the jurisdiction'.

[110] CPC puts here a definition of 'native court': "a court established or deemed to have been established under the Native Courts Law". In 1967-68 the Native Courts were transformed into Area Courts and this and other sections of CPC dealing with Native Courts were amended accordingly.

[111] CPC, Bauchi omit the definition of 'Sharia Court of Appeal'.

[112] CPC has no similar definition. Gombe defines 'judge': "means a judge of any of the Sharia Courts". Gombe then uses the word 'judge' throughout its SCPC, where the other SCPCs use 'alkali'. This will not be separately noted subsequently.

[113] CPC, Bauchi omit the definition of 'kadi'.

[114] CPC, Bauchi, Borno omit the definition of 'state'.

[115] CPC, Bauchi omit the definition of '*taklif*'. Kaduna defines it as "the age of attaining legal and religious responsibility." Kebbi and Sokoto add to Kaduna's definition: "by both age and mental soundness".

[116] CPC, Bauchi omit the definition of '*hudud*'. Gombe: "means offences or punishments that are fixed under the Sharia as contained in the Sharia Penal Code Law."

[117] CPC, Bauchi omit the definition of '*qisas*'. Kaduna has "reciprocal punishment" instead of "retaliation".

[118] Jigawa includes a definition of '*mukallaf*': "means a competent person to stand trial".

"caning" means whipping with a light supple leather whip and does not include lashes with a whip made of hide or a club or bamboo cane;[119]

"officer in charge of a police station" or "officer in charge of the police station" includes, when the officer in charge of the police station is absent from the station building or unable for any reason to perform his duties, the police officer present at the station building who is next in seniority to, or who in the absence of such officer in charge performs the duty of such officer;[120]

"Sharia Penal Code" means the Sharia Penal Code established by the Sharia Penal Code Law of the State;

["First Schedule of the Penal Code"][121]

"police district" means a police division;[122]

["police force"][123]

"police officer" means any member of the Nigeria Police Force;[124]

"superior police officer" shall have the same meaning as in Section 2 of the Police Act;

["sub-area head"][125]

"take cognizance" with its grammatical variations means take notice in an official capacity.

2. Words which refer to acts done also extend to illegal omissions.

3. All words and expressions used herein and defined in the Sharia Penal Code shall have the meanings attributed to them by that Code.

PART II - THE CONSTITUTION AND POWERS OF CRIMINAL COURTS

CHAPTER II – THE CONSTITUTION OF SHARIA CRIMINAL COURTS

4. There shall be four classes of Sharia Criminal Courts in the State[126] namely:

(a) Sharia Court of Appeal
(b) Upper Sharia Court;
(c) Higher Sharia Court;

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119 CPC, Bauchi omit the definition of 'caning'.
120 Bauchi, Jigawa omit the definition of 'officer in charge of a police station'.
121 Kebbi inserts here a definition of 'First Schedule of the Penal Code': "means the first schedule of the Penal Code (Amendment) Law, 2000."
122 CPC: "means – (a) in the case of the Nigeria Police, a police province; and (b) in the case of native authority police, the area of the jurisdiction of the native authority." Bauchi defines 'police division': "includes any police station, not post within jurisdiction." Jigawa: also defines 'police division': "means a police division."
123 CPC inserts here a definition of 'police force': "includes a police force established and constituted by a native authority under any written law or deemed to have been so constituted."
124 CPC: "means any member of a police force."
125 CPC inserts here a definition of 'sub-area head': means a person appointed by a native authority to be head of an administrative area".
126 Bauchi: "The classes of the criminal courts in the State under this code are:"; Gombe: "The composition of the State Sharia Courts is:".

(d) Sharia Court.[127]

5. The Grand Kadi, with the approval of the Governor, may by warrant:[128]

(a) divide the State or any portion thereof, into districts or populated areas for the purposes of establishing Sharia Courts;

(b) constitute any part of the State a district or populated area for the purpose of establishing a Sharia Court.

(c) distinguish such districts or populated areas by such names or numbers as he may think proper; and

(d) vary the limits of any such districts or populated areas.

6. (1) In each district or populated area there shall be and there is hereby established a court, to be called the Sharia Court.[129]

(2) A Sharia Court shall have such jurisdiction as is conferred upon it by this Sharia Criminal Procedure Code or any other written law.[130]

7. (1) Subject to the provisions of this Sharia Criminal Procedure Code:

(a) The Sharia Court alkali of each district or populated area shall be the presiding officer of the court of such district or populated area wherein he shall have and exercise all the jurisdiction and powers conferred upon him by his appointment; and

(b) No alkali, either as presiding officer or otherwise, shall exercise any jurisdiction or powers in excess of those conferred upon him by his appointment.

(2) When the Grand Kadi[131] assigns two or more alkalis to any district or populated area, each alkali shall be a presiding officer and each sitting separately shall have and exercise all the jurisdiction and powers conferred upon him by his appointment.

8. (1) Sharia Court alkalis shall be styled[132] Upper Sharia Court alkalis, or Higher Sharia Court alkalis or Sharia Court alkalis.[133]

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127 CPC lists High Court, courts of Chief Magistrates, courts of magistrates of the first, second and third grades, and "native courts established or deemed to have been established in Northern Nigeria under any law." Bauchi, Borno, Gombe, Jigawa, Kaduna, Kebbi, Sokoto have only two grades of Sharia Courts below the Sharia Court of Appeal, "Upper Sharia Courts" and "Lower" or simply "Sharia Courts". Bauchi addis to its list "State High Court".

128 CPC: "The Chief Justice [of the Northern Region] may:"; CPC then refers to "magisterial districts", not "districts or populated areas". Jigawa refers to "divisions" here and subsequently; this will not be noted separately again. Borno: "The Chief Judge, on the recommendation of the Grand Khadi, with the approval of the Governor, may by warrant". Zamfara: "The Chief Judge, with the approval of the Governor, may by warrant".

129 CPC refers to magisterial districts and magisterial courts.

130 CPC, in addition to referring to magistrate's courts, adds at the end of this subsection: "subject nevertheless to the limitations imposed by the Constitution of Northern Nigeria". Jigawa, as to the entirety of §6, says: "Repealed".

131 CPC: "When the Chief Justice". Borno: "When the Chief Judge on the recommendation of the Grand Khadi".

132 Kebbi: "referred to".

133 CPC has four grades of magistrates; Gombe, Jigawa, Kaduna, Kebbi, Sokoto have only two grades of alkalis, see note to §4.

(2) The State Judicial Service Commission may appoint any person to the office of Sharia Court alkali and such appointment shall be made in compliance with the provisions of the Sharia Courts Law of the State and any other legislation made in accordance therewith.[134]

9. Every alkali shall have jurisdiction throughout the State unless his appointment is specifically limited to the area of any district or populated area or group of districts or populated areas.[135]

10. Notwithstanding the provisions of Section 9, an Upper Sharia Court alkali who is assigned to a group of districts or populated areas, may direct a subordinate alkali in one district or populated area within the group to assist another subordinate alkali within the group or populated area and may direct to the best advantage the movements of any additional subordinate alkali within the group.[136]

11. The Grand Kadi[137] shall have the power to appoint persons to the office of justice of the peace and to dismiss and exercise control over such persons.[138]

CHAPTER III – THE POWERS OF SHARIA CRIMINAL COURTS

12. (1) Subject to the other provisions of this Sharia Criminal Procedure Code, any offence under the Sharia Penal Code may be tried by any Sharia Court by which such offence is shown in the sixth column of Appendix A[139] to be triable or by any Sharia Court with greater powers.[140]

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134 CPC: "The Public Service Commission may appoint any person to the office of magistrate". CPC then adds a subsection (3) which requires appointments to be made "in compliance with the provisions of the Constitution of Northern Nigeria and of any legislation made in accordance therewith." Gombe omits "made in accordance therewith."

135 Bauchi: "The territorial jurisdiction of: (a) any Sharia and Upper Sharia Court of the State is limited to the Local Government in which the Court is situate (both first instance and appellate); (b) the Sharia Court of Appeal and the High Court is the entire State provided that such High Court shall conduct the trial of the accused persons, being Muslims, in accordance with Islamic law." Jigawa omits this section.

136 Jigawa omits this section.

137 Borno, Gombe, Jigawa, Kebbi, Sokoto, Zamfara: "The Attorney-General".

138 CPC: "The appointment of a justice of the peace shall be made in compliance with the provisions of the Constitution of Northern Nigeria".

139 Appendix A is omitted from this work. In separate columns it (1) lists, row by row, sections of the CILS Draft Harmonised Sharia Penal Code prescribing punishments for offences, (2) describes, row by row, the offence corresponding to each section, (3) states "whether the police may arrest [for the offence] without warrant or not" (referring to §25 of this code), (4) states "whether a warrant or a summons shall ordinarily issue in the first instance [to compel attendance of the accused at trial]" (referring to §152 of this code), (5) summarises the punishment for the offence, and (6) names the "Sharia Court with least powers by which [the offence is] triable".

140 Kaduna omits "or by any Sharia Court with greater powers". CPC has "or by any court other than a native court with greater powers". CPC then goes on, in its subsection (2), to deal with offences triable by native (subsequently Area) courts, referring to the 7th column of Appendix A. Several SCPCs (Borno, Gombe, Zamfara) unnecessarily include the same subsection (2) as CPC, referring however to the Sharia courts they have already dealt with in subsection (1), and referring to a 7th column of Appendix A which they do not in fact include in their Appendix As. Kebbi and Sokoto take a different approach to this whole section, providing as follows: "(1) Subject to the other provisions of this Sharia Criminal Procedure Code, the Upper Sharia Court shall have the exclusive jurisdiction to try any or all

Provided that any such Sharia Court shall try such offence only if jurisdiction so to do has been conferred upon it by its court warrant.

(2) Subject to the provisions of subsection (1) the jurisdiction of Sharia Courts shall be governed by the provisions of the Sharia Courts Law.

13. (1) Any offence under any law other than the Sharia Penal Code may be tried by any court given jurisdiction in that behalf in that law or by any court with greater powers.

(2) When no court is so mentioned such offence may be tried by the Upper Sharia Court or any Sharia Court constituted[141] under this Sharia Criminal Procedure Code.[142]

(3) Nothing in subsection (2) shall be deemed to confer upon any court any jurisdiction in excess of that conferred upon that court by sections 14 to 24.

14. An Upper Sharia Court alkali[143] may pass any sentence authorised by law.

15. A Higher Sharia Court alkali[144] may pass the following sentences:

(a) imprisonment for a term not exceeding fifteen years;[145]

(b) fine not exceeding ten thousand naira;[146]

(c) all punishments under section 93 of the Sharia Penal Code except subsection 1(i), (viii), (ix) and (xviii) thereof;[147]

(d) detention under section 95 of the Sharia Penal Code.

16. A Sharia Court alkali[148] may pass the following sentences:

(a) imprisonment for a term not exceeding ten years;[149]

(b) fine not exceeding seven thousand naira;[150]

(c) all punishments under section 93 of the Sharia Penal Code except subsection 1(i), (viii), (ix) and (xviii) thereof;

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the offences listed in 'Appendix A' of this code. (2) The Sharia Court shall have jurisdiction to try any or all the offences not listed in 'Appendix A' of this Sharia Criminal Procedure Code. (3) Notwithstanding the provisions of subsections (1) and (2) above, the Upper Sharia Court may having regard to all the circumstances of the case where it deems fit try any or all the offences not listed in 'Appendix A' of this code. (4) Where the Upper Sharia Court tries an offence under subsection (3) above, an appeal against its decision shall lie to the Sharia Court of Appeal."

141 CPC: "by the High Court or any court constituted". Kebbi, Sokoto: "by any court constituted".

142 CPC adds after this subsection a proviso with five subsections, on the limits of the powers of various magistrate and native courts to try offences.

143 CPC: "the High Court".

144 CPC: "A Chief Magistrate". Borno, Gombe, Kaduna, Kebbi, Sokoto: omit this section, as they divide their Sharia Courts into only two grades: Upper Sharia Courts and Sharia Courts, see note to §8(1).

145 CPC: 5 years.

146 CPC: 500 pounds.

147 CPC: "caning".

148 CPC: "A magistrate of the first grade"; and CPC goes on in two subsequent sections, which have no correlates here, to deal with magistrates of the second and third grades as well.

149 Gombe: 15 years.

150 Gombe: ₦10,000.

(d) detention under section 95 of the Sharia Penal Code.

17. All Sharia Court alkalis shall notwithstanding the limit of fine provided under this Code, order a complete restitution of any monies or properties criminally misappropriated, stolen, robbed, received by extortion, cheating, deceit, breach of trust, forgery, falsification of accounts or by any illegal means by a person.[151]

18. Notwithstanding the limitation imposed on Sharia Court alkalis in their civil jurisdictions as Sharia Court alkalis under the Sharia Courts Law or any other written law, an alkali that tries an offence shall have powers and jurisdiction to make an order of compensation whether or not the money or money's worth of property exceeds his civil jurisdiction.[152]

19. (1) The Governor may, on the recommendation of the Grand Kadi,[153] by order authorise an increased jurisdiction in criminal matters,[154] to be exercised by any Sharia Court to such extent as the Grand Kadi may on such recommendation specify and such order may at any time be revoked by the Governor by writing under his hand.[155]

(2) An order under subsection (1) may authorise such increased jurisdiction in respect of:[156]

(a) offences under a named Act or Law;

(b) offences specifically referred to under a named Act or Law; or

(c) a particular offence for which a person is then charged or a particular offence of which a court has taken cognizance.

20. Any Sharia Court may pass any lawful sentence combining any of the types of sentences which it is authorised by Law to pass.

21. Any Sharia Court may award any term of imprisonment in default of payment of a fine which is authorised by section 98 of the Sharia Penal Code:

Provided that the term of imprisonment shall not be in excess of the powers of the court under sections 14 to 19 of this Code.

22. (1) Where a Sharia Court has authority under any written law to impose imprisonment for an offence and has no specific authority to impose a fine for that offence the Sharia Court may in its discretion impose a fine in lieu of imprisonment.[157]

(2) The amount of the fine shall not be in excess of the power of the court to impose fines under sections 14 to 19 of this Code.[158]

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[151] CPC omits this section.

[152] CPC omits this section. Gombe: "whether or not the money or money's worth of property exceeds his civil or criminal jurisdiction".

[153] CPC: "Chief Justice"; Borno: "Chief Judge"; in both cases twice in this subsection.

[154] Gombe ends this subsection at this point.

[155] Jigawa: "The Governor may, on the recommendation of the Grand Kadi, by order increase the jurisdiction in criminal matters of the Sharia Courts to such extent as the Grand Kadi may specify in such order."

[156] Jigawa and Kaduna omit this subsection.

[157] Jigawa adds here: "so however such fine shall not exceed the limits of the jurisdiction of the court to award"; this brings what is here subsection (2) into subsection (1).

[158] Jigawa omits this subsection, see previous note. Kaduna also omits subsection (2).

(3) No term of imprisonment[159] imposed in default of payment of such fine shall exceed the maximum fixed in relation to the amount of the fine by section 98 of the Sharia Penal Code.[160]

(4) In no case shall any term of imprisonment[161] imposed in default of payment of such fine exceed the maximum term authorised as punishment for the offence by the written law.[162]

(5) The provisions of this section shall not apply in any case where a written law provides a minimum period of imprisonment[163] to be imposed for the commission of an offence.[164]

23. (1) When a person is convicted at one trial of two or more distinct offences, the court may, subject to the provisions of section 100 of the Sharia Penal Code, sentence him for such offences to the several punishments prescribed therefore which such court is competent to inflict; such punishments, when consisting of imprisonment, to commence the one after the expiration of the other in such order as the court may direct, unless the court directs that such punishments shall run concurrently.[165]

(2) In cases falling under this section, a court shall not be limited by the provisions of sections 14 to 19 but a court shall not impose consecutive sentences exceeding in the aggregate twice the amount of punishment, which it is in the exercise of its ordinary jurisdiction competent to inflict.

24. A court may, whether the accused is discharged or not, bind over the complainant or accused, or both, with or without sureties, to be of good behaviour and may order any person so bound, in default of compliance with the order, to be imprisoned for a term not exceeding three months in addition to any other punishment to which that person is liable.

PART III – ARREST AND PROCESS

CHAPTER IV – ARREST

A – Arrest

25. Any police officer may arrest:

(a) any person who commits an offence in his presence notwithstanding any provision in the third column of Appendix A[166] that an arrest may not be made without a warrant;

(b) any person for whose arrest a warrant has been issued or whom he is directed to arrest by a justice of the peace or superior police officer under sections 28 and 29 of this Code;

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159 Kebbi and Sokoto add here: "and or caning".
160 Jigawa and Kaduna omit subsection (3).
161 Kebbi and Sokoto add here: "and or caning".
162 Jigawa and Kaduna omit subsection (4).
163 Kebbi and Sokoto add here: "and or caning".
164 Kaduna omits subsection (5).
165 Jigawa omits everything from "which such court is competent to inflict" through "as the court may direct".
166 Kebbi, Sokoto omit "in the third column of Appendix A".

(c) any person who has been concerned in an offence for which, in accordance with[167] the provisions of the Sharia Penal Code or under any other Act or Law for the time being in force in any part of Nigeria, the police may arrest without warrant, or against whom a reasonable complaint has been made or credible information has been received or reasonable suspicion exists of his having been so concerned;

(d) any person the order for whose discharge from prison has been cancelled by an alkali of the Upper Sharia Court or a Kadi of the Sharia Court of Appeal[168] under section 98 of this Code;

(e) any person whom he reasonably suspects to be designing to commit an offence for which the police may arrest without a warrant, if it appears to him that the commission of the offence cannot be otherwise prevented;

(f) any person required to appear by a public summons published under section 66 of this Code;

(g) any person found taking precautions to conceal his presence in suspicious circumstances or who being found in suspicious circumstances has no ostensible means of subsistence or cannot give a satisfactory account of himself;

(h) any person in whose possession property is found which may reasonably be suspected to be stolen property or property in respect of which an offence has been committed under section 289, 291, 292, 293, 294, 295, 296, 337 or 339 of the Sharia Penal Code, or who may reasonably be suspected of having committed an offence with reference to such property;

(i) any person who obstructs a police officer while in the execution of his duty;

(j) any person who has escaped or attempts to escape from lawful custody;

(k) any person reasonably suspected of being a deserter from any military force for the time being serving in Nigeria;[169]

(l) any person who in his presence has committed or been accused of committing any offence for which the police may not, according to the third column of Appendix A arrest without a warrant, if on his demand, such person refuses to give his name and address or gives a name and address which he believes to be a false one;

[failing to obey direction of Governor][170]

26. Any police officer may require any person whom he has reasonable grounds for suspecting to have committed an offence of any kind to furnish him with his name and address, and he may require any such person to accompany him to the police station.

27. Any private person may arrest:

(a) any person for whose arrest he has a warrant or whom he is directed to arrest by a justice of the peace under section 28 or by a justice of the peace or a superior police officer under section 29;

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[167] CPC inserts here: "the third column of Appendix A or under".

[168] CPC: "by a judge of the High Court". Jigawa, instead of the alternative of a kadi of the Sharia Court of Appeal, has the alternative of an alkali of the Higher Sharia Court.

[169] Kebbi and Sokoto omit subsection (k).

[170] CPC, Borno, Gombe, Kaduna, Zamfara add a further subsection: "any person failing to obey a direction of the Governor issued under section [as specified]".

(b) any person who has escaped from his lawful custody;

(c) any person required to appear by a public summons published under section 66;

(d) any person committing in his presence an offence for which the police are authorised to arrest without a warrant.

28. (1) Any justice of the peace may arrest or direct the arrest of any person committing any offence in his presence and shall thereupon hand him over to a police officer or take security for his attendance before a court at a specified time.

(2) Notwithstanding the provisions of subsection (1), a justice of the peace shall not direct a superior police officer under this section.

29. (1) Any justice of the peace or superior police officer may at any time arrest or direct the arrest in his presence of any person for whose arrest a warrant might lawfully be issued.

(2) A justice of the peace making an arrest under subsection (1) shall thereupon hand over the person arrested to a police officer or take security for his attendance before a court at a specified time.

30. If a person liable to arrest resists the endeavour to arrest him or attempts to evade the arrest, the person authorised to arrest him may use all means necessary to effect the arrest.

31. The person making an arrest may take from the person arrested any offensive weapon which he has about his person and shall deliver all weapons so taken to the court or officer before whom the person arrested is required by the warrant of arrest or by this Sharia Criminal Procedure Code to be produced.

32. Every person is bound to assist a justice of the peace, police officer or other person reasonably demanding his aid in arresting or preventing the escape of any person whom such justice of the peace, police officer or other person is authorised to arrest.

33. (1) If anyone who is authorised to arrest any person has reason to believe that such person has entered into or is within any place, he may enter such place and thereby search for the person to be arrested.

(2) The person residing in or being in charge of such place shall on demand allow free ingress thereto and afford all reasonable facilities for the search.

(3) If on demand such ingress is refused, the person authorised to make the arrest may effect an entry by force.

(4) The provisions of this section shall be subject to the provisions of section 81 of this Code.

34. Any person authorised to effect the arrest of any other person may for the purpose of effecting the arrest pursue him into any part of the State.

35. Any police officer or other person authorised to make an arrest may break out of any place in order to liberate himself or any other person who, having lawfully entered for the purpose of making an arrest, is detained therein.

36. An arrested person shall not be subjected to more restraint than is necessary to prevent his escape.

37. Except when the person arrested is in the actual course of committing a crime, or is pursued immediately after committing a crime or escaping from lawful custody, the person making the arrest shall inform the person arrested of the cause of arrest.

B – Procedure After Arrest

38. (1) Any person, except a police officer or a justice of the peace, making an arrest without a warrant or an order of a justice of the peace shall without unnecessary delay take the person arrested to the nearest police station or hand him over to a police officer or to the nearest Sharia Court.[171]

(2) If the arrested person appears to be one whom a police officer is authorised to arrest, the police officer shall re-arrest him; otherwise the arrested person shall be at once released.

39. A police officer making an arrest without warrant or a re-arrest under section 38(1), 40 or 41 shall without unnecessary delay take or send the person arrested before a court competent under Chapter XV of this Code to take cognizance of the case or before the officer in charge of a police station.

40. Any person arrested for refusing to give his name and address or for giving a false name or address shall:

(a) if he is found to have given his true name and address, be released;

(b) when his true name and address are ascertained, be released on his executing a bond, with or without sureties, to appear before a court if and when required;

(c) should his true name and address not be ascertained within twenty-four hours from the time of arrest or should he fail to execute the bond or, if so required, to furnish sufficient sureties, be forthwith brought before the nearest Sharia Court competent under Chapter XV of this Code to take cognizance of the case.

41. No police officer shall detain in custody a person arrested without warrant for a longer period than in the circumstances of the case is reasonable, and such period shall not, in the absence of an order of a court under section 128 of this Code, exceed twenty-four hours exclusive of the time necessary for the journey from the place of arrest to the Sharia Court and of any intervening public holiday.

42. An officer in charge of a police station shall report as soon as reasonably possible to the appropriate Local Government[172] or superior police officer every case of arrest without warrant within his district.

43. (1) A police officer making an arrest or receiving an arrested person from a person by whom the arrest has been made may search the arrested person or cause him to be searched.

(2) A police officer searching a person shall place in safe custody such articles, other than necessary wearing apparel, as he thinks fit,[173] and shall make a list of the same, and shall permit the arrested person to retain all articles not so placed in safe custody.

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171 CPC, Borno, Jigawa omit the last alternative, ending with "police officer".

172 CPC: "to the appropriate native authority". Jigawa: "to the appropriate authority".

173 Kebbi, Sokoto: instead of "as he thinks fit" put "having regard to religious and cultural values of the person".

(3) When the arrested person is a woman, the search shall not be made except by a woman.

44. No person who has been arrested by a police officer or re-arrested under section 38(2) of the Code shall be discharged except on his own bond or on bail or under the special order of a court.

45. A register of arrests shall be kept in the prescribed form at every police station and every arrest made within the local limits of the station shall be entered therein by the officer in charge of the police station so soon as the arrested person is brought to the station.

CHAPTER V – PROCESSES TO COMPEL APPEARANCE

A – Summons

46. (1) A summons to appear or attend before a court may be issued by any court competent to inquire into an offence or by any justice of the peace.[174]

(2) Every summons so issued shall be in writing, in duplicate and signed or sealed by the court or justice of the peace.[175]

47. The summons shall be served by a police officer or by any officer of the court issuing it or other public servant who, under any law for the time being in force, may be authorised to serve summonses.

48. (1) The summons shall if practicable, be served personally on the person summoned by delivering or tendering to him one of the duplicates of the summons.

(2) The person served shall, if so required by the serving officer, sign or make his mark on a receipt therefore on the back of the other duplicate.

49. Service of a summons on an incorporated company or other body corporate may be effected by service on the secretary, local manager or other principal officer of the corporation at any office of the corporation in the State.

50. Service of a summons on a Local Government shall be effected in accordance with the provisions of the Local Government Law.[176]

51. Where the person summoned cannot by the exercise of due diligence be found, the summons may be served by leaving one of the duplicates for him with some adult male member of his family who shall, if so required by the serving officer, sign a receipt therefore on the back of the other duplicate, or by affixing one of the duplicates of the summons to some conspicuous part of the house or homestead in which the person summoned ordinarily resides.

52. Where the person on or with whom a summons is served or left is unable to sign his name or make his mark, the summons shall be served or left in the presence of a witness.

53. A summons required to be served outside the local limits of the jurisdiction of the court or justice of the peace[177] issuing it shall ordinarily be sent in duplicate to a court within the local limits of whose jurisdiction the person summoned resides or is, to be there served.

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[174] Jigawa omits "or by any justice of the peace".
[175] Jigawa omits "or justice of the peace".
[176] Jigawa: "shall be effected by service on the secretary or any principal officer of the Local Government Council".

54. An affidavit or declaration purporting to be made before a court by the serving officer or by a witness to the service that a summons has been served and a duplicate of the summons purporting to be endorsed, in manner provided by section 48 or section 51, by the person to whom it was delivered or tendered or with whom it was left shall be admissible in evidence and the statements made therein shall be deemed to be correct unless and until the contrary is proved.

B – Warrant of Arrest

55. (1) Every warrant of arrest issued under this Sharia Criminal Procedure Code by a court or justice of the peace shall be in writing signed or sealed by the court or the justice of the peace.

(2) Every such warrant shall remain in force until it is cancelled by the Sharia Court or justice of the peace issuing it or until lit is executed.[178]

56. (1) A Sharia Court or justice of the peace issuing a warrant for the arrest of any person shall have discretion to direct by endorsement on the warrant that, if such person executes a bond with sufficient sureties for his attendance before the court or justice of the peace at a specified time and thereafter until otherwise directed, the person to whom the warrant is directed shall, on receiving security, release such person from custody.[179]

(2) The endorsement referred to in subsection (1) shall state:

(a) the number of sureties;

(b) the amount in which the sureties and the person for whose arrest the warrant is issued are to be respectively bound; and

(c) the time and place at which the person for whose arrest the warrant is issued is to attend.

(3) Whenever security is taken under this section, the person to whom the warrant is directed shall forward the bond to the appropriate Sharia Court.

57. (1) A warrant of arrest shall ordinarily be directed to one or more police officers or other public servants who may be authorised to make an arrest, but the court or justice of the peace issuing the warrant may, if its immediate execution is necessary and no police officer or other public servant so authorised is immediately available, direct it to any other person or persons.[180]

(2) When a warrant is directed to more persons than one, it may be executed by all or by any one or more of them.

58. A warrant of arrest directed to a police officer may also be executed by any other police officer whose name is endorsed upon the warrant by the police officer to whom it is directed or endorsed.

59. The person executing a warrant of arrest shall notify the substance thereof to the person to be arrested and, if so required, shall show him the warrant.

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[177] Jigawa omits "or justice of the peace".
[178] Jigawa omits "or justice of the peace" in both subsections of this section.
[179] Jigawa omits "or justice of the peace" in this subsection.
[180] Jigawa omits "or justice of the peace" in this subsection.

60. A warrant of arrest may be executed notwithstanding that it is not in the possession at the time of the person executing the warrant, but the warrant shall, on the demand of the person apprehended, be shown to him as soon as practicable after his arrest.

61. The person executing a warrant of arrest shall, subject to the provisions of section 56 as to security, without unnecessary delay bring the person arrested before the court specified in the warrant.

62. A warrant of arrest may be executed at any place in the State.

63. (1) When a warrant of arrest is to be executed outside the local limits of the jurisdiction of the court or justice of the peace issuing it, such Sharia Court or justice of the peace may, instead of directing such warrant as laid down in section 57, forward it by post or otherwise to any court within the local limits of whose jurisdiction it is to be executed.[181]

(2) Such court shall endorse the warrant and, if practicable cause it to be executed in manner hereinbefore provided within the local limits of its jurisdiction.

64. When a warrant of arrest is to be executed beyond the local limits of the jurisdiction of the court or justice of the peace issuing it, the person to whom it is directed shall take it for endorsement to a court within the local limits of whose jurisdiction the warrant is to be executed, where there is doubt as to the genuineness of the warrant, the court may order an enquiry.[182]

65. (1) When a warrant of arrest is executed outside the local limits of the jurisdiction of the court or justice of the peace issuing it the person arrested shall, unless security is taken under section 56, be taken before a court within the local limits of whose jurisdiction the arrest was made and such court shall, if the person arrested appears to be the person intended by the court or justice of the peace issuing the warrant, either:

(a) take security for his appearance in accordance with the provisions of Chapter XXVII of the Code or as directed by any endorsement of the warrant under section 56 and forward the bond or bonds to the court or justice of the peace issuing the warrant; or

(b) direct his removal in custody to such court or justice of the peace.

(2) Notwithstanding the provisions of subsection (1), the arrested person may be taken directly before the court or justice of the peace issuing the warrant if this course is more convenient having regard to conditions of time, place and other circumstances.[183]

C – Public Summons and Attachment

66. (1) If an alkali of the Sharia Court[184] has reason to believe, whether after taking evidence or not, that a person against whom a warrant of arrest has been issued by himself or by any court or justice of peace,[185] has absconded or is concealing himself so that such warrant cannot be executed, such alkali may publish a public summons in

[181] Jigawa omits "or justice of the peace" in this subsection.
[182] Neither CPC nor any SCPC has the last clause here, about doubt as to the genuineness of the warrant. Jigawa omits "or justice of the peace" in this section.
[183] Jigawa omits "or justice of the peace" in both subsections of this section.
[184] CPC: "judge of the High Court"; and throughout this subchapter CPC refers to the High Court, to the apparent exclusion of magistrates' and native/Area courts.
[185] Jigawa omits "or justice of the peace".

writing requiring that person to appear at a specified place and a specified time not less than thirty days from the date of publishing the public summons.

(2) The public summons shall be published as follows:

(a) it shall be publicly read in some conspicuous place in the town or village in which the person in respect of whom it is published ordinarily resides;

(b) it shall be affixed to some conspicuous part of the house or homestead in which such person ordinarily resides or to some conspicuous place in such town or village; and

(c) a copy thereof shall be affixed to some conspicuous part of the Sharia Court building.

(3) A statement in writing by the alkali of the Sharia Court to the effect that the public summons was duly published on a specified day, shall be conclusive evidence that the requirements of this section have been complied with, and that the public summons was published on such day.

67. (1) An alkali of the Sharia Court may at any time after action has been taken under section 66, order the attachment of any property, movable or immovable or both belonging to a person the subject of a public summons.

(2) An order under subsection (1) shall authorise any public servant named in it to attach any property belonging to a person the subject of a public summons within the area of jurisdiction of the alkali by seizure or in any other manner in which for the time being property may be attached by way of civil process.

(3) If a person the subject of a public summons does not appear within the time specified in the public summons, the property under attachment shall be at the disposal of the Sharia Court; but it shall not be sold until the expiration of three months from the date of the attachment, unless it is subject to speedy and natural decay, or the alkali considers that the sale would be for the benefit of the owner, in either of which cases, the alkali may cause it to be sold whenever he thinks fit.

68. If within one year from the date of the attachment, any person whose property is or has been at the disposal of the Sharia Court under section 67, appears voluntarily or being arrested is brought before the Sharia Court and proves to its satisfaction that he did not abscond or conceal himself for the purpose of avoiding execution of the warrant, and that he had not such notice of the public summons as to enable him to attend within the time specified therein, that property so far as it has not been sold, and the net proceeds of any part thereof which has been sold shall, after satisfying there out all costs incurred in consequence of the attachment, be delivered to him.

D – Other Rules Regarding Process

69. (1) A court or justice of the peace[186] empowered by this Sharia Criminal Procedure Code to issue a summons for the appearance of any person may, after recording reasons in writing, issue a warrant for his arrest in addition to or instead of the summons:

(a) if, whether before or after the issue of such summons, the court or justice of the peace sees reason to believe that he has absconded or will not obey the summons; or

[186] Jigawa omits "or justice of the peace".

(b) if, at the time fixed for his appearance he fails to appear and the summons is proved to have been duly served in time to admit of his appearing and no reasonable excuse is offered for his failure to appear.

(2) A court or justice of the peace[187] empowered by this Sharia Criminal Procedure Code to issue a warrant for the arrest of any person may issue a summons in place of a warrant if it or he thinks fit.

70. When any person for whose appearance or arrest a summons or warrant may be issued is present before a court or justice of the peace, the court or justice of the peace may require him to execute a bond, with or without sureties, for his appearance before a court.[188]

71. The provisions contained in this chapter relating to summonses and warrants and their issue, service and execution shall so far as may be apply to every summons and every warrant issued under this Sharia Criminal Procedure Code.

CHAPTER VI – MEANS TO SECURE THE PRODUCTION OR DISCOVERY OF DOCUMENTS OR OTHER THINGS AND FOR THE DISCOVERY AND LIBERATION OF PERSONS UNLAWFULLY CONFINED

A – Summons to Produce

72. When a court or justice of the peace considers that the production of any document or other thing is necessary or desirable for the purpose of any investigation, trial or other proceeding under this Sharia Criminal Procedure Code by or before such court or justice of the peace, the court or justice of the peace may issue a summons to any person in whose possession or power the document or thing is believed to be, requiring him to attend and produce it or to cause it to be produced at the time and place stated in the summons or order.[189]

B – Searches and Orders for Production and Liberation of Persons

73. Where for any reason it appears to a Sharia Court or justice of the peace that it is impossible or inadvisable to proceed under section 72 or that a search or inspection would further the purposes of any investigation, trial or other proceeding under this Sharia Criminal Procedure Code, the court or justice of the peace may issue a search warrant authorising the person to whom it is addressed to search or inspect the place or places mentioned in the warrant for any document or thing specified or for any purpose described in the warrant and to seize any such document or thing, and to dispose of it in accordance with the terms of warrant.[190]

74. Where an investigation under this Sharia Criminal Procedure Code is being made by a police officer, he may apply to any court or justice of the peace within the local limits of whose jurisdiction he is, for the issue of a search warrant under section 73.

75. (1) Where upon information and after such inquiry, if any, as it thinks necessary, a court or justice of the peace has reason to believe that any place is used for the deposit or sale of stolen property or that there is kept or deposited in any place any property in respect

[187] Jigawa omits "or justice of the peace".
[188] Jigawa omits "or justice of the peace" twice in this section.
[189] Jigawa omits "or justice of the peace" throughout in this section.
[190] Jigawa omits "or justice of the peace" throughout in this section, although the words are included in the section title.

of or by means of which an offence has been committed or which is intended to be used for any illegal purpose, the court or justice of the peace may issue a search warrant authorising any police officer:[191]

(a) to search the place in accordance with the terms of the warrant and to seize any property appearing to be of any description above-mentioned and to dispose of it in accordance with the terms of the warrant; and

(b) to arrest any person found in the place and appearing to have been or to be a party to any offence committed or intended to be committed in connection with the property.

(2) In this section and section 76 "offence" includes an offence against a law of the Federation, State or any Local Government, which would be punishable in the State if it had been committed in Nigeria.

76. (1) Where a court upon information and after such inquiry, if any, as it thinks necessary, has reason to believe that any person is confined under such circumstances that the confinement amounts to an offence, it may issue a search warrant authorising the person to whom it is addressed to search for the confined person and to bring him before the court and upon the appearance of the confined person the court shall make such order as seems proper.

(2) Upon complaint made on oath to a court of the abduction for any unlawful purpose or of the unlawful detention of any person, the court may after such inquiry, if any, as it thinks necessary, make an order for the production of that person or for the immediate restoration of that person to his liberty or if he is under eighteen years of age[192] for his immediate restoration to his parent, guardian or other person having lawful charge of him and may compel compliance with an order made under this subsection using such force as may be necessary and upon the production of the person who is the subject of the order, the court shall make such order as seems proper.

77. (1) Searches under Part B of this chapter shall, unless the court or justice of the peace owing to the nature of the case otherwise directs, be made whenever possible in the presence of two respectable inhabitants of the neighbourhood to be summoned by the person to whom the search warrant is addressed.

(2) A list of all things seized in the course of search and of the places in which they are found shall be drawn up by the person carrying out the search and shall be signed or sealed by the witnesses.

78. If any place to be searched is an apartment in the actual occupancy of a woman, not being the person to be arrested,[193] the person making the search shall, before entering the apartment, give notice to such woman that she is at liberty to withdraw and shall afford her every reasonable facility for withdrawing, and may then enter the apartment.

79. The occupant of any place searched or some person on his behalf shall be permitted to be present at the search and shall, if he so requires, receive a copy of the list of things seized therein signed or sealed by the witnesses referred to in section 77.

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[191] Jigawa omits "or justice of the peace" throughout in this section.

[192] CPC: "under fourteen years of age". Jigawa: "under the age of puberty".

[193] CPC, Borno, Gombe, Kebbi, Sokoto, Zamfara: insert here: "who, according to custom [Kebbi: "according to Sharia"], does not appear in public". Jigawa: "who does not appear in public".

80. (1) Where any person in or about a place, which is being searched, is reasonably suspected of concealing about his person any article for which search should be made, such person may be searched.

(2) A list of all things found on his person and seized shall be prepared and witnessed in manner mentioned in section 77 and a witnessed copy of the list shall be delivered to the person searched.[194]

81. Whenever it is necessary to cause a woman to be searched, the search shall be made by another woman, with strict regard to decency.

82. Every person executing a search warrant beyond the local limits of the jurisdiction of the court or justice of the peace[195] issuing it shall, before doing so apply to some court within the local limits of whose jurisdiction search is to be made and shall act under its directions.

83. The provisions of section 33(2) as to ingress and all other provisions hereinbefore contained as to warrants of arrest shall, so far as applicable, apply to search warrants.

84. Any justice of the peace may direct a search to be made in his presence of any place for the search of which he is competent to issue a search warrant.

85. Any Court may, if it thinks fit, impound any document or thing produced before it under the Sharia Criminal Procedure Code.

PART IV – THE PREVENTION OF CRIME

CHAPTER VII – SECURITY FOR KEEPING THE PEACE AND FOR GOOD BEHAVIOUR

A – Security for Keeping the Peace and for Good Behaviour on Conviction

86. Whenever any person is convicted by a court of any offence involving or likely to cause a disturbance of the public peace or a breach of the peace and the court is of opinion that it is expedient to require that person to execute a bond for keeping the peace and being of good behaviour, it may at the time of passing sentence on such person order him to execute a bond for a sum proportionate to his means and with or without sureties for keeping the peace and being of good behaviour for any period not exceeding three years in the case of the Upper Sharia Court and not exceeding two years in the case of any other Sharia Court.[196]

B – Security for Keeping the Peace and for Good Behaviour in Other Cases

87. (1) Whenever a court or justice of the peace is informed that any person is likely to commit a breach of the peace or to disturb the public peace or to do any illegal act which may probably cause a breach of the peace or disturb the public peace, the court or justice of the peace may issue a summons requiring that person to attend before a court to execute a bond with or without sureties for keeping the peace or refraining from illegal acts likely to disturb the public peace for any period not exceeding one year or to show cause why he should not execute such bond. [197]

(2) Proceedings shall not be taken under this section unless:

(a) the person informed against is in the State; and

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[194] CPC, Kebbi, Sokoto, Zamfara add: "if he so requires".
[195] Jigawa omits "or justice of the peace".
[196] Kebbi: 1 year/6 months.
[197] Kebbi: 6 months. Jigawa omits "or justice of the peace".

(b) either:

(i) the person informed against is within the area of jurisdiction of the court before which he is required to attend; or

(ii) the place where the breach of the peace or disturbance is apprehended is within the area of jurisdiction of the court before which the person informed against is required to attend.

88. Whenever a court receives information that any person within the local limits of its jurisdiction:

(a) habitually commits any offence punishable under sections 231 to 239 of the Sharia Penal Code; or

(b) is by habit a robber, house breaker or thief; or

(c) is by habit a receiver of stolen property knowing the same to have been stolen; or

(d) habitually protects or harbour thieves or aids in the concealment or disposal of all stolen property; or

(e) habitually commits mischief, extortion or cheating or the counterfeiting of coin, notes or revenue stamps or attempts so to do; or

(f) habitually commits or attempts to commit or abets the commission of offences involving a breach of the peace; or

(g) is so desperate and dangerous as to render his being at large without security hazardous to the community,

such court may issue a summons requiring that person to attend before the court to execute a bond with sureties for his good behaviour for any period not exceeding two years or to show cause why he should not execute such bond.

89. Whenever it appears to a justice of the peace or court acting under section 87 or section 88, as the case may be, upon the report of a police officer or upon other information that there is reason to fear the commission of a breach of the peace or disturbance of the public peace and that such breach of the peace or disturbance of the public peace cannot be prevented otherwise than by the immediate arrest of any person, such justice of the peace or court shall record the substance of the report or information and may at any time issue a warrant for the arrest of such person and for his production before a court.

90. A justice of the peace[198] or court when issuing a summons or warrant under section 87, 88 or 89 as the case may be, shall therein set forth the substance of the information received, the amount of the bond to be executed, the term for which it is to be in force and the number, character and class of sureties, if any, required.

91. (1) When any person has appeared or is brought before the court in compliance with a summons or warrant under section 87, 88, or 89, the court shall proceed to inquire into the truth of the information upon which action has been taken and to take such further evidence as may appear necessary.

(2) An inquiry under subsection (1) shall be made as far as practicable in the manner hereinafter laid down for conducting trials and recording evidence in summary trials by alkalis except that:

[198] Jigawa omits "justice of the peace or".

(a) no charge need be framed nor shall any witness be recalled for cross-examination[199] except with the permission of the court; and

(b) the court may refuse to release on bail any person arrested under section 88 unless he executes a bond of the nature specified in the warrant of arrest but limited in time to the conclusion of the inquiry.

(3) For the purposes of this section, the fact that a person is a habitual offender or is so desperate and dangerous as to render his being at large without security hazardous to the community may be proved by evidence of general repute.

92. (1) If on inquiry under section 91 it is proved that it is necessary for keeping the peace or preserving the public peace, or maintaining good behaviour, as the case may be, that the person in respect of whom the inquiry is made should execute a bond with or without sureties the court shall make an order accordingly.

(2) Notwithstanding the provisions of subsection (1):

(a) no person shall be ordered to give security of a nature different from or of an amount larger than or for a period longer than[200] any specified in the summons or warrant issued under sections 87, 88 and 89.

(b) The amount of every bond shall be fixed with due regard to the circumstances of the case and shall not be excessive;

(c) When the person in respect of whom the inquiry is made is under eighteen years of age, the bond shall be executed only by his sureties.

93. If on inquiry under section 91 it is not proved that it is necessary for keeping the peace or preserving the public peace or maintaining good behaviour, as the case may be, that the person in respect of whom the inquiry is made should execute a bond, the court shall make an entry on the record to that effect and if such person is in custody only for the purpose of the inquiry shall release him or if he is not in custody shall discharge him.

C – Proceedings in all Cases Subsequent to Order to Furnish Security

94. (1) If any person in respect of whom an order requiring security is made under section 86 or section 92 is at the time the order is made subject to a sentence of imprisonment, the period for which such security is required shall commence on the expiration of such sentence.

(2) In other cases the period for which security is required shall commence on the date of the order unless the court for sufficient reason fixes a later date.

95. The bond to be executed by any person in respect of whom an order requiring security is made under section 86 or section 92 shall bind him to keep the peace or to refrain from illegal acts likely to disturb the public peace or to be of good behaviour, as the case may be, and in the last case the commission or attempt to commit or the abetment of an offence punishable with imprisonment, wherever it may be committed, is a breach of the bond.

96. If any person ordered to give security under section 86 or section 92 does not give the security on or before the date of the commencement of the period for which the security is

[199] Jigawa: "impeachment".
[200] Borno, Gombe, Jigawa, Kaduna, Zamfara: "period larger than".

to be given, he shall be committed to prison or if he is already in prison be detained in prison until such period expires or until within such period he gives the security ordered.

97. (1) The court may refuse to accept any surety offered or any surety previously accepted on the ground that the surety is an unfit person for the purpose of the bond.

(2) Before so refusing to accept or before rejecting any such surety, the court shall hold an inquiry into his fitness and the court shall, before holding the inquiry, give reasonable notice to the surety and to the person by whom the surety was offered and shall in making the inquiry record the substance of the evidence adduced before it.

(3) If the court is satisfied after considering the evidence adduced before it, that the surety is an unfit person for the purposes of the bond, it shall make an order refusing to accept or rejecting, as the case may be, such surety and record its reasons for so doing.

98. (1) Whenever an alkali of the Upper Sharia Court[201] is of the opinion that any person imprisoned for failing to give security under this chapter may be released without hazard to the public or to any person, he may order the person imprisoned to be discharged.

(2) Whenever any person has been imprisoned for failure to give security under this chapter, an alkali of the Upper Sharia Court may make an order reducing the amount of the security or the number of sureties or the time for which security has been required.

(3) An order under section (1) may direct the discharge of the person imprisoned either without conditions or upon any conditions which that person accepts.

(4) If any condition upon which any person imprisoned for failing to give security under this chapter is discharged is in the opinion of an alkali of the Upper Sharia Court not fulfilled, he may cancel the order of discharge and thereupon such person shall be recommitted to prison until the expiry of the period for which he was originally ordered to give security, unless before that time he gives such security.

99. An alkali of the Upper Sharia Court[202] may at any time cancel any bond for keeping the peace or refraining from illegal acts likely to disturb the public peace or for good behaviour executed under this chapter.

CHAPTER VIII – UNLAWFUL ASSEMBLIES AND RIOTS

100. Any justice of the peace or police officer of or above the rank of assistant superintendent or any commissioned officer of the armed forces of the Federation may command any unlawful assembly or any assembly of five or more persons likely to cause a disturbance of the public peace to disperse; and it shall thereupon be the duty of the members of such assembly to disperse accordingly.

101. If, upon being commanded in accordance with the provisions of section 100, any unlawful assembly or any assembly of five or more persons likely to cause a disturbance of the public peace does not disperse or if, without being so commanded, it conducts itself in such a manner as to show a determination not to disperse, or if force or violence is used by it or by any member thereof in prosecution of the common object of such assembly, any justice of the peace or police officer of or above the rank of assistant superintendent or any commissioned officer of the armed forces of the Federation may proceed to disperse such

[201] Jigawa: "alkali of the Sharia Court", here and in subsections (2) and (4).
[202] Jigawa: "alkali of the Sharia Court".

assembly by force and may require the assistance of any male person for the purpose of dispersing such assembly and, if necessary, arresting and confining the persons who form part of it, in order to disperse such assembly or that they may be punished according to law and any such person whose assistance is so required shall be bound to render such assistance.

102. (1) No prosecution against any person for any act purporting to be done under this chapter shall be instituted in any Sharia Court except with the sanction of the Attorney-General.

(2) No justice of the peace, police officer or commissioned officer of the armed forces of the Federation acting under this chapter in good faith shall be deemed to have thereby committed an offence.

(3) No act lawfully done[203] under this chapter shall be called in question in any civil proceedings.

CHAPTER IX – PUBLIC NUISANCES

103. (1) Whenever a court considers on receiving a police or justice of the peace report[204] or other information and on taking such evidence, if any, as it thinks fit that an offence under section 360, 361, 362, 363, 364, 365 or 366 of the Sharia Penal Code is being committed, such court may make a conditional order requiring the offender within a time fixed in the order to cease committing such offence and to amend or remove the causes thereof in such manner as in the order specified or to appear before the court at a time and place to be fixed by the order and apply to have the order set aside or modified in manner hereinafter provided.

(2) No order duly made by a court under this section shall be called in question in any civil proceedings.

104. (1) An order made under section 103 shall if practicable be served on the person against whom it is made in manner provided for the service of a summons.

(2) If an order referred to in subsection (1) cannot be served in the manner laid down in that subsection it may be served by registered letter through the post addressed to the person against whom it is made at last known address or, if his last address is not known, then by affixing a notice thereof in some conspicuous place in the town or village in or near which the nuisance or offence is being committed.[205]

105. A person against whom an order under section 103 is made shall:

(a) perform within the time and in the manner specified in the order the act directed thereby; or

(b) appear in accordance with the order and apply to have the same set aside or modified.

106. If a person against whom an order under section 103 is made does not perform the act specified in the order or appear and apply to have the order set aside or modified he shall be liable to the penalty prescribed in that behalf in section 323 of the Sharia Penal Code, and the order shall be made absolute.

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[203] Kebbi, Sokoto: "no act lawfully and in good faith done".
[204] CPC: omits "or justice of the peace".
[205] Kebbi and Sokoto omit subsection (2).

107. (1) If a person against whom an order under section 103 is made appears and applies to have the order set aside or modified the court shall take evidence in the matter in the same manner as in a summary trial.

(2) If the court is satisfied that the order with or without modification is reasonable and proper the court shall make it absolute with such modification, if any, as the court shall think fit.

(3) If the court is not so satisfied it shall cancel the order.[206]

108. (1) If the act directed by an order under section 103 which is made absolute under section 106 or subsection (2) of section 107 is not performed within the time fixed and in the manner specified therein, the court may cause it to be performed and may recover the cost of performing it either by the sale of any building, goods or other property removed by its order or by seizure and sale of any other movable property of the person against whom the order under section 103 was made in manner hereinafter prescribed for the recovery of a fine.

(2) No suit shall lie in respect of anything done in good faith under this section.

109. (1) If the court making an order under section 103 considers that immediate measures should be taken to prevent imminent danger or injury of a serious kind to the public, it may issue such further order to the person against whom the order was made as is required to obviate or prevent such danger or injury pending the determination of the matter.

(2) In default of the person referred to in subsection (1) forthwith obeying the further order referred to in that subsection or if notice thereof cannot by the exercise of due diligence be served upon him immediately, the court may use or cause to be used such means as it thinks fit to obviate the danger or to prevent the injury.

(3) No suit shall lie in respect of anything done in good faith under subsection (2).

110. Any court may in any proceedings under this chapter or in any criminal proceedings in respect of a public nuisance order any person not to repeat or continue the public nuisance.

CHAPTER X – PREVENTIVE ACTION BY POLICE AND PUBLIC

111. Every police officer, justice of the peace, area head or other public servant[207] charged with responsibility for maintaining law and order may intervene for the purpose of preventing and shall to the best of his ability prevent the commission of any offence, for which he is authorised to arrest without a warrant, or any damage to any public property movable or immovable.

112. Every person shall be bound to assist a justice of peace, police officer, area head or other public servant charged with responsibility for maintaining law and order reasonably demanding his aid in the suppression of a breach of the peace or in the prevention of any damage to any public property movable or immovable or to any railway, canal, water supply, telegraph, telephone or electrical installation or in the prevention of the removal of any public landmark or buoy or other mark used for navigation.[208]

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[206] Kebbi and Sokoto omit this entire section.

[207] CPC: "Every police officer, sub-area head or other public servant".

[208] Jigawa omits "or buoy or other mark used for navigation".

CHAPTER XI – DUTY OF PUBLIC AND OF AREA HEADS TO GIVE INFORMATION

113. Every person:

(a) who has reason to believe that any other person has committed suicide or has been killed by another or by an accident of any kind whatsoever or that a dead body has been found; or

(b) who is aware of the commission of or of the intention of any other person to commit any offence punishable under section 152, 154, 186, 187, 192, 193, 199, 201, 219, 233, 237, 389, or 390 of the Sharia Penal Code,

shall in the absence of reasonable excuse, the burden of proving which shall lie upon the person making such excuse, forthwith give information to the nearest Local Government, court, police officer or justice of the peace[209] of such death, dead body, commission or intention.

114. Every area head[210] not being a person competent under Chapter XV to take cognizance of an offence shall forthwith communicate to the nearest court so competent or to the Local Government, which shall then inform the appropriate police officer, or to the nearest police officer any information which he may posses or obtain respecting:

(a) the permanent or temporary residence of any notorious receiver or vendor of stolen property; or

(b) the resort to or passage through his village, ward or district of any person whom he knows or reasonably suspects to be a murderer, robber, escaped convict or person required to appear by a summons published under section 66(2) of this Code; or

(c) the occurrence within his village, ward or district of the death of any person or the disappearance from his village, ward or district of any person in circumstances which lead to a reasonable suspicion that the death or disappearance is the result of an offence committed in respect of such person; or

(d) any matter likely to affect the maintenance of order or the prevention of crime or the safety of persons or property respecting which the Local Government has directed him to report.

115. (1) An area head to whom information has been given under paragraph (c) of section 114 or who suspects the existence of such facts as are set out in that paragraph shall after forwarding the information either to the Local Government which shall then inform the appropriate police officer, or in any other manner prescribed in that section, proceed to the place where the body of the deceased is and shall there in the presence of two or more persons whom he shall summon for the purpose, and who also shall be bound to attend, make an investigation and draw up a report of the apparent cause of death describing such wounds, fractures and other marks of injuries as may be found on the body and stating in what manner or by what weapon or instrument these marks appear to have been inflicted and such other information relating to the death as he can discover.

[209] CPC: "nearest native authority, court or police officer".
[210] Jigawa: "Every person".

(2) Notwithstanding the provisions of subsection (1) when the police officer to whom information has been given under paragraph (c) of section 114 undertakes the investigation the area head on being so notified shall cease further to investigate the same as directed by the police officer.

(3) Where practicable the person making an investigation under subsections (1) and (2) shall be accompanied by a medical officer or dispensary attendant.

(4) Where there is any doubt regarding the cause of death or where for any other reason the person making the investigation considers it expedient and practicable to do so or where the medical doctor or dispensary attendant attending such investigation so directs, the body shall be brought to the nearest hospital or to some other convenient place for further examination.

(5) Except in case of necessity the burial shall not take place until leave has been obtained from a court or a justice of the peace.

(6) The person making the investigation under this section shall have the powers and duties of a police officer under sections 122 and 123 of this Code.

(7) On completion of the investigation the area head shall forward his report and the record if any, of his investigation to the Local Government Authority which shall then inform the appropriate police officer.

(8) Nothing in this section shall operate to relieve any police officer from any obligation or duty conferred upon him under Chapter XII to undertake and carry out any investigation.

PART V – INFORMATION TO THE POLICE AND THEIR POWERS TO INVESTIGATE

CHAPTER XII

A – Procedure in Cases where the Police May Arrest Without a Warrant

116. (1) When information is given to the officer in charge of a police station concerning the commission of an offence for which according to the third column of Appendix A, the police are authorised to arrest without a warrant and which under the provisions of Chapter XIII may be tried by a court within the local limits of whose jurisdiction the police station is situated, he shall if it is given orally reduce the information or cause it to be reduced to writing in the prescribed from called the First Information Report and shall read it or cause it to be read over to the informant; and every such information whether given in writing or reduced to writing as aforesaid shall be signed or sealed by the person giving it if he is able so to do and such officer shall enter or cause to be entered the information in a book to be kept in the form prescribed by the Commissioner of Police for the State.

Provided that if the officer is satisfied that no public interest will be served by a prosecution he may refuse to accept the information and notify in writing the informant of his right to complain to a court under section 141 of this Code.

(2) When on any other grounds the officer in charge of a police station has reason to suspect the commission of an offence referred to in subsection (1) he shall enter or cause to be entered the grounds of his suspicion in a First Information Report and the substance thereof in the book referred to in that subsection.

(3) Notwithstanding the provisions of subsection (1), the officer in charge of a police station may, if in his view the matter might more conveniently be investigated[211] by an officer in charge of another police station transfer the information or refer the information to such other police station.

117. (1) After complying with the provisions of section 116 the officer in charge of a police station shall act as follows:

(a) he shall send to the appropriate court in the manner set out in section 118 the First Information Report;

(b) (i) he shall forthwith proceed to the spot and investigate the case and if the offender is not already in custody take such steps as may be necessary for his discovery and arrest, or he may depute a police officer subordinate to him to do so and to report to him;

(ii) in cases involving death or serious injury to any person the officer in charge of the police station shall arrange, if possible, for a medical officer or dispensary attendant to examine the body or the person injured, and if the officer in charge of the police station or a police officer deputed by him under this subsection so directs the body or the person injured shall be brought to the nearest hospital for such further examination as he or the medical officer or dispensary attendant considers necessary and the burial shall not take place except in case of necessity until leave has been obtained from a court or justice of peace;

(c) if the information is given against a person by name and the alleged offence is not of a serious character, the officer in charge of a police station need not make or direct the investigation on the spot; and

(d) if it appears to the officer in charge of a police station that there is not sufficient ground or reason for entering upon the investigation he need not investigate the case.

(2) In the cases mentioned in paragraph (c) and (d) of subsection (1) the officer in charge of a police station shall record in the book referred to in section 116 and in his First Information Report to the court his reasons for not entering on an investigation or for not making or directing the investigation on the spot or not investigating the case.

118. (1) Every First Information Report sent to a court shall be submitted through such officer of police, if any, as the Commissioner of Police for the State shall direct.

(2) An officer through whom a First Information Report is submitted under the provisions of subsection (1) may give such instructions as he thinks fit to the officer submitting the report and shall after recording such instructions, if any, on the First Information Report pass the same to the court without delay.

119. (1) After receiving the First Information Report the court may:

(a) direct that the police shall proceed with the investigation; or

(b) if it thinks fit proceed to deal with the case as provided in Chapter XV.

[211] CPC: "more conveniently be inquired into".

(2) In the event of the court electing to proceed in accordance with paragraph (b) of subsection (1) it shall forthwith inform the officer in charge of the police station of its intention so to do and thereupon the police shall act according to the direction of the court.

120. (1) Every officer in charge of a police station conducting an investigation under section 117, or any police officer deputed by the officer in charge of a police station to conduct such investigation, shall keep a case diary in which he shall set forth in chronological order:

(a) the time when he began his investigation;

(b) any information received by him in connection with the investigation;

(c) the time when such information reached him;

(d) the places visited by him;

(e) any action required to be taken or directions given by a court in the course of the police investigations or inquiry by the court, and any facts ascertained as a result thereof;

(f) any report made by any police officer acting on his instructions;

(g) the statement of any witness, if reduced to writing;

(h) a statement of the circumstances ascertained through his investigation;

(i) the time when he closed the investigation.

(2) The First Information Report or a copy thereof shall in all cases be attached to and form part of the case diary.

121. (1) Nothing in any way included in or forming part of a case diary shall be admissible in evidence in any inquiry or trial unless it is admissible under the provision of the Islamic Law[212] or of this Sharia Criminal Procedure Code or of rules made thereunder but:

(a) a court may if it thinks fit order the production of the case diary for its inspection under the provisions of section 142;

(b) the Attorney-General may at any time order the submission of the case diary to himself;

(c) any relevant part of the case diary may be used by a police officer who made the same to refresh his memory if called as a witness.

(2) Save to the extent that:

(a) anything in any way included in or forming part of a case diary is admitted in evidence in any inquiry or trial in pursuance of the provisions of subsection (1), or

(b) the case diary is used for the purposes set out in paragraph (c) of subsection (1),

the accused or his agent shall not be permitted to call for or inspect such case diary or any part thereof but where for the purpose of paragraph (a) or (b) any such inspection is permitted, such inspection shall be limited to the part of the case diary referred to in paragraph (a) or (b) as the case may be.

[212] CPC: "the Evidence Act". Kebbi: "Sharia Law".

122. (1) A police officer making an investigation under section 117 may require the attendance before him, of any person being within the limits of his own police district, whose evidence appears likely to be of assistance in the case, and may examine such person orally.

(2) A person referred to in subsection (1) shall be bound to attend and to answer the questions put to him except that, he shall be warned that he is not bound to answer if his answer would tend to expose him to a criminal charge or to a penalty other than a charge of failing to give information under Chapter XI of this Code.

(3) No person giving evidence in an investigation under section 117 shall be required to take an oath.

123. (1) No police officer or person in authority shall make use of any threat or of any promise of an advantage towards any person in an investigation under this chapter in order to influence the evidence he may give.

(2) No police officer or other person shall prevent any person from making in the course of the investigation any statement in accordance with any rules made under section 337 of this Code which of his own free will he may be disposed to make.

124. (1) If any person in the course of an investigation under section 117 or at any time after the close of the investigation but before commencement of any trial confesses to the commission of an offence in connection with the subject matter of the investigation he may be taken before a justice of the peace, when available, for his statement to be recorded by such justice of the peace and thereafter placed in the case diary.

(2) When a justice of the peace records such confession he shall do so in detail in his own handwriting in the presence of the person making the confession and after reading over to him such record, the justice of the peace shall sign it.

(3) No justice of the peace shall record any such confession unless after questioning the person making it he is satisfied that it is made voluntarily.

(4) No oath shall be administered to any person making such confession.

(5) The record of such confession in the case diary if made by a justice of the peace in accordance with this section shall be admissible as evidence against the person who made the confession and if so admitted shall be read out in court and it shall not be necessary to call as a witness the justice of the peace who recorded it:

Provided that the court trying the case may if it thinks fit either on the application of the accused or of its own motion call the justice of the peace who recorded the confession as a witness to the contents and to prove the circumstances in which it was recorded.

125. (1) If any person in the course of an investigation under section 117 or at any time after the close of the investigation but before the commencement of any trial confesses to the commission of an offence in connection with the subject matter of the investigation, a police officer may, instead of taking the person before a justice of the peace, record such confession in the case diary in his own handwriting in the presence of the person making the confession and after reading over to that person such record shall require him to sign or seal it and the police officer shall also sign it.

(2) No police officer shall record any such confession unless after questioning the person making it he is satisfied that it is made voluntarily.

(3) No oath shall be administered to any person making such confession.

(4) Subject to the provision of Islamic Law[213] and of any rules made under paragraph (f) of subsection (1) of section 337 of this Code, the record of a confession in the case diary if made by a police officer in accordance with this section shall be admissible as evidence against the person who made the confession and if so admitted shall be read out in court.

126. (1) A person under arrest upon reasonable suspicion of having been concerned in an offence punishable with imprisonment may be required by any justice of the peace or police officer to submit to a medical examination by a medical officer or if no medical officer is available by a dispensary attendant.

(2) Such a medical examination shall only be required if it is so desirable in the interests of justice.

127. (1) A court holding a trial or a police officer conducting an investigation may cause the fingerprints, photograph or measurements of any person to be taken if satisfied that it is desirable in furtherance of the purposes of the trial or investigation.

(2) All fingerprints, photographs or records of measurements taken under this section may be kept for six months but if not already destroyed shall then be destroyed unless the person in respect of whom they were taken has been convicted of an offence.

(3) Notwithstanding the provisions of subsection (2), when a person who has not previously been convicted of an offence is discharged by the court or acquitted upon his trial or is not charged, all fingerprints, photographs and records of measurements taken under this section shall forthwith be destroyed.

128. (1) Whenever it appears that an investigation under section 117 cannot be completed within twenty-four hours of the arrival of the accused or suspected person at the police station, the officer in charge of the police station shall release or discharge him under section 304, or send him as soon as practicable to the nearest court competent under Chapter XV to take cognizance of the offence.

(2) The court may from time to time, on the application of the officer in charge of a police station, authorise the detention of the person under arrest in such custody as it thinks fit for a time not exceeding fifteen days, and shall record its reasons for so doing.

(3) If the court refuses to authorise detention of the accused under arrest it shall make an order of discharge under section 44.

(4) If the police investigation is not completed within fifteen days and the court considers it advisable that the accused should be detained in custody pending further investigation it shall remand the accused as provided in section 223 of this Code.

Provided that the total period for which the accused may be detained under this section shall not exceed ninety days and at the end of such period, the court may make an order of discharge.[214]

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[213] CPC: "Evidence Law". Kebbi: "Sharia Law".

[214] This as in Kano CPC after amendment by Edict No. 15 of 1978. Proviso not included in CPC of 1960.

129. (1) If in the course of an investigation under section 117 it appears to the officer in charge of a police station by or under whom an investigation is being made that such investigation should be terminated without a trial, he shall after entering in the case diary a summary of the case and his reasons for terminating the investigation, close the case diary and terminate the investigation:

Provided that nothing in this subsection shall prevent the officer in charge of a police station from re-opening the case diary and continuing the investigation if further information is given to him concerning the commission of the offence.

(2) When an investigation has been terminated or reopened under the provisions of this section, the officer in charge of a police station shall forthwith inform the court and the court shall thereupon endorse upon the First Information Report the fact of such termination or re-opening and the reasons therefor:

Provided that the court may, if it is not satisfied from the information given that the investigation has been properly terminated order that the investigation be continued and the case diary be re-opened; and if the court shall think fit may send a copy of the First Information Report endorsed as aforesaid together with the reasons stated by the officer in charge of a police station to the Attorney-General with any comments that it may think fit to make.

(3) When any person has been taken into custody in the course of an investigation and such investigation has been terminated under the provisions of subsections (1) and (2) the officer in charge of a police station shall on such termination forthwith release him, or, if he has been remanded in custody by the court, shall cause an application to be made to the court for an order that such person be released.

(4) Nothing in this section shall affect the power of the police to released an arrested person under section 44.

(5) Notwithstanding the provisions of this section, an officer in charge of a police station shall not order the termination of an investigation, which has been instituted by direction of the Attorney-General.

130. Subject to section 146, if upon an investigation under this chapter, it appears to the officer in charge of a police station that there is sufficient evidence or reasonable ground or suspicion to justify sending the accused to a competent court to take cognizance of the offence he shall send the accused to such court which may where applicable, fix a day for the trial or remand the accused in custody or on bail as the case may be:

(a) for his appearance before such court on day to be fixed and thereafter for his attendance from day to day before such court until otherwise directed; or

(b) for his appearance before another court having jurisdiction to try the offence.[215]

[215] This as in Kano CPC after amendment by Edict No. 15 of 1978. CPC of 1960 had: "If, upon investigation under this chapter, it appears to the officer in charge of a police station that there is sufficient evidence or reasonable ground or suspicion to justify sending the accused to a court empowered to take cognizance of the offence, he shall send the accused to such court which may fix a day for the inquiry or trial, or, if the offence is bailable and the accused is able to give security, shall take security from him for his appearance before such court on a day to be fixed, and thereafter for his attendance from day to day before such court until otherwise directed."

131. (1) If under the provisions of section 130 the court fixes a day for a trial the officer in charge of a police station shall subject to any orders or directions of the court:

(a) require the complainant, if any, and all persons likely to be required as witnesses to execute bonds without sureties to appear before the court as thereby directed and to prosecute or give evidence, as the case may be, in the matter of the trial;

(b) arrange for the accused whether in custody or on bail to be before the court on the day fixed for the trial;

(2) A copy of a bond executed under subsection (1) shall be handed to the person executing the same and the original shall be forwarded to the court for filing.

(3) If any person required to execute a bond under this section refuses to do so, he may be sent in custody to the court which may order his detention until he executes the bond or until the hearing of the case is concluded.

B – Procedure in Cases where the Police may not Arrest Without a Warrant

132. (1) When an information is received by an officer in charge of a police station of facts pointing to the commission of an offence for which the police may not arrest without a warrant, he shall enter the substance of the information in a book in the form prescribed in accordance with subsection (1) of section 116 of this Code and either in a First Information Report or in such other report as may be prescribed in respect of the offence and thereupon refer the informant, if other than a public servant acting in the exercise of his public duties, to a justice of the peace and send the First Information Report or such other report to the same justice of the peace and the justice of the peace on receipt thereof shall, if the police show sufficient cause, issue a warrant.

(2) No investigation of such an information shall be made by any police officer without the order of a justice of the peace or superior police officer unless the circumstances appear to be such that the delay which would be caused by submitting the report may seriously prejudice the interest of justice, in which case the investigation may be commenced forthwith but a report shall be sent as soon as possible to a justice of the peace or superior police officer giving the reasons for the action taken and on the receipt of the report of the justice of the peace or superior police officer may give such orders or direction as he thinks fit.

(3) The functions conferred on a superior police officer by subsection (2) may be exercised by such other police officers as the Commissioner of Police for the State may by office appoint.[216]

(4) Any investigation of such an information undertaken by a police officer either by direction of a justice of the peace or superior police officer under subsection (2) or without such direction under subsection (2) shall be conducted in such manner and with such powers as are set out in this chapter save that no arrest of a suspected person shall be made without warrant.

[216] Kebbi omits this subsection.

PART VI – PROCEEDINGS IN PROSECUTIONS

CHAPTER XIII – PLACE OF TRIAL

133. Every offence shall ordinarily be tried by a court within the local limits of whose jurisdiction:

(a) the offence was wholly or in part committed, or some act forming part of the offence was done;

(b) some consequence of the offence has ensued;

(c) some offence was committed by reference to which the offence is defined; or

(d) some person against whom, or property in respect of which, the offence was committed is found, having been transported whether by the offender or by some person knowing of the offence.

Illustrations:

(a) A posts in Abuja a letter addressed to B in Kaduna threatening to accuse B of an offence in order to extort money from him.

(b) A stabs B at Abuja and B dies ten days later at Kaduna in consequence of the wound.

(c) A in Abuja abets an offence committed by B at Kaduna.

(d) A abducts B at Abuja and carries him to Kaduna where he is found.

(e) A steals property at Abuja and the property is taken by B who knows it to be stolen, to *Kaduna where it is found.*

In all the above cases A may be tried either at Abuja or at Kaduna.

134. When it is uncertain in which of several districts an offence was wholly or in part committed, the offence may be tried by a court having jurisdiction over any of such districts.[217]

135. An offence committed by a person whilst he is in the course of performing a journey or voyage may be tried by a court through or into the local limits of whose jurisdiction he, or the person against whom, or the thing in respect of which, the offence was committed, resides, is or passed in the course of that journey or voyage.

136. Whenever a question arises as to which of two or more courts ought to try an offence it shall be decided by the Grand Kadi.[218]

137. (1) The Grand Kadi may,[219] whenever it appears to him that the transfer of a case will promote the ends of justice or will be in the interest of the public peace transfer any case from one court to another at any stage of the proceedings.

(2) Nothing in this section shall affect powers of transfer under the provisions of the Sharia Courts Law.[220]

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[217] Jigawa uses "divisions" rather than "districts".

[218] Borno: "by the Chief Judge on the recommendation of the Grand Khadi". Zamfara: "by the Chief Judge". Sokoto makes this subsection (1) of this section, and adds a subsection (2) as follows: "(2) Where the Grand Kadi takes a decision under subsection (1) above such decision shall be final".

[219] Borno: "the Chief Judge may, on the recommendation of the Grand Khadi". Zamfara: "the Chief Judge may".

[220] Kaduna omits subsection (2).

138. Subject to section 146 of this Code when a court has reason to believe that any person within the local limits of its jurisdiction has committed without such limits an offence which cannot under the provisions of section 133 of this Code or any other law for the time being in force, be tried within such local limits but is under any law for the time being in force, triable in the State, it may take cognizance of the offence as if it had been committed within the local limits of its jurisdiction and compel such person in manner hereinbefore provided to appear before it and send him to a court having jurisdiction to try the offence, or, if the offence is bailable may take a bond with or without sureties for his appearance before such a court.[221]

CHAPTER XIV – SANCTIONS NECESSARY FOR THE INITIATION OF CERTAIN PROCEEDINGS

139. (1) No court shall take cognizance:

(a) of any offence punishable under section 307 to 323 of the Sharia Penal Code, except with the previous sanction or on the complaint of the public servant concerned or of some public servant to whom he is subordinate;

(b) of any offence punishable under section 326, 329, 330, 331, 332, 335, 336, 345, 346, 347, 350, 351 or 353 of the Sharia Penal Code when such offence is committed in or in relation to any proceeding in any court, except with the previous sanction or on the complaint of such court;

(c) of any offence described in section 252 of the Sharia Penal Code or punishable under section 255 or section 258 of the Sharia Penal Code, when such offence has been committed by a party to any proceeding in respect of a document produced or given in evidence in such proceeding, except with the previous sanction or on the complaint of such court;

(d) of any offence punishable under paragraph (a) of section 285 of the Sharia Penal Code where the circumstances are such as to constitute an offence under section 6 of the Public Order Act, except with the sanction of the Attorney-General;

(e) of any offence punishable under section 124 of the Sharia Penal Code except with the sanction of the Attorney-General.

(2) The provisions of subsection (1) with reference to the offences named therein, apply also to the abetment of such offences and attempts to commit them.

(3) The sanction referred to in this section may be expressed in general terms and need not name the accused person, but it shall, so far as practicable, specify the place where and the occasion on which the offence was committed.

(4) When sanction is given in respect of any offence referred to in this section, the court taking cognizance of the case may frame a charge of any other offence so referred to which is disclosed by the facts.

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[221] This as in Kano CPC after amendment by Edict No. 15 of 1978. CPC of 1960 was essentially the same, except without the initial "Subject to section 145 of this code", and using "be inquired into or tried within such local limits" rather than "be tried . . ."; "it may inquire into the offence" rather than "take cognizance . . ."; and "send him to a court having jurisdiction to inquire into the offence" rather than "jurisdiction to try the offence".

(5) Any sanction given or refused under this section may be revoked or granted by any authority to which the authority giving or refusing it is subordinate.

140. No court shall take cognizance of any offence falling under sections 270-271 or sections 138-142 of the Sharia Penal Code except upon a complaint made by some person aggrieved by such offence, but where the person so aggrieved is a woman[222] or where such a person is under the age of 18 or is an idiot or lunatic or is from sickness or infirmity unable to lodge a complaint, some other person may, with the leave of the court, lodge a complaint on his behalf,[223] [and in case of offence under sections 141-142 of the Sharia Penal Code where the party so aggrieved is other than the State Government or Local Government, a police officer may in the public interest and with the consent of the Attorney-General, make a complaint on behalf of such party.][224]

141. (1) No court shall take cognizance of an offence under sections 125-126 of the Sharia Penal Code except:

(a) upon a complaint made by the husband of the woman or in his absence by some person who had care of such woman on his behalf at the time when the offence was committed; or

(b) in the case of the woman being unmarried upon a complaint made by her father or guardian or in his absence by some person who had care of such unmarried woman on his behalf at the time when the offence was committed.

(2) Where the husband, father or guardian referred to in subsection (1) is under the age of eighteen years, or is an idiot or lunatic or is from sickness or infirmity unable to make a complaint some other person may, with the leave of the court, make a complaint on his behalf.[225]

CHAPTER XV – INITIATION OF JUDICIAL PROCEEDINGS BEFORE A COURT

142. Subject to the provisions of Chapters XIII and XIV of this Code, a court may take cognizance of any offence committed within the local limits of its jurisdiction:

(a) when an arrested person is brought before it under section 39 or 40 of this Code;

(b) upon receiving a First Information Report under section 117 of this Code or from any other court;

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[222] CPC, Zamfara: "is a woman who according to the customs and manners of the country ought not to be compelled to appear in public".

[223] Kebbi, Sokoto: "some other person may, with the leave of the court and on production of two witnesses make a complaint on his or her behalf".

[224] Bracketed part: CPC: "and in the case of an offence under section 393 of the Penal Code where the party so aggrieved is the Government or a Native Authority or a Local Government Authority the Attorney-General may make a complaint on behalf of the Government, and a member of the native authority or Local Government Authority may make a complaint on behalf of such native authority or Local Government Authority." Jigawa, Kebbi, Sokoto, Zamfara: "and in case of an offence under sections 142 to 143 of the Sharia Penal Code where the party so aggrieved is the Government or a Local Government the Attorney-General may make a complaint on behalf of the Government, and a member of the Local Government and in the case of an offence under sections 142 to 143 of the Sharia Penal Code where the party so aggrieved is other than the Government, or Local Government, a police officer may, in the public interest and with the sanction of the Attorney-General, make a complaint on behalf of such party".

[225] This section is omitted on all SCPCs.

(c) upon receiving a complaint in writing from the Attorney-General;

(d) upon receiving a complaint of facts which constitute the offence;

(e) if from information received from any person other than a police officer it has reason to believe or suspect that an offence has been committed.[226]

143. When the accused person appears before a court taking cognizance of an offence, the court may require the police officer if any, in charge of the investigation, or any police officer acting on his behalf, to state a summary of the case and, if the court thinks fit, to produce the case diary for its inspection; and upon the application of any such police officer or of its own motion, the court may give such directions as to the matters to be proved and how they are to be proved, and what documents or other exhibits are to be produced as the court may think fit.

144. When a court has exercised its powers under section 143 it shall inform the accused person that he is not required to say anything at that stage, but that if he wishes to inform the court of the substance of his defence he can do so in order that the court may give him such advice as it may think fit.

145. (1) A court taking cognizance of an offence on complaint shall, subject to the exercise of its powers under sections 143 and 144, thereupon examine the complainant and reduce his complaint and the substance of the examination to writing, and the writing shall be signed or sealed by the complainant if he is able so to do.

(2) A court may in its discretion conduct such examination on oath.

(3) When the complaint is made in writing and signed by a public servant acting or purporting to act in the execution of his official duties, the court may, if it thinks fit, and shall when the complaint is made by a court under section 279 of this Code proceed with the trial of the case without examining the complainant under this section.

146. If an offence of which a court takes cognizance ought properly or more conveniently to be tried by another court, the said court taking cognizance shall send the case to such other court for trial.[227]

147. If a court taking cognizance of an offence under the provisions of section 142 of this Code is of the opinion that an investigation or further investigation should be conducted under the provisions of Chapter XII, the court shall order that such an investigation or further investigation shall be conducted in the same manner and with the same powers as are set out in Chapter XII; and at the time when such order is made or at any stage of the investigation or further investigation, the police officer in charge of the investigation, or any police officer acting on his behalf, may appear before the court and apply for directions as to

[226] This as in Kano CPC after amendment by Edict No. 15 of 1978. CPC of 1960, in the prefatory language, had "Subject to the provisions of chapters XIII and XIV and to any limitation on the powers of the court, a court may take cognizance of an offence:"; and in subsection (b) did not have the phrase "or from any other court".

[227] This as in Kano CPC after amendment by Edict No. 15 of 1978, except that a proviso relating to the case where the proper or more convenient court is the High Court is here omitted. CPC of 1960 had: If an offence of which a court takes cognizance ought properly to be inquired into or tried by another court or if in the opinion of the court taking cognizance thereof the offence might be more conveniently inquired into or tried by another court, it shall send the case to such other court."

the matters to be proved and how they are to be proved, and what documents, if any, are to be produced.

148. (1) A Sharia Court taking cognizance of an alleged offence on the complaint of any person other than a police officer may, for reasons to be recorded in writing, refer the matter to any police officer for investigation.[228]

(2) An investigation by a police officer under the provisions of subsection (1) shall be conducted so far as may be in the manner and with the powers in and with which an investigation under Chapter XII is conducted, and shall, if the police have already investigated the case, be deemed to be a continuation of that investigation.

149. (1) A Sharia Court taking cognizance of an alleged offence may refuse to proceed with the case if after examining the complainant, if any, and considering the result of any investigation held under Chapter XII or section 148 of this Code, there is in its opinion no sufficient ground for proceeding; and it shall thereupon briefly record its reasons for so refusing.

(2) Where there is in the opinion of the Attorney-General, no sufficient ground for any charge to be preferred in accordance with section 159 of this Code, against the accused, the Attorney-General may subject to the provision of section 211 of the constitution of the Federal Republic of Nigeria 1999 discontinue the case.

(3) If the accused is in custody or on bail, he shall be discharged when, under this section, the court refuses to proceed or the Attorney-General discontinues the case.

(4) A person aggrieved by a refusal of a court to proceed with a case may apply to the appropriate appeal court with an affidavit setting out the facts for an order directing the transfer of the case to another court of competent jurisdiction to hear and determine the case or matter.[229]

150. (1) If a First Information Report or a complaint in writing is received by a court which is not competent to take cognizance of the offence, the court shall return the First Information Report or complaint for presentation to the proper court with an endorsement to that effect.

(2) If a complaint not in writing is made to a court which is not competent to take cognizance of the offence the court shall direct the complaint to the proper court.

151. When a court taking cognizance of an offence is satisfied that there is sufficient ground for proceeding, it shall after causing process to issue for the attendance of the

[228] This as in Kano CPC after amendment by Edict No. 13 of 1977. CPC of 1960 had: "(1) If a court taking cognizance of an alleged offence on the complaint of any person other than a police officer is not satisfied that the offence has been committed or if for any other reason the court deems it expedient to do so, it may make an inquiry into the case or direct any subordinate court to do so or refer the matter to any police officer for investigation."

[229] This whole section as in Kano CPC after amendment by Edict No. 15 of 1978, except that in subsection (2) the words "subject to the provision of section 211 of the constitution of the Federal Republic of Nigeria 1999" have been newly inserted here. These words are also omitted in Borno, Gombe, Jigawa, Kebbi, Sokoto and Zamfara SCPCs. CPC of 1960 did not have what is here subsection (2) at all, and its subsection (2), here subsection (3), provided only that: "If the accused is in custody or bail he shall be discharged when the court refuses under this section to proceed."

accused person, if he is not already in custody or on bail, proceed to try it provided that it has jurisdiction to try the offence.[230]

152. Every accused person shall, subject to the provisions of section 153 of this Code, be present in court during the whole of his trial unless he misconducts himself by so interrupting the proceedings or otherwise as to render their continuance in his presence impracticable.

153. (1) Process to compel the attendance of the accused person shall ordinarily be a summons or a warrant according to the opinion of the court. A summons or a warrant should according to the fourth column of Appendix A issue in the first instance.[231]

(2) When a summons is issued the court may if it sees reason to do so dispense with the personal attendance of the accused:

Provided that:

(a) he is represented by counsel; or

(b) he authorises in writing his agent or relations to represent him;[232] or

(c) he pleads guilty in writing.[233]

(3) Notwithstanding the provisions of subsection (2), the court shall not, without adjourning for his personal attendance sentence the accused to any term of imprisonment or to any other form of detention or order him to be subject to any disqualification.

CHAPTER XVI – TRIALS AND OTHER JUDICIAL PROCEEDINGS BEFORE SHARIA COURTS[234]

154. The procedure laid down in this chapter shall be observed by the Sharia Courts.[235]

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[230] This as in Kano CPC after amendment by Edict No. 15 of 1978. CPC of 1960 had: ". . . proceed either to hold an inquiry into the offence or to try it provided that the court is competent to do so."

[231] CPC: "Process to compel the attendance of the accused person shall ordinarily be a summons or a warrant according as in the opinion of the court a summons or a warrant should according to the fourth column of Appendix A issue in the first instance."

[232] CPC does not have this subsection (b).

[233] Kebbi and Sokoto add: "duly signed by him".

[234] In CPC, the title of Chapter XVI is SUMMARY TRIALS IN MAGISTRATES' COURTS, comprising §§155-166 of CPC, which correspond to §§153-164 here. The remaining sections of this chapter, i.e. §§165-171, are drawn from the chapter of CPC on TRIALS BY THE HIGH COURT, omitted here, (§§167 and 168 = CPC §§196 and 198) and from the chapter of CPC on TRIALS IN NATIVE COURTS, also omitted here (§§165, 166, 169, 170 and 171 = CPC §§391, 392, 393, 395 and 396, respectively), with such variations as are indicated in notes to the separate sections.

[235] CPC of 1960: "Subject to the provisions of chapter XXXIII [TRIALS IN NATIVE [subsequently Area] COURTS], the procedure laid down in this chapter shall be observed by magistrates' courts and native [area] courts." In 1979 Kano State repealed chapter XXXIII of its CPC and made this chapter XVI – as it does here – apply unqualifiedly to trials in Area Courts, Kano No. 4 of 1979. Jigawa: "(1) In any matter of a criminal nature a Sharia Court shall be guided in regard to practice and procedure by the provision of this code. (2) Notwithstanding the provisions of subsection (1) all Sharia Courts shall be bounded by the following provisions: (a) Chapter XVI sections 151-168; (b) sections 191, 192, 196, 204, 205, 203, 214, 215, 218, 233, 234, 240, 241, 246, 254, 255, 256, 257, 258, 259, 261, 262, 263; (c) Chapter XXVII sections 298-313; and (3) The provisions of Islamic Law of practice and procedure in

155. When the accused appears or is brought before the court the particulars of the offence of which he is accused shall be stated to him and he shall be asked if he has any cause to show why he should not be convicted.[236]

156. If the accused admits that he has committed the offence of which he is accused his admission shall be recorded as nearly as possible in the words used by him and if he shows no sufficient cause why he should not be convicted the court may convict him accordingly.[237]

Provided where the accused appears before the court by himself and makes the admission of the commission of the offence, the court shall before convicting him satisfy itself that the accused has clearly understood the meaning of the offence in all its details and essentials, the effect of his admission, and, in addition, the court shall inform the accused of his option to retract his admission.[238]

157. (1) When the court decides not to convict the accused under section 156 or when an accused person states that he intends to show cause why he should not be convicted the court shall proceed to hear the complainant, if any, and take all such evidence as may be produced in support of the prosecution.

(2) The court shall ascertain from the complainant or otherwise the names of any person likely to be acquainted with the facts of the case and to be able to give evidence for the prosecution and shall summon to give evidence before the court such of them as the court thinks necessary.

(3) The accused shall be at liberty to cross-examine the witnesses for the prosecution and, if he does so, the prosecutor may re-examine them.[239]

158. (1) If upon taking all the evidence referred to in section 157 and making such examination, if any, of the accused as may be made in accordance with section 201 the court finds that no case against the accused has been made out which if not rebutted would warrant his conviction the court shall discharge him.

(2) The court may discharge the accused at any previous[240] stage of the case, if for reasons to be recorded by the court it considers the charge to be groundless.

(3) A discharge under this section shall not be a bar to further proceedings against the accused in respect of the same matter.

(4) No oath shall be administered to the accused for the purposes of an examination under this section.[241]

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criminal matters as contained in the recommended texts of the Sharia." Editor's note: it appears that Jigawa's subsection (3) should be sub-subsection (d) of subsection (2).

[236] Jigawa: "shall be stated to him and he shall be asked if the information is true, if he admits same shall be asked if he has any cause to show why he should not be convicted."

[237] CPC adds: "and in that case it shall not be necessary to frame a formal charge". CPC also has two further subsections: "(2) The Governor may by order specify the maximum sentence of imprisonment or the maximum fine which any grade or class of court may impose on a conviction under this section. (3) No court shall exercise any powers under subsection (1) unless an order under subsection (2) has been made in respect of that grade or class of court."

[238] CPC does not have this proviso.

[239] Jigawa: "The accused shall be at liberty to impeach the evidence of the witnesses for the prosecution."

[240] Jigawa omits the word 'previous'.

159. If when the evidence referred to in section 157 of this Code and the examination referred to in section 158 of this Code have been taken and made or at any previous stage of the case the court is of opinion that there is ground for presuming that the accused has committed an offence triable under this chapter, which such court is competent to try and which in the opinion of the court could be adequately punished thereby, the court shall frame a charge declaring with what offence the accused is charged and shall then proceed as hereinafter provided.[242]

160. (1) If the court is of the opinion that the offence is one which having regard to section 159 it should try itself, the charge shall then be read and explained to the accused and he shall be asked whether he is guilty or has any defence to make.

(2) If the accused pleads guilty, the court shall record the plea and may in its discretion convict him thereon.

(3) The court shall before convicting on a plea of guilty satisfy itself that the accused has clearly understood the meaning of the charge in all its details and essentials and also the effect of his plea.

161. (1) If the accused pleads not guilty or makes no plea or refuses to plead, he shall be required to state whether he wishes to cross-examine or further cross-examine any, and if so which, of the witnesses for the prosecution whose evidence has been taken.

(2) If the accused wishes to impeach or[243] cross-examine or further cross-examine under the provisions of subsection (1) the witness named by him shall be recalled and after cross-examination and re-examination, if any, they shall be discharged.

(3) The evidence of any remaining witnesses for the prosecution shall next be taken and after impeachment,[244] cross-examination and re-examination, if any, they also shall be discharged.

(4) The accused shall then be called upon to enter upon his defence and produce his evidence.

(5) If the accused puts in any written statement, the court shall file it with record.

(6) The complainant or prosecutor may cross-examine any witnesses produced for the defence and the accused may re-examine them.[245]

162. (1) The court shall call upon the accused person to inform the court of the names and whereabouts of any witnesses whom he intends to call his defence.[246]

(2) Thereafter, the accused may apply to the court to issue any process for compelling the attendance of any witness for the purpose of examination or the production of any document or other thing and the court shall issue such process unless for reasons to

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[241] Kebbi omits this subsection (4).
[242] This as in Kano CPC after amendment by Edict No. 13 of 1977. CPC of 1960 has two additional subsections relating to proceedings in magistrates' courts and committal for trial in the High Court.
[243] CPC omits the words "impeach or".
[244] CPC omits "impeachment".
[245] Jigawa omits "and the accused may re-examine them".
[246] This subsection drawn from §389 of CPC, in the chapter on TRIALS IN NATIVE [AREA] COURTS, on "right of accused to state case and adduce evidence". What are here subsections (2) and (3) are subsections (1) and (2) in CPC.

be recorded by it in writing if it considers that the application is made for the purpose of vexation or delay or of defeating the ends of justice.

(3) The court may before summoning any witness on an application under subsection (1) require that reasonable expenses incurred by such witness in attending for the purposes of the trial be deposited in court.

163. (1) If in any case under this chapter in which a charge has been framed the court finds the accused not guilty, it shall record an order of discharge.[247]

(2) If in any case under this chapter in which a charge has been framed the court finds the accused guilty, it shall announce its finding[248] and shall thereafter, if the accused has not previously called any witness to character, call upon him to produce such witness if he so desires and, if he wishes, to make a statement in mitigation of punishment.

(3) The record of the accused's previous convictions, if any, if it has not already been put in evidence, shall be produced and if necessary proved by the police.[249]

(4) The court shall then pass sentence upon the accused according to law.

164. When the proceedings have been instituted upon complaint and upon any day fixed for the hearing of the case the complainant or prosecutor is absent, the court may in its discretion notwithstanding anything hereinbefore contained at any time before the charge has been framed discharge the accused.

165. (1) If, in any case instituted by complaint as defined in this Sharia Criminal Procedure Code or upon information given to a police officer or a court and heard under this chapter, the court discharges the accused[250] and is satisfied that the accusation against him was frivolous or vexatious, the court may in its discretion by its order of discharge[251] direct the complainant or informant to pay to the accused, or to each of the accused where there are more than one, such compensation not exceeding five hundred naira to each such accused as the court thinks fit[252] and may award a term of imprisonment not exceeding three months in the aggregate in default of payment, and the provisions of section 98 of the Sharia Penal Code shall apply as if such compensation were a fine.

(2) Before making any decision under subsection (1) the court shall:

(a) record and consider any objection which the complainant or informant may urge against the making of the direction; and

(b) state in writing in its order of discharge its reasons for awarding the compensation.

(3) Compensation awarded under this section may be recovered as if it were a fine.

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[247] CPC, Kebbi, Sokoto: "order of acquittal".
[248] Kebbi, Sokoto: "announce its finding and conviction".
[249] Kaduna: "proved by the prosecution". Jigawa: "prosecutor".
[250] CPC: "discharges or acquits the accused".
[251] CPC: "discharge or acquittal".
[252] Kaduna omits "not exceeding five hundred naira to each such accused". Kebbi and Sokoto omit this entire section, including subsections (2), (3) and (4) below.

(4) Any person directed to make a payment of compensation under this section may appeal from the direction as if he had been convicted after trial by the court.[253]

166. (1) In taking evidence in any criminal matter a Sharia Court may test the credibility of any witness by examination.[254]

(2) Notwithstanding the provisions of this Sharia Criminal Procedure Code or of any other written law, a Sharia Court may in its discretion invite any witness to attest to the credibility of the witness to testify.[255]

(3) After hearing the evidence of any witness, a Sharia Court shall ask an accused person if there is any question which he wishes the court to put to the witness on his behalf and thereupon the court shall put to the witness any question which the accused person wishes the court to put on his behalf but shall not be bond to put to a witness any question which does not bear directly on facts which are material to the proper appreciation of the facts of the case.

167. A Sharia Court shall make its finding in any criminal matter upon the evidence which is before it and in making such finding nothing shall be taken into consideration which is not supported by the evidence.[256]

168. After the court has made its finding the court shall announce that finding.[257]

169. When the provisions of section 163(2) and (3) of this Code have been complied with the court may retire or adjourn to consider the sentence and the court shall, having determined the sentence, announce the same in open court. [258]

170. A Sharia Court having jurisdiction over *qisas* offences shall, before passing a sentence, invite the blood relatives of the deceased person, or the complainant as the case may be, to express their wishes as to whether retaliation should be carried out, or *diyah* should be paid or the accused should be forgiven and the court shall record such wishes in the record of proceedings.[259]

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[253] This subsection (4) as in Kano after amendment by KSLN of 1982; CPC of 1960 does not have it.
[254] This entire section drawn from §391 of CPC, in the chapter on TRIALS IN NATIVE [AREA] COURTS".
[255] CPC: "(2) Notwithstanding the provisions of this Criminal Procedure Code or of any other written law, a native court [subsequently Area Court] may in its discretion invite any witness to take an oath as to the truth of his evidence or any part thereof either before he gives such evidence or at any subsequent stage of the proceedings and if such witness refuses to take any such oath the court may draw such inference from such refusal as it thinks just."
[256] This section = CPC §392, in the chapter on TRIALS IN NATIVE [AREA] COURTS.
[257] This section = CPC §196, in the chapter on TRIALS BY THE HIGH COURT.
[258] This section = CPC §198, in the chapter on TRIALS BY THE HIGH COURT, except that CPC says the court "shall retire or adjourn to consider and dtrmine the sentence and shall then announce the same in open court". Kebbi adds a proviso to this section: "*Provided that* whenever any person is charged with a criminal offence he shall, unless the charge [is] withdrawn, be entitled to fair hearing within three months peiod by a Sharia Court, Upper Sharia Court or Sharia Court of Appeal whether on original [or] appellate jurisdiction."
[259] This section based on CPC §393, in the chapter on TRIALS IN NATIVE COURTS, which however reads as follows: "A native [area] court having jurisdiction over capital offences shall, before passing a sentence of death, invite the blood relatives of the deceased person, if they can be found and brought to court, to express their wishes as to whether a death sentence should be carried out and shall record such wishes in the record of the proceedings."

171. (1) In the trial of a criminal matter a Sharia Court shall make a record of the proceedings in the prescribed form and shall record the following particulars:[260]

(a) the serial number of the case;

(b) the name, tribe or nationality, residence, occupation and age of the accused;[261]

(c) the name, tribe or nationality, occupation and age of the complainant;[262]

(d) the offence complained of and the offence, if any, proved and, where relevant, the value of the property in respect of which the offence has been committed;

(e) the date and place of commission of the offence and the date of arrest;

(f) the date of the complaint or First Information Report;

(g) the names of the witnesses for the prosecution and defence and a record of their evidence in narrative form;

(h) the plea of the accused and his examination;

(i) the finding and, in the case of conviction, reasons therefore with a reference to the Sharia Penal Code or other Act or Law;

(j) the sentence or other final order;

(k) the date on which the proceedings terminated.

(2) The alkali or president[263] of the court shall sign or seal the record of proceedings.

172. Any person[264] appointed a justice of the peace under the provisions of this Sharia Criminal Procedure Code shall be bound to observe the provisions of this Sharia Criminal Procedure Code in the exercise of his powers as justice of peace.

[Chapter on PRELIMINARY INQUIRY AND COMMITMENT FOR TRIAL TO THE HIGH COURT][265]

[Chapter on TRIALS BY THE HIGH COURT][266]

CHAPTER XVII – CHARGES

173. Charges may be as in the forms set out in Appendix B[267] modified in such respect as may be necessary to adapt them to the circumstances of each case.

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[260] This section = CPC §395, in the chapter on TRIALS IN NATIVE COURTS.
[261] Jigawa includes "religion" after "name".
[262] CPC says "complainant if any".
[263] Borno, Kebbi, Sokoto omit "or president". Kaduna: "alkali or presiding judge".
[264] This section = CPC §396, in the chapter on TRIALS IN NATIVE COURTS, except that CPC has "Any president or member of a native court appointed a justice of the peace . . .". Kaduna and Jigawa, evidently in error, refer twice in this section to "this Sharia Penal Code".
[265] In CPC of 1960, Chapter XVII was entitled PRELIMINARY INQUIRY AND COMMITMENT FOR TRIAL TO THE HIGH COURT. This entire chapter was deleted in Kano by Edict No. 13 of 1977, and no sections from it are included in this code.
[266] In CPC of 1960, Chapter XVIII was entitled TRIALS BY THE HIGH COURT. The entire chapter is omitted here, except for two sections, namely CPC §§196 and 198 = §§167 and 168 above.
[267] We have omitted Appendix B from this annotated version of the code.

174. (1) Every charge under this Sharia Criminal Procedure Code shall have a statement of the offence complained of with date and place, and when material, the value of the property in respect of which the offence has been committed.

(2) The charge shall also as much as possible define the offence so as to give the accused notice of the matter with which he is charged.[268]

** [Sections on "Particulars as to time, place and person", "Charge of criminal breach of trust, etc.", Charge of falsification of accounts", and "When manner of committing offence must be stated"][269]

175. No error in stating either the offence or the particulars required to be stated in the charge and no omission to state the offence or those particulars shall, be regarded, at any stage of the case as material, unless the accused was in fact misled by such error or omission and it has occasioned a failure of justice.[270]

176. (1) When any person is being tried by any Sharia Court on an imperfect or erroneous charge, the Sharia Court may permit or direct the framing of a new charge or add to or otherwise alter the original charge.[271]

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[268] CPC's section on contents of charges has five subsections, as follows: "(1) Every charge under this Criminal Procedure Code shall state the offence with which the accused is charged. (2) If the law which creates the offence gives it any specific name, the offence may be described in the charge by that name only. (3) If the law which creates the offence does not give it any specific name, so much of the definition of the offence must be stated as to give the accused notice of the matter with which he is charged. (4) The law and section of the law against which the offence is said to have been committed shall be mentioned in the charge. (5) The fact that the charge is made is equivalent to a statement that every legal condition required by law to constitute the offence charged was fulfilled in the particular case." Kebbi and Sokoto, alone among the SCPCs, include CPC's subsection (3) in addition to the two subsections included in this code.

[269] At this point CPC has four sections omitted here, as follows: §202: "*Particulars as to time, place and person*: The charge shall contain such particulars as to the time and place of the alleged offence and the person, if any, against whom, or the thing, if any, in respect of which, it was committed as are reasonably sufficient to give the accused notice of the matter with which he is charged." §203: "*Charge of criminal breach of trust, etc.* When the accused is charged with criminal breach of trust or criminal misappropriation of money, it shall be sufficient to specify the gross sum in respect of which the offence is alleged to have been committed and the dates between which the offence is alleged to have been committed without specifying particular items or exact dates, and the charge so framed shall be deemed to be a charge of a single offence." §204: "*Charge of falsification of accounts.* When the accused is charged with falsification of accounts under section 371 of the Penal Code it shall be sufficient to allege a general intent to defraud without naming any particular person intended to be defrauded or specifying any particular sum of money intended to be the subject of the fraud or any particular day on which the offence was committed." §205: "*When manner of committing offence must be stated.* When the nature of the case is such that the particulars mentioned in sections 203 and 204 do not give the accused sufficient notice of the matter with which he is charged, the charge shall also contain such particulars of the manner in which the alleged offence was committed as will be sufficient for that purpose [with three illustrations]."

[270] CPC four illustrations after this section, omitted in all SCPCs.

[271] As in Kano CPC after amendment by Edict No. 15 of 1978. CPC of 1960 had: "When any person is committed for trial without a charge or with an imperfect or erroneous charge the court may frame a charge or add to or otherwise alter the charge, as the case may be, having regard to the provisions of this Criminal Procedure Code as to the form of charges", with two illustrations following. Gombe: ". . . the Sharia Court may permit or direct the framing of a new charge or discharge the accused person."

(2) Every such alteration or addition or new charge shall be read and explained to the accused and his plea thereto shall be taken.

177. (1) Any Sharia Court may alter or add to any charge or frame a new charge at any time before judgment is pronounced.

(2) Every such alteration or addition or new charge shall be read and explained to the accused and his plea thereto shall be taken.[272]

178. If the charge as revised under section 176 or 177 is such that proceeding immediately with the trial is not likely in the opinion of the Sharia Court to prejudice the accused in his defence or the prosecutor, if any, in the conduct of the case, the Sharia Court may in its discretion forthwith proceed with the trial as if the charge so revised had been the original charge.

179. If the revised charge is such that proceeding immediately with the trial is likely in the opinion of the Sharia Court to prejudice the accused in his defence or the prosecutor, if any, in the conduct of the case, the Sharia Court may either direct a new trial or adjourn the trial for such period as may be necessary.

180. Whenever a charge is revised by the Sharia Court after the commencement of the trial, the prosecutor and the accused shall be allowed to recall or re-summon and examine with reference to such revision any witness who may have been examined and also to call any further witness whom the Sharia Court may consider to be material.

181. For every distinct offence of which any person is accused there shall be a separate charge and every such charge shall be tried separately, except in the cases mentioned in sections 182, 183, 184, 185 and 190.

Illustration:

A is accused of theft on one occasion and of causing grievous hurt on another occasion. A must be separately charged and separately tried for the theft and for causing grievous hurt.

182. Where a person is accused of several offences of the same or similar character he may be charged with and tried at one trial for any number of them; but if the court, before the trial or at any stage of the trial before judgment is pronounced, considers that he may be prejudiced or embarrassed in his defence by such procedure or that for any other reason it is desirable to do so, the court may order a separate trial of any one or more of such charges.

183. (1) If a series of acts so connected together as to form the same transaction is alleged, the accused may be charged with and tried at one trial for every offence which he would have committed if all of such acts or some one or more of them without the rest were proved.

(2) In passing sentence the court shall have regard to section 99 of the Sharia Penal Code.[273]

184. If a series of acts is of such a nature that it appears that an offence was committed on one of several occasions but it is doubtful whether the facts which can be proved will show

[272] Kebbi omits this entire section.

[273] CPC has two illustrations following this section, omitted in all SCPCs.

on which occasion an offence was committed, the accused may be charged with having committed an offence alternatively on one or other of such occasions.[274]

185. If a single act or series of acts is of such a nature that it is doubtful which of several different offences the facts which can be proved will constitute, the accused may be charged with having committed all or any one or more of such offences and any number of such charges may be tried together, or he may be charged in the alternative with having committed some or other of the said offences.

Illustration:

A is accused of an act which may amount to theft or receiving stolen property or criminal breach of trust. He may be charged (a) with theft and receiving stolen property and criminal breach of trust; or (b) with theft or receiving stolen property or criminal breach of trust alternatively; or (c) with one or two of these offences omitting the others or any of them.

186. If in the case mentioned in section 185 of this Code the accused is charged with one offence and it appears in evidence that he committed a different offence with which he might have been charged under the provisions of that section, he may be convicted of the offence which he is shown to have committed although he was not charged with it.[275]

Illustrations:

(a) *A is charged with stealing a bicycle. It is proved that he received the bicycle knowing it to have been stolen. A may be convicted of receiving stolen property although he was not charged with that offence.*

(b) A is charged with stealing a wireless set and it is proved in evidence that he obtained the wireless set by means of a criminal breach of trust. A may be convicted of criminal breach of trust although he was not charged with that offence.

(c) A is charged with rape and it is proved in evidence that he committed an act of gross indecency. A may be convicted of committing an act of gross indecency although he was not charged with that offence.

(d) A is charged with causing grievous hurt to Z and it is proved in evidence that A in fact abetted B to cause the grievous hurt to Z. If at the time of framing the charge A could have been charged with abetting the offence, A may be convicted of abetment.[276]

187. (1) When a person is charged with an offence consisting of several particulars, a combination of some only of which constitutes a complete lesser offence, and such combination is proved but the remaining particulars are not proved, he may be convicted of the lesser offence though he was not charged with it.

(2) When a person is charged with an offence and facts are proved which reduce it to a lesser offence, he may be convicted of the lesser offence although he is not charged with it.

188. When a person is charged with an offence he may be convicted of an attempt to commit such an offence although the attempt is not separately charged.

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[274] CPC has one illustration following this section, omitted in all SCPCs.

[275] Jigawa: "although he was not initially charged with it".

[276] CPC has a fifth illustration, omitted from all SCPCs, as follows: "A, a woman, is charged with culpable homicide punishable with death; in fact it is apparent in evidence that she killed her child who was under the age of twelve months while the balance of her mind was disturbed by reason of her not having fully recovered from the effect of giving birth to the child. A may be convicted of culpable homicide not punishable with death."

189. (1) When more than one charge is framed against the same person, and when a conviction has been obtained on one or more of them, the complainant or the officer conducting the prosecution may, with the consent of the court, withdraw the remaining charge or charges, or the court of its accord may stay the trial of such charge or charges.[277]

(2) A withdrawal under subsection (1) shall have the effect of a discharge[278] on the remaining charge or charges referred to in that subsection unless[279] the conviction be set aside on appeal or on review in which case the court, subject to any order of the court setting aside the conviction, may proceed with the trial of the charge or charges so withdrawn.[280]

(3) Notwithstanding the provisions of subsections (1) and (2), the Sharia Court shall not withdraw the remaining charges if it concerns *hudud* offences.[281]

190. The following persons may be charged and tried together, namely:

(a) persons accused of the same offence committed in the course of the same transaction;

(b) persons accused of an offence and persons accused of abetment or of an attempt to commit the same offence;

(c) persons accused of more than one offence of the same or similar character, committed by them jointly;

(d) persons accused of different offences committed in the course of the same transaction;

(e) persons accused of offences which include theft, extortion or criminal misappropriation and persons accused of receiving or retaining or assisting in the disposal or concealment of property, the possession of which has been transferred by offences committed by the first named persons, or of abetment of or attempting to commit any of the last named offences;

(f) persons accused of offences under sections 169, 170 and 171 of the Sharia Penal Code or either of those sections in respect of stolen property the possession of which has been transferred by one offence; and

(g) persons accused of offences committed during a fight or series of fights arising out of another fight, and persons accused of abetting any of these offences,[282]

and the provisions contained in the former part of this chapter shall, so far as may be, apply to all such charges.[283]

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[277] Gombe, instead of "the complainant or the officer conducting the prosecution may, with the consent of the court, withdraw the remaining charge or charges, or the court of its accord may stay", says simply that "the court may stay the trial of such charge or charges."
[278] CPC: "shall have the effect of an acquittal".
[279] Gombe: "if" instead of "unless".
[280] Gombe: "so stayed".
[281] CPC omits subsection (3).
[282] Borno omits subsection (g).
[283] Kaduna and Kebbi omit "and the provisions contained . . . may be applied to all such charges". CPC, Kebbi and Sokoto also have three illustrations after this section, as follows: " (a) A and B are

191. (1) If any appellate court is of opinion that any person convicted of an offence was misled in his defence by the absence of a charge, or by an error in the charge, and it has occasioned a failure of justice, it may direct that the trial be recommenced upon a charge framed in whatever manner it thinks fit.[284]

(2) If the court is of opinion that the facts of the case are such that no valid charge could be preferred against the accused in respect of the facts it shall quash the conviction.[285]

CHAPTER XVIII – PREVIOUS CONVICTIONS[286]

192. (1) A person who has once been tried by a court of competent jurisdiction for an offence and convicted[287] of that offence shall, while such conviction[288] remains in force, not be liable to be tried again for the same offence nor on the same facts for any other offence for which a different charge from the one made against him might have been made under section 185 of which he might have been convicted under section 186.

(2) A person convicted of any offence constituted by an act causing consequences, which together with such act constituted a different offence from that of which he was convicted, may be afterwards tried for such last mentioned offence, if the consequences had not happened or were not known to the court to have happened at the time when he was convicted.

(3) A person convicted of any offence constituted by any acts may, notwithstanding such conviction, be subsequently charged with and tried for the same or any other offence constituted by the same acts which he may have committed, if the court by which he was first tried was not competent to try the offence with which he was charged.[289]

193. A previous conviction may be pleaded or proved[290] at any stage of any trial for the same offence or any other offence to a charge of which it is a bar, upon its being proved, the accused shall be discharged.

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accused of the same homicide, A and B may be charged and tried together for that homicide. (b) A and B are accused of housebreaking by night in the course of which A commits culpable homicide with which B has nothing to do. A and B may be tried together on a charge, charging both of them with housebreaking by night and A on a separate charge with culpable homicide. (c) A and B are both charged with theft and B is charged with two other thefts committed by him in the course of the same transaction. A and B may be tried together on a charge charging both with the one theft and B alone with the two other thefts."

[284] Borno: "was misled in his defence by the absence of justice, it may direct that the trial be recommended upon a charge framed in whatever manner it thinks fit."

[285] CPC: "in respect of the facts proved". CPC also has one illustration after this section.

[286] CPC, Kebbi, Sokoto: chapter title is PREVIOUS ACQUITTALS AND CONVICTIONS.

[287] CPC, Kebbi, Sokoto: "convicted or acquitted".

[288] CPC, Kebbi, Sokoto: "conviction or acquittal".

[289] Jigawa, Kebbi, and Sokoto omit this subsection. As in subsection (1), CPC has "convicted or acquitted" and "conviction or acquittal" where this code has "convicted" and "conviction". CPC also has five illustrations following this section.

[290] CPC, Kebbi, Sokoto: "A previous acquittal or conviction may be pleaded or proved".

CHAPTER XIX – GENERAL PROVISIONS AS TO TRAILS AND OTHER JUDICIAL PROCEEDINGS IN SHARIA COURTS

194. (1) The place in which any court is held for the purpose of trying any offence shall be deemed to be an open court, to which the public generally may have access, so far as the same can conveniently contain them.

(2) Notwithstanding the provisions of subsection (1), a court may if it thinks fit order at any stage of a trial of any particular case that the public generally or any particular person shall not have access to or be or remain in such place.

Explanation:

Acting under subsection (2), the court may exclude any witness from the court at any stage of the proceedings or may clear the court whilst a child or young person is giving evidence.

195. (1) A legal practitioner shall have the right to practise in the Sharia Court in accordance with the provisions of the Legal Practitioners Act, 1990.

(2) The expression "legal practitioner" shall have the same meaning as in the Legal Practitioners Act, 1990.

196. (1) In the case of a prosecution in the Sharia Court by or on behalf of the State or by any public servant in his official capacity or by any Local Government, the State or that public servant or Local Government may be represented by a law officer, the Attorney-General, State Counsel, a police officer, or by any legal practitioner or other person duly authorised in that behalf or by or on behalf of the Attorney-General or, in revenue cases, authorised by the head of the department concerned.[291]

(2) In any cause, matter or appeal, to which a Local Government is a party, the Local Government may be represented at any stage of the proceedings by any member or officer of the Local Government who shall satisfy the court that he is duly authorised in that behalf.

(3) In any criminal case by or against a first or second class chief in either his official or personal capacity the chief may be represented in the court at any stage of the proceedings by any indigene of his chiefdom who shall satisfy the court that he has the authority to represent the chief.[292]

(4) Where any person other than the Attorney-General prosecutes on behalf of the State or any public servant prosecutes in his official capacity such person or public servant shall prosecute the case subject to such directions as may be given by the Attorney-General in any prosecution for an offence under a Law of the State.[293]

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[291] Jigawa omits "or, in revenue cases . . .". Kebbi: "may be represented by the Attorney-General or any legal practitioner duly authorised by the Attorney-General."

[292] Jigawa uses "Emir" instead of "first or second class chief". Gombe, Kebbi and Sokoto omit subsection (3) entirely.

[293] Kebbi and Sokoto omit this subsection. Jigawa and Kaduna have it as part of subsection (3). Sokoto, omitting subsections (3) and (4) in this section, adds the following after subsections (1) and (2): "*Interpretation*. In this chapter: "Legal Officer" includes officers in the office of the Attorney-General who are holders of: (a) Degree in Law; (b) Diploma in Sharia and Civil Law; and (c) Diploma in Law."

197. Except as otherwise provided in this Sharia Criminal Procedure Code the general order of procedure in trials before a Sharia Court, shall, so far as may be, be the same as is provided in Chapter XVI of this Code, for trials and other judicial proceedings in Sharia Courts.[294]

** [Sections on "Oath", "Witness not compelled to take oath or affirmation", and "Manner of taking oath or affirmation"][295]

198. No person of the Islamic faith shall be required to take an oath in any court unless:

(a) he has been given an opportunity to complete[296] the ablution prescribed by the Islamic faith for persons taking oath on the Holy Qur'an; [297]and

(b) the oath is administered by a person of the Islamic faith; and

(c) the oath is taken upon a copy of the Holy Qur'an printed in the Arabic language.[298]

199. The court shall prevent the putting of irrelevant questions to witnesses and shall protect them from any language, remarks or gestures likely to intimidate them; and it shall prevent the putting of any question of an indecent or offensive nature unless such question bears directly on facts which are material to the proper appreciation of the facts of the case.

200. (1) Save as otherwise provided in subsection (2) of section 153, all evidence in every trial shall be taken in the presence of the accused.

(2) Save as otherwise provided in this Sharia Criminal Procedure Code, the evidence of each witness and the examination and statement, if any, of the accused shall be recorded in writing by or under the superintendence of the court.[299]

(3) The record may ordinarily be in the form of a narrative and not in the form of question and answer, but in the discretion of the court any particular question and answer may be taken down in full.

(4) After recording the evidence of a witness the court may also record or cause to be recorded such remarks as it thinks material respecting the demeanour of such witness whilst under examination.

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[294] Kebbi and Sokoto omit this section. In CPC, the section requires procedure in inquiries and trials before the magistrates' and native [area] courts to conform so far as may be to trials in the High Court.

[295] At this point CPC has three sections omitted here, as follows: §229: "*Oath*. (1) Every witness giving evidence in any inquiry or trial under this Criminal Procedure Code may be called upon to take an oath or make a solemn affirmation that he will speak the truth. (2) The evidence of any person, who by reason of youth or ignorance or otherwise is in the opinion of the court unable to understand the nature of an oath, may be received without the taking of an oath or making of an affirmation if in the opinion of the court he is possessed of sufficient intelligence to justify the reception of the evidence and understands the duty of speaking the truth." §230: "*Witness not compelled to take oath or make affirmation*. No witness, if he refuses to take an oath or make a solemn affirmation, shall be compelled to do so or asked his reason for so refusing but the court shall record in such a case the nature of the oath or affirmation proposed, and the fact of the refusal of the witness together with any reason which the witness may voluntarily give for his refusal." §231: "*Manner of making oath or affirmation*. A witness shall take an oath or make a solemn affirmation in such a manner as the court considers binding on his conscience."

[296] Gombe, Jigawa, Kebbi: "perform".

[297] Kebbi, Sokoto: "Glorious Qur'an".

[298] Kebbi, Sokoto: "Glorious Qur'an". Jigawa: "printed in the Arabic text".

[299] Kebbi, Sokoto: "shall be recorded in writing by the court".

201. (1) For the purpose of enabling the accused to explain any circumstances appearing in the evidence against him the court may, if the accused so agrees, at any stage of a trial, after explaining to the accused the effect of subsections (2) and (3), put such questions to him as the court considers necessary and in such case shall for the purpose aforesaid question him generally on the case after the witnesses for the prosecution have been examined and before he is called on for his defence.

(2) The accused shall not render himself liable to punishment by refusing to answer such questions or by giving false answers to them; but the courts may draw such inference from such refusal or answers as it thinks just.

(3) The answers given by the accused may be taken into consideration in the trial.

(4) The sole purpose of such examination shall be to discover the line of defence and to make clear to the accused the particular points in the case for the prosecution which he has to meet in his defence and there shall be nothing in the nature of a general cross-examination for the purpose of establishing the guilt of the accused.

(5) No oath shall be administered to the accused for the purposes of an examination under this section.[300]

202. (1) An accused person shall not be a competent witness on his own behalf in any trial, whether he is accused solely or jointly with another person or persons, but he may be a competent witness in proceedings against any person or persons tried jointly with him.[301]

(2) The deposition, if any, of the accused recorded under subsection (1) may be put in evidence in any other trial for any other offence which such deposition or such answers may tend to show he has committed.[302]

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[300] Kebbi and Sokoto omit this section entirely.

[301] This is directly contradictory to CPC §236(1), which says that "An accused person *shall* be a competent witness on his own behalf in any inquiry or trial, whether he is accused solely or jointly with another person or persons, *and* his evidence may be used in proceedings against any person or persons tried jointly with him; and the following provisions shall have effect: (a) the accused shall not be examined as a witness except at his own request; (b) before giving evidence the accused shall be warned by the court that he is not bound to give evidence, and that, if he does so, his evidence may be used at the inquiry or trial; (c) the failure of the accused to give evidence shall not be made the subject of any comment by the prosecution, but the court may draw such inference as it thinks just; (d) the accused shall not be asked in cross-examination, and if asked shall not be required to answer, any question tending to show that he has committed or been convicted of or been charged with an offence other than that wherewith he is then charged, or is of bad character, unless: (i) the proof that he has committed or been convicted of such other offence is admissible evidence to show that he is guilty of the offence wherewith he is then charged; or (ii) he has personally or by his legal practitioner asked questions of the witnesses for the prosecution with a view to establishing his own good character, or the nature or conduct of the defence is such as to involve imputations on the character of the prosecutor or the witnesses for the prosecution; (iii) he has in his evidence made statements against any other persons tried jointly with him; (e) no prosecution in respect of such evidence for the offence of giving false evidence shall be instituted against the accused except with the sanction of a judge of the High Court." CPC then has subsection (2) as here. Kebbi and Sokoto as here but they omit from subsection (1) "but he may be a competent witness in proceedings against any person or persons tried jointly with him."

[302] Borno, Jigawa, Kebbi, Sokoto omit subsection (2).

203. (1) Any Sharia Court may at any stage of any trial or other judicial proceeding under this Sharia Criminal Procedure Code summon any person as a witness or call as a witness any person in attendance though not summoned as a witness, and shall summon or call any such person:

(a) if his evidence appears to the court to be essential to the just decision of the case; or

(b) on the application of the Attorney-General, and if such application is made, the accused shall have a similar right, on applying to the court, to have any person summoned or called as a witness by the court.[303]

(2) The court may examine or allow the prosecutor or complainant or the accused, as the case may require, to impeach or examine any person summoned or called as a witness under this section, and shall allow the prosecutor or the accused, as the case may require, to impeach or examine any person so summoned or called under paragraph (b) of subsection (1).

(3) Any person summoned or called as a witness under the provisions of this section may:

(a) if impeached or examined by the prosecutor or complainant be impeached or cross-examined by the accused and then re-examined by the prosecutor or complainant;[304]

(b) if impeached or examined by the accused be impeached or cross-examined by the prosecutor or complainant and then be re-examined by the accused.[305]

(4) Any person summoned or called as a witness under the provisions of this section who is examined by the court may be impeached or cross-examined by the prosecutor or complainant and by the accused.[306]

(5) The powers conferred by this section may be exercised whether or not the person to be summoned or called and examined has already been examined as a witness in the proceedings.[307]

204. (1) In any proceedings pending before a court, the court may upon application either orally or in writing by any party, issue a warrant or order for bringing up before the court any person confined in any place under sentence or under remand or otherwise, to be examined as a witness in the proceedings.

(2) The person mentioned in any such order shall be brought before the court under custody.

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[303] This entire section as in CPC after amendment by NN 12 of 1964, except as noted.

[304] CPC and Kebbi omit the words "impeached or" throughout this sub-subsection. Jigawa omits "and then re-examined by the prosecutor or complainant". Borno omits both sub-subsections of subsection (3), evidently in error as it has the prefatory language.

[305] CPC omits the words "impeached or" throughout this sub-subsection. Kebbi omits the sub-subsection entirely. Jigawa omits "and then be re-examined by the accused".

[306] CPC begins this subsection with: "Notwithstanding anything contained in section 222 of the Evidence Law, any person . . .". CPC again omits the words "impeached or". Borno omits the subsection entirely.

[307] Borno omits subsection (5).

205. (1) The evidence of a witness given and duly recorded in writing in any judicial proceeding under this Sharia Criminal Procedure Code may in the discretion of the court be read and accepted as evidence in any subsequent proceedings concerning the same cause or matter against the same accused or in a later stage of the same proceedings, if the witness is dead or cannot be found or is incapable of giving evidence or if his presence cannot be obtained without an amount of delay, expense or inconvenience which the court considers unreasonable in the circumstances of the case, *provided that* the questions in issue are substantially the same on each occasion and that if the witness is a witness for the prosecution, the accused had the right and opportunity to cross-examine the witness.

Illustration:

Where A is tried and convicted of causing grievous hurt to B and B subsequently dies of his injuries, A may be tried again for intentional homicide.[308] *B's evidence at the first trial may be used in the second trial, B being dead and the questions in issue at each trial substantially the same.*

(2) If a witness is produced and examined in any judicial proceeding under this Sharia Criminal Procedure Code, his evidence given and duly recorded in writing at any like proceeding previously held against the same accused in which the questions in issue were substantially the same or in a previous stage of the same judicial proceeding may be read out after the evidence in chief has been given and he may be examined and cross-examined upon it and it may be accepted as evidence in court.[309]

(3) The court may, when it thinks that a witness has told the truth at a previous stage and is lying before it, ignore the evidence given before it and rely on the evidence given previously.[310]

206. Where there are several accused, the statements of each made in answer to examination under section 201 or given in evidence under section 202 of this Code may be taken into consideration by the court and shall be admissible for or against himself and any of the other accused at the same or any subsequent stage of the same proceedings, but such statements made by one of the accused shall not be admitted at the trial of the other accused unless the accused person who made such statement is being tried jointly with the other accused and the statements were made in the presence of the other accused who shall have had an opportunity of impeaching or cross-examining the accused who made them.[311]

207. When any evidence is given in a language not understood by the accused and the accused is present in court, it shall be interpreted to him in a language understood by him.

208. (1) When the services of an interpreter are required by any court or justice of the peace for the interpretation of any evidence, statement or other proceedings, he shall be bound to state the true interpretation of the evidence, statement or other proceedings.

(2) When the services of an interpreter are used in any proceedings by a court or justice of the peace, the record of the proceedings shall state the name of the

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[308] CPC, Borno, Gombe, Jigawa, Kaduna, Kebbi, Sokoto, Zamfara: "culpable homicide punishable with death".

[309] Kebbi and Sokoto omit subsection (2).

[310] Kebbi and Sokoto omit subsection (3).

[311] CPC: omits "impeaching or". Kebbi and Sokoto omit the whole section.

interpreter, the languages which and in which he interprets, and the fact that he has been bound in accordance with the provisions of subsection (1) to state the true interpretation of the evidence, statement or other proceedings.[312]

209. Whenever in the course of any judicial proceeding under this Sharia Criminal Procedure Code the court thinks it advisable to view the place where the offence is alleged to have been committed or any other place, the court may either adjourn to that place and there continue the proceedings or adjourn the case and proceed to view the place concerned accompanied by the accused and may cause any witness to be conducted thither and may take any evidence or hear any statement or explanation by the accused on the spot, and the prosecutor and the counsel for the accused, if any, shall have the right to be present at the view.

210. (1) Where the age of any person, or whether a person is under or above a specified age, is in question in any judicial proceeding under this Sharia Criminal Procedure Code, the court may determine such question by taking into account one or both of the followings, namely:

(a) the apparent physical appearance of the person concerned;

(b) any evidence, in relation to the age of the person concerned, received by the court in accordance with the provisions of this Sharia Criminal Procedure Code.

(2) The evidence of a witness, who is not an expert, shall be admissible for the purpose of this section.[313]

211. (1) Whenever it appears to a court that a person who is so dangerously ill that there is a possibility that he may not recover is able and willing to give evidence relating to any offence, the court may take in writing the statement of such person.[314]

(2) When a statement is taken in accordance with subsection (1) the court shall certify that the statement is a correct record of the statement made by such person.[315]

(3) The court shall record its reason for proceeding under this section and shall also record thereon date and place of taking the statement.

212. Whenever in the course of any judicial proceeding under this Sharia Criminal Procedure Code it appears to the court that the examination of a witness is necessary for the ends of justice and that the attendance of such witness cannot be procured without an amount of delay, expense or inconvenience which in the circumstances of the case would be unreasonable, such court may dispense with his attendance and may issue a commission to any court within the local limits of whose jurisdiction such witness resides to take his evidence.[316]

213. (1) The court issuing a commission under section 212 may send any interrogatories in writing submitted by the prosecution or the defence or prepared by itself which it

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[312] As in CPC after amendment by NN 12 of 1964.
[313] As in CPC after amendment by NN 12 of 1964, except that in subsection (1)(b) CPC has "the provisions of the Evidence Law or this Criminal Procedure Code", and in subsection (2) it has "who is not an expert within the meaning of section 56 of the Evidence Law shall be admissible…".
[314] CPC adds "and may invite him to take an oath as to the truth of the statement".
[315] Kaduna omits subsection (2), renumbering the following subsection as (2).
[316] Kebbi and Sokoto omit this section.

deems relevant to the questions at issue to the court to which the commission is directed which shall examine the witness upon such interrogatories.

(2) The prosecutor and the accused may appear in person or by counsel before the Sharia Court taking evidence on commission and examine, cross-examine or re-examine, as the case may be such witness.[317]

(3) A commission shall be addressed to a court and not personally to an officer of the court and, if the record or extracts from the record are not sent with the commission, sufficient information shall be given to enable the examining court to understand the point upon which the evidence of the witness is required.[318]

214. (1) After any commission issued under section 212 has been duly executed, it shall be returned together with the deposition of the witness examined thereunder to the court out of which it issued; and the commission, the return thereto and the deposition shall be open at all reasonable times to inspection by the prosecution or defence and subject to all just exceptions may be read in evidence in the case and shall form part of the record.

(2) Any deposition of a witness examined under a commission issued under section 212 of this Code may also be received in evidence at any subsequent stage of the same case before another court.[319]

215. Wherever in the course of any judicial proceedings under this Sharia Criminal Procedure Code, it appears to a court that for the purpose of ascertaining the nature, source or other attribute of identification of ay article the examination of a witness who is abroad is necessary for the ends of justice and that the attendance of such witness cannot be procured without an amount of delay, expense or inconvenience which in the circumstances of the case would be unreasonable the court, after hearing the prosecutor, if any, and the accused or his counsel may dispense with his attendance and may settle such interrogatories in writing to be answered by such witness as may be necessary for the aforesaid purpose.[320]

216. (1) The evidence of any medical officer or registered medical practitioner taken before a Sharia Court in the presence of the accused may be read in evidence in any trial or other proceeding under the Sharia Criminal Procedure Code although he is not called as a witness.

(2) The Sharia Court may if it thinks fit summon such medical officer or registered medical practitioner to appear before it as a witness.

(3) (a) A written report by any medical officer or registered medical practitioner after he has examined any person or the body of any person may at the discretion of the court be admitted in evidence for the purpose of proving the nature of any

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[317] CPC has a proviso to this subsection, omitted here and in all SCPCs: "provided that where the court taking evidence on commission is a native court no counsel shall be entitled to appear."
[318] Kebbi and Sokoto omit this section.
[319] Kebbi and Sokoto omit this section.
[320] CPC has two further subsections: "(2) Where such interrogatories are settled buy a court other than the High Court leave to serve such interrogatories shall be obtained from a judge of the High Court. (3) The interrogatories settled by the court under subsections (1) and (2) may be answered by affidavit duly sworn by the witness in question or in such other manner as a judge of the High Court may order."

injuries received by such person or, where such person has died, the nature of the injuries received by such person and, where possible, the physical cause of his death;

(b) On the admission of such report the same shall be read over to the accused and he shall be asked whether he disagrees with any statement therein and any such disagreement shall be recorded by the court; and

(c) If by reason of any such disagreement or otherwise it appears desirable for the ends of justice that such medical officer or registered medical practitioner shall attend and give evidence in person the court shall summon such medical officer or registered medical practitioner to appear as a witness.[321]

217. (1) Any document purporting to be a report under the hand of the Accountant General or Director of Audit or any expert in bacteriology, physiology, biology, pathology, chemistry or other branch of scientific knowledge in the service of any Government of Nigeria upon any matter or thing duly submitted to him for examination or analysis and report in the course of any proceeding under this Sharia Criminal Procedure Code may be used as evidence in any trial or other proceedings under this Sharia Criminal Procedure Code.[322]

(2) The court may, if it appears desirable for the ends of justice,[323] summon any person making a report under subsection (1) to give evidence in person.[324]

218. (1) The court shall, in the absence of evidence to the contrary, presume that the signature to any report or document referred to in section 216 or section 217 is genuine and that the person signing it held the office or the qualifications which he professed at the time when he signed it.

(2) Where any such report or document is intended to be produced by either party to the proceedings, a copy thereof shall be sent to the other party at least ten clear days before the day appointed for the hearing and, if it is not so sent, the court may, if it thinks fit, adjourn the hearing on such terms as it thinks proper.[325]

219. (1) If it is proved that an accused person has absconded and that there is no immediate prospect of arresting him, the court competent to try such person for the offence alleged may in his absence examine any witnesses produced on behalf of the prosecution and record their depositions.

(2) Any such deposition may on the arrest of such person be given in evidence at the trial for the offence with which he is charged if the deponent is dead or incapable of giving evidence or his attendance cannot be procured without an amount of delay,

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[321] As in Kano after amendment by NN 12 of 1964 and KS 15 of 1978.

[322] Kaduna adds a proviso to this subsection: "*Provided that* no such evidence shall be admissible in a trial in which the issue of paternity is sought to be established."

[323] Sokoto adds here "and if the accused so request shall".

[324] Kebbi has an entirely different subsection (2): "Any depositions taken under subsection (1) may be given in evidence when any person is subsequently accused of the offence if the deponent is dead or incapable of giving evidence beyond the limits of the State." This seems to be a typographical error, see §218(2) below.

[325] Kebbi omits subsection (2).

expense or inconvenience which in the circumstances of the case would be unreasonable.

220. (1) If it appears that an offence punishable with death or imprisonment for ten years[326] and upwards has been committed by some person or persons unknown, any Sharia Court may hold an inquiry and examine any witness who can give evidence concerning the offence.

(2) Any depositions taken under subsection (1) may be given in evidence when any person is subsequently accused of the offence if the deponent is dead or incapable of giving evidence or beyond the limits of the State.

221. (1) At any time after the completion of an investigation under this Sharia Criminal Procedure Code into any alleged offence and before the commencement of any trial resulting therefrom, the Attorney-General may by writing under his hand exercise his power to inform the court which has taken cognizance of such offence that he does not, in respect of all or any of the alleged offences, intend to prosecute the person or any one or more of the persons accused.

(2) At any stage in any inquiry or at any stage before the finding in any trial under this Sharia Criminal Procedure Code the Attorney-General may in writing or in person exercise his power to inform the court conducting such trial that he does not in respect of all or any of the offences alleged or charged intend to prosecute or further to prosecute the person or any one or more of the persons accused.

(3) When the Attorney-General exercises the powers referred to in subsection (2) all proceedings in respect of the offence alleged or charged shall be stayed and the person accused shall be discharged of and from the same, but such discharge shall not operate as a bar to any subsequent proceedings against the person accused on account of the same facts.

(4) The powers of the Attorney-General mentioned in this section do not apply to *hudud* and *qisas* offences.[327]

222. No influence by means of any promise or threat or otherwise shall be used to an accused person to induce him to disclose or withhold any matter within his knowledge.

223. (1) If from the absence of a witness or any other reasonable cause it becomes necessary or advisable to postpone the commencement of or adjourn any trial, the court may if it thinks fit by order in writing stating the reasons therefor from time to time postpone or adjourn the same on such terms as it thinks fit for such time as it considers reasonable and may by a warrant remand the accused if in custody.

(2) Notwithstanding the provisions of subsection (1), no court shall remand an accused person to custody under this section for a term exceeding five[328] days at a time.

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[326] Gombe: 14 years. Kebbi: 3 years. Sokoto: 5 years.

[327] CPC omits subsection (4). Kebbi and Sokoto have instead: "(4) In exercising powers conferred upon him under this section, the Attorney-General of the State shall have regard to the principles, norms and tenets contained in the State Sharia Penal Code and this Sharia Criminal Procedure Code." Gombe omits this entire section.

[328] CPC, Jigawa, Kebbi: 15 days.

224. (1) Subject to section 146,[329] if in the course of a trial before a court the evidence appears to warrant a presumption that the case is one that should be tried by some other court, the court holding the trial shall stay proceedings and submit the case with a brief report explaining its nature to a court which has jurisdiction.

(2) The court to which the case is submitted may either try the case itself or refer the case for trial to any court subordinate to it which has jurisdiction.

(3) If the court to which the case is submitted decides that the case should be tried the trial shall begin afresh.[330]

225. (1) Whenever a court having jurisdiction:

(a) finds a person guilty after hearing the evidence for the prosecution and the defence; or

(b) accepts a plea of guilty from a person,

and after convicting such person is of the opinion that he ought to receive a punishment different in kind from, or more severe than that, which such court is empowered to inflict, it may record such opinion and submit the proceedings and send the accused to a court having the necessary powers of punishment.[331]

(2) The court to which proceedings are submitted under subsection (1) shall pass such sentence or order in the case as it thinks fit and is according to law.

(3) When more accused than one are being tried together and the court considers it necessary to proceed under subsection (1) in regard to all the accused it shall forward all the accused who are in its opinion guilty to the appropriate court.

Explanation:

A court may where several persons are charged before it sentence some of the accused and forward the others under this section to an appropriate court for sentence.

226. (1) When an accused person is found guilty of an offence the court may in passing sentence take into consideration any other offence of the accused person, whether or not a court has taken cognizance of such offence, if the accused admits the other offence and desires that it be taken into consideration.[332]

(2) In exercising its powers under subsection (1), a court shall not pass a greater sentence than the maximum sentence:

(a) which it could have passed on the accused person on conviction for the offence:

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[329] Kaduna omits "Subject to section ---".

[330] As in Kano CPC after amendment by Edict No. 15 of 1978, except that at the end of subsection (1) Kano adds "or to the High Court". In CPC of 1960, subsection (1) does not have the prefatory "Subject to section 145", has "should be tried or committed for trial" instead of "should be tried", and refers twice to "inquiry or trial" instead of just "trial"; subsection (2) has "try the case itself or commit the accused for trial or refer the case for trial or commitment to any court . . ."; subsection (3), omitted entirely here, states what the court to which the case is submitted or referred should do if it considers that the accused should be committed for trial; and subsection (4) is as here except that it has "submitted or referred" not just "submitted". Borno omits this entire section.

[331] CPC adds "or to the High Court".

[332] CPC adds "and if the Attorney-General consents".

(i) in respect of which he has been found guilty; or

(ii) which he has admitted, and

(b) which it has jurisdiction to pass.

(3) Where the accused person expresses a desire[333] under subsection (1) the court shall enter or cause an entry to that effect to be made on the record and upon sentence being pronounced the accused shall not, unless the conviction is set aside, be liable to be charged or tried in respect of any such offence so taken into consideration.[334]

227. (1) The court at any stage of the trial where there are several accused may by order in writing stating the reasons therefor stay the proceedings of the joint trial and may continue the proceeding against each or any of the accused separately.

(2) Where it appears that the evidence of one of the accused is required for the prosecution of another accused, the accused whose evidence is required shall be acquitted or convicted[335] before his evidence is taken.

228. (1) Any Sharia Court may, and when so required by the Attorney-General shall, refer for the opinion of the Sharia Court of Appeal, any question of law which arises in the hearing of any case pending before it or may give judgment in any such case subject to the Sharia Court of Appeal's decision, and pending such opinion or decision, as the case may be, may either commit the accused to prison or release him on bail to appear when called on.

(2) A reference to the Sharia Court of Appeal by a Sharia Court under subsection (1) shall set out:

(a) the charge or complaint;

(b) the facts found to be admitted or proved;

(c) any submission of law made by or on behalf of the complainant or the accused;

(d) any question of law which the court desires to be submitted for the opinion of the Sharia Court of Appeal; and

(e) any question of law which the Attorney-General requires to be submitted for the opinion of the Sharia Court of Appeal.

(3) Upon the Sharia Court of Appeal notifying its opinion or decision the case shall be dealt with in accordance with such opinion or decision.[336]

229. If the accused though not insane cannot be made to understand the proceedings the court shall proceed to try the issue of his fitness to plead and if it is established that he is not fit to plead he shall be treated in like manner as a person incapable of making his defence by reason of unsoundness of mind.[337]

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[333] CPC inserts here "and the Attorney-General gives consent".

[334] Kebbi and Sokoto add a subsection (4): "This section does not apply to *hudud* and *qisas* offences".

[335] Gombe omits "or convicted".

[336] Throughout this section CPC refers to the High Court rather than the Sharia Court of Appeal; Jigawa refers to the Upper Sharia Court. Kaduna adds a subsection (4): "In this section 'Sharia Court' includes Upper Sharia Court".

[337] CPC adds: "as provided in Chapter XXVI" = chapter XXIV here, PERSONS OF UNSOUND MIND.

230. Where an alkali of a Sharia Court having tried a case is prevented by illness or other unavoidable cause from delivering the judgment or sentence of the court, such judgment and the sentence, if the same has been reduced into writing and signed by the alkali may be delivered and pronounced in open court in the presence of the accused by any other alkali of the Sharia Court as may be appropriate.

231. In all cases where the opinions of the members of the court differ, the opinion of the majority shall prevail.

232. Where a court is constituted of an even number of alkalis and such court is evenly divided on any matter for decision the matter shall be referred for hearing before a court constituted of an uneven number of alkalis not less than three.

233. Every member of a court shall give his opinion on every question which the court has to decide and he shall give his opinion as to the sentence even though he was in favour of discharge.[338]

234. The opinions of the members of the court shall be taken in succession beginning with the junior in rank.

CHAPTER XX – THE JUDGMENT

235. In this chapter:

"Commissioner" means such State Commissioner as the Governor may from time to time designate in that behalf.

236. (1) The judgment in every trial in a court shall be in writing and shall be pronounced, and the substance of it explained in a language understood by the accused in open court either on the day on which the hearing terminates or at some subsequent time of which due notice shall be given.

(2) If the accused is in custody he shall be brought up to hear judgment delivered; if he is not in custody he shall be required to attend to hear judgment delivered unless his presence is dispensed with by the court.

(3) No judgment delivered by any court shall be deemed to be invalid by reason only of the absence of any party or his counsel on the day or from the place notified for the delivery thereof, or of any omission to serve or defect in service on the parties or their counsel or any of them of the notice of such day and place.

237. (1) Every judgment shall contain the point or points for determination, the decision thereon and the reasons for the decision and shall be dated and signed or sealed by the court in open court at the time of pronouncing it.

(2) If the judgment is a judgment of conviction, it shall specify the offence of which and the section of the Sharia Penal Code or other law under which the accused is convicted and the punishment to which he is sentenced.

(3) If the judgment is a judgment of discharge,[339] it shall state the offence of which the accused is discharged and direct that he be set at liberty.

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[338] CPC has "acquittal" instead of "discharge".

[339] CPC: "of acquittal". Kebbi: "discharge or acquittal".

238. No sentence of *hudud* or *qisas* shall be imposed on a person who is under the age of *taklif*.

239. (1) Where a person is convicted of a *hadd* or *qisas* offence[340] and it appears to the court by which he is convicted that he was under the age of *taklif* when he committed the offence[341] the court shall, without prejudice to the right of *diyah* in appropriate cases, deal with him in accordance with section 11 of the Children and Young Persons Law and section 95 of the Sharia Penal Code.[342]

(2) The court shall report to the Commissioner in every case in which an order has been made under the provisions of subsection (1).[343]

240. (1) Where a woman convicted of an offence punishable with death, *qisas* or *hadd*[344] alleges that she is pregnant, or where the court by which a woman is convicted thinks fit so to do, the court shall, before sentence is pronounced upon her, determine the question whether or not she is pregnant.

(2) The question whether the woman is pregnant or not shall be determined by the court on such evidence as may be given or put before it on the part of the woman or on the part of the prosecution, and the court shall find that the woman is not pregnant unless it is proved affirmatively to the satisfaction of the court that she is pregnant.[345]

241. When a person is sentenced to death the sentence shall direct that:

(a) he be beheaded;

(b) in case of *qisas*, he be caused to die in the like manner he caused the death of his victim except such manner that is contrary to Sharia;[346]

(c) in case of *zina*, he be stoned to death; and

(d) in case of *hirabah*, he be caused to die by crucifixion.[347]

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[340] CPC: "of an offence punishable with death".
[341] CPC: "under the age of seventeen".
[342] CPC: "the court shall order that he be detained during the Governor's pleasure, and if the court so orders, he shall be detained in accordance with the provisions of section 303, notwithstanding anything to the contrary in any written law."
[343] Kebbi omits subsection (2).
[344] CPC: "punishable with death".
[345] CPC has three more subsection to this section: "(3) Where under the provisions of subsection (2) it is proved affirmatively to the satisfaction of the court that the woman is pregnant, the court shall find accordingly and shall pass upon her a sentence of imprisonment for life. (4) Where under the provisions of subsection (2) it is not proved affirmatively to the satisfaction of the court that the woman is pregnant, the court shall find accordingly and pronounce sentence of death upon her. *Provided that* an appeal shall lie against the finding of the court to the Federal Court of Appeal, and, if the finding is reversed on appeal, the sentence of death shall be quashed and a sentence of imprisonment for life shall be substituted therefor. (5) The court of trial shall report to the Commissioner any case in which a sentence of imprisonment for life is passed or is substituted for a sentence of death under the preceding provisions of this section."
[346] Kaduna has an illustration to this subsection: "Illustration. A kills B by way of juju or sodomy: A will not be executed in the like manner he caused the death of B because to do so is contrary to Sharia."
[347] CPC has only one provision in this section: "When a person is sentenced to death, the sentence shall direct that he be hanged by the neck till he is dead."

242. When a person is sentenced to suffer *qisas* for injuries the sentence shall direct that the *qisas* be carried out in the like manner the offender inflicted such injury on the victim.[348]

243. When a judgment of conviction is one from which an appeal lies, the court shall inform the convicted person that he has a right to appeal and of the period within which if he desires to appeal his appeal is to be presented.[349]

244. No court when it has signed its judgment shall alter or review the same, except as provided in section 274 or section 282 or to correct a clerical error.[350]

245. On the application of the accused a copy of the judgment, or when he so desires a translation in his own language if practicable, shall be given to him without delay and such copy shall be given free of cost.[351]

246. The original judgment shall be filed with the record of the proceedings.[352]

PART VII – PROCEEDINGS SUBSEQUENT TO JUDGMENT

CHAPTER XXI – APPEAL AND REVIEW

247. (1) Appeals from Sharia Courts in criminal matters shall be in accordance with the Sharia Courts Law or the Sharia Court of Appeal Law or this Sharia Criminal Procedure Code or any rules made under any of such laws.

(2) (a) Whoever is dissatisfied with the order, decision or judgment made by a Sharia Court or a Higher Sharia Court may appeal to the Upper Sharia Court sitting in its appellate jurisdiction;[353]

(b) Appeals from the Upper Sharia Court in criminal matters shall lie to the Sharia Court of Appeal.[354]

** [Appeals from magistrates' courts][355]

248. (1) An appeal in accordance with the provisions of this chapter shall be commenced by the appellant giving to the registrar of the court from which the appeal is brought or to the registrar of the court to which the appeal is brought notice of such appeal which may be verbal or in writing, and if verbal, shall be forthwith reduced to writing by the registrar and signed by the appellant, or by a legal practitioner if a legal practitioner is representing him.

(2) The notice of appeal shall be given in every case before the expiration of the thirtieth day or, where the appeal is against a sentence of caning, before the expiration

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[348] CPC omits this section. Kaduna adds a proviso: "*Provided that* where, in the opinion of the Court, the reciprocal punishment shall be in excess of the injury suffered by the victim the Court shall direct that the reciprocal punishment be substituted with the payment of *diyah* as prescribed under Schedule B of the Sharia Penal Code."

[349] This section omitted from all SCPCs.

[350] This section omitted from all SCPCs except Borno.

[351] This section omitted from all SCPCs except Borno.

[352] This section omitted from all SCPCs except Borno.

[353] Kebbi, Sokoto omit "or a Higher Sharia Court".

[354] CPC omits subsection (2). Jigawa omits sub-subsection (b) of subsection (2).

[355] CPC has here a section on appeals from magistrates' courts.

of the seventh day[356] after the day on which the court has made the decision appealed against.

(3) Where an appellant gives verbal notice of appeal at the time of the pronouncement of the decision and before the opposite party or the legal practitioner representing him has left the court, such verbal notice of appeal shall be recorded by the court with a note of the presence of the respondent or the legal practitioner representing him and written notice of appeal shall not thereafter be necessary.

(4) If the appellant is in prison he may present his notice of appeal and the memorandum of the grounds of appeal required by section 249 of this Code to the officer in charge of the prison who shall thereupon forward such notice and memorandum to the registrar of the court from which the appeal is brought.

(5) An appellant shall file as many copies of this notice of appeal as there are parties to be served, in addition to the copies for the court and the Attorney-General.

249. (1) An appellant in an appeal brought in accordance with the provisions of this chapter shall within thirty days or, if the appeal is against a sentence of caning, within seven days[357] of the day of the pronouncing of the decision appealed against file with the registrar of the court from which the appeal is brought a memorandum setting forth the ground of his appeal which shall be signed by the appellant or the legal practitioner representing him.

(2) An appellant shall file as many copies of his memorandum or grounds of appeal, as there are parties to be served, in addition to the copies for the court and the Attorney-General.

250. (1) In his memorandum of grounds of appeal the appellant shall set forth in a separate ground of appeal each error, omission, irregularity or other matter on which he relies or of which he complains with particulars sufficient to give the respondent due notice thereof;

Provided that the non-inclusion of grounds of appeal or the particulars thereof shall not defeat the competence of the appeal.[358]

(2) Without prejudice to the generality of subsection (1), the memorandum of grounds of appeal may set forth all or any of the following grounds, that is to say:

(a) that the lower court had no jurisdiction in the case; or

(b) that the lower court has exceeded its jurisdiction in the case; or

(c) that the decision has been obtained by fraud; or

(d) that the appellant has been tried and convicted or the appellant forms the subject of a hearing or trial pending before a competent court;[359] or

(e) that admissible evidence has been rejected, or inadmissible evidence has been admitted, by the lower court, and that in the latter case there is not sufficient

[356] CPC: "fifteenth day". Kebbi and Sokoto omit the whole separate provision here on sentences of caning.
[357] CPC: "fifteen days". Kebbi and Sokoto omit the whole separate provision here on sentences of caning.
[358] CPC omits the proviso.
[359] CPC: "that the case has already been heard or tried and decided by or forms the subject of a hearing or trial pending before a competent court".

admissible evidence to sustain the decision after rejecting such inadmissible evidence;[360] or

(f) that the decision is unreasonable or cannot be supported having regard to the evidence; or

(g) that the decision is erroneous in point of law; or

(h) that some other specific illegality, not hereinbefore mentioned and substantially affecting the merits of the case, has been committed in the course of the proceedings in the case; or

(i) that the sentence passed on conviction is excessive or inadequate, unless the sentence is one fixed by law.

(3) Where the appellant relies upon the grounds of appeal mentioned in paragraph (d) of subsection (2) the name of the court shall be stated and, if it is alleged that a decision has been made, the date of such decision.

(4) Where the appellant relies upon the ground of appeal mentioned in paragraph (g) of subsection (2) the nature of the error shall be stated and, where he relies upon the ground of appeal mentioned in paragraph (h) of that subsection the illegality complained of shall be clearly specified.

251. (1) Within thirty days or in the case of an appeal against a sentence of caning, within seven days[361] after the pronouncing of the decision of the Sharia Court the appellant shall enter into a bond with or without a surety as the alkali may require, in such sum as the alkali may specify, or, in lieu of furnishing a surety or sureties, as the case may be, he may deposit with the alkali the sum required.

(2) The condition of the bond shall be for the due prosecution of the appeal and for abiding the result thereof, including all costs of the appeal.

(3) If there shall be any breach of the bond the deposit, if any, shall be forfeited and shall be applied to discharging the condition of the bond.

(4) If the appellant is in custody he may at the discretion and on the order of a Sharia Court alkali be released on bail on complying with the provisions of this section as to security for prosecuting the appeal and abiding the results thereof.

(5) If the appellant who is in custody is not within the district or populated area[362] of the alkali from whose decision the appeal is made, any alkali of the district or populated area in which such appellant may be shall have the powers and functions given and assigned to the alkali by this section.

** [appeals from High Court/Upper Sharia Court][363]

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[360] Kebbi omits this subsection.

[361] CPC: 15 days. Kebbi and Sokoto omit the whole separate provision here on sentences of caning.

[362] CPC: "not within the district". Jigawa: "not within the jurisdiction", in both cases twice in this subsection.

[363] CPC has here a section on appeals from the High Court, which we need not consider further. All SCPCs except Jigawa have made this into a section providing for appeals from Upper Sharia Courts to the Sharia Court of Appeal – redundantly in view of §247(2)(b) above. Jigawa: "Appeals from the Sharia Courts in criminal matters shall lie to the Upper Sharia Court and the decision of the Upper Sharia Court shall be final."

252. (1) The Grand Kadi[364] may on his own motion call for and examine the record of any proceedings in any criminal cause or matter before any court for the purpose of satisfying himself as to the correctness, legality or property of any finding, sentence or order recorded or passed and as to the regularity of the proceedings of the court.

(2) After the exercise of his powers under subsection (1) the Grand Kadi may refer the record of the proceedings to the court to which an appeal from a decision of the court referred to in subsection (1) would lie and such appellate court shall treat such reference as if it were an appeal before it from the court referred to in subsection (1) at the instance of such party of person as the Grand Kadi shall designate whether or not an appeal lies at the instance of such party or person.

(3) The powers conferred upon the Grand Kadi by this section shall not be exercised in respect of any proceedings where a party has instituted any appeal proceedings in respect thereof or any proceedings for a review have been instituted under the provisions of the Sharia Courts Law.[365]

253. When the record of any proceedings in a criminal court is before the Grand Kadi for examination, neither the accused nor the complainant or prosecutor shall be entitled to be heard either in person or by agent, or legal practitioner.[366]

254. A sentence other than a sentence of death, *hudud* or *qisas*[367] shall take effect notwithstanding an appeal unless:

(a) a warrant has been issued under section 270 when no sale of property shall take place until the sentence has been confirmed or the appeal decided, or

(b) an order for release on bail pending any further proceedings has been made by a competent court when the time during which the convicted person had been so released shall be excluded in computing the period of any sentence which he has ultimately to undergo.[368]

255. A court exercising appellate jurisdiction shall not in the exercise of such jurisdiction interfere with the finding or sentence or other order of the lower court on the ground only that evidence has been wrongly admitted or that there has been a technical irregularity in procedure, unless it is satisfied that a failure of justice has been occasioned by such admission or irregularity.[369]

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[364] CPC, Borno, Zamfara: "Chief Judge", throughout this section.

[365] This as in Kano CPC after amendments by NN 12 of 1964 and KSLN 22 of 1983, except that there are two additional subsections in CPC: "(3) No reference shall be made under this section in respect of any finding of not guilty unless the record of the proceedings was called for within six months of the date of the delivery of the judgment. (4) Whenever the record of a case comes before the Chief Judge under this section he may by an order in writing direct that a person in confinement be released on bail or on his own bond pending any further proceedings or order."

[366] Only Kaduna includes "or legal practitioner; CPC and all other SCPCs omit this.

[367] CPC does not mention sentences of *hudud* or *qisas* here. Gombe omits *hudud* but includes *qisas*.

[368] Bauchi §6: "(1) No payment of *diyah* or amputation of limb or stoning to death under the Sharia Penal Code shall be carried out until after time for appeal lapses and the convict fails to appeal. (2) For the purposes of subsection (1) of this section appeal includes an application for leave to appeal out of time."

[369] All SCPCs omit "that evidence has been wrongly admitted or that". At the end of this section, Borno has "omitted" instead of "admitted".

256. After the pronouncement of the judgment of an appeal court, the court from which the appeal came shall have the same jurisdiction and power to enforce, and shall enforce any decision which may have been affirmed, modified, amended or substituted by the appeal court, or any judgment which may have been pronounced by the appeal court in the same manner in all respects as if such decision or judgment had been pronounced by itself.[370]

257. No alkali of a Sharia Court shall sit as a member of an appeal court when such appeal court is hearing an appeal from a finding, sentence or order passed by him or by a court of which he is a member.

258. Every criminal appeal, other than an appeal from a sentence of fine or *diyah*[371] shall finally abate on the death of the appellant.

CHAPTER XXII – EXECUTION

259. In this chapter:

"Convicted person" means a person convicted of an offence punishable under the Sharia Penal Code or any other written Law.[372]

** [Section on "Sections not applicable to native [subsequently area] courts"][373]

260. After a sentence of death, amputation or *qisas* of the limbs[374] has been pronounced in the Upper Sharia Court the presiding alkali shall, as soon as may be convenient, forward to the Governor[375] a copy of the trial proceedings including the judgment and sentence together with a report in writing containing any recommendation or observations on the case which he thinks fit to make.

261. (1) When any convicted person:

(a) has been sentenced to death or *qisas* of the limbs[376] or amputation by the Upper Sharia Court; and

(b) (i) has not appealed within the time prescribed by law; or

(ii) has unsuccessfully appealed against the conviction; or

(iii) having filed a notice of appeal has failed to prosecute such appeal,

the Governor, after consultation with the Executive Council and the body of Islamic jurists of the State[377] may[378] affirm the sentence.

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[370] Borno, Gombe, Jigawa, Zamfara omit the words "court in the same manner in all respects as if such decision or judgment"; this is evidently a typographical error.
[371] CPC omits "or *diyah*".
[372] CPC: "means a person convicted of an offence punishable with death".
[373] At this point CPC has a section omitted here, as follows: "§293: *Sections not applicable to native courts.* Nothing in sections 294-301 inclusive [= SCPC §§256-263] shall affect the procedure prescribed in section 394 [omitted in SCPC] to be followed by a native court having jurisdiction over capital offences." In Kano this section was repealed by KSLN 22 of 1983, conforming this part of the Kano CPC to the earlier repeal of Chapter XXXIII on TRIALS IN NATIVE COURTS.
[374] CPC, Borno, Gombe, Jigawa, Zamfara omit "amputation or *qisas* of the limbs". Kaduna: "death, amputation or *qisas*".
[375] Kebbi and Sokoto insert here: "through the Attorney-General".
[376] Kaduna omits "of the limbs".

(2) The Governor, in the public interest, may in consultation with the Executive Council pardon any convicted person of an offence punishable with death other than *hudud* or *qisas*.[379]

262. If the Governor affirms the sentence in section 261 the said sentence shall be carried into effect in accordance with the provisions of this chapter.[380]

263. The Governor shall communicate the decision referred to in section 262 to the Upper Sharia Court or Sharia Court of Appeal.[381]

264. (1) When the Governor has communicated his decision in accordance with the provisions of section 263 he shall by order either:

(a) direct that the sentence of death, amputation or *qisas* shall be executed and the order shall state the date, time and place for the sentence to be carried out and give directions as to the place of burial of the body or disposal of the dismembered body part and treatment of the wound; or

(b) direct that the execution shall take place at such date, time and place as shall be specified by some officer specified in the order and that the body or dismembered body part of the person executed shall be buried at such place as shall be specified by such officer and shall also give directions on the treatment of the wound.

(2) When the date, time and place of carrying out the sentence of death, amputation or *qisas* and the place of burial is not stated in the Governor's order the officer specified in the order shall endorse thereon the date, time and place of carrying out the sentence of death, amputation or *qisas* and the place of burial or treatment.

(3) The Governor may make rules prescribing the form of any order, direction or specification mentioned in this section.[382]

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377 CPC: "after consultation with the advisory council of the State on the prerogative of mercy, shall decide whether or not he should exercise any power conferred on him by section 192 of the Constitution". Borno, Gombe, Jigawa, Zamfara: "after consultation with the Executive Council and the State Council of Ulamas". Kaduna: "the body of Islamic jurists of the State". Sokoto: "the Executive Council and the State Advisory Council on Religious Affairs". Kebbi does not require consultation with anybody, but makes affirmation of the sentence subject to sub-section (2), see below. Bauchi also does not require the Governor to consult with anyone.

378 Jigawa, Kaduna, Kebbi say "may affirm the sentence". Borno, Gombe, Sokoto, Zamfara say "shall affirm the sentence". Bauchi says "shall" as to certain cases, but the section (§40) is obviously confused.

379 CPC and Gombe omit subsection (2). Kaduna: "The Governor may, in the public interest, and in consultation with the body of Islamic jurists, pardon any convicted person in accordance with section 212 of the Constitution of the Federal Republic of Nigeria, 1999." Kebbi: "The Governor, may, with the approval of the relation of the deceased, pardon any convicted person of the offence punishable with death other than *hudud* or *qisas*."

380 CPC: "If the Governor decides that he should not exercise a power referred to in [the previous section] in respect of a convicted person the sentence of death pronounced upon the convicted person shall be carried into effect in accordance with the provisions of this chapter."

381 CPC: "to the High Court".

382 In this section, CPC refers only to sentences of death, and does not mention disposal of dismembered body parts or treatment of wounds; otherwise the provisions are the same.

265. (1) A copy of the Governor's order shall be sent to the sheriff and the sheriff shall cause effect to be given thereto.[383]

(2) If for any reason a copy of the Governor's order is not received by the sheriff before the date fixed therein or endorsed thereon[384] for execution, the sheriff shall nevertheless direct that the order shall be carried into effect upon the earliest convenient day after the receipt thereof.

(3) The said copy of the Governor's order or the directions issued by the sheriff under subsection (2) shall be sufficient authority to all persons to carry the sentence into effect in accordance with the terms thereof.[385]

266. (1) If a woman sentenced to death, amputation or *qisas*[386] is subsequently alleged to be pregnant the superintendent or other officer in charge of the prison in which she is detained shall report such allegation to the Governor who shall thereupon order the sentence of death, amputation or *qisas* to be postponed until a medical officer to be appointed in writing by the Governor has determined whether or not the woman is pregnant, and make a report in writing of this finding to the Governor.

(2) Where the pregnancy is proved the sentence shall be postponed until after delivery and weaning of the child.[387]

267. (1) When the Governor exercises a power referred to in section 261(2) he shall issue an order, directing that the execution not be proceeded with, and, as the case may be, that the convicted person be released, or that he be imprisoned for such a term as may be specified in the order, or that he be otherwise dealt with as may be specified in the order subject to any condition as may be specified therein.

(2) The Governor shall send to the superintendent or other officer in charge of the prison in which the convicted person is confined a copy of any order issued by the Governor in accordance with the provisions of this section.

(3) The superintendent or other officer in charge of the prison in which the convicted person is confined shall comply with and give effect to every such order sent to him under the provisions of this section.[388]

268. (1) When an accused person is sentenced to imprisonment, the court passing the sentence shall forthwith issue a warrant committing him to prison and shall send the warrant and prisoner to the prison in which he is to be confined.

(2) Every warrant referred to in subsection (1) shall be directed to the officer in charge of the prison or other place in which the prisoner is to be confined and shall be lodged with the official in charge of such prison or other place.

269. (1) When any person is ordered to be detained during the Governor's pleasure he shall notwithstanding anything in this Sharia Criminal Procedure Code or in any other

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[383] Kebbi has in this section and the next two, "Grand Kadi" in place of "sheriff", and Sokoto has "sheriff or Chief Mufti".

[384] All SCPCs omit the words "endorsed thereon".

[385] Borno omits subsection (3).

[386] CPC: deals with sentences of death only in this section, not mentioning amputation or *qisas*.

[387] CPC omits this subsection.

[388] Gombe omits this entire section.

written law be liable to be detained in such place and under such conditions as the Governor may direct and whilst so detained shall be deemed to be in legal custody.

(2) A person detained during the Governor's pleasure may at any time be discharged by the Governor on licence.

(3) A licence may be in such form and may contain such conditions as the Governor may direct.

(4) A licence may at any time be revoked or varied by the Governor and where a licence has been revoked the person to whom the licence relates shall proceed to such place as the Governor may direct and if he fails to do so, may be arrested without warrant and taken to such place.[389]

270. (1) When an offender is sentenced to pay a fine the court passing the sentence may, in its discretion although the sentence directs that in default of payment of the fine the offender shall be imprisoned, issue a warrant for the levy of the amount:

(a) by the seizure and sale of any movable property belonging to the offender; or

(b) by the attachment of any debts due to the offender; or

(c) subject to the provisions of the Land Use Act 1978[390] by the attachment and sale of any immovable property of the offender situated within the jurisdiction of the court.

(2) A warrant for seizure and sale of the movable property of an offender shall be addressed to the court within the local limits of whose jurisdiction it is to be executed.

(3) When execution of a warrant is to be enforced by attachment of debts or by sale of immovable property, the warrant shall be sent for execution to any court competent to execute decrees for the payment of money in civil suits and such court shall follow the procedure for the time being in force for the execution of such decrees.

271. Except in the case of a sentence of death or *qisas* of the limbs or amputation[391] a warrant for the execution of any sentence or other order of a criminal court shall be issued by the court which passed such sentence or order.

272. (1) When an offender has been sentenced to a fine only with or without a sentence of imprisonment in default of payment of the fine, the court authorised by section 271 to issue a warrant may exercise all or any of the powers following, that is to say:

(a) allow time for payment of the fine;

(b) direct that the fine be paid by instalments;

(c) postpone the issue of a warrant under section 270;

(d) without postponing the issue of a warrant under section 270 postpone the sale of any property seized under such warrant;

(e) postpone the execution of the sentence of imprisonment in default of payment of the fine.

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[389] Kebbi and Sokoto omit this entire section.

[390] Kaduna omits this "subject to" clause.

[391] CPC, Borno, Gombe, Jigawa, Zamfara omit "or *qisas* of the limbs or amputation". Kaduna omits "of the limbs".

(2) Any order made in the exercise of the powers referred to in subsection (1) may be subject to the offender giving such security as the authority making the order thinks fit by means of a bond with or without sureties, and such bond may be conditioned either for the payment of the fine in accordance with the order or for the appearance of the offender as required in the bond or both.

(3) In like manner the court or any person authorised as aforesaid may order that the execution of the sentence of imprisonment upon an offender who has been committed to prison in default of payment of a fine be suspended and that he be released but only subject to the offender giving security as set forth in subsection (2).

(4) In the event of the fine or any instalment thereof not being paid in accordance with an order under this section the authority making the order may enforce payment of the fine or of the balance outstanding by any means authorised in this chapter and may cause the offender to be arrested and may commit or recommit him to prison under the sentence of imprisonment in the default of payment of the fine.

273. (1) When the accused is sentenced to caning the sentence shall be executed at such time as the court may direct in the presence of an official of the court and the sentence shall be inflicted by such instrument and in such manner and at such place as shall be prescribed by order of the court.[392]

(2) The caning shall be inflicted in the presence of the registrar[393] of the court, and where it relates to a *hadd* punishment, in the presence of the public.[394]

(3) No sentence of caning shall be executed by instalments.

(4) Whenever a sentence of caning is to be executed the court shall ensure that the caning be carried out in the following manner:

(a) the whip to be used shall be a light, supple leather whip which is one-tailed;

(b) the convict shall be made to sit up;[395]

(c) the male convict shall be bared except for his underpants;[396]

(d) the female convict shall be relieved only of heavy outer garments that in the opinion of the court may negate the effect of lashes;

(e) the convict shall not be bound unless it becomes clear that the punishment cannot otherwise be carried out;

(f) the executioner shall be of moderate physique;

(g) the lashes shall be of moderate force so as not to cause lacerations to the skin of the convict;

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[392] This is substantially §307(1) of CPC, except that CPC refers to "Haddi lashing" rather than "caning", and makes it the responsibility of the Governor, not the court, to specify the instrument, the manner, and the place of execution of the sentence. CPC §307 then has a subsection (2) as follows: "Nothing herein contained shall be deemed to authorise the infliction of a Haddi lashing upon any person other than a Moslem and in accordance with the provisions of subsection (2) of section 68 of the Penal Code." In §308, CPC goes on to deal separately with sentences of "caning".

[393] Kebbi: "registrar or court clerk". Sokoto: "registrar or mufti".

[394] Cf. CPC §308(2): "The caning shall be inflicted in the presence of the registrar of the court."

[395] Kebbi: "the male convict shall be made to lie down while the female convict shall be made to sit up".

[396] Kebbi and Sokoto: "trousers" not "underpants".

(h) the executioner shall hold the whip with the last three fingers; the first finger and the thumb are to be held loosely and the whip emerges between the middle finger and the first finger;

(i) the executioner shall strike only the back and the shoulders of the convict and where the convict is a female recourse shall be made to strict modesty and decency.[397]

274. (1) If before the execution of sentence of caning it appears to the registrar[398] of the court referred to in subsection (2) of section 273 that the offender is not in a fit state of health to undergo the sentence, he shall stay the execution, and the court which passed the sentence may either:

(a) after taking a medical opinion again order the execution of the sentence; or

(b) substitute for it any other sentence which it could have passed at the trial except in cases of *hudud*;[399]

(c) where the convict is a pregnant woman, the sentence shall be postponed until after delivery of the child and the woman is cleansed of her postnatal discharge.[400]

(2) If during the execution of caning it appears to the registrar of the court that the offender is not in a fit state of health to undergo the remainder of the sentence, the caning shall immediately be stopped and the remainder of the sentence be remitted except in cases of *hudud*.

(3) In either case referred to in subsection (1) and (2), the stay of execution shall be by prior consent of the Court.[401]

275. (1) When the accused is sentenced to caning, the court shall forthwith ask him whether he intends to appeal and if he expresses such an intention the canning shall not be inflicted until seven days[402] after the date of sentence or, if an appeal is made within that time, unless and until the appellate court confirms the sentence.

(2) When the accused is sentenced to caning only and states to the court his intention to appeal in accordance with the provisions of subsection (1), the court shall release him pending the expiry of the period of seven days or, if an appeal is made within that time, the disposal of the appeal by the appellate court on his furnishing bail to the satisfaction of the court for his appearance at such time and place as the court may direct for the execution of the sentence if such sentence is to be carried out.

(3) When the accused is sentenced to caning only and furnishes bail to the satisfaction of the court for his appearance at such time or place as the court may direct for the execution of the sentence, the court shall release him pending such appearance.

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[397] Compare CPC §308(4) and (5): "(4) No sentence of caning shall be inflicted on: (a) females; (b) males sentenced to death; or (c) males whom the court considers to be more than forty-five years of age. (5) The sentence shall be inflicted with a light rattan cane."

[398] Kebbi: "registrar or court clerk". Sokoto: "registrar or mufti", here and throughout this section.

[399] CPC omits "except in cases of *hudud*" here and in subsection (2).

[400] CPC omits sub-subsection (c). Borno omits everything after the word "delivery". Kebbi, Sokoto add: "and certified by a medical officer to be fit".

[401] CPC, Borno, Gombe, Jigawa, Kebbi, Sokoto, Zamfara: "In either case the court shall be informed of the stay of execution". Kaduna as here, except has "by prior consent and orders of the court".

[402] CPC: 15 days. Kebbi, Sokoto: 30 days.

276. When sentence of imprisonment is passed on an escaped convict, such sentence shall take effect after he has suffered imprisonment for a further period equal to that which at the time of his escape remained unexpired of his former sentence.[403]

277. Subject to the provisions of section 23 of this Code, when a person is sentenced to imprisonment, such imprisonment shall not commence before the expiration of any imprisonment to which he has been previously sentenced, unless the court directs that the imprisonment shall run concurrently with any such previous imprisonment.

278. When a sentence has been fully executed, the officer executing it shall return the warrant to the court in which the trial took place with an endorsement under his hand certifying the manner in which the sentence has been executed.

PART VIII – SPECIAL PROCEEDINGS

CHAPTER XXIII – PROCEEDINGS IN CASE OF CERTAIN OFFENCES AFFECTING THE ADMINISTRATION OF JUSTICE

279. (1) When any court is of the opinion that an offence referred to in section 139 of this Code is committed before it or brought to its notice in the course of any judicial proceeding should be inquired into or tried, such court, after making any preliminary inquiry which it thinks fit, may send the case for trial to the nearest court of competent jurisdiction, and may send the accused in custody or take sufficient security for his appearance before such court of competent jurisdiction[404] and may bind over any person to appear and give evidence at such trial.

(2) The Sharia Court of competent jurisdiction shall thereupon proceed according to law and as if upon complaint made and recorded under section 145 of this Code.

(3) Where it is brought to the notice of a Sharia Court of competent jurisdiction to which the case may have been transferred under this section that an appeal is pending against the decision arrived at in the judicial proceedings out of which the matter has arisen, it may if it thinks fit adjourn the hearing of the case until such appeal is decided.

280. (1) When any such offence is as described in Sections 309, 313, 314 and 326 of the Sharia Penal Code is committed in the view or presence of any Sharia Court, the court may instead of proceeding under section 279 of this Code cause the offender to be detained in custody; and at any time before the rising of the court on the same day may if it thinks fit take cognizance of the offence and sentence the offender to a fine not exceeding one thousand naira and in default of payment to imprisonment for a term which may extend to one month or caning which may extend to 15 lashes.[405]

(2) No criminal court shall impose a sentence under this section which it is not competent to impose under the provisions of Chapter III of this Code.

281. (1) When any court takes cognizance under section 280 of an offence it shall record the facts constituting the offence with the statement, if any, made by the offender as well as the finding and sentence.

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[403] Borno omits this section.

[404] All SCPCs leave out the clause beginning "and may send the accused . . ." and ending at this note.

[405] CPC: fine not exceeding £10. CPC, Borno, Gombe, Kaduna, Kebbi, Sokoto, Zamfara: in default of payment of fine, imprisonment of up to 1 month "unless such fine be sooner paid", with provision for lashes omitted except in Kaduna.

(2) If the offence is under section 326 of the Sharia Penal Code the record shall show the nature and stage of the judicial proceedings in which the court interrupted or insulted was sitting and the nature of the interruption or insult.

282. When any court has under section 280 of this Code sentenced an offender to punishment for refusing or omitting to do anything which he was lawfully required to do or for any intentional insult or interruption, the court may in its discretion discharge the offender or remit the punishment on his submission to the order or requisition of the court or an apology being made to its satisfaction.

283. If any witness or any person called to produce a document or thing before a Sharia Court unlawfully refuses to answer such questions as are put to him or to produce any document or thing in his possession or power which the court requires him to produce and does not offer any reasonable execute for such refusal, the Sharia Court may, for reasons to be recorded in writing, sentence him to imprisonment or by warrant of the court commit him to the custody of an officer of the court for any term not exceeding seven days unless in the meantime he consents to be examined and to answer or to produce the document or thing and in the event of his persisting in his refusal, he may be dealt with according to the provisions of section 279 or section 280 of this Code.

284. (1) Any person sentenced by any court under section 280 or section 283 of this Code may, notwithstanding anything hereinbefore contained, appeal to the court to which judgments or orders made in the trial court are appealable.

(2) Any person sentenced by any court under section 280 or section 283 may, notwithstanding anything hereinbefore contained, ask for a review by the reviewing authority, if any, which ordinarily has a power of review over such courts.

CHAPTER XXIV – PERSONS OF UNSOUND MIND

285. (1) When a Sharia Court holding a trial has reason to suspect that the accused is of unsound mind and consequently incapable of making his defence the court shall in the first instance investigate the fact of such unsoundness of mind.

(2) An investigation under subsection (1) may be held in the absence of the accused person if the court is satisfied that owing to the state of the accused's mind it would be in the interests of the accused or of other persons or in the interests of public decency that he should be absent.

(3) If the Sharia Court is not satisfied that the accused is capable of making his defence, the court shall adjourn the trial or inquiry and shall remand such person for a period not exceeding one month to be detained for observation in some suitable place.

(4) A person detained in accordance with subsection (3) shall be kept under observation by a medical officer during the period of his remand and before the expiry of that period the medical officer shall give to the court his opinion in writing as to the state of mind of this person, and if he is unable within the period to form any definite opinion shall so certify to the court and shall ask for a further remand and such further remand may extend to a period of two months.

(5) Any Sharia Court before which a person suspected to be of unsound mind is accused of any offence may, on the application of the Attorney-General made at any stage of the proceedings prior to the trial, order that such person be sent to some suitable place for observation.

286. (1) If a medical officer reports under section 285 of this Code that such person is of sound mind and capable of making his defence, the court shall, unless satisfied that the accused person is of unsound mind, proceed with the trial.

(2) If the medical officer shall report under section 285 that such person is of unsound mind and incapable of making his defence, the court shall if satisfied of the fact, find accordingly, and thereupon the trial shall be adjourned.

287. (1) Whenever an accused person is found to be of unsound mind and incapable of making his defence the court, if the offence charged is not punishable with death, amputation or *qisas* of the limbs[406] may in its discretion release him on sufficient security being given by his guardians that he shall be properly taken care of and shall be prevented from doing injury to himself or to any other person, and for his appearance when required before the court or such officer as the court appoints in that behalf.

(2) If the offence charged is one punishable with death, amputation or *qisas* of the limbs,[407] or if a court has refused to take security under subsection (1), or if no application is made for bail or if an application for bail is refused, the court shall report the case to the Governor[408] who offer consideration of the report may, in his discretion, order the accused to be confined in a suitable place of safe custody.

(3) Pending the order of the Governor the accused may be committed to a suitable place of safe custody.

288. Whenever a trial is adjourned under section 285 of this Code or section 286 of this Code the court may at any time re-open or commence the trial and require the accused to appear or be brought before such court.

289. When the accused has been released under section 287 of this Code the court may at any time require the accused to appear or be brought before it and may again proceed under section 285 of this Code.

** [Section on "When accused appears to have been of unsound mind"][409]

290. Whenever any person is discharged[410] upon the ground that at the time at which he is alleged to have committed an offence he was by reason of unsoundness of mind incapable of knowing the nature of the act alleged as constituting the offence or that it was wrong or

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406 CPC and SCPCs have "not punishable with death" only.

407 CPC: "punishable with death". Borno, Gombe, Jigawa, Kebbi, Zamfara: "punishable with death, a *hadd* or *qisas* offence or amputation". Kaduna: "punishable with death, *hadd* or *qisas*".

408 Kebbi, Sokoto: "report the case to the Governor through the Attorney-General".

409 At this point CPC of 1960 has a section omitted here, as follows: "§325: *When accused appears to have been of unsound mind.* When the accused appears to be of sound mind at the time of any preliminary inquiry before a court and the court is satisfied from the evidence given before it that there is reason to believe that the accused committed an act which if he had been of sound mind would have been an offence and that he was at the time when the act was committed by reason of unsoundness of mind incapable of knowing the nature of the act or that it was wrong or contrary to law, the court shall proceed with the case and, if the accused ought otherwise to be committed to the High Court, send him for trial." This section was deleted from the Kano CPC by Edict No. 15 of 1978, as part of the abolishment of preliminary inquiries.

410 CPC: "acquitted". Kebbi, Sokoto: "discharged or acquitted".

contrary to Sharia law,[411] the finding shall state specifically whether he committed the act or not.

291. (1) Whenever the finding states that the accused person committed the act alleged, the Sharia Court before which the trial has been held shall, if such act would but for incapacity found to have constituted an offence, order such person to be kept in safe custody in such place and manner as the court thinks fit and shall report the case for the order of the Governor.

(2) The Governor may order such person to be confined in a suitable place of safe custody during the Governor's pleasure.

292. When any person is confined under section 287 of this Code or section 291 of this Code, a responsible medical officer shall keep him under observation in order to ascertain his state of mind and such medical officer shall make a special report as to the state of mind of such person for the information of the Governor at such time or times as the Governor shall require.

293. If the responsible medical officer referred to in section 292 of this Code certifies that in his opinion a person confined under section 287 of this Code or section 291 of this Code may be discharged without danger to himself or to any other person, the Governor may thereupon order him to be discharged or to be detained in custody and he may appoint two medical officers to report on the state of mind of such person and on receipt of such report the Governor may order his discharge or detention as he thinks fit.

294. Where a person is confined in any place the Governor may direct his transfer from one place to another as often as may be necessary.

295. Whenever any relative or friend of any person confined under section 287 of this Code or section 291 of this Code applies to the Governor that such person shall be delivered over to his care and custody, the Governor may in his discretion order such person to be delivered to such relative or friend upon the relative or friend giving sufficient security that:

(a) the person delivered shall be properly taken care of and shall be prevented from doing injury to himself or to any other person;

(b) if at any time it shall appear that the person delivered is capable of making his defence the relative or friend shall produce such person for trial; and

(c) the person delivered shall be produced for the inspection of such officer and at such times as the Governor directs.

CHAPTER XXV – PROCEEDINGS RELATING TO CORPORATIONS

296. (1) In this chapter:

"corporation" means any body corporate, incorporated in Nigeria or elsewhere;

"representative" in relation to a corporation means a person duly appointed by the corporation to represent it for the purpose of doing any act or thing which the representative of a corporation is by this chapter authorised to do, but a person so appointed shall not by virtue only of being so appointed be qualified to act on behalf of the corporation before any Sharia Court for any other purpose.

[411] CPC: "contrary to law". Kaduna: "contrary to Sharia".

(2) A representative for the purposes of this chapter need not be appointed under the seal of the corporation, and a statement in writing purporting to be signed by a managing director of the corporation or by any person having, or being one of the persons having the management of the affairs of the corporation, to the effect that the person named in the statement has been appointed as the representative of the corporation for the purposes of this section shall be admissible without further proof as evidence that the person has been so appointed.

297. Where a corporation is called upon to plead to any charge it may enter in writing by its representative a plea of guilty or not guilty or any plea which may be entered under the provisions of section 193 of this Code, and if either the corporation does not appear by a representative or, though it does so appear, fails to enter as aforesaid any plea, the court shall order a plea of not guilty to be entered and the trial shall proceed as though the corporation had duly entered a plea of not guilty.

298. A Sharia Court alkali may commit a corporation for trial to the High Court.[412]

299. A representative may on behalf of a corporation:

(a) make a statement before a Sharia Court alkali holding a preliminary inquiry; or

(b) state whether the corporation is ready to be tried on a charge or altered charge to which the corporation has been called on to plead under the provisions of section 177 of this Code.

300. Where a representative appears, any requirement of this Sharia Criminal Procedure Code that anything shall be done in the presence of the accused, or shall be read or explained to the accused, shall be construed as a requirement that that thing shall be done in the presence of the representative or read or said or explained to the representative.

301. Where a representative does not appear, any such requirement as is referred to in section 300 of this Code shall not apply.

302. Subject to the provisions of this chapter, the provisions of this Sharia Criminal Procedure Code relating to the trial of offences shall apply to a corporation as they apply to a natural person *sui juris* [413] and of full age.

PART IX – SUPPLEMENTARY PROVISIONS

CHAPTER XXVI – THE COMPOUNDING OF OFFENCES

303. Subject to the provisions of the Sharia Penal Code, other provisions of this Sharia Criminal Procedure Code, or any other written law, the offences punishable by *qisas* or *ta'azir* under the Sharia Penal Code may be compounded by the blood relations of the deceased victim or in any case by the person affected by the offence *provided that* the compounding must be before the court trying the offence, and upon the application of the person affected if the court sees reason to allow the offence to be compounded and thereafter discharge the accused person.[414]

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[412] Kebbi and Sokoto omit this section.

[413] Jigawa: "to a natural person *mukallaf* and of full age".

[414] Borno: "may be compounded and thereafter discharge the accused person". Borno, Gombe, Jigawa, Kaduna, Kebbi, Sokoto, Zamfara all add a subsection (2): "Except the offence of *qadhf* [Kaduna: homicide and *qadhf*] under section [number varies] of the Sharia Penal Code, no *hadd* offence shall be

CHAPTER XXVII – BAIL

304. (1) When any person accused of an offence punishable with imprisonment whether with or without fine for a term not exceeding three years or with fine only[415] is arrested or detained without warrant by an officer in charge of a police station or appears or is brought before a Sharia Court and is prepared at any time while in the custody of that officer or before that court to give such security as may seem sufficient to the officer or court, such person shall be released on bail unless the officer or court, for reasons to be recorded in writing, considers that by reason of the granting of bail the proper investigation of the offence would be prejudiced or a serious risk of the accused escaping from justice be occasioned.

(2) The officer or the Sharia Court referred to in subsection (1) if he or it thinks fit may instead of accepting security from such person discharge him on his executing a bond without sureties for his appearance as provided in section 309 of this Code and 310 of this Code.

305. (1) Persons accused of an offence punishable with death shall not be released on bail.

(2) Persons accused of an offence punishable with imprisonment for a term exceeding three years shall not ordinarily be released on bail; nevertheless the Upper Sharia Court or the Sharia Court of Appeal[416] may upon application release on bail a person accused as aforesaid if it considers:

(a) that by reason of the granting of bail the proper investigation of the offence would not be prejudiced; and

(b) that no serious risk of the accused escaping from justice would be occasioned; and

(c) that no grounds exist for believing that the accused, if released, would commit an offence.[417]

(3) Notwithstanding anything contained in subsections (1) and (2), if it appears to the Upper Sharia Court or the Sharia Court of Appeal[418] that there are no reasonable grounds for believing that a person accused has committed the offence, but that there are sufficient grounds for further inquiry, such person may, pending such inquiry, be released on bail.

306. (1) Where any person is accused of an offence a single alkali of the Upper Sharia Court or a Kadi of the Sharia Court of Appeal[419] may, subject to the provisions of section 305 of this Code, direct that such person be admitted to bail.

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compounded." The HSCPC specifies offences which may not be compounded in Appendix C. CPC has a very long section on compounding of offences (§339), comprising nine subsections, which we do not reproduce here, plus, in its Appendix C, a list of offences which may be compounded showing by whom they may be compounded.

415 Kebbi, Sokoto: "When any person accused of an offence punishable with imprisonment for a term not exceeding three years whether with or without fine or caning or with fine only".

416 CPC and Bauchi: "nevertheless the court may . . .".

417 Kaduna omits the text of sub-subsection (c), making what is here subsection (3) into sub-subsection (c) instead.

418 CPC: "if it appears to the court that . . ." Bauchi omits subsection (3).

419 CPC: "a single judge of the High Court may". Borno: "a single judge may". Jigawa: "a single alkali of the Upper Sharia Court may". Borno, Kebbi, Sokoto: "a single alkali of the Upper Sharia Court or the Sharia Court of Appeal may".

(2) When any person is convicted of an offence in a Sharia Court and appeals from such court to the Upper Sharia Court or Sharia Court of Appeal, the Upper Sharia Court or the Sharia Court of Appeal or a singe alkali or kadi thereof may, subject to the provision of section 305, direct that such person be admitted to bail.[420]

307. Any Sharia Court may at any subsequent stage of proceeding under this Sharia Procedure Code cause any person who has been released under sections 304, 305, or 306 to be arrested and may commit him to custody.

308. An alkali of the Sharia Court may in any case direct that the bail bond required by an officer in charge of a police station or any court be reduced.

309. Before any person is released on bail under sections 304, 305, or 306 of this Code he shall execute a bond for such sum of money as the officer in charge of the police station or the court thinks sufficient on condition that such person shall attend at the time and place mentioned in the bond and shall continue so to attend until otherwise directed by the Sharia Court and if he is released on bail the sureties shall execute the same or another bond or other bonds containing conditions to the same effect.

310. (1) As soon as a bond referred to in section 309 has been executed, the person for whose appearance it has been executed shall be released; and if he is in prison, the court admitting him to bail shall issue a written order of release to the official in charge of the prison and such official on receipt of the order shall release him.

(2) Nothing in this section, section 304 or section 305 of this Code shall be deemed to require the release of any person liable to be detained for some matter other than that in respect of which the bond was executed.

311. When any person is required by any Sharia Court or officer in charge of a police station to execute a bond with or without sureties, the court or officer may, except in the case of bonds to be executed under Chapter VII permit him to deposit a sum of money to such amount as the court or officer may think fit in lieu of executing such bond.

312. When a person required to execute a bond is under eighteen years of age, a bond executed by a surety or sureties only may be accepted.

313. (1) The amount of every bond shall be fixed with due regard to the circumstances of the case and shall not be excessive.

(2) If, through mistake, fraud or otherwise, insufficient sureties have been accepted or if the sureties afterwards become insufficient the court may issue a warrant for the arrest of the person on whose behalf the sureties executed the bond and, when that person appears, the court may order him to find sufficient sureties and on his failing to do so may make such order as in the circumstances is just and proper.

314. Where a person has been admitted to bail and circumstances arise which in the opinion of the Attorney-General would justify the court in cancelling the bail or requiring bail of greater amount, a Sharia Court my, on application being made by the Attorney-

[420] CPC deals with appeals to the High Court: "the High Court or a single judge thereof may". Jigawa: "When any person is convicted of an offence in a Sharia Court and appeals from such court to the Higher Sharia Court or the Upper Sharia Court a single alkali thereof may"." Kebbi and Sokoto as here except omit "or a single akali or kadi thereof". Bauchi: "and appeals from such court to the Upper Sharia Court or Sharia Court of Appeal or any other court a single judge thereof may".

General, issue a warrant for the arrest of the person and, after giving him an opportunity of being heard, may either commit him to prison to await trial, or admit him to bail for the same or an increased amount.

315. (1) All or any sureties to a bond may at any time apply to the court which caused the bond to be taken to discharge the bond either wholly or so far as relates to the applicants.

(2) On an application under subsection (1) the court shall issue a warrant for the arrest of the person on whose behalf the bond was executed and upon his appearance shall discharge the bond either wholly or so far as relates to the applicants and shall require such person to find other sufficient sureties and, if he fails to do so, may make such order as in the circumstances is just and proper.

316. When a surety to a bond dies before his bond is forfeited, his estate shall be discharged from all liability under the bond, but the person on whose behalf such surety executed the bond may be required to find a new surety; and in such case the court may issue a warrant for the arrest of such person and upon his appearance may require him to find a new surety and, if he fails to do so, may make such order as in the circumstances is just and proper.

317. If a person required by a court to find sufficient sureties under section 313, 315 or 316 of this Code, fails to do so the court, unless it is just and proper in the circumstances to make some other order, shall make:

(a) in the case of a person ordered to give security for good behaviour under section 86 of this Code or section 87 of this Code, an order committing him to prison for the remainder of the period for which he was originally ordered to give surety or until he finds sufficient sureties; or

(b) in the case of a person accused of an offence and released on bail under section 304 an order committing him to prison until he is brought to trial or discharged.

318. (1) Whenever it is proved to the satisfaction of the court by which a bond has been taken or, when the bond is for appearance before a court to the satisfaction of such court, that a bond has been forfeited, the Sharia Court shall record the grounds of such proof and may call upon any person bound by the bond to pay the penalty thereof or to show cause why it should not be paid.

(2) If sufficient cause is not shown and the penalty is not paid, the Sharia Court may proceed to recover the same from any person bound or from his estate if he is dead in the manner laid down in section 270 of this Code for the recovery of fines.

(3) A surety's estate shall only be liable under this section if the surety dies after the bond is forfeited.

(4) If the penalty is not paid and cannot be recovered in manner aforesaid, the person bound shall be liable by order of the Sharia Court which issued the warrant under section 270 of this Code to imprisonment for a term which may extend to six months.[421]

[421] Bauchi: 2 months.

(5) The Sharia Court may at its discretion remit any portion of the penalty and enforce payment in part only.

319. When a person who is bound by any bond to appear before a Sharia Court does not so appear, the Sharia Court may issue a warrant for his arrest.

CHAPTER XXVIII – THE DISPOSAL OF PROPERTY

320. When any property regarding which any offence appears to have been committed or which appears to have been used for the commission of any offence is produced before any Sharia Court during any trial, the court may make such order as it thinks fit for the proper custody of that property pending the conclusion of the trial and, if the property is subject to speedy or natural decay, may, after recording such evidence as it thinks necessary, order it to be sold or otherwise disposed of.

321. (1) When a trial in any criminal case is concluded, the Sharia Court may make such order as it thinks fit for the disposal by destruction, confiscation or delivery to any person appearing to be entitled to the possession thereof or otherwise of any movable property or document produced before it or in its custody or regarding which any offence appears to have been committed or which has been used for the commission of any offence.

(2) When an order is made in a case in which any appeal lies, such order shall not, except when the property is livestock or is subject to speedy and natural decay, be carried out until the period allowed for presenting such appeal has passed or, when such appeal is presented within such period, until such appeal has been disposed of.

(3) Notwithstanding the provisions of subsection (2), the Sharia Court may in any case make an order under the provisions of subsection (1) for the delivery of any property to any person appearing to be entitled to the possession thereof on his executing a bond with or without sureties to the satisfaction of the court engaging to restore such property to the court, if the order made under this section is modified or set aside by the appellate court.

322. When any person is convicted of any offence which includes or amounts to theft or receiving stolen property and it is proved that any other person has bought the stolen property from him without knowing or having reason to believe that the same was stolen and that any money has on his arrest been taken out of the possession of the convicted person, the court may, on the application of the purchaser and on the restitution of the stolen property to the person entitled to the possession thereof, order that out of such money a sum not exceeding the price paid by the purchaser be delivered to him.

323. (1) On a conviction under section 374 or 141 of the Sharia Penal Code the court may order the confiscation or destruction of all the copies of the thing in respect of which the conviction was had and which are in the custody of the court or remain in the possession or power of the person convicted.

(2) The court may, in like manner, on a conviction under section 355, 356, 357, 358 or 359, 360 and 361 of the Sharia Penal Code order the food, drink, drug or medical preparation in respect of which the conviction was obtained to be destroyed.

324. (1) Whenever a person is convicted of an offence attended by criminal force or show of force or criminal intimidation and it appears to the court that thereby any person

has been dispossessed of any immovable property, the court may if it thinks fit order that property to be restored to the possession of the same.

(2) No order under subsection (1) shall prejudice any right or interest to or in such immovable property which any person may be able to establish in a civil suit.

325. (1) The seizure by the police of property taken under section 43 of this Code or alleged or suspected to have been stolen or found in circumstances which create a suspicion of the commission of an offence shall be forthwith reported to a court which shall make such order as it make such order as it thinks fit respecting the disposal of the property or its delivery to the person entitled to the possession thereof on such conditions as the court thinks fit, or, if such person cannot be ascertained, respecting the custody and production of such property.

(2) If the person entitled to the possession of property referred to in subsection (1) is unknown, the court may detain it and shall in such case issue a public notice in such form as it thinks fit specifying the articles of which the property consists and requiring any person who may have a claim thereto to appear before the court and establish his claim within six months from the date of the notice.

326. (1) If no person within the period referred to in section 325 establishes his claim to property referred to in that section and if the person in whose possession such property was found is unable to show that it was lawfully acquired by him, such property shall be at the disposal of the court and may be sold in accordance with the orders of the court.

(2) At any time within two years from the date of the property coming into the possession of the police the court may direct the property or the proceeds of the sale of the property to be delivered to any person proving his title thereto on payment by him of any expenses incurred by the court in the matter.

327. If the person entitled to the possession of property referred to in section 325 of this Code is unknown or absent and the property is subject to speed and natural decay or if the court to which its seizure is reported is of opinion that its sale would be for the benefit of the owner, the court may at any time direct it to be sold and the provisions of section 325 and 326 of this Code shall as nearly as may be practicable apply to the net proceeds of such sale.

CHAPTER XXIX – MISCELLANEOUS

328. Subject to any rules made by the Grand Kadi[422] under section 337 of this Code any Sharia Court may if it thinks fit remit the fees for the issue and service of any witness summons and order payment on the part of the Government of the reasonable expenses of any complainant or witness attending for the purpose of any trial, inquiry or other proceeding before such court under this Sharia Criminal Procedure Code or before the Upper Sharia Court or where the witness is to be summoned under sections 162 and 203 of this Code.

329. (1) Whenever under any law in force for the time being a Sharia Court imposes a fine, the court may, when passing judgment, order that in addition to a fine a convicted person shall pay a sum:

[422] CPC and Zamfara: "Chief Judge". Borno: "Chief Judge on the recommendation by the Grand Khadi".

(a) in defraying expenses properly incurred in the prosecution;

(b) in compensation in whole or in part for the injury caused by the offence committed, where substantial compensation is in the opinion of the court recoverable by civil suit;

(c) in compensating an innocent purchaser of any property in respect of which the offence was committed who has been compelled to give it up;

(d) in defraying expenses incurred in medical treatment of any person injured by the accused in connection with the offence.

(2) If the fine referred to in subsection (1) is imposed in a case which is subject to appeal, no such payment additional to the fine shall be made before the period allowed for presenting the appeal has elapsed or, if an appeal is presented, before the decision on the appeal.

330. At the time of awarding compensation in any subsequent civil suit relating to the same matter, the court shall take into consideration any sum paid or recovered as compensation under section 329 of this Code.

331. Any compensation adjudged to be payable under section 102 of the Sharia Penal Code and the payment of any money other than fine, payable by virtue of any order under this Sharia Criminal Procedure Code, may be enforced as if it were a fine.

332. (1) If any person affected by a judgment or order passed by a Sharia Court desires to have a copy of any order or deposition or other part of the record other than the judgment, he shall on application for such copy be furnished therewith.

(2) An application under subsection (1) shall be made within a period of two years from the date of judgment or order affecting the applicant.

(3) The applicant shall pay such fee, if any, for the copy as may be prescribed, unless the court or appellate court in any case on account of the poverty of the applicant or for some special reason directs that the copy be furnished without fee.

333. Any police officer may seize any property which may be alleged or suspected to have been stolen or which may be found in circumstances which create suspicion of the commission of any offence and such police officer, if subordinate to the officer in charge of a police station, shall forthwith report the seizure to that officer.

334. Any superior police officer may exercise the same powers throughout the local area to which he is appointed as may be exercised by an officer in charge of a police station within the limits of his station.

335. (1) When any person causes the arrest of another person and it appears to the court by which the case is inquired into or tried that there was no sufficient ground for causing such arrest, the court may in its discretion direct the person causing the arrest to pay to the arrested person or each of the arrested persons, if there are more than one, such compensation not exceeding five thousand naira[423] to each such person as the court thinks fit and may award a term of imprisonment not exceeding three

[423] Borno, Gombe, Jigawa, Kebbi, Sokoto, Zamfara: "not exceeding five hundred naira". Kaduna: "such compensation as the court thinks fit".

months in the aggregate in default of payment, and the provisions of section 98 of the Sharia Penal Code shall apply as if such compensation were a fine.[424]

(2) Before making any direction under subsection (1) the court shall:

(a) record and consider any objection which the person causing the arrest, if present, may urge against the making of the direction; and

(b) state in writing its reasons for awarding the compensation.

(3) Compensation awarded under this section may be recovered as if it were a fine.

(4) Any person directed to make a payment of compensation under this section may appeal from the direction as if he had been convicted after trial by the court.

336. Nothing in this Sharia Criminal Procedure Code shall affect the use or validity of any special forms in respect of any procedure or offence specified under the provisions of any other written law nor the validity of any other procedure provided by any other written law.

337. (1) The Grand Kadi with the approval of the Governor[425] may make rules of court for all or any of the following purposes:

(a) prescribing fees or expenses to be charged for or in respect of any act or thing done under this Sharia Criminal Procedure Code;

(b) prescribing the books and forms of account to be used in Sharia Courts and the keeping of the same;

(c) requiring the making and forwarding of returns of cases decided in Sharia Courts to the Grand Kadi or any Kadi of the Sharia Court of Appeal and prescribing the forms of and terms of forwarding such returns;

(d) prescribing the imposition of penalties on any person who fails to take any action required by a rule of court or who disobeys any rule of court;

(e) prescribing forms for process, warrants, summons, orders of court, bonds, notices, certificates and receipts;

(f) prescribing the conditions under which statements may be made to the police by accused and other persons and under which such statements may be admitted in evidence;

(g) generally for the better carrying into effect of the provisions and objects and intentions of this Sharia Criminal Procedure Code.

(2) Rules of court made under this section shall apply to all proceedings by the State before Sharia Courts.

338. (1) No person shall try or sit as a member of the court which tries any case to or in which he is a party or personally interested.[426]

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[424] Kaduna omits the last clause.

[425] CPC, Zamfara: "The Chief Judge with the approval of the Governor". Borno: "The Chief Judge on the recommendation of the Grand Khadi with the approval of the Governor".

[426] CPC adds: "without the consent of the Chief Judge".

(2) A person shall not be deemed to be a party to or personally interested in any case within the meaning of this section by reason only that he is concerned therein in a public capacity or by reason only that he has viewed the place in which an offence is alleged to have been committed or any other place in which any other transaction material to the case is alleged to have occurred.

339. Subject to the provisions of section 338 any criminal proceeding by or against any officer of a court for any offence or matter cognisable by a court may be brought in any court having jurisdiction in respect of any particular proceeding.

340. A public servant having any duty to perform in connection with the sale of any property under this Sharia Criminal Procedure Code shall not purchase or bid for the property.

341. (1) No kadi of the Sharia Court of Appeal or Sharia Court alkali or member of a Sharia Court shall be liable for any act done or ordered to be done by him in the course of any proceeding before him whether or not within the limits of his jurisdiction *provided that* at the time he, in good faith, believed himself to have jurisdiction to do or order to be done the act complained of.

(2) No person required or bound to execute any warrant or order issued by a court shall be liable in any action for damages in respect of the execution of such warrant or order unless it be proved that he executed either in an unlawful manner.

** [Section on "Governor's powers when exercisable under the Sharia Criminal Procedure Code"][427]

** [Section on "Directions by native [subsequently Area] court to officer of Nigeria Police"][428]

CHAPTER XXX – IRREGULAR PROCEEDINGS

342. If any court or justice of the peace not empowered by law to do any of the following things, namely:

(a) to issue a search warrant under section 73 of this Code;

(b) to direct, under section 119 of this Code, the police to investigate an offence; and

(c) to take cognizance of an offence under section 142 of this Code,

erroneously in good faith does any such thing, the proceedings shall not be set aside merely on the ground that the court or justice of the peace was not so empowered.

343. If any court or justice of the peace not being empowered by law in this behalf, does any of the following things, namely:

(a) attaches and sells property under section 67 of this Code;

(b) demands securities to keep the peace;

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[427] Kaduna adds here a section as follows: "The powers conferred upon the Governor by this Sharia Criminal Procedure Code shall not be exercised unless in consultation with the Body of Islamic Jurists which shall be established by the Governor for the State."

[428] CPC of 1960 has here a section on *Directions by native court to officer of Nigeria Police.* This section was deleted in 1971 in all the CPCs of the northern States, by identical edicts, on the ground that "[it] is no longer considered necessary following the re-organisation of Area Courts and this Edict therefore repeals that section." Kano State Edict No. 9 of 1971. No SCPC includes the section in any form.

(c) demands security for good behaviour;

(d) discharges a person lawfully bound to be of good behaviour;

(e) cancels a bond to keep the peace;

(f) makes an order under section 103 of this Code as to public nuisance;

(g) prohibits, under section 110 of this Code, the repetition or continuance of a public nuisance;

(h) tries an offender;

(i) decides an appeal,

such proceedings shall be void.

344. (1) No finding or sentence pronounced or passed shall be deemed invalid merely on the ground that no charge was framed, unless, in the opinion of an appeal court or reviewing authority a failure of justice has in fact been occasioned thereby.

(2) If an appeal court or reviewing authority thinks that a failure of justice has been occasioned by an omission to frame a charge, it may order that a charge be framed and that the trial be recommenced from the point at which the appeal court or reviewing authority considers the charge should have been framed.

345. Subject to the provisions hereinbefore contained, no finding, sentence or order passed by a court of competent jurisdiction shall be reversed or altered on appeal or review on account of any error, omission or irregularity in the complaint, summons, warrant, charge, public summons, order, judgment or other proceedings before or during trial or in any inquiry or other proceedings under this Sharia Criminal Procedure Code unless the appeal court or reviewing authority thinks that a failure of justice has in fact been occasioned by such error, omission or irregularity.[429]

346. A summons, warrant or other process under any written law shall not be invalidated by reason of the person who signed the same dying or ceasing to hold office or have jurisdiction.

347. A court may at any time amend any defect in substance or in form in any order or warrant issued by such court, and no omission or error as to time and place, and no defect in form in any order or warrant given under this Sharia Criminal Procedure Code, shall be held to render void or unlawful any act done or intended to be done by virtue of such order or warrant, when it is therein mentioned, or may be inferred there from, that it is founded on conviction or judgment, and there is a valid conviction or judgment to sustain the same.

[Chapter entitled GENERAL][430]

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[429] CPC has an explanation after this section, omitted in all SCPCs.

[430] Kebbi and Sokoto add to their SCPCs a final Chapter XXXI entitled GENERAL. In Sokoto this consists of one section, entitled "Jurisdiction in abetments, attempts and conspiracy", which is also included in Kebbi; Kebbi adds a second section, not included in Sokoto, entitled "Procedure under Maliki School of jurisprudence". Here are the two sections: "*Jurisdiction in abetments, attempts and conspiracy.* (1) Except as otherwise provide by this Sharia Criminal Procedure Code and subject to Appendix A, any court that has jurisdiction to try an offence shall also have jurisdiction to try: (a) abetment; (b) attempt; and (c) criminal conspiracy to commit such offences. (2) Any court that has power to issue a warrant or other court process shall also ahve power to issue the same in respect of abetment, attempt and criminal conspiracy." "*Procedure under Maliki School of jurisprudence.*

[Chapter on TRIALS IN NATIVE COURTS][431]

APPENDICES

[Ed. note: This Code and CPC both conclude with three appendices, which we omit here.

- **Appendix A** is in both cases a "Tabular Statement of Offences", described more fully in the first note to §12 above.
- **Appendix B** in both cases consists of two "Forms of Charges", one for a single charge and one for two or more charges (referring back to Chapter XVII in the case of this Code).
- **Appendix C**, in the CPC, lists "Offences Which May be Compounded". In this Code it lists "Non-Compoundable Offences" as follows: *zina*, rape, sodomy, incest, lesbianism, bestiality, witchcraft, *qadhf*, defamation, theft, alcoholism, *hirabah*, blasphemy and cannibalism, giving the numbers of the sections dealing with these crimes. Cf. §299 above.

Of the Sharia Criminal Procedure Codes here annotated, Borno, Kebbi, Sokoto and Zamfara include Appendices A and B, although Kebbi and Sokoto have much modified and abbreviated their "Tabular Statements of Offences"; Kaduna includes only Appendix A; Gombe and Jigawa refer to Appendices A and B in the texts of their Codes but omit them in the enacted versions; and Bauchi omits the appendices altogether.]

Notwithstanding any of the provisions contained in this Law the Sharia Courts may, wherever it deems fit, apply such rules of Islamic Procedure as are contained in such books of authority of the Maliki School of Jurisprudence."

[431] The final chapter of CPC, Chapter XXXIII, is entitled TRIALS IN NATIVE [subsequently Area] COURTS. In Kano, this chapter was repealed in 1979 and Chapter XVI, on SUMMARY TRIALS, was made to apply without qualification to trials in both magistrates' and area courts (Kano No. 4 of 1979). The chapter is also omitted here except that five sections from it (§§391, 392, 393, 395, and 396) have been adapted for use in Chapter XIX of this code on GENERAL PROVISIONS AS TO TRIALS AND OTHER JUDICIAL PROCEEDINGS IN SHARIA COURTS (= §§165, 166, 169, 170 and 171 above).

And note that Kano State, instead of adopting a whole separate Sharia Criminal Procedure Code as part of its programme of Sharia implementation, instead simply added back a substantially altered Chapter XXXIII to its Criminal Procedure Code, calling it now TRIALS BY SHARIA COURTS. Kano's new Chapter XXXIII is printed following this code.

Chapter 5 Part V

Kano State Criminal Procedure Code Cap. 37 (Amendment) Law 2000 Annotated[1]

Arrangement of sections:[2]

1. Citation and commencement.
2. Interpretation.
3. Amendment of the principal law Cap. 37 1991.

CHAPTER XXXIII

385. Initiation of criminal proceeding.
386. Every complaint shall disclose a cause of action.[3]
387. Court to ascertain from the complaint details of the complaint.
388. Particulars of the offence to be read over to the accused.
389. Court can convict on the confession of the accused.
390. Court to hear evidence against the accused if he denies or if he refuses to admit or deny.
391. Name of witnesses to be ascertained from the complainant.
392. Witness to state his name and address.
393. Court may test the trustworthiness of a witness.
394. Accused may impeach any witness.
[subsection (2): accused may question any witness]
395. Accused to be discharged if prima facie case is not established against him.
396. Accused person to defend himself when prima facie case is established against him.
397. Accused can call as many witnesses as he can for his defence.
398. Prosecution at liberty to impeach defence witnesses.
[subsection (2): prosecutor/complainant may question any witness]
399. Court to compel the attendance of any witness.
[subsection (2): commission to take evidence]
400. Accused to be given a chance to say anything he deems fit before the court adjourns for judgment.
401. Court to record the names of two persons as witnesses to the accused's reply.
402. Court to retire for judgment after exhausting all defence witnesses.
403. Finding/judgment to be announced in open court.

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[1] Signed into law on 27 November 2000, gazetted as No. 6 of 2001, Kano State of Nigeria Gazette No. 8, Vol. 33, 27th December, 2001 Supplement Part A pp. A39-A51. The annotations show variations between the provisions of the new Chapter XXXIII of the Kano Criminal Procedure Code brought into force by this law, and the Bauchi State Sharia Criminal Procedure Code, assented to by the Governor of Bauchi State on 15th February 2002, still not gazetted as of July 2006.

[2] This list of sections has been extracted from the section titles contained in the law as gazetted; in order to save space, the section titles have then been omitted from the text of the law printed here. Where several different matters are dealt with in a single section, we have shown in indented brackets what the other matters are, beyond that indicated in the section title, e.g. §394. We have supplied a title in brackets for §407.

[3] Here and elsewhere both the Kano and Bauchi laws have "course of action".

404. Accused to be discharged and acquitted if found not guilty.
405. Sentence to be pronounced if the accused is found guilty.
[proviso: court to invite complainant or deceased's relatives to express their wishes as to retaliation or *diyah* in *qisas* cases and shall be bound by wishes so expressed]
406. In death [or amputation] sentence court to send the record of proceedings to the Governor.
407. [When no appeal is taken.]
408. Governor to order for execution after exhausting avenues for appeal.
[subsections (2) and (3): when woman sentenced to death is alleged to be pregnant]
[subsection (4): mode of executing death sentence]
409. Payment of *diyah*.
410. Sharia Court to be guided by the CPC.
411. Sharia Court to be bound by the provisions of [this Chapter XXXIII].
412. Jurisdiction and powers [of Sharia Courts].
413. Record of proceedings.

KANO STATE CRIMINAL PROCEDURE CODE CAP. 37 (AMENDMENT) LAW 2000

A law to provide for the Amendment of the Criminal Procedure Code Law Cap. 37 Laws of Kano State.

BE IT ENACTED by the State House of Assembly as follows:

1. This Law may be cited as the Criminal Procedure Code (Amendment) Law 2000 and shall come into operation on 1st day of Ramadan, 2000 (27th November 2000).

2. In this Law unless the context otherwise requires:

"Principal Law" means the Criminal Procedure Code Law Cap. 37 Laws of Kano State.

3. Chapter XXXIII covering sections 385-396 of the Principal Law is hereby amended by:

(a) Repealing the whole chapter and

(b) Substituting it with the following new Chapter XXXIII:

CHAPTER XXXIII: TRIALS BY SHARIA COURTS

385. A person shall be tried by the Sharia Court if:

(a) a written complaint is make against him by the Attorney-General, or

(b) upon the receipt of complaint of fact which constitutes an offence by a victim of crime or his representative when the Attorney-General's consent is sought and obtained.

Provided that where the Attorney-General refuses to give his consent the victim of crime or his representative can institute an action by direct complaint to the court.[4]

(c) Upon receiving a First Information Report under section 118 of the Criminal Procedure Code.

[4] Bauchi: "Upon the receipt of complaint of fact which constitutes an offence by a victim of crime or his representative if the court has reason to believe or suspect that an offence has been committed."

386. Every complaint shall disclose a cause of action, in this respect it is sufficient for a complaint to have a statement of the offence complained of with date and place and when material, the value of the property in respect of which the offence has been committed.

387. Upon the receipt of a complaint the court shall ascertain the details thereof and if the court is satisfied that it discloses a cause of action it shall ensure the attendance of the accused.[5]

388. When an accused person[6] appears or is brought before the court, the particulars/details of the offence of which he is being accused shall be read over to him by the court in a language he understands, and upon the court's satisfaction that the accused understands the accusation against him he shall be asked to make a plea.

389. (1) If the accused confesses before the court to the commission of an offence which he is accused of, his confession shall be recorded as nearly as possible in the words used by him, and the court may convict and sentence him accordingly.[7]

Provided that the court is satisfied that the accused has clearly understood the meaning of the accusation against him and the effect of his confession.

(2) Notwithstanding the provision of subsection (1) of this section where an accused person retracts from his confession he shall not be convicted but the court shall proceed to hear the evidence as may be produced by the prosecutor.[8]

390. If the accused denies the accusation against him, or if he refuses to admit or deny, the court shall proceed to hear the accusation against him and take all such evidence as may be produced in support of the accusation against him.[9]

391. The court shall ascertain from the complainant the name of any person or persons likely to give evidence for the complainant/prosecution and [shall procure the attendance of] such of them as the court deems necessary.

392. When a witness appears before the court, each one of them is to be questioned as to his name, religion, age, occupation and residence, and to his connection[10] with the party if any.

393. After a witness has given evidence for the complainant or prosecutor, the court may put such questions to him as it may deem necessary.

394. (1) The accused is at liberty to impeach any witness that testifies against him.

(2) Notwithstanding the provision of sub-section (1) of this section the accused may put any question to the witness which he deems necessary, but if the court considers any of the questions irrelevant it shall refuse to put such question, the question and the court's refusal shall however be entered into the court's record.[11]

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[5] Bauchi: "of the suspect".
[6] Bauchi uses "suspect/defendant" instead of "accused person" or "accused" in this section.
[7] Bauchi adds: "if the confession satisfies conditions laid down by Sharia".
[8] Bauchi: "complainant/prosecution".
[9] Bauchi adds: "in accordance with Islamic law".
[10] Bauchi: "relationship with the party if any".
[11] Bauchi adds a subsection (3): "Evidence of bad character shall not be given against the accused person before conviction or verdict."

395. (1) If the court after exhausting all witnesses for the prosecution/complainant comes to the conclusion that a prima facie case is not established against the accused, or if the evidence against the accused is not sufficient to justify the continuation of the trial for any other offence, the court shall after administering an oath of denial on the accused discharge him.[12]

(2) A discharge under subsection (1) of this section shall not be a bar to further proceedings against the accused in respect of the same offence.[13]

396. After taking at least 4 unimpeached witnesses in the case of offences under SS … to …[14] and at least 2 witnesses in other offences,[15] if court is satisfied that a prima facie case has been established by the prosecution/complainant, the court shall call upon the accused person to enter his defence.

397. The accused is at liberty to call as many witnesses as he can in his defence.[16]

398. (1) Defence witnesses shall be examined one after the other and the prosecutor/complainant will be at liberty to impeach witnesses brought by the accused.

(2) Notwithstanding the provision of subsection (1) of this section, the prosecutor/complainant may put any question to the witness, which he deems necessary. But if the court considers any of the questions irrelevant it shall refuse to put such question. The question and the answer shall however enter into the court's record.

399. (1) The court shall compel the attendance of any witness of the accused who may likely give factual evidence for the defence.

(2) Whenever in the course of any trial it appears to the court that the examination of a witness is necessary for the ends of justice and that the attendance of such witness cannot be procured without an amount of delay, expense or inconvenience, which in the circumstances of the case will be unreasonable, such court may dispense with his evidence and may issue a commission to any court within the local limits of whose jurisdiction such witness resides to take his evidence.

400. (1) After exhausting all witnesses for the defence the court shall give the accused person a chance to say whether or not he has anything to say before the court adjourns for judgment.

(2) If the accused raises any point that merits consideration the court shall proceed to determine all the issues raised by the accused.

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[12] Bauchi: "the court shall without calling the accused to enter his defence discharge him."

[13] Bauchi adds: "if within six months the complainant is able to bring credible evidence that can warrant reopening of the case."

[14] Sic. The intended references are probably to the sections of Kano's Sharia Penal Code dealing with *zina* and perhaps related offences.

[15] Bauchi: "After taking the evidence of witnesses if the court is satisfied . . .".

[16] Bauchi: "Without prejudice to the right of the accused person of making statement from the dock, the accused is at liberty to call his witness in his defence. *Provided that* an accused person cannot give evidence in the witness box in his own behalf in any trial whether he is accused solely or jointly with others, but he can give evidence against a co-accused."

401. Where the accused says he has nothing to say his answer shall be recorded in his own [words] and the court shall record the name of 2 persons who were in the court when the accused said he has nothing to say.

402. After concluding the case for the prosecution and defence,[17] the court may retire or adjourn for judgment.

403. (1) Judgment in every trial shall be in writing and its content shall be explained to the accused in a language he understands.

(2) If the accused is in custody he shall be brought up to hear the judgment; if he is not in custody he shall be made to attend to hear the judgment.

404. Where the court finds the accused not guilty he shall be discharged and acquitted.

405. If the court finds the accused guilty the court shall pronounce the accused guilty and shall pass its sentence accordingly.

Provided that in cases under sections 142 to 147 Sharia P.C., the court shall invite the blood relations of the deceased or the complainant as the case may be to express their wishes as to whether retaliation should be carried out or *diyah* should be paid and the court shall be bound by the wishes so expressed.[18]

406. In cases falling under sections 124-134 Sharia P.C., where death sentence or amputation of hand is passed the court shall as soon as possible after passing such sentence send to the Governor through the Attorney-General a report upon the case together with all documents (record of proceedings) in respect of the case and the sentence shall not be carried out unless it is confirmed by the Governor, within the period of 90 days.[19]

407. In any criminal matter where the person convicted in the Sharia Court fails to appeal to an appropriate court the conviction of the Sharia Court shall stand.[20]

408. (1) After exhausting all avenues of appeal if utilised by the convict the Governor shall make an order for the execution of any sentence falling under subsection 406 of this Law.

Provided that no [such?] sentence shall be imposed on a person under the age of poverty [sic: puberty] but such an offender shall be punished in strict accordance with Islamic law by sending him to a place of custody for juveniles for a duration of time as the court deems fit.[21]

(2) Where a woman convicted of an offence punishable with death, alleges that she is pregnant, the court shall before execution of the said sentence determine the question whether or not she is pregnant.

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[17] Bauchi adds: "including addresses by the parties or their counsel".

[18] Compare CPC §393: "A native [area] court . . . shall, before passing a sentence of death, invite the blood relatives of the deceased person, if they can be found and brought to court, to express their wishes as to whether a death sentence should be carried out and shall record such wishes in the record of the proceedings."

[19] Bauchi puts these provisions into two subsections, the first dealing with death sentences, the second with "sentences for amputation of the hand or retaliation (*qisas*)". The reporting requirements are the same as those in Kano in both cases.

[20] Bauchi omits this section.

[21] Bauchi omits the proviso.

(3) Where the court is satisfied that the convict is pregnant, it shall postpone the execution pending the time she delivers and upon the completion of breast-feeding her baby, when no one [else] can breast-feed the baby.[22]

[(4)] The mode of executing any death sentence shall be expressly stated in the judgment and it shall be in accordance with Sharia.[23]

409. (1) In cases falling under section 145 Sharia Penal Code where payment of *diyah* is ordered as per the wishes of blood relations or victim of crime as the case may be, the court shall order payment of such *diyah* on the close relations of the convict.[24]

(2) Where the court is satisfied that the close relations are not available or where they are not financially capable of making such payments the court shall make an order for the full payment of the *diyah* on the convict.

Provided that in both circumstances under subsections (1) and (2) of this section where the court is satisfied that the close relations, and the convict are not in position to effect payment of *diyah* because of their financial incapability the court shall make an order that State Government take over the responsibility of settling such *diyah*.

(3) The Government before effecting payment pursuant to the provision above shall make thorough investigations with a view to determining the true financial position of the convict and that of his relations.

(4) Where it is discovered that either the convict or his relations are capable of effecting payment of *diyah* in toto or any part thereof, the Government may refuse to pay anything at all or may pay any amount it deems necessary. Reference to the State Government under the provision above includes Local Government Council of the convict.[25]

410. (1) In any matter of criminal nature the Sharia Court shall be guided in regard to practice and procedure by the provisions of this Law.

(2) The fact that a Sharia Court has not been guided by the provisions of the Criminal Procedure Code in any criminal trial shall not entitle any person to be acquitted or any order of the court to be set aside.[26]

411. Notwithstanding the provision of subsection (1) of this section [sic: section 410, of which this section was probably supposed to be subsection (3)], the Sharia Courts shall be bound by the provisions of Chapter XXXIII [sections] 385 to 413 of the CPC.[27]

412. The jurisdiction and powers of the Sharia Courts shall be as contained in the schedule to the Sharia Court Law 2000.

413. (1) In all criminal proceedings a Sharia Court shall make a record of proceedings which shall include the following:

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[22] Bauchi omits "when no one [else] can breast-feed the baby".
[23] Bauchi: "in accordance with Islamic law".
[24] Bauchi: "on the convict and his relations".
[25] Bauchi omits subsections (3) and (4).
[26] This section and the next are essentially the same as CPC §386 (1), (3) and (2), respectively. CPC §386(4) adds: "Where a native [area] court has not been guided or properly guided by the provisions of this Criminal Procedure Code an appellate court or reviewing authority shall apply to the case the principles contained in sections 288 and 382 of this Criminal Procedure Code and the provisions of the Native Court Law."
[27] Bauchi omits this section.

a. The serial number of the case;
b. Name, religion, occupation and age of the accused;
c. Name, religion, occupation and age of complainant;
d. Offence complained of;
e. Date and place of commission of the offence;
f. Date of complaint before the court;
g. Name of witnesses for the prosecution/complainant and the accused;[28]
h. The plea of the accused person;
i. Finding with reasons;
j. Sentence or other final order and date;
k. Date on which proceedings terminated.

(2) The judge of the court shall sign the record.[29]

AUTHENTICATION BY THE CLERK TO THE HOUSE

This printed impression has been carefully compared by me with the Bill which has passed the House of Assembly and found by me to be a true and correctly printed copy of the said Bill.

Yazid M. Zubair
Clerk to the House of Assembly

[28] Bauchi: "Name, age, occupation and religion of witnesses for the prosecutor/complainant, and the accused."

[29] Bauchi adds three further subsections: "(3) Where this Code is silent on any procedure in a case before a judge recourse may be made to any relevant provision in the Criminal Procedure Code Law of Bauchi State of Nigeria Cap 38, 1991 provided that such provision under reference shall not in any manner contravene the Sharia. (4) A judge is at liberty to resort to any Arabic text of recognised Islamic jurists on any procedure notwithstanding the provisions of this Code if the text to be referred to is more in conformity with the primary sources of Sharia as defined in the Sharia Penal Code Law. (5) The provisions of the Qur'an, Sunnah and Ijma being the primary sources of Sharia are supreme, accordingly any provision in this Code that is inconsistent with any of the provisions of the said primary sources shall, to the extent of the inconsistency be void."

Chapter 5 Part VI

Conversion Table: Criminal Procedure Code of 1960 to CILS Harmonised Sharia Criminal Procedure Code

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20	-	CPC §20 repealed in 1962
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141	140	CPC: Prosecution for breach of contract, defamation and offences against marriage SCPC: Prosecution for breach of contract, qadhf and defamation
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196	168	Announcement of findings
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204	omitted	Charge of falsification of accounts
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272	239	CPC: Procedure where person is convicted of a capital offence committed while under seventeen SCPC: Procedure when person is convicted of *hadd* or *qisas* offence committed while under the age of *taklif*
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Chapter 5 Part VII

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Chapter 5 Part VIII

Sections of the Criminal Procedure Code of 1960 Omitted in the CILS Harmonised Sharia Criminal Procedure Code

1. Summary. The Criminal Procedure Code of 1960 (CPC) is divided into 398 sections (including §§243A and 250A, added in 1964). Of these, 48 are omitted from the CILS Harmonised Sharia Criminal Procedure Code (HSCPC) outright (notably, by omission of all of CPC Chapter XVII on preliminary inquiry and commitment for trial to the High Court, and most of CPC Chapters XVIII and XXXIII, on trials in the High Courts and in the ex-Native Courts), and 4 more are left out by virtue of the collapsing of distinctions made in CPC but not in HSCPC. By this calculation 350 out of 398, or 87.9% of CPC sections are included in the HSCPC. If we exclude from the CPC section-count the 18 sections of Chapter XVII which were already deleted in the 1970s and 1980s, then 350 out of 380, or 92.1% of CPC sections are included in the HSCPC.

2. CPC sections omitted outright from HSCPC.

A. Chapter XVII: Preliminary inquiry and commitment for trial to the High Court. This entire chapter was deleted from Kano State's CPC in 1977[1] and from the CPCs of at least two other States (Bauchi and Sokoto) in 1989.[2] Probably other northern States also deleted the chapter on preliminary inquiries in 1989, but our research has not confirmed this. In any case, from Kano came Jigawa (1991), from Bauchi came Gombe (1996) and from Sokoto came Kebbi (1991) and Zamfara (1996), all the offspring inheriting the statutes of their parents, so that when Sharia implementation started in 1999 at least seven of the twelve Sharia States had abolished preliminary inquiries. The Sharia Criminal Procedure Codes of all the Sharia States, and the CILS Harmonised Sharia Criminal Procedure Code, also omit this chapter and the apparently cumbersome and unnecessary procedure that it entailed. The following table gives only the section titles from the original CPC.

167. *Commitment*
168. *Taking of evidence produced*
169. *When accused to be discharged*
170. *Transformation of inquiry into trial*
171. *Procedure on transformation of inquiry into trial*
172. *Framing of charge*
173. *Charge to be explained and copy furnished to accused*
174. *List of witnesses for defence at trial*
175. *Power of magistrate to examine witnesses named in list given under section 174*
176. *Order of commitment*
177. *Summons to witnesses for defence when accused is committed*
178. *Bonds of complainants and witnesses*

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[1] Kano State Edict No. 13 of 1977.

[2] Bauchi State Edict No. 7 of 1989; Sokoto State Legal Notice No. 1 of 1989. The latter does not actually delete Chapter XVII and all its sections, but rather (in an order by the Chief Judge) abolishes the procedures thereby provided.

179. *Detention in custody in cases of refusal to execute bond*
180. *Charge, etc. to be forwarded*
181. *Power of Attorney-General to amend or alter charge*
182. *Power to summon supplementary witnesses*
183. *Custody of accused pending trial*
184. *Continuation of inquiry by a different magistrate*

B. Chapter XVIII: Trials by the High Court. This chapter is omitted from HSCPC, except for two sections put in HSCPC Chapter XVI, "Trials and other judicial proceedings before Sharia Courts". Except for section 186 we give section titles only of the omitted chapter. The two sections shown in bold are the ones included in the HSCPC.

185. *Trial by High Court*
186. *Defence in capital cases*: Where a person is accused of an offence punishable with death if the accused is not defended by a legal practitioner the court shall assign a legal practitioner for his defence.
187. *Commencement of trial*
188. *Plea of not guilty or no plea*
189. *Presentation of case for prosecution*
190. *Examination of accused at inquiry to be read*
191. *Procedure after conclusion of evidence for prosecution*
192. *Defence*
193. *Right of accused as to examination and summoning of witnesses*
194. *Prosecutor's right of reply*
195. *Consideration of finding*
196. *Announcement of finding* = HSCPC §168
197. *Procedure on finding of guilty*
198. *Sentence* = HSCPC §169
199. *Recommendation to mercy*

C. Omitted from Chapter XIX [=HSCPC XVII]: Charges

202. *Particulars as to time, place and person*: The charge shall contain such particulars as to the time and place of the alleged offence and the person, if any, against whom, or the thing, if any, in respect of which, it was committed as are reasonably sufficient to give the accused notice of the matter with which he is charged.
203. *Charge of criminal breach of trust, etc.* When the accused is charged with criminal breach of trust or criminal misappropriation of money, it shall be sufficient to specify the gross sum in respect of which the offence is alleged to have been committed and the dates between which the offence is alleged to have been committed without specifying particular items or exact dates, and the charge so framed shall be deemed to be a charge of a single offence.
204. *Charge of falsification of accounts.* When the accused is charged with falsification of accounts under section 371 of the Penal Code it shall be sufficient to allege a general intent to defraud without naming any particular person intended to be defrauded or specifying any particular sum of money intended to be the subject of the fraud or any particular day on which the offence was committed.
205. *When manner of committing offence must be stated.* When the nature of the case is such

that the particulars mentioned in sections 203 and 204 do not give the accused sufficient notice of the matter with which he is charged, the charge shall also contain such particulars of the manner in which the alleged offence was committed as will be sufficient for that purpose. [with three illustrations].

D. Omitted from Chapter XXI [= HSCPC XIX]: General provisions as to inquiries, trials and other judicial proceedings.

229. *Oath.* (1) Every witness giving evidence in any inquiry or trial under this Criminal Procedure Code may be called upon to take an oath or make a solemn affirmation that he will speak the truth.
(2) The evidence of any person, who by reason of youth or ignorance or otherwise is in the opinion of the court unable to understand the nature of an oath, may be received without the taking of an oath or making of an affirmation if in the opinion of the court he is possessed of sufficient intelligence to justify the reception of the evidence and understands the duty of speaking the truth.

230. *Witness not compelled to take oath or make affirmation.* No witness, if he refuses to take an oath or make a solemn affirmation, shall be compelled to do so or asked his reason for so refusing but the court shall record in such a case the nature of the oath or affirmation proposed, and the fact of the refusal of the witness together with any reason which the witness may voluntarily give for his refusal.

231. *Manner of making oath or affirmation.* A witness shall take an oath or make a solemn affirmation in such a manner as the court considers binding on his conscience.

E. Omitted from Chapter XXIV [= HSCPC XXII]: Execution

293. *Chapter not applicable to native courts.* [refers ahead to CPC Chapter XXXIII, "Trials in Native Courts", omitted from HSCPC].

F. Omitted from Chapter XXVI [= HSCPC XXIV]: Persons of unsound mind. [Note: this section deals with preliminary inquiries under Chapter XVII of CPC, all of which is omitted from HSCPC, see A above.]

325. *When accused appears to have been of unsound mind.* When the accused appears to be of sound mind at the time of any preliminary inquiry before a court and the court is satisfied from the evidence given before it that there is reason to believe that the accused committed an act which if he had been of sound mind would have been an offence and that he was at the time when the act was committed by reason of unsoundness of mind incapable of knowing the nature of the act or that it was wrong or contrary to law, the court shall proceed with the case and, if the accused ought otherwise to be committed to the High Court, send him for trial.

G. Omitted from Chapter XXXI [XXIX]: Miscellaneous.

378. *Directions by native court to officer of Nigeria Police.* Notwithstanding the provisions of sections 120 [= HSCPC §119: Power of court on receiving First Information Report], 130 [= HSCPC §129: Procedure when police consider investigation should be terminated without trial], 144 [= HSCPC §143: Power of court to give directions] and 148 [= HSCPC §147: Power of court to order further investigation] nothing in this Criminal Procedure Code shall be deemed to empower a native court to give any direction to a police officer of the Nigeria Police Force except for the purpose of arranging for the time and place of the trial in a case brought

before such court by a police officer of the Nigeria Police Force.

H. Chapter XXXIII: Trials in Native Courts: this entire chapter omitted from HSCPC, except for five sections put in HSCPC Chapter XVI, "Trials and other judicial proceedings before Sharia Courts". The five sections shown in bold are the ones included in the HSCPC.

385. *Definitions for chapter XXXIII.* [defining 'Minister' and 'Provincial Commissioner'].

386. *Native courts to be guided by Criminal Procedure Code.* (1) In any matter of a criminal nature a native court shall be guided in regard to practice and procedure by the provisions of this Criminal Procedure Code other than those provisions which relate only to any court other than a native court.
(2) Notwithstanding the provisions of subsection (1) all native courts shall be bound by the provisions of sections 388, 389, 390, 391, 392, 393, 394 and 395 [i.e., this chapter].
(3) The fact that a native court has not been guided or properly guided by the provisions of this Criminal Procedure Code shall not entitle any person to be acquitted or any order of the court to be set aside.
(4) Where a native court has not been guided or properly guided by the provisions of this Criminal Procedure Code an appellate court or reviewing authority shall apply to the case the principles contained in sections 288 [= HSCPC §255: appellate court not to send back judgment for technical error in procedure] and 382 [= HSCPC 345: finding or sentence when reversible by reason of error or omission in charge or other proceedings] of this Criminal Procedure Code and the provisions of the Native Courts Law.

387. *Formal charge not necessary in native courts.* Notwithstanding the provisions of this Criminal Procedure Code, it shall be sufficient in any trial before a native court to have, instead of a formal charge, a statement of the offence complained of with the date and place, and when material, the value of the property in respect of which the offence has been committed.

388. *Procedure on conviction in native courts when no formal charge made.* Where a native court charges an accused person in the manner provided in section 387 then in the case of a conviction the offence proved shall be stated with a reference to the appropriate section of the Penal Code or other Act or Law under which in the opinion of the court an offence has been committed and a brief statement of the reasons for conviction shall be given.

389. *Right of accused to state case and adduce evidence.* Upon charging an accused person a native court shall call upon him to state his defence and to inform the court of the names and whereabouts of any witnesses whom he intends to call in his defence and the court shall procure the attendance of such witnesses and hear their evidence in like manner in all respects as a magistrate acting under section 163.

390. *Counsel not admitted to native court.* No legal practitioner shall be permitted to appear to act for or to assist any party before a native court.

391. *Examination of witnesses*, cf. HSCPC §166

392. *Making of findings* = HSCPC §167

393. *Court to record wishes of deceased's relatives in capital cases*, cf. HSCPC §170: Court to record wishes of complainant or deceased's relatives in *qisas* cases.

394. *Procedure in capital cases.* Cf. CPC §§294-95, HSCPC §§260-61.

395. ***Records in native court*** **= HSCPC §171**
396. ***Duties of justice of the peace*** **= HSCPC §172**

3. CPC sections omitted from HSCPC by virtue of collapsing of distinctions made in CPC but not HSCPC. In sum: same territory covered, but in fewer sections

A. Jurisdiction of various grades of judges. CPC §§14-18 on jurisdiction of 5 grades of judges, from High Court to magistrate grade 2. HSCPC §§14-16 on jurisdiction of 3 grades of Sharia Court alkalis. Net of 2 sections omitted from HSCPC.

B. Appeals. CPC §§278 and 279 treat appeals from Native Courts and from Magistrate Courts. HSCPC §247 treats appeals from Sharia Courts. Net of 1 section omitted from HSCPC.

C. Execution of sentences of lashing or caning. CPC §§307 and 308 deal separately with *haddi* lashing and caning; HSCPC §273 deals with all together. Net of 1 section omitted from HSCPC.

Chapter 5 Part IX

Sections of the CILS Harmonised Sharia Criminal Procedure Code Omitted in the Criminal Procedure Code of 1960

1. Summary. The CILS Harmonised Sharia Criminal Procedure Code (HSCPC) is divided into 347 sections. Of these, only 3 are not in the Criminal Procedure Code of 1960 (CPC). By this calculation 344 out of 347, or 99.1% of HSCPC sections are included in the CPC.

2. HSCPC sections omitted outright from CPC.

A. Chapter III: The Powers of Sharia Criminal Courts.

17. *Powers of alkali to order restitution.* All Sharia Court alkalis shall notwithstanding the limit of fine provided under this Code, order a complete restitution of any monies or properties criminally misappropriated, stolen, robbed, received by extortion, cheating, deceit, breach of trust, forgery, falsification of accounts or by any illegal means by any person.

18. *Order to pay compensation.* Nothwithstanding the limitation imposed on Sharia Court alkalis in their civil jurisdictions as Sharia Court alkalis under the Sharia Courts Law or any other written law, an alkali that tries an offence shall have powers and jurisdiction to make an order of compensation whether or not the money or money's worth of property exceeds his civil jurisdiction.

B. Chapter XX [CPC XXII]: The Judgment.

242. *Sentence of retaliation for injuries.* When a person is sentenced to suffer *qisas* for injuries the sentence shall direct that the *qisas* be carried out in the like manner the offender inflicted such injury on the victim.

3. HSCPC sections omitted from CPC by virtue of collapsing of distinctions made in CPC but not HSCPC. None.

SOME PARTS OF CRIMES & THEIR PUNISHMENTS

PRODUCED BY COUNCIL OF ULAMA AND PRESENTED TO THE BORNO STATE GOVERNMENT

ON 1ST DAY OF JUNE, 2001.

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  - *Hirabah* (Highway Robbery)
  - *Shurbul-Khamar* (Drinking Alcoholic Drink)
  - Receiving Stolen Property

I.

INTRODUCTION

WHAT IS SHARIA

Sharia is an Arabic word meaning the path to be followed. Literally it means 'the way to a watering place.' It is the path not only leading to Allah, the Most High, but the believed by all Muslims to be the path shown by Allah, the Creator Himself through High Messenger, Prophet Mohammed (PBUH). In Islam, Allah alone is the sovereign and it is He who has the right to ordain a path for the guidance of mankind. Thus, it is only Sharia that liberates man from servitude to other than Allah. This is the only reason why Muslims are obliged to strive for the implementation of Sharia.

> We made for you a law, so follow it, and not the fancies of those who have no knowledge. 65:18 Qur'an.

The absolute knowledge which is required to lay down a path for human life is not possessed by any group of people. In the words of Sayyid Qutb: "They are equipped with nothing but fancies and ignorance when they undertake the task which is no concern of theirs and does not properly belong to them. Their claim to one of the properties of divinity is a great sin and a great evil."

THE INJUNCTIONS AND JUSTICE IN THE DIVINE REVELATIONS

There are a number of Qur'anic injunctions commanding Muslims to do justice. Right from the beginning, Allah sent with His apostles three gifts which aim at rendering justice and guiding entire human society to the path of peace. In Surah al-Hadid, the Qur'an says:

> We sent aforetime our Apostles with clear signs and sent down with them the Book and the Balance (of Right and Wrong), that men may stand forth in justice.

Three things are mentioned as a gifts of Allah. They are the Book, the Balance and Iron, which stand as emblems of three things which hold society together viz. – revelation, which commands good and forbids evils, justice, which give to each person his due, and the strong arm of the law, which maintains sanctions for evil-doers.

> Allah commands justice, the doing of good and charity to kith and kin and He forbids all shameful deeds and injustice and rebellion; He instructs you that ye may receive admonition. Qur'an 16.90

Justice is a comprehensive term, and may include all the virtues of good behaviour. But the religion of Islam asks for something warmer and more human, the doing of good deeds even when perhaps they are not strictly demanded by justice, such as returning good for ill or obliging those who in worldly language "have no claim on you" and of course the fulfilling of the claims of those who claims are recognized in social life. Similarly, the opposites are to be avoided; everything that is recognized as shameful, and everything that is really unjust, and any inward rebellion against Allah's law or our own conscience in its most sensitive form. The Prophet of Allah is asked to tell to people to do justice as the Creator, the nourisher and the cherisher of all has commanded it:

> Say my Lord has commanded justice.

The command is repeated in Surah al-Nisa Qur'an 7:29:

> Allah commanded you to render back your trusts to those to whom they are due and when you judge between man and man. That you judge with justice. Qur'an 4:58

The Prophet is asked to administer justice according to the *Kitab*-Allah (Book of Allah):

> We have sent down to thee the Book in truth, that you might judge between men as guided by Allah; so be (used) as an advocate by those who betray their trust. Qur'an 4:105

The commentators explain this passage with reference to the case of Ta'imah ibn Ubairaq, who was nominally a Muslim, but in reality was a hypocrite, and given to sorts of wicked deeds. He was suspected of having stolen a set of amour, and when the trail was hot, he planted the stolen property into the house of Jew, where it was found. The Jew denied the charge and accused Ta'imah on account of his nominal profession of Islam. The case was brought to the Apostle, who acquitted the Jew according to the strict principle, as guided by Allah. Attempt were made to prejudice him and deceive him into using his authority to favour Ta'imah.

The general lesson is that the righteous man is faced with all sorts of subtle wiles; the wicked will try to appeal to his highest sympathies any most honourable motives to deceive him and use him as an instrument for defeating justice. He should be careful and cautious, and seek the help of Allah for protection against deception and for firmness in dealing the strictest justice without fear or favour. To do otherwise is to betray a sacred trust; the trustee must defeat all attempts made to mislead him. Justice must be done equally to all and sundry, even if it be done against ONE'S SELF, OR ONE'S PARENT OR RELATIVES. There must be no difference between rich and poor. All are servants of Allah, and must be judged according to the Book of Allah.

> O ye who believe, stand out firmly for justice, as witness to GOD, even as against yourselves, or your parent, your kin, and whether it be (against) rich or poor. For God can best protect both. Follow not the lusts (of your hearts), lest ye swerve, and if you distort (justice) or decline to do justice. Verily Allah is well-acquainted with all that you do. Qur'an 4:135

Justice is Allah's attribute, and to stand firm for justice is to be a witness to Allah, even it is detriment to our own interest, as we conceive them or the interest of those who are near and dear to us. According to the Latin saying, "Let justice be done though heaven should fall."

But Islamic justice is something higher than the formal justice of Roman law or any other human law. It is even more penetrative that the subtler justice in the speculations of the Greek philosophers. It searches out the innermost motives, because we are to act as in the presence of Allah, to whom all things, acts and motives are known.

Some people may be inclined to favour the rich, because they expect something from them. Some people may be inclined to favour the poor because they are generally helpless. Partiality in either cases is wrong. We are asked to be just, without fear or

favour. Both the rich and the poor are under Allah's protection as far as their legitimate interest are concerned, but they cannot expect to be favoured at the expense of others. Allah can protect the interests of all, far better than any man.

ALLAH IS THE LAW-GIVER

In the Sharia, there is an explicit emphasis on the fact that Allah is the law-giver and the whole *ummah*, the nation of Islam, is merely His trustee. It is because of this principle that the *ummah* enjoys a derivative rule-making power and not an absolute law-creating prerogative. The Islamic state, like the whole of what one might call Islamic political psychology, views the *Dar al-Islam* (Abode of Islam) as one vast homogenous commonwealth of people who have a common goal and common destiny and who are guided by a common ideology in all matters both spiritual and temporal. The entire Muslim *ummah* lives under the Sharia to which every member has to submit, with sovereignty belonging to Allah alone.

Every Muslim who is capable and qualified to give a sound opinion on matters of Sharia, is entitled to interpret the Law of Allah when such interpretation becomes necessary. In this sense Islamic policy is a democracy. But where an explicit command of Allah or his Prophet already exists, no Muslim leader or legislature, or any religious scholar can form an independent judgment; not even all the Muslims or world put together have the right to make the least alteration in it.

EXECUTIVE FUNCTIONS UNDER THE SHARIA

The executive function under the Sharia vests solely in the just ruler or a group of such people who appoints his delegates and is responsible only to the Sharia as represented by the Council of Jurists (*ulama* and *fuqaha*) in whom the legislative function of deriving laws from the Book of Allah and the Sunnah is vested. New laws according to the needs of the time and circumstances are only made by these men learned in the guiding principles of law, men chosen by the popular assembly from among the multitudes of those learned in the Sharia on account of their enlightenment and understanding of the need of the people.

But the fundamental principle on which rests the Islamic legal system is that the laws of Islam are not passed in a heated assembly by men who ardently desire the legislation in their interest, against men who ardently oppose it in their interest. The laws of Islam are firmly based upon the Sharia and are, therefore, in the interest of the people as a whole. They are not the work of warring politicians, but of sober jurists.

This is the reason why there is a great degree of stability in the Sharia mainly due to its Divine origin as compared to any other man-made secular legislation in the world.

THE DIFFERENCE BETWEEN SHARIA & ANY OTHER LAW

The difference between other legal systems and the Sharia is that under the Sharia its fountain head is the Qur'an and Sunnah, the *wahy al-jali* (the revelation per se) and the *wahy al-khafi* (the hidden revelation). The Qur'an and the Sunnah are the gift given to entire *ummah*. Therefore, the *ummah* as a whole is collectively responsible for the administration of justice. This is the reason why any legislative or consultative assembly

in any Muslim land has no power of encroachment on any legal right of the members of the *ummah* and those who live with them in peaceful co-existence.

The other important point in this regard is that in Sharia, justice is administered in the name of Allah, one of whose attributes is *Al-Adil* (the Just and the Giver of Justice). Any injustice or any tribal or racial consideration is nothing but a grave sin and disobedience to Allah. "To judge justly" is, therefore, a religious duty and a devotional act. Neither a king, nor a caliph or a sultan can ever claim his words are laws as was done by tyrant from Pharaoh to Louis XIV. They are not the fountains of justice even though some wrong-headed Muslim rulers might have posed as if they possessed such authority. With this in mind, we shall proceed to examine briefly the sources and the aims of Sharia.

THE AIMS OF SHARIA

The Sharia originated from the direct commandment of Allah, but there is the provision of power given to man in order to interpret and expand Divine commandment, by means of analogical deductions and through other processes. Unlike the Roman law which developed from the action, or English common law which developed from the writs, the very first source of Sharia is the Holy Qur'an. The second source is the Sunnah or the practice of Prophet Muhammad (SAW) who has rightly explained:

> I leave two things for you. You will never go astray while holding them firmly. The Book of Allah and the Sunnah of His Prophet.

The third source which may be classified as both *ijma*, consensus of opinion of *ulama*, and *qiyas*, analogical deductions, provided detailed understanding derived from the Qur'an and Sunnah, covering the myriads of problems that arise in the course of man's life. As a matter of fact, the ideal code of conduct or a pure way of life which is the Sharia, has much wider scope and purpose than an ordinary legal system in the Western sense of the term. The Sharia through this process aims at regulating the relationship of man with Allah and man with man. This is the reason why the Sharia law cannot be separated from Islamic ethics. The process of revelation of various injunctions (*ahkam*) of the Qur'an shows that the revelation came down when some social, moral or religious necessity arose, or when some Companions consulted the Prophet concerning some significant problems which had wide repercussion on the lives of Muslims.

The Qur'an therefore, is the best commentary (*tafsir*) of the Qur'an and the main sources of the Sharia.

The scholars of the Qur'an have enumerated varying number of verses of legal injunctions, but the number is approximately considered to be 500. They deal with marriage, polygamy, dower, maintenance, rights and obligations of the spouses, divorce and various models of dissolution of marriage, the period of retreat after divorce (*iddah*), fosterage, contracts, loans, deposits, weights and measures, removal of injury, oaths and vows, punishments for crime, wills, inheritance, equity, fraternity, liberty, justice to all, principles of an ideal state, fundamental human rights, law of war and peace, justice administration, etc.

The Qur'anic injunctions, from which is derived the Sharia, are further explained and translated into practice by the Sunnah of the Prophet. Sunnah literally means a way,

practice, rule of life, and refers to the exemplary conduct or the models behaviour of the Prophet in what he said, did or approved. Thus it became a very important source of the Sharia only second in authority after the Holy Qur'an.

Besides the Qur'an and the Sunnah, the consensus of the opinion of the learned men and jurists, known in Sharia terminology as the *ijma*, plays an important role in Islamic law since it provides a broad vehicle of progress and reconstruction. *Qiyas,* analogical deduction, is also recognized as the source of Islamic legal system since it gives an instrument to cope with the growing needs and requirements of society. But such analogical deduction is based on very strict, logical and systematic principles and is not to be misconstrued as mere fancies and imaginations of men. Alongside these four sources, the Sharia takes into consideration *istihsan* or jurist preference or equity of a jurist as against *qiyas* which helps in providing elasticity and adaptability to the entire Islamic legal system. The concept of *al-masalih al mursalih* (the matters which are in public interest and which are not specifically defined in the Sharia) was enunciated by Imam Malik ibn Anas (d. 795 A.D) and has also become a part of the Sharia system.

JUSTICE AS RESPECT TO PEOPLE

The central notion of justice in the Sharia is based on mutual respect of one human being by another. The just society in Islam means the society that secures and maintains respect for persons through various social arrangements that are in the common interests of all members. A man as *khalifat* Allah (vice-regent of Allah) on earth must be treated as an end in himself and never merely as a means. He is the cream of creation and hence the central theme of the Qur'an. What is required is the equal integrity of each person in the society and his loyalty to the country concerned which in turn will make it the duty of the society to provide equally for each person's pursuit of happiness. This is the reason why things unlawful (*haram*) for Muslims but lawful for non-Muslims will not be made forbidden for them in the Muslim state.

Politically, respect for persons was the motivating thought behind the *kalimah al-shahadah*, the creed confusion of Islam, which neglected any other deity other than Allah who created all human beings as equal irrespective of their tribes or clans. It was this teaching which made the Quraishites, Prophet Muhammad's tribesmen, angry when he helped to liberate the slaves and destitutes like Bilal and Zaid and many others in the early days of Islam. It is a fact of history that all of Khadijah's wealth was spent after freeing the slaves; and before her death she, along with the Prophet, could hardly get a square meal a day. It was the same principle which guided the first city-state of Medina as shown in its charter which guaranteed individual rights irrespective of religious beliefs of the communities living in Medina.

Respect for persons in the Sharia is rooted in the divine injunctions of the Qur'an and the precepts of the Prophet. The bill of rights, suffrage, civil rights and the slogans for political equity as we know today are of a very recent origin and seem to be mere reflections of what the Sharia taught 1400 years ago from now. The treatment accorded by the Sharia made the aristocracies of birth, race, wealth and language, the features, which vary, from person to person, all suspect as disrespectful of persons. The criterion of respect was only the *taqwah*, the fear of Allah:

> The best among you in the eyes of Allah are those who are stronger in *taqwah* (fear of Allah).

The Sharia, it should be noted, gives priority to human welfare over human liberty. Muslims as well as non-Muslims living in a Muslim state are duty bound not to exploit common resources to their own advantage, destroy good producing land, and ruin the potential harvest or encroach upon a neighbour's land. Since a man in Islam is not merely an economic animal, each person's equal right to life, and to a decent level of living, has priority over the called economic liberty.

Behind every legal, social or political institutions of Islam, there is a divine sanction which every believer is expected to reverence no matter where he lives. He cannot change his own whims into laws. There are the limits of Allah (*hudud* Allah) which are imposed in order to curtail man's ambitions and devices. *Halal* (lawful) and *haram* (unlawful) are clearly mentioned and these are the boundaries which every Muslim as well-as non-Muslim living with them must respect. If he transgresses any of these limits, he is doing wrong or committing a crime. Even between these two boundaries of lawful and unlawful, there exist the things which are doubtful (*mushttahat*), which must be refrained from in order to avoid excesses. The hadith of the Prophet says:

> That which is lawful is plain and that which is unlawful is plain and between the two of them are doubtful matters about which not many people know. Thus, he who avoids doubtful matters clears himself in regard to his religion and his honour, but he who falls into doubtful matters falls into that which is unlawful, like the shepherd who pastures around a sanctuary, all but grazing therein. Truly every kind has a sanctuary, and truly Allah's sanctuary is His prohibitions. Truly, in the body there is a morsel of flesh which, if it be whole, all the body is whole and which, if it be diseased, all of it is diseased. Truly, it is the heard. Related by Buhari & Muslim.

In reality, these limits provide safeguards of the rights of men and nations and give men sense of responsibility to Allah and hence to the entire mankind. These limits stop him from being inhuman, and make him respect the blood and property of another man, and give equality of treatment to all individuals, male and female before law. In commercial dealings, these limits provide for respect for contractual dealings and pledge words and the prohibition of many and gambling. In the case of individual conduct, these limits provide for the prohibition of intoxicants and not to do injustice to servants and give charity to poor relations and provide for the strict law governing inheritance. In the dealings with nations, these limits provide for respect for treaties, and give strict code of conduct for one's dealings with the fellowmen by not destroying even the enemy's means of sustenance, and show mercy to the surrendered enemy and show respect for non-combatants. In short, in every action of a man's dealings with fellow men there are limits (*hudud*) imposed by Allah which are nothings but the sanctions of the divine Sharia.

Judicial power, according to Sharia, must always operate in conformity with equity, even to the benefit of an enemy and to the detriment of a relative. Sharia does not allow the slightest modification in the rule of perfect justice, or any form of arbitrary

procedure to replace it. It firmly establishes the rule of law, eliminating all differences between the high and low.

Qur'an asserts that all mankind, born of the same father and mother, forms one single family, that the God of men is unique, that the Creator has ordered men according to nations and tribes so that they may know, and assist one another, for the good of all.

In the administration of justice, therefore, a judge must be upright, sober, calm and cool. Nothing should ruffle his mind from the path of rectitude. If he does wrong, he is not only responsible to the people but also to God. The noble Prophet (SAW) advises: "No judge shall pass a judgment between two men while he is angry." Mishkat al Masabih 24:55. He must not feel kindness in executing the ordained sentences for the prescribed crimes. The Qur'an says, "Let not pity detain you in the matter of obedience to Allah if you believe in Allah and the Last Day and let a party of believers witness their sentences." Qur'an 24:2. He must decide disputes with as much speed and promptness as possible for delayed justice produces no appreciable good. He must not accept any present or bribery from the parties concerned. He must exert hard to arrive at a just conclusion. The Prophet said:

> Verily Allah is with a judge so long as he is just. When he is (willingly) unjust, he goes off him and the devil keeps attached to him. Mishkat al Masabah 26:61.

To a judge, all are equal in the eye of the law. As God dispense justices among His subjects, so a judge should judge without any distinction whatsoever. The Prophet said, "The previous nations were destroyed, because they let off persons of high rank and punished the poor and the helpless." In the Sharia, a judge for every matter, civil, criminal and military, there is no separate judiciary for separate civil, criminal and military departments.

The basic principles of Sharia, therefore, can be summed up as follows:

a. The larger interest of society takes precedence over the interest of the individual.

b. Although relieving hardship and promoting benefit are both among the prime objectives of the Sharia the former takes precedence over the later.

c. A bigger loss cannot be inflicted to relieve a smaller loss or a bigger benefit cannot be sacrificed for a smaller one. Conversely, a smaller harm can be inflicted to avoid a bigger harm or a smaller benefit can be sacrificed for a larger benefit.

AL-QADI (THE JUDGE) AND HIS RESPONSIBILITIES UNDER SHARIA

Qualification of a *qadi*:

As we have seen, Islam has given a great importance to justice which must be done at all cost. Those who perform the function of the *qadi*s (judges) or *qadi al qudat* (chief justice) must be not only men of deep insight, profound knowledge of the Sharia, but they must also be Allah-fearing, forthright, honest, sincere men of integrity. The Holy Prophet (SAW) has said:

> The messenger of Allah said: The *qadi*s are of three types. One type will go to paradise and the remaining two will end up in the fire of hell. The person who will go to paradise is one who understood the truth and judged accordingly.

In Surah al-Hadid, the Qur'an says:

> We sent aforetime our Apostles with clear signs and sent down with them the Book and the Balance (of Right and Wrong), that men may stand forth in justice.

Three things are mentioned as gifts, the Book, the Balance and Iron, which stand as emblems of three things which hold society together, viz – revelation, which commands good and forbids evils; justice, which give to each person his due, and the strong arm of the law, which maintains sanctions for evil-doers.

> Justice is a command of Allah and whosoever violates it faces grievous punishment.

> Allah commands justice, the doing of good and charity to kith and kin and He forbids all shameful deeds and injustice and rebellion; He instructs you that ye may receive admonition. Qur'an 16:90.

Justice is a comprehensive term, and may include all the virtues of good behaviour. But the religion of Islam asks for something warmer and more human, the doing of good deeds even where perhaps they are not strictly demanded by justice, such as returning good for ill or obliging those who in worldly language "have no claim on you" and of course the fulfilling of the claims of those whose claims are recognized in social life. Similarly, the opposites are to be avoided, everything that is recognized as shameful, and everything that is really unjust, and any inward rebellion against Allah's law or our own conscience in its most sensitive form. The Prophet of Allah is asked to tell to people to do justice as the creator, the Nourisher and the Cherisher of all has commanded it:

> Say My Lord has commanded justice.

The command is repeated in Surah al-Nisa Qur'an 7:29.

> Allah commanded you to render back your trusts to those to whom they are due and when you judge between man and man. That you with justice. Qur'an 4:58

The Prophet is asked to administer justice according to the *Kitab*-Allah (Book of Allah):

> We have sent down to thee the Book in truth, that you might judge between men as guided by Allah, so be used as an advocate by those who betray their trust. Qur'an 4:105.

The commentators explain the passage with reference to the case of Ta'imah ibn Ubairaq, who was nominally a Muslim, but in reality was a hypocrite, and given to sorts of wicked deeds. He was suspected of having stolen a set of amour, and when the trail was hot, he planted the stolen property into the house of Jew, where it was found. The Jew denied the charge and accused Ta'imah, but the sympathies of the Muslim community were with Ta'imah in account of his nominal profession of Islam. The case was brought to the Apostle, who acquitted the judge according to the strict principle, as

guided by Allah. Attempts were made to prejudice him and deceive him into using his authority to favour Ta'imah.

The general lesson is that the righteous man is faced with all sorts of subtle wiles; the wicked will try to appeal to his highest sympathies any most honourable motives to deceive him and use him as an instrument for defeating justice. He should be careful and cautious and seek the help of Allah for protection against deception and for firmness in dealing the strictest justice without fear or favour.

> One who judged unjustly after understanding the truth, they will go to hell. Likewise, *qadi* who judged in ignorance also will go to hell. Abu Daud & Ibn Majah.

The above hadith shows how delicate and responsible job of *qadi* is in Islam. His knowledge of Qur'an and Sharia must be very deep and that he judge justly. Otherwise, it can really ruin a man's spiritual future in the next world. The life in this world is only for a limited period while the life in the next world is forever. Then why should one really undertake to be a judge when he does not have the required qualifications and character to be a judge? In another hadith, it is reported by Abu Hurairah that the Messenger of Allah said: "One who is made a *qadi* to administer justice among people is as if he is slaughtered without a knife."

Naturally, a man who is appointed as a *qadi* or a judge does not have an easy job to perform. If he becomes slightly irresponsible and unjust, he will be caught on the Day of Judgment. On the other hand, when he is just and administers justice according to the Book of Allah [and] Sunnah of the Prophet (SAW) he is taken as an enemy of high influential people in the society. The responsibility of *qadi* is like a double-edged sword, and one has to be extraordinary careful in fulfilling it. The following is the guidance from the Sunnah of the Prophet which every judge must follow in their task of administering justice:

1) Equality of all litigants: a Muslim judge must treat all his litigants equally whether he is a king or his page, a master or his servant, a rich man or a poor man, a relative or a stranger and a friend or a foe. It is reported by Ubadah bin al-Samit that the Messenger of Allah (SAW) said:

   > Let the *hadd* of Allah be applied equally on your relatives and the total strangers, you should not care a bit for the rapprochement of any critic whatsoever.

   The Prophet (SAW) has also said:

   > It is reported by Aishah that the messenger of Allah said: "Forgive the shortcomings of highly respected people but certainly do not forgive them in awarding the hard punishment to them."

2) The defendant and appellant must appear before the *qadi*s. Even though one is a highly placed person or a king or an emperor or an administrator of a country, he must not be exempted from appearing before the judge to answer the charges levelled against them. It is reported by Abdullah bin Zubair that the messenger of Allah said:

Both the parties in a dispute must be brought before the judge

3) The defendant should be given right to take an oath. Human being, being what he is, will keep on grumbling and blaming others for his own faults or in order to hide his faults and escape punishments. If everyone's claim is taken seriously there would appear so many claimants of people's life and property. The remedy is suggested by the Holy Prophet as follows:

> It is reported by Abdullah bin Abbas that the Messenger of Allah (SAW) said: "If people were to be judged merely on account of their claims, there would appear claimants of the life and property of everyone (so that there would remain none whose life and property can remain safe) so, the defendant must be given right to take an oath (concerning the charge levelled against him)."

The above guidance of the Prophet will provide the defendants with an opportunity to get acquitted of the calumny put against them.

4) The judge must be careful in awarding *hadd* punishment. *Hadd* punishment is meant to be a deterrent so that people may not become complacent and commit crimes simply because they find punishment to be just nominal. But while awarding *hadd* punishment, the judge must make sure that the crime is definitely committed. If there is a slight doubt in establishing the crime, he should refrain from awarding hard punishment, the Prophet has said:

> It is reported by Aishah that the Messenger of Allah (SAW) said: "As far as possible refrain from awarding *hadd* punishment to a Muslim, if there is found slight excuse (or doubt), leave him alone because it is better for the judge to err in acquitting the accused rather than erring in awarding him punishment."

II.

CRIMINAL LAW (*AL-UQUBAT*), PUNISHMENT (*AL-HUDUD*) & *TA'ZIRAT*

AL-UQUBAT: CRIMINAL LAW

The penal or criminal law in Islam is called *al-uqubat* (singular, *al-'uqubah*) which covers both torts as well as crimes. There is very little difference between the two. The Sharia emphasizes on fulfilling the rights of all individuals as well as the public at large. The law that gives the remedy to the public is a crime and if it is given to the individual it is a tort. The *uqubat* applies to Muslims, as well as non-Muslims alike in a Muslim state. A Muslim will be punished for a crime committed even if it was done far away from the Islamic state. In an ultimate sense, it is a crime against Allah, and he will be punished once he came home or was brought back by the authorities of an Islamic state.

The *qadi* or a Sharia judge has to abide by the law prescribed in the case of *uqubat*, and hence he is forbidden to impose a penalty other than that fixed by the Divine law in conformity with the injunctions of the Qur'an and the Sunnah otherwise he will be an evildoer.

HUDUD AND *TA'ZIRAT*

Hadd punishment only given when there is a violation of people's rights. The word *hudud* is the plural or an Arabic word *hadd*, which means prevention, restraint or prohibition, and for this reason, it is a restrictive and preventive ordinance, or stature, of Allah concerning things lawful (*halal*) and things unlawful (*haram*).

Hudud of Allah are of two categories. Firstly, those statutes prescribed to mankind in respect of foods and drinks and marriages and divorce, etc., what are lawful thereof and what are unlawful, secondly, the punishments prescribed or appointed to be inflicted upon him who does that which he has been forbidden to do. In Islamic jurisprudence, the word *hudud* is limited to punishments for crimes mentioned by the Holy Qur'an or the Sunnah of the Prophet while other punishments are left to the discretion of the *qadi* of the rule which are called *ta'azir* (disgracing the criminal). The general word of punishment is *uqubah* derived from "*aqb*" which means one thing coming after another because punishment follows transgression of the limits set by Divine law. This is the reason why Islamic penal law is called *al-uqubat*. We should bear in mind that all the violations and breaches of Divine limits in a general sense are not punishable since the punishment is only inflicted in those cases in which there is violation of breach of other people's rights. As for example, if someone neglects to perform pilgrimage when he has the means, it is not punishable. But if one does not pay *zakat* or poor due, which is a charity as well as a tax from the rich to the poor, there will be punishment accorded to the defaulter. The Holy Prophet appointed officials to collect the *zakat*, which was received in the *bait al-mal* (public treasury), thus showing that its collection was a duty of the Muslim state. Islamic history records that when certain Arab tribes refused to pay *zakat*, Sayyaidna Abu Bukr sent out troops against them, because the withholding of *zakat* on the part of an entire tribe was tantamount to a rebellion against the Islamic state and the violation of the rights of the poor.

These crimes which are punishable in Sharia are ones which affect the society. The Holy Qur'an has enumerated them as murder (*qatl*), dacoity or highway robbery (*hirabah*), theft (*sariqah*), adultery or fornication (*zina*), and accusation of adultery (*qadhaf*). We shall discuss in detail these crimes and their punishments, but it should be understood that the Holy Qur'an lays down a general law for the punishment of offences in the following words:

> And the recompense of injury (*sayyi'ah*) is punishment. (*sayyi'ah*) equal thereto, but who ever forgives and amends his reward is due from Allah for Allah loves not those who do wrong.

This golden principle is of very great importance and applied both to individual wrong done by one person to another and also to the offences committed against society. There are a number of Qur'anic injunctions concerning the punishment of offenders guiding the *ummah*. "And if you punish then punish with the life of that with which you were affected; but if you are patient, it will certainly be best for those who are patient." "And he who punishes evil with the like of that with which he has been afflicted and he has been oppressed Allah will certainly help him." "Whoever acts aggressively against you, inflict injury on him."

While in the verses quoted above and similar other verses, there is a rule laid down for the individual wronged, that he should in the first instance try to forgive the offender provided he amends by forgiveness. According to these verses, if punishment of evil is to be given, it should be proportionate to the evil committed. Every civilized code of penal laws is based on this principle. It is an interesting point to remember that the Holy Qur'an generally adopts the same word for punishment, as for the crime. Thus, in Chapter 42:40, both the evil and its punishment are called *sayyi'ah* (evil); in Chapter 16:120 and Chapter 22:60, the word used is a derivative of *uqubah* (punishment); and in Chapter 2:194, the word used is *itida* (aggression). The adoption of the same word evil for the crime and its punishment indicates that punishment itself, though justified by the circumstances, it truly speaking nothing but a necessary evil.

It is for this reason that the Muslims are asked to get their rights either on private or public through the due process of law taking the matter up to the competent *qadi*'s (judge) court and not by taking law into their hands. Otherwise they will be among the wrong-doers (*zalimun*). In private defence too, they must be just in using the amount of force necessary. But in all cases, they must not seek a compensation greater than the injury suffered by them. The most they can do is to demand equal redress, i.e. the harm equivalent to the harm done to them and no more. But the ideal way is not to seek vengeance at all but reconciliation, forgiveness and maiming the offender aware of the gravity of his offence as long as it is not against the public and injurious to the entire society. In the latter case, the deterrent punishment will follow. The Qur'anic injunctions gives this gospel of goodness in the following words:

> Nor can goodness and evil be equal. Repel evil with what is better then will be between whom and you was hatred as it where your friend and ultimate.

But such goodness will only be granted to those who exercise patience, forbearance and self-restraint, who are really persons of the greatest good fortune. They will be given their reward twice by Allah, their Creator, because they have persevered and have tried

to avert evil with good. In Surah 33, verse 96 Muslims are ordered specifically to repel evil with what is best.

Muslims are thus taught to be forbearant (*sabirin*), but they are equally asked to prevent repetition of crimes by taking steps and applying both physical and moral means. The best moral means is to turn hatred into friendship by forgiveness and love, as the Qur'an says: "But if a person forgives and makes reconciliation, his reward is due from Allah, for Allah loves not those who do wrong."

PUNISHMENTS FOR CRIMES CAN BE DIVIDED INTO FOUR BROAD CATEGORIES

a) Physical punishment which includes death sentence, amputation of hand, flogging and stoning to death;
b) Restriction of freedom which includes imprisonment or sending one on an exile;
c) Imposition of fines;
d) Warning given by the *qadi*.

Apart from these prescribed punishments for various crimes there are other ways of making the criminal feel that he has committed a great wrong. As for example, a man convicted of false accusation or fornication (*qadhaf*) will be deprived of the right of giving a testimony (*shahadah*).

PREVENTION OF *HADD* PUNISHMENT IN CASES OF DOUBT

Prophet Muhammad has given the basic ruling in a hadith:

> Prevent the application of *hadd* punishment as much as you can whenever any doubt persists.

Once this ruling was applied it reduced the number of *hadd* punishments in the Muslim countries like Saudi Arabia. When the benefit of doubt is resolved in favour of the accused supposing in case of theft (*sariqah*), a lesser punishment by *ta'azir* is given because the doubt relates to the criteria and not the conviction. In the case of adultery, if there is a little doubt, no *hadd* punishment will be given at all.

In case of theft the accused should not be given the *hadd* punishment all of a sudden. In a Muslim state, every individual is entitled to social security through the public treasury called *bait al-mal* where funds are collected from various sources including the obligatory collection of *zakat*. If a citizen is driven by force of circumstances since he could not earn his living for himself and his family due to lack of opportunity or was not taken care of through the funds of *bait al-mal*, the society will be considered at fault and know *hadd* punishment will be given to the accused. This is in keeping with the decision of Caliph 'Umar not to apply *hadd* to those accused of theft during the period of famine in Medina.

Even the very process of law under the Sharia curtails the number of *hadd* punishments. According to the Maliki school the accused in the case of theft, must be taken to the *qadi*.

Another factor in awarding *hadd* punishment is the stipulation of two matured and just male witnesses of high moral probity. It is not always easy to find such witnesses present at the scene of the crime. If the accused confesses the crime, the punishment will be accorded. Even in this regard, Imam Abu Yusuf of the Hanafi school and Imam Ahmad bin Hanbal say that two or even three sustained confessions are needed before conviction.

Apart from these measures, it must also be proved before giving *hadd* punishment that in the event of theft, the accused did force open or break into the house and actually entered it. It is required that money, gold, silver, ornaments, diamonds and pearls and other valuables must be kept securely locked in a strong box and stores must be guarded and houses must be locked so as not to tempt the potential thief. If one failed to take enough precaution then he gets part of the blame for negligence which brought about the theft. In such cases where these requirements are not satisfied, but there exists sufficient ground for conviction, *ta'azir* will be applied instead of *hadd* punishment. Besides, if the stolen property is food, fruit, grass or forest wood, *hadd* punishment will not be applied at all.

HADD PUNISHMENTS ARE AWARDED IN THE FOLLOWING SEVEN CASES

1. Penalties exacted for committing murder, manslaughter or bodily harm;
2. Punishment for theft by the amputation of a hand;
3. Punishment for fornication or adultery; stoning for a married person, and one hundred lashes for an unmarried person;
4. Punishment for slander by eighty lashes;
5. Punishment for apostasy by death;
6. Punishment for inebriation by eighty lashes;
7. Punishment for highway robbery (*qata al-tariq*) by death; cutting off a leg and an arm from opposite direction or an exile according to the seriousness of the crime.

In the rest of the cases, *ta'azir* will be applied.

TA'AZIR: ITS MEANING AND APPLICATION

Ta'azir literally means disgracing the criminal for his shameful criminal act. In *ta'azir*, punishment has not been fixed by law, and the *qadi* is allowed discretion both as to the form in which such punishment is to be inflicted and its measure. This kind of punishment by discretion has been provided in special consideration of the various factors affecting social change in human civilization and which very on the basis of varieties in the methods of commission or the kind of criminal conduct indictable under the law. Offences punishable by this method are those against human life, property, and pubic peace and tranquillity.

The general structure of the criminal law of the Muslims today (*al-siyasat al-shara'i*) is based on the principles of *ta'azir*. In other words *ta'azir* forms discretionary penalties inflicted by the judge himself, either for an offence whose punishment is not determined, or for prejudice done to one's neighbour. The punishment can take the

form of lashes, imprisonment, fine, warning etc. To sum up, *ta'azir* can be defined as follows:

> It is disciplinary punishment for a crime for which no specific *hadd* is prescribed for any form of expiation.

EXCEPTIONS TO LEGAL RESPONSIBILITY

Sayyidna 'Ali once said to Sayyidna 'Umar, "Do you know that no deed good or evil are recorded (for the following) and are not responsible for what they do:

1. An insane person till he becomes sane;
2. A child till he grows to the age of puberty;
3. A sleeping person till he awakes."

According to the above narration, we shall consider the legal liability or criminal responsibilities to Sharia.

The responsibility for the crime committed will be that of the criminal alone. His father, mother, brother or any other relative will not be made to undergo punishment for crime committed by him as happened during the *jahiliyyah* period before Islam. The Holy Qur'an says that nobody will bear the burden of another.

The only collective responsibility will be that of the family in respect of payments of blood money or damages resulting from a crime. In this case, the criminal as well as his relatives on his father's side will be collectively responsible for *diyah* (blood money) or damages imposed for causing any physical injury.

The famous *wasiyyah* or will left by Sayyidna 'Ali throws further light on this subject. When Sayyidna 'Ali sustained injury at the hands of Abdal-Rahman bin Muljim, he called his sons to his deathbed and said to them. "Do not kill anyone except him who killed me. But wait; if I die from his blow, revenge me with a blow for a blow, and don't mutilate the criminal, for I heard the messenger of Allah say: 'Beware of mutilation even if it were an ailing dog'."

CRIMINAL LIABILITY

A child will not be given *hadd* punishment for a crime committed by him. Since there is no legal responsibility of a minor, i.e. children of all ages until they reach the age of puberty, *qadi* will still have the right either to admonish the juvenile delinquent or impose on him some restrictions which will help to reform him and stop him from committing any future crime. According to Abu Zaid al-Qayrawani al-Maliki, there shall be no *hadd* punishment for minors even in respect of levelling a false accusation of unchastity (*qadhaf*) or in respect of committing fornication.

If a person has committed a crime in the state of insanity, he will not be punished, Imam Abu Yusuf says that "the *hadd* punishment can be imposed on the accused after his confession, unless it is made clear that he is not insane or mentally troubled." If he is free from such deficiency he should then be submitted to the legal punishment. It is therefore, most essential that the *qadi* (judge) assures himself of the sound mind of the criminal before he pronounces his verdict.

Sleep is considered to be a lesser death. If any crime is committed while still in sleep, one is not legally responsible for it provided it is ascertain that it was committed in a sleeping state. The case of Sayyidna 'Umar's son Ubaid Alah, who committed adultery with a sleeping woman, 'Ubaid Allah was punished, the lady was acquitted.

The same principle will apply if one suffers from walking in sleep, although he looks aware, he is still sleeping and walking. If one commits a crime in that state, he will not be legally responsible.

If any crime is committed under force or duress, there will be no legal liability if it is proved that he did with a hadith which states "my community is excused for what it commits [sic]. The Holy Prophet has said: "My *ummah* will be forgiven for crimes it commits under duress, in error, or as a result of forgetfulness." No punishment will be given for crimes committed under such a state of mind as negating responsibility for a criminal act.

[DISCUSSION OF SPECIFIC CRIMES]

ZINA (ADULTERY OR FORNICATION)

Zina defined	*Zina* is defined as: illegal relationship between a man and a women with a unique condition whether the offender is married or not
To *fuqaha*	*zina* is unlawful penetration. Also *zina* is sexual intercourse with a woman to whose sexual possession one has no lawful right.
Unlawful intercourse defined	This means hiding of glans or its similitude in a vagina, that means, anything outside this is not considered as *zina*.
Ihsan or *mushin*	The word *muhsin* means a person who had married before. The punishment for such a person is stoning to death.
Ghairu muhsin	This means a person who has never married before. The punishment is 100 lashes and imprisonment for one year, and for a slave half the punishment of a free man.

PROOF OF *ZINA*

i. All jurists agree that proof for *zina* is by four witnesses.
ii. Confession by an offender.
iii. *Zuhuril hamli lil bikr* i.e. pregnancy without a legitimate father.

CONDITIONS OF THE PROOF OF *ZINA*

I. Four witnesses with good character; if anything less than four testify their testimony cannot be accepted.
II. All the witnesses must testify that they have seen the offenders in the actual act of *zina*. That is "the penis right inside the vagina."
III. That the witness must be direct. Hearsay evidence cannot be accepted e.g. if four witnesses testify that they have heard from four witnesses who saw the actual act of *zina*, such a testimony cannot be accepted.
IV. All the four witnesses must testify all a the same time and at the same place. One of the fundamental conditions of the acceptability is all the witnesses should testify at "same place" and at the "same time".

Testimony of a judge	The judge cannot be one of the witness
Punishment	The following conditions must be fulfilled before the *hadd* of stoning to death is applied: (i) The offender must be sane; (ii) He must be married; (iii) He must be matured; (iv) He must be a free man not slave.
Zina without *hadd* of stoning to death	The following marriages are null & void and the spouses, *alwali*, *wakil*, witnesses & the imam who contracted such marriages are to be punished as follows: if it is with their knowledge and or consent: ₦20,000.00 fine or 12 lashes or imprisonment for one month The marriages are as follows: (i) Temporary marriage: *nikahul muttuah,* that is marriage with conditions that it can be dissolved after a certain period. (ii) Exchange marriage: *shigar* – a marriage constituted based on arrangement that e.g. exchange of daughters or sisters in place of dowry; (iii) A marriage contracted to legalise a woman for her former husband in cased of a woman given triple *talaq*. (iv) A marriage contracted without a marriage guardian (*wali*) and no witnesses.

LIWAT (SODOMY)

Definition	*Liwat* (sodomy or homosexuality) means anal sex between men.
Punishment	The punishment is *hadd* (stoning to death) whether the offender is married or not.

LESBIANISM (*AL-MUSAHAKAH* OR *SHIAQ*)

Definition:	Whosoever, being a woman engages another woman in carnal intercourse through her sexual organ or by means of stimulation or sexual excitement of one another has committed the offence of lesbianism.
Punishment for Lesbianism	The punishment for lesbianism is imprisonment for not less than 6 months with 12 lashes.

BESTIALITY (*WAD UL-BAHIMAH*)

Definition:	If a person has carnal intercourse with any animal is said to have committed the offence of bestiality.
Punishment	The offender shall be given 10 lashes and the animal which was the subject of bestiality, should be tied on the neck of the offender and he should be made to go round the town or any public place with the animal on his neck.

SEXUAL INTERCOURSE WITH A DEAD PERSON

If a person has a carnal knowledge with a dead person, the punishment for such an offender is also by way of *hadd* (stoning to death) it is the same if the person is *muhsin* or *ghairu muhsin* i.e. married or not.

SEXUAL INTERCOURSE WITH A SLEEPING PERSON (*WAD AL-NAIMAH*)

There is no *hadd* on the sleeping person, but the offender should be punished accordingly i.e. if married 100 lashes and stoning to death if not married 100 lashes and one year imprisonment.

QADHF (FALSE ACCUSATION OF *ZINA*)

Qadhf defined

Whoever by words either spoken or reproduced by mechanical means accuses another person[1] of having unlawful sexual act in any form or expression and the accusation could not be established as true is said to have committed *Qadhf*.
Also it is *Qadhf* if a person contests the paternity of another person.

Punishment for *Qadhf*

Punishment for *Qadhf* is eighty (80) lashes.

THEFT (*SARIQAH*)

Theft defined

If a person removes any property dishonestly and without consent takes any lawful property belonging to another out of its place or custody (*hirz*) is said to have committed theft.
Provided that the property:

(a) Have reach *nisab* ¼ of *dinar*.
(b) The person said to have stolen the property has no right of *shubaha*.
(c) Is kept in a secured place.
(d) The poperty is not entrusted to the person who was said to have committed the theft.
(e) That the property is owned by someone.

The *hadd* of cutting the hands is applied after the following conditions are fulfilled:

(i) The person who was said to have committed the theft must be sane.
(ii) He must be an adult.
(iii) He must not be compelled to commit theft.

[1] The person accused should be:
(i) Adult
(ii) Free
(iii) Decent
(iv) Muslim
(v) Potent
(vi) If a Lady, sexually capable.

Punishment for Theft

First offender: cutting off of the right hand from wrist
Second offender: cutting off of the left feet from ankle
Third offender: cutting off of the left hand from wrist
Fourth offender: cutting off of the left feet from ankle

The punishment is same i.e. by way of *hadd* if the offender is male or female, Muslim or non-Muslim.

The only exception is:

(i) A father who stole his son's property
(ii) Slave who stole his master's property

HIRABAH (HIGHWAY ROBBERY)

Hirabah defined:

Fuqaha (jurist) has resolved that *hirabah* is the use of arms on highway to rob people. According to Maliki law, even if the robbery was committed in town with the use of arms, it is considered as *hirabah*.

Punishment for robbery: (*al-hirabah*)

The court has a discretion to select the *hadd* and or it is for the court to consider the seriousness of the offence.

According to Imam Maliki, once a person kills, he has to be killed, the court has no discretion over this. Once a robber kills, the discretion the court has is either to hang, execute or crucify him.

But if the offender only robs without killing, the court cannot send him away from his home town, it can only crucify, execute or hang him.

But if he puts his victim in fear the court has a discretion as to any of the punishments.

The following punishments however have been prescribed for the offence of robbery depending on the nature and seriousness of the robbery committed thus:

(i) If he robbed and killed: he can be executed and crucified, the court has no discretion
(ii) If he kills but not robbed: he can be killed only.
(iii) If he only robbed but did not kill, his right hand and left leg can be cut off.
(iv) If he only puts his victim in fear, he can be sent away 40 miles from his home town or he can be imprisoned.

Proof of robbery

The offence of robbery can be proved by:

(i) Admission or confession;
(ii) Witness testifying to that effect;
(iii) Victims testifying by themselves;
(iv) Circumstantial evidence (*shahadatus simah*)

Condition for the award of *hadd* punishment

The robber(s) must be:

(i) An adult
(ii) Sane
(iii) Male or female
(iv) Slave or freeman
(v) Armed – even if it is wood, stick or stone he uses, will be suffice.

As for the victim

(i) He must be a Muslim or those whom we stay together i.e. (non-Muslim)
(ii) Lawful possession that is property lawfully owned.

SHURBUL-KHAMAR (DRINKING ALCOHOLIC DRINK)

Definition:

Any fermented juice or grape, barley, dates, honey or any other thing which may make one intoxicated after drinking. It may also include any liquor or thing which has the same property e.g. Indian hemp, tablets, etc.

Punishment:

Whoever drinks alcohols or any intoxicant voluntary, shall be punished with eighty (80) lashes no matter the quantity.

PROOF

(i) Two witnesses with unquestionable characters testified that they saw the offender drinking alcohol or any intoxicant.
(ii) If two witnesses testified that they smelt the odour of alcohol (wine) from the mouth of the person who was said to have drank alcohol.
(iii) Confession by an offender.

The punishment for the following people is 15 lashes or imprisonment for six months:

(1) Brewers (of alcohol)
(2) Loaders
(3) Sellers
(4) Brewery owners

RECEIVING STOLEN PROPERTY

Defined

Property, the possession whereof has been transferred by theft or by extortion or by *hirabah* and property which has been criminally misappropriated or in respect of which criminal breach of trust has been committed, is stolen property, whether the transfer has been made or the misappropriation or breach of trust has been committed within the state or elsewhere; but if such property subsequently comea into possession of a person legally entitled to the possession thereof, it then ceases to e stolen property.

Punishment

First offender(s) 5 years. Second offender(s) 5 years & 12 lashes.

KADUNA STATE GOVERNMENT
COMMITTEE ON THE HARMONISATION OF DRAFTS
OF THE SHARIA PENAL CODE AND
SHARIA CRIMINAL PROCEDURE CODE LAWS

Reports by the two subcommittees of the committee

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I.

Report of Subcommittee Chaired by Hon. Grand Kadi Dr. Maccido Ibrahim

KADUNA STATE GOVERNMENT COMMITTEE TO HARMONISE DRAFTS ON SHARIA CRIMINAL PROCEDURE AND SHARIA PENAL CODE LAWS

[Introduction]

In its efforts to meet the demand of its people, the Kaduna State Government decided to establish Sharia and Customary Courts in the State.

The Government, in view of the above retained the services of the Centre for Islamic Legal Studies, Ahmadu Bello University, Zaria to produce drafts on Sharia Penal Code and Sharia Criminal Procedure Code Laws.

On completion of the assignment, His Excellency, Alhaji Ahmed Moh'd Makarfi, the Executive Governor of Kaduna State set up a committee to harmonise the drafts of the two laws, with a view of drafting a final bill to be forwarded to the Kaduna State House of Assembly for its consideration and passage into law.

Pursuant to this decision, the Government established a seven-man committee. Thus:

1.	Hon. Justice Bashir Sambo, Grand Kadi of the Fed. Capital Abuja (Rtd)	Chairman
2.	Hon. Justice Mu'azu Aliyu, Grand Kadi Kaduna State (Rtd)	Member
3.	Hon. Dr. Maccido Ibrahim Grand Kadi Kaduna State	Member
4.	Hon. Attorney General Kaduna State	Member
5.	Barrister Alh. Yahya Mahmud a Kaduna based Legal Practitioner	Member
6.	Barrister Shehu Ibrahim Ahmed – Chief Registrar Sharia Court of Appeal, Kaduna	Member
7.	Barrister Ibrahim Lawal Ibrahim, Legal Draftsman Ministry of Justice Kaduna	Secretary

The committee held its first meeting on the 24th of Nov. 2001 at 11.30 a.m. The committee established two sub-committees, one under the chairmanship of the Hon. Grand Kadi Kaduna State Dr. Maccido Ibrahim, and two to be reviewed by Barrister Yahya Mahmud.

[Terms of reference of the subcommittees]

Sub-committee number one of the Hon. Grand Kadi has the following guidelines:

1. *Ta'azir*: does that mean lashes only or include imprisonments in Islam?
2. Creating roles for traditional rulers in *mu'amalat* and matters regarding witchcraft, juju etc.
3. Can compensation be awarded in place of *qisas*? and

4. To generally look into the conformity of the two laws with the Islamic law taking into consideration the volatile and multi-religious nature of the state.

The Yahya Mahmud sub-committee will take care of constitutional limitations and the problems which might arise on appeal to Court of Appeal and the Supreme Court of Nigeria.

[Observations on specific sections of the draft Sharia Penal Code]

The sub-committee of the Hon-Grand Kadi reviewed the Sharia Penal Code Law and make the following observations:

1. P. 1 S. 3(1) Sharia Penal Code Law. The section does not accept deletion or substitution because it is a matter of law i.e. a provision under S. 20(1)(b) of Sharia Courts Law, 2001 as amended by Sharia Court (Amendment) Law, 2001.
2. P. 15 S. 57(b). The word *qisas* includes punishments inflicted upon offenders by way of equitable retaliation for causing death or injury to a person. Not necessarily that the killer will be killed with the same instrument or weapon.
3. [no text opposite 3 in original]
4. P. 27 S. 93(1)(h). The word retaliation can be changed to a more civilized one such as the word equality as defined by Professor Abdurraman I. Doi in his book, *The Basis of Sharia* p. 331. While (i) to (p) in the same section can be under (h) as regard commission of crimes, their nature, circumstances and economic position of the state and the judge's discretion. This is because punishments vary according to variation of circumstances e.g. during disaster, war or famine.
5. P. 10 S. 26. The word voluntarily is not clear, can be substituted with the word intentionally subject of the committee's understanding of the context.
6. P. 11 S. 37. Not all crimes and their punishments can be substituted to the payment of compensation to person injured. This committee can discuss and make a decision in some offences.
7. P. 13 S. 47. The definition of *taklif* is in agreement with the Constitutional provision of the Federal Republic of Nigeria 1999.
8. P. 14 S. 50. The definition of *qatl'al-gheelah* needs more elaboration or amendment, because *qatl al-gheelah* can be done without taking property – e.g. a husband who intentionally killed his wife with a gun or knife is *gheelah*; or master kills his slave in the same manner. In this case the general principle of *annafs binnafs* should be applied.
9. P. 14 S. 57. *Ta'azir* can be applied by the State or judge.
10. P. 14 S. 57(A). Offences or punishments as provided under the sections simply means:

    S. 125 - *Zina*
    132 - Incest
    138 - *Qadhf* defined

139 - Punishment of *qadhf*
143 - Theft defined
144 - Punishment for theft
148 - Punishment for drinking alcoholic drink
150 - Punishment for drunkenness in a public or private place
151 - *Hirabah* defined
152 - Punishment for *hirabah*.

11. P. 15 S. 57(b). The word retaliation can be changed to a more civilized one such as "the law of equality" or "reciprocity".

12. P. 23 S. 83. Provides that right of *diyah* or damages shall not be prejudiced in appropriate cases such as:

S. 66 - Presumption of knowledge of an intoxicated person
67 - Act done by person justified by law
68 - Act of court of justice
69 - Act done pursuant to the judgement or order of court
70 - Accident in doing a lawful act
71 - Act done without criminal intent to prevent other injury or to benefit person injured.
72 - Act of child
73 - Act of person of unsound mind or person asleep
74 - Involuntary intoxication
75 - Act not intended to cause death done or grievous hurt done by consent
76 - Act done not intended to cause death done by consent for a person's benefit.
77 - Correction of child, pupil, servant or wife
78 - Communication made in good faith
79 - Act to which a person is compelled by threats
80 - Nonvoluntary act
81 - Act of necessity
82 - Act causing slight harm.

13. P. 23 S. 84 up to 92. Right of private defence is in agreement with Maliki school of law and there is no alternative.

14. P. 27 S. 93(i)(k). Reprimand can be " " [sic] instead of *tawbikh*. S. 939(i)(p). Warning is not the same as *tahdid*, the world *tahdid* can be changed to *inzar* to give the court meaning or warning.

15. P. 28 S. 95(b). The number of lashes or the amount of fine is supposed to be open in accordance with the *ijtihad al-qadi*. Subject to the opinion of the committee.

16. P. 28 S. 96(i). In Maliki school of law every Sharia Court has unlimited jurisdiction without tempering the aggrieved party's right to appeal against the decision of the lower court.

17. P. 28 S. 97. The solution in Maliki school of law is *taflis* i.e. to auction the offender's movable or immovable properties or to give him time to pay instalmentally, but certainly not imprisonment. If the offender has nothing to auction Islamic treasury can pay for him.

18. P. 29 S. 98. In Maliki school of law there is no imprisonment or canning in default of payment of fine. This is because as earlier on stated either the offender to pay the fine or his property to be sold in order to pay the fine or the Islamic treasury is to pay it on his behalf so the table under the section is not known and not applicable under Maliki law. The table can be brushed [sic] or substituted with *ta'azir* subject to committee's opinion.

19. P. 30 S. 100. The section is not clear because Islam generally and Maliki school of law in particular kicked against double jeopardy. Committee has to form opinion on this.

20. P. 30 S. 101. An example of misdemeanour must be provided in order to see whether or not a particular misdemeanour is an offence in Islam. Again *tahdid* does not denote warning refer to S. 27(k).

21. P. 31 S. 102. The section is not quite relevant with Maliki school of law because all Sharia Courts are bound to apply Maliki law only and no any other law or act apart from fundamental issues of the Constitution or any other cardinal principles of justice affecting human right.

22. P. 31 S. 103. Closure of premises used in conducting business in contravention of Sharia like beer parlour, casino houses etc. Such places can be closed forever or to change the business to something permissible in Islam.

23. P. 31 S. 104. The section is in agreement with Maliki school of law and there were a case law to that effect whereby Sayyidi Ali (RA) ordered for a whole caravan to be killed because one of them killed a fellow traveller and all of them refused to show him to the authority.

24. P. 32 S. 110. Since there is no express provision made by this Code which is supposed to follow Maliki school of law, then there is the need to borrow from other schools of law such as Shafi'i or Hanbali or Hanafi.

25. P. 32 SS 108 to 119. Though the matters need further discussions by the committee, because of the *muhadanah* (mixed laws) they contain. This mixture of Sharia and man-made law makes the sections irrelevant also run counter to the provisions of S. 4 of Sharia Court Law as amended by Sharia Courts (Amendment) Law 2001.

26. P. 35 S. 120. Contains (*muhadanah*) – mixed laws, Sharia and man-made law please refer to P. 32 above.

27. P. 36 S. 121. The applicability of this depends upon the alkali's discretion after due consideration of manners, mood and intention.

28. P. 36 S. 122(1) & (2). Falls under *qisas* while p. 37 S. 123 they are called in Arabic *bugatuz zalimin* or *mufsidun* they are to be punished according to their different offences.

29. P. 37 S. 124. The provisions of this S. are borrowed from another Islamic school of thought, so the section is subject to be discussed by the committee.

30. P. 37 S. 126(b). Needs an intensive research to get an alternative even if by going outside the country, though it can remain as it is till we find an alternative. The explanation under the section is acceptable to the Maliki school of law.

31. P. 38 S. 127(1)(v). Needs more elaboration or be abolished, though it is subject to the opinion of the committee. This is because age does not matter in cases of rape.

32. P. 38 S. 128(c). The sections can be applied to both housewives and concubines after investigations on culture.

33. P. 39 SS 129 & 130. The punishment for sodomy is specifically provided by Sunnah of the Prophet (SAW)

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    and there is no difference between a man and woman. The only exception is where the husband commits the offence of sodomy with his wife the punishment in this case is caning.

34. P. 39 S. 132(a). The punishments can differ according to the form and gravity of the crime for instance incest with mother and daughter or grand daughter can attract severe punishment exceeding one year. But in case with a sister one year is enough as provided by the ode, depending upon the alkali's *ijtihad*. Refer to S. 126(b) for a similar provision in case of alternative if need be.

35. P. 41 S. 137. The provision of this section does not cover kissing in public of man and a woman who are husband and wife. It can not also be applied on people whose culture allows them to do so in public like Arabs and English, they do it to even their relations whether male for female most particularly on the cheek.

36. P. 41 S. 138. Second paragraph of this section needs more elaboration and if possible with an example.

37. P. 41 S. 138. No alternative.

38. P. 41 S. 140(a). The provision of this section is acceptable even in murder cases punishable with death the punishment can be changed to payment of *diyah* as prescribed in Maliki law.

39. P. 41 S. 140(b). Where husband withdrew his allegation against the wife the matter becomes ordinary *qadhf* so in this case the husband can be caned 80 lashes and the marriage continues, thus before *li'an*, according to some jurist even after *li'an*.

40. P. 42 SS. 141 & 142. Need more elaboration in respect of the position of the Holy Prophet (SAW) by stating that if one applied what are contained in the two sections

on the Holy Prophet Muhammad (SAW) with bad intention he should be killed and there is no alternative. See the Book of *Alshifa* written by Al-Qadi (Iyadh).

41. P. 44 SS. 143 & 144. There will be no amputation in case of theft where there is necessity, hunger, war faming or disaster; the punishment can be commuted to imprisonment.

42. P. 47 S. 150. The section is just a style of English Penal Code. Islam the punishment is canning or imprisonment let it be so or both but no more. Subject to further discussion by the committee.

43. P. 48 S. 152(a). Which authority provides the type of punishment SS (b) would not be applied unless the robber used dangerous weapons. SS (c) is supposed to be under murder and not *hirabah*.

44. P. 48 S. 153. Is not Maliki law it also contains double jeopardy there is again a difference between preparation and attempt. Preparation can attract canning and not imprisonment.

45. P. 49 SS. 155-159. The sections provide more than one punishment using the word "shall" which indicates imperative application while Islam prohibits double jeopardy. So the ward "can" may be used instead of shall in order to give room for an alternative.

46. P. 62 S. 199(c) (a) (b) [sic]. Needs elaboration. The punishment of *gheelah* contained in the proviso to the section can be remitted to payment of *diyah* if the heirs opted to it.

47. P. 65 S. 206. The provision of the Code in respect of payment of *ghurrah* for causing miscarriage is in line with Maliki school of law. But instead of providing an imperative additional caning of ten lashes the section should have allowed the judge to exercise his discretion.

48. P. 65 SS. 207-304. Should remain as they are. This is because to get their details in Maliki school of law is not easily possible according to our understanding, but subject to the committee's opinion.

49. P. 98 SS. 305-340. Are also same as above, likewise SS. 341-353.

50. P. 119 SS. 354-399. We also advise that they should remain as they are, while SS. 400-402 can be applied under *ijtihad al-qadi*; but S. 403(A)(1)(2) are absolutely in compliance with Islamic schools of jurisprudence.

51. P. 138 SS. 404-409. Dealing with ordeal, witchcraft and juju. According to the provisions of the Holy Qur'an and the Maliki law people who engage in such practices are the ones who associate [other things] with Allah (SWA) because they invoke the help of *jins* by calling their names and making sacrifices for them most especially with goats. Legally speaking any Muslim engages in such a practice will be asked to repent within (3) days if repented and desist from the practice he will be set free, if refuses repentance then he will be regarded as the one who commits *ridda* and his punishment is to be killed by hanging. The code and other books of theology provide death punishment for such practices.

SUMMARY

(a) Term of reference number one, which says does *ta'azir* mean only lashes or does it include imprisonment in Islam. Grand Kadi AbuAlhasan Aliyu Ibn Muhammad Ibn Habib Al-Mawardi in his book *Al-Ahkam al Sultaniyyah* Chapter 19 pp. 219-259 says that imprisonment can be included in some aspects.

(b) Term of reference number two which deals with roles to be played by the traditional rulers in *mu'amalat* and matters related to witchcraft, juju and the like. In this respect business people of different calls such as *sarkin* or *galadiman pawa*, *sarkin ma'auna* or *sarki in dillalai* can be mobilised through traditional rulers to act as *hisbah* to deal with those who adulterate foods or drinks or those who tamper with scales or mudus with the view to earn wrongful gain and cause wrongful loss to buyers. This does not mean that they will try and punish offenders, but they only caution and deter offenders or take them to court in cases beyond their control for justice to take its course.

(b)i Traditional rulers can also be used to reconcile between a father and his daughter in case of forced marriage if the reconciliation fails they take matter to court.

(b)ii They can be used as arbiters between neighbours who are ready for out of court settlement once and for all in cases of mischief or nuisance.

(b)iii They can assist courts and give evidence by specifying the boundaries of farm lands in court or when judge goes for locus in quo visit. In this respect traditional rulers can be invited by one of the parties or court can summon them to assist or give evidence.

(b)iv In case of witchcraft all the punishments are there in the Penal Code.

(c) Term of reference number three deals with payment of compensation instead of *qisas*. This is done when the *waliyul-dam*, legal claimants of the blood of the victim, asked for same in place of *qisas* and is allowed even in intentional killing.

(d) Term of reference number four which deals with the conformity or otherwise of the two Sharia Codes with the Islamic law considering the volatile and multi-religious nature of Kaduna State. The matter is simple, because Islamic Sharia allows intra-borrowing from one or more particular school of though to another when the need for so doing arises. Sharia law in general and the two Sharia Codes of Kaduna State in particular are in conformity with the 1999 Constitution by virtue of SS. 4 (4), 6(4) (5), 33 & 34, 38, 275-277 and S. 10.

CONCLUSION

We observe that this Sharia Penal Code has adequately treated *hudud* & *qisas* contained in the Holy Qur'an and there is no alternative from a clear provision of the Holy Qur'an which does not accept any other than its apparent meaning.

We also observe that SS. 206-219 of the Sharia Penal Code where "shall" which denotes imperative is frequently used the word "can" can serve the purpose in order to give room for an alternative and to allow the judge to use his discretionary powers taking into consideration the mercy nature of Sharia which prohibits double jeopardy, that is why one will find that only few cases such as *zina* and *qatl* murder carry three different punishments at a time.

In *zina* the offender can be sentenced to 100 lashes, one year imprisonment and in addition, the offender can be adjudged to pay damages. In respect of the volatile and multi-religious nature of Kaduna State, the solution to the problem is that every judge among the three tier legal system shall limit himself to what the law provides for him as jurisdiction in personal, territorial and subject matter jurisdictions with out exceeding limit.

Co-operation and understanding of traditional rulers and application of justice equity and good conscience will help matters.

We also realise that the draftsmen of the Sharia Penal Code Law depended on a well-known books. One is *Punishment in Islamic Law* written by Muhammad S. El-Awa from Chapter 4 SS. 96-116 they depend on the book 100% word by word in both Arabic and English. Two, is *Basis of Sharia (Islamic Law)* written by Prof. Abdurrahman Doi concerning criminal offences most especially part III PP. 316-391. Three *Islamic Law in Nigeria: Application and Teaching* edited by S. Khalid Rashid. Four, *Al-Ahkam al-Sultaniyyah* written by Grand Kadi, Abu-Akhasan Aliyu, Ibn Muhammad, Ibn Habib Al-Mawardi. Five, *Al-mahakim al-shar'iyyah.* Six, the Penal Code Law of Kaduna State.

We also want to seise this opportunity to advise the Government to provide the standard and uniform mudu and scale for measuring and weighing essential commodities, such as cash crops, meat and the like.

The Code under review is acceptable and appropriate most especially in a State like Kaduna which has multi-religious and divergent ethnic groups.

The provision of the Code apart from *hudud* and *qisas* which mainly based on Maliki school of law are based on what is known in Sharia as *maswalih al-amah*, public interest, which is also an important source of Sharia along with *qiyas,* analogical deductions, as they are always good instruments used to take care of new cases arising as a result of technological advancement and civilisation sophistication. These are our observations after reading the Code page by page.

Signed by:

……..
Dr. Maccido Ibrahim
Grand Kadi
Kaduna State
[Chairman Sub-Committee]

Signed by

……
Barrister Shehu Ibrahim Ahmad
Chief Registrar Sharia Court of Appeal
Kaduna
Member/Secretary Sub-Committee

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II.

Report of Subcommittee Chaired by Barrister Yahya Mahmud

KADUNA STATE GOVERNMENT COMMITTEE FOR THE HARMONISATION OF KADUNA STATE DRAFT SHARIA PENAL CODE LAW 2001 AND KADUNA STATE SHARIA CRIMINAL PROCEDURE CODE LAW, 2001

INTRODUCTION

The Kaduna State Government must be congratulated for preparing draft Sharia Penal Code Law, 2001 and Sharia Criminal Procedure Code Law 2001 for the criminal administration of justice to the Muslim citizens in Kaduna State as a fulfilment of their fundamental right. The fundamental rights of the Muslims begin with Divine rights, which can only be accomplished with the provisions of Sharia to govern their lives. It must be remembered that just before Nigeria became independent in 1960 the former Northern Nigeria Government was under duress blackmailed into passing Penal Code Law and Criminal Procedure Code Law for the administration of criminal justice in Northern Nigeria for both Muslims and non-Muslims. Though these Penal Code Law and Criminal Procedure Code Law contained some aspects of Sharia punishments for Muslims only, they were not found to be satisfactory to the Muslim as both the Northern Nigerian Government and the Panel of Jurists which it appointed to reorganise the laws of criminal justice did betray a very important recommendation of the panel which says:

> (b) Since the majority of the people living within the Region were Muslims, it was desirable to ensure that the new criminal system or Penal Code to be adopted did not in any way conflict with the provisions and injunctions of the Holy Qur'an and Sunnah (Sharia).

It will be of interest to know the several comments, observations and recommendations made on the draft bill by the Junaidu Committee.

2. What the Kaduna State Government has done in drafting Sharia Penal Code Law and Sharia Criminal Procedure Code Law is simply to expand the criminal Sharia jurisdiction of Sharia Courts and making the Sharia Penal Code Law and Sharia Criminal Procedure Code Law applicable to Muslims only. The harmonisation committee has therefore studied the two Sharia Codes and made clarification of the provisions in order to make it to have no conflict with Holy Qur'an and Sunnah and also in conformity with the Sharia provisions in the Constitution and authoritative laws. One must pray and hope that those Muslims who by ignorance or selfishness tried to hinder the proper development of Sharia legal system in this country will not repeat themselves again. The way and manner the Kaduna State Government has reformed the legal system in the State, the High Court, the Sharia Court of Appeal, the Magistrates, the Sharia Courts and Customary Courts for the administration of justice to all its citizens is really commendable. No Kaduna State citizen can now complain of being taken and made to go to a court, which is not of his/her choice. The two Sharia Penal Code Law and Sharia

Criminal Procedure Code Law have met the demand of the Muslim citizens of Kaduna State the they are applicable to the Muslims only.

1999 CONSTITUTION

3. The harmonisation committee has also studied the two laws in line with the 1999 Constitution and it has come to firmly believe that the laws conform with the provisions of the 1999 Constitution. This is because the Kaduna State Government has prepared the two laws in line with the powers given to it by the 1999 Constitution. The sections of 1999 Constitution which give the Kaduna State Government the powers are section 1, 4(6), 4(7), 6(4), 6(5)k, 36(12) 277(1), 278 and 279.

Section 1(1) "This Constitution is supreme and its provisions shall have binding force on all authorities and persons throughout the Federal Republic of Nigeria."

Section 1(3) "If any other law is inconsistent with the provisions of this Constitution, this Constitution shall prevail and that other law shall to the extend of the inconsistency be void."

Section 38(1) "Every person shall be entitled to freedom of thought, conscience and religion, including freedom to change his religion or belief, and freedom (either alone or in community with others, in public or in private) to manifest and propagate his religion or belief in worship, teaching, practice and observance."

According to section 1(1), section 38(1) of the 1999 Constitution as quoted above is binding on Kaduna State Government. It is by this provision that the Kaduna State Government prepared the two Sharia Code laws for her Muslim citizens in fulfilment of their fundamental right of religion. The two Sharia Code laws are not inconsistent with any provision of the 1999 Constitution. The other provisions of the Constitution which give the Kaduna State Government prepare these two Sharia Penal Code are:

Section 4(6) "The legislative powers of State of the Federation shall be vested in the House of Assembly of the State."

Section 4 (7). "The House of Assembly of a State shall have power to make laws for the peace, order and good government of the State or any part thereof with respect to the following matters, that is to say:

(a) any matter not included in the Exclusive Legislative List set of in Part I of the Second Schedule to this Constitution;
(b) any matter included in the Concurrent Legislative list set out in the first column of Part II of the Second Schedule to this Constitution to the extent prescribed in the second column opposite thereto; and
(c) any matter with respect to which it is empowered to make laws in accordance with the provisions of this Constitution."

Section 6(4) "Nothing in the forgoing provisions of this section shall be construed as precluding:

(a) 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;

(b) the National Assembly or any House of Assembly which does not require it from abolishing any court which it has power to establish or which it has brought into being."

Section 6(5)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 may make laws."

Section 36(12) "Subject as otherwise provided by this Constitution, a person shall not be convicted or a criminal offence unless that offence is defined and the penalty therefore is prescribed in a written law; and in this subsection, a written law refers to an Act of the National Assembly or a law of a State, any subsidiary legislation or instrument under the provisions of a law."

Section 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." It is clear indeed to anybody unless his vision is clouded with ignorance or selfishness he cannot say that the law of the State can only confer additional in Islamic personal law. It is beyond doubt that the law of the State has power to confer to the Sharia Court of Appeal additional jurisdiction in both Islamic civil and criminal matters. If the lower courts of Sharia i.e. Sharia Courts are given jurisdiction to deal with Islamic civil or criminal matters, the Sharia Court of Appeal would have jurisdiction to entertain appeals in both Islamic civil and criminal matters coming from such lower courts. THAT THE EXPRESSION "IN ADDITION TO SUCH OTHER JURISDICTION AS MAY BE CONFERRED UPON IT BY THE LAW OF THE STATE" IN SECTION 277 OF THE CONSTITUTION WOULD EMPOWER A STATE LAW TO CONFER JURISDICTION ON THE SHARIA ON THE SHARIA COURT OF APPEAL IN ALL CASES GOVERNED BY ISLAMIC LAW IS CONFIRMED BY REFERENCE TO "JURISDICTION CONFERRED UPON IT BY THIS CONSTITUTION OR ANY LAW" IN SECTIONS 278 AND 279 OF THE CONSTITUTION.

Section 278 "For the purpose of exercising any jurisdiction conferred upon it by this Constitution or any law."

SECTION 279 "Subject to provisions of any law made by the House of Assembly of the State."

SECTION 10 "The Government of the Federation or of a State shall not adopt any religion as State Religion". This section 10 is a controversial provision of the 1999 Constitution, which contradicts other important provisions of the 1999 Constitution. This section 10 is wrongly given the meaning of secularism for the country and it can not certainly stand the way of Kaduna State Government in its resolve to give the Muslim

citizens their fundamental right through the provisions of Sharia Penal Code Law and Sharia Criminal Procedure Code Law. As a matter of fact the Nigeria Inter-Religious Council, in its effort to build a solid mutual understanding between Muslims and Christians of this country organised a two day seminar on Sharia, June 21 – 22nd 2000, co-chaired by His Eminence the Sultan of Sokoto, Alhaji Muhammadu Maccido and the President of Christian Association of Nigeria, His Eminence Dr. Sunday Mbang and issued the following communiqué at the end of the seminar:

(1) Whereas the Council accepts the fact that Muslims have the right to practice Sharia in accordance with the demands of Islamic religion and within the provisions of the Constitution of the Federal Republic of Nigeria, NIREC appreciates the fears expressed by non-Muslims on the application of Sharia, especially in the areas of apostasy, capital punishment and any other areas of discrimination. The Council therefore recommends that the implementation of Sharia in any part of Nigeria should not violate the freedom and legitimate interests of non-Muslims as guaranteed by the Nigerian Constitution.

(2) Whereas the practice of Sharia remains the right of every Muslim faithful, it should not be extended to non-Muslim. The Council notes the fact that a non-Muslim is not even qualified to practice Sharia.

Besides these two points of the communiqué quoted above, there are seven more points of the communiqué which is relevant in efforts to bring understanding between Muslims and non-Muslim but the two quoted points above are most relevant as far as the question of Sharia is concerned. It is therefore crystally clear that the two Kaduna State Government Sharia Penal Code Law and Sharia Criminal Procedure Code Law are in conformity with the 1999 Constitution.

COURT OF APPEAL

4. It has been opined that since the 1999 Constitution has fundamentally given the Sharia Court of Appeal jurisdiction in civil proceedings of Islamic personal law, it is therefore the Court of Appeal that is likely to tackle appeals from the decisions of the Sharia Court of Appeal on Islamic personal law only. This opinion is wrong since the Constitution has given the State law the power to confer additional jurisdiction in all cases governed by Islamic law. What is important to understand is that the competence of the Sharia Court of Appeal to decide can not be limited to questions of Islamic personal law only when the State law has conferred to it jurisdiction in other laws, criminal or otherwise. The Court of Appeal is therefore competent always to decide on whatever the Sharia Court of Appeal is competent to decide. It is in order to prepare justices of the Court of Appeal that such justices are required to be learned in Islamic law and not in Islamic personal law. A reference to Section 288 of the 1999 Constitution testifies to that. Section 288 says:

(1) In exercising his powers under the forgoing provisions of this chapter in respect of appointments to the offices of Justices of the Supreme Court and Justices of the Court of Appeal, the President shall have regard to the need to ensure that there are among the holders of such offices persons learned in Islamic personal law and persons learned in Customary law.

(2) For the purposes of sub-section (1) of this section (a) a person shall be deemed to be learned in Islamic personal law if he is a legal practitioner in Nigeria and has been so qualified for a period of not less than fifteen years in the case of a justice of the Supreme Court or not less than twelve years in the case of the Court of Appeal and has in either case obtained a recognised qualification in ISLAMIC LAW from an institution acceptable to the National Judicial Council.

5. If sections 237, 240 and 244 of the 1999 Constitution are examined well, they will confirm that the Court of Appeal has jurisdiction to entertain any decisions which the Sharia Court of Appeal is competent to decide.

Section 237

(1) "There shall be a Court of Appeal."

(2) "The Court of Appeal shall consist of a President; and such number of justices of which three shall be learned in Islamic personal law."

Section 240

"Subject to the provisions of this Constitution, the Court of Appeal shall …… [sic] as may be prescribed by an Act of the National Assembly."

Section 244

(1) An appeal shall lie from 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 with respect to any question of Islamic personal law, which the Sharia Court of Appeal is competent to decide.

If section 288 which makes it clear that a justice of the Court of Appeal must be learned in Islamic law is considered with sections 237, 240 and 244, it will be clear that the Court of Appeal has jurisdiction to hear appeals from Sharia Court of Appeal on all cases governed by Islamic law. The proviso which is in the opening of section 240 has made it clear that section 244 must always go together with the section as the proviso has shown that anything added to the Sharia Court of Appeal by the law of the State will make the Sharia Court of Appeal competent to decide on it. By this proviso in Section 240, the Court of Appeal is made duty bound to hear appeals from all cases governed by Islamic law upon which the Sharia Court of Appeals is competent to decide as Section 277(1) of the 1999 Constitution has clearly vindicated.

AUTHORITIES

5. [sic] It is necessary to consider authorities, which may appear to be in conflict with the provisions of the Sharia Penal Code Law and Sharia Criminal Procedure Code Law prepared by the Kaduna State Government. But if such authorities are considered they will be found to come about out of ignorance or selfishness. In any case, as far as Islamic law is concerned, the law of precedence of the common law has no validity in Islamic law. Such authorities should not discourage the Kaduna State Government in preparing

its Sharia criminal laws, which are fundamentally made in fulfilment of the fundamental rights of the Muslim citizens of Kaduna State. If cases decided by the Sharia Court of Appeal go to the Court of Appeal they will not be decided only on decided cases but on the Constitution and other aspects of law. If the court becomes convinced that section 277(1) strengthened by section 278 and 279 has given the law of the State power to confer additional jurisdiction on the Sharia Court of Appeal in all cases governed by Islamic law, it can then hear and decide on all such cases coming to it from the Sharia Court of Appeal. Whatever the case may be, the Kaduna State Government has the constitutional right to provide the Muslim citizens of Kaduna with their fundamental rights of freedom of religion as enshrined in section 38(1) of the Constitution. No freedom of religion can be provided without the laws of such a religion and in the case of Sharia both civil and criminal. It is earnestly hoped that those Muslims who in the past used to stand in the way of the development of the Sharia legal system will stop doing so in the interest of justice and fair-play.

EDUCATION

6. The administration of justice within the Sharia legal system requires that both the judge and plaintiff/defendant should have the knowledge of Sharia. It is especially so with the judge It is necessary therefore for the Kaduna State Government to give more attention to the religious education of all of its citizens. In any case, no person should be allowed to be a judge unless he has the requisite qualification, good learning and fear of Almighty Allah.

7. Finally with further studies of the provisions of the two Kaduna State Sharia Penal Code Law and Sharia Criminal Procedure Code Law concluded the bills should be made ready for presentation to the Kaduna State House of Assembly. An interim has already been made available. What remains may be a trip overseas to seek verification of certain provisions of the two Sharia Penal Code Law and Sharia Criminal Procedure Code Law. Lastly, the Kaduna State Government ably led by His Excellency, Alhaji Ahmed Mohammed Makarfi, the Executive Governor of Kaduna State must again be congratulated for preparing the Kaduna State Sharia Penal Code Law and Sharia Criminal Procedure Code Law in fulfilment of the fundamental rights of the Muslim citizens of Kaduna State. May the Almighty Allah bring peace, mutual understanding, respect and prosperity to Kaduna in particular and throughout the Federal Republic of Nigeria in general, amen!

[Yahya Mahmud]
Chairman Secretary