

# Volume III: Sanitizing Society

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# CHAPTER 3

## SANITIZING SOCIETY

### I.

#### Introduction to Chapter 3

*Philip Ostien*

1. Sanitizing society as a goal of Sharia implementation.

Sharia implementation had many motivations: this is documented and discussed in Chapters 1 and 2 of this work. This chapter focuses on one of the central motivations: the desire to find a cure for the many social ills besetting Nigeria, or, in this case, besetting the Muslim North. The malaise, its putative cause, and the expected means of its cure, are well summarised in this passage from the Report of the Committee on the Implementation of Sharia Law in Kebbi State:<sup>1</sup>

The Sharia Committee after listening to oral advice and suggestions and having discussed the written memoranda received observes as follows:

(i) that the background to the call for the revival and full implementation of the Sharia in Kebbi State was the dissatisfaction of both the Government and the people with poor administration of justice as well as the collapse of the social and political institutions of our society which is manifested in the prevalence of social vices such as corruption, nepotism, tribalism, abuse of public office and position, drunkenness, cheating, fornication, armed robbery, gross violation of human rights among others, which are taking their toll on the national psyche on a daily basis under the very nose of the existing judicial system which is largely Western in its orientation and origin and which is so far removed from our cultural heritage that not surprisingly, it has failed to provide adequate remedy to all these evils;

(ii) that for the Muslims and non-Muslims alike, it is now time to look back to the good old days when Sharia was in full operation in some parts of this country. In those days, historical documents testify, there was security of life and property in all the territories where Sharia was being practised and people lived in harmony, peace and tranquillity;

(iii) that the social decay and moral decadence today is similar to what obtained during the *jabiliyyah* period in Saudi Arabia, and that almost as soon as the Sharia was implemented these vices evaporated into thin air;

(iv) that in Saudi Arabia today serious crimes and anti-social behaviour have been reduced to a minimum due to the implementation of the Sharia;

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<sup>1</sup> Quoted in the “White Paper on the Report of the Committee on the Implementation of Sharia Law in Kebbi State”, Chapter 2, 184.

(v) that seeing the effect of the implementation of the Sharia in this part of the country before the arrival of the British colonialists and the miracle it performed in Arabia during the early days of Islam as well as its effect in modern Saudi Arabia, the Muslims in Kebbi State call loudly for its entrenchment into our legal system once again as a remedy to our predicaments....

Prominent among the ills identified in this passage is “poor administration of justice”, blamed on “the existing judicial system which is largely Western in its orientation and origin”. The efforts made by the Sharia States to correct this problem, through the Islamisation of their court systems, will be documented and discussed in two later chapters of this work, on “Court Reorganisation” and “The Judges of the Sharia Courts”, both forthcoming. This chapter focuses on other social ills, documenting the efforts of the Sharia States to address them through legislation. Some further quotations from the Sharia Implementation Committee reports will serve to indicate some of the specific problems addressed:

Corruption. “Out of the societal moral decay, corruption has remained in the forefront.... [C]orruption has grown so powerful, contagious and pervasive [that] it eats up all our development programmes. Many policies...have failed to address these problems.” “Nigeria has tested rule under colonialism, military dictatorship and democracy as presented in Western sense, but still none has proved adequate and effective in curbing the menace of social injustice, corruption, bribery, bigotry and many other social malaise. Sharia is the only option left that is capable enough to tackle and reverse this trend.”<sup>2</sup>

Liquor, gambling, and prostitution. “All social menaces such as prostitution, selling and drinking of alcohol, and gambling should be fought with immediate effect.... Further, in doing this work, those involved in these dirty works should be urged to repent and be given assistance.” “I believe if we start with these, there will be significant reduction in the commission of immoral acts....”<sup>3</sup>

Unhealthy influences from the media. “Government should with immediate effect close all video houses and shops where drama cassettes are sold. Further, strict measures should be taken against cinema houses too.” “[I]t has been proved that these institutions have a great corrupting influence on youth. This is in addition to the fact that they serve as meeting places for criminal elements. Their harm is greatest in the LGAs [Local Government Areas] where recreational facilities are more limited.” “All immoral literature should be banned from circulation to ensure conformity with Islamic ethics and practices.”<sup>4</sup>

Unscrupulous market practices. “[U]nscrupulous people have filled our markets and nobody can stop them from what they are doing....” “The above [particularly the unscrupulous practices of self-imposed middlemen, discussed at length] are the main problems facing us and we hope that as the implementation of Sharia takes shape in this State, such practices will in time be wiped out...because they are harmful to both Islam

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<sup>2</sup> Chapter 2, 30, 94.

<sup>3</sup> Ibid., 57, 133.

<sup>4</sup> Ibid., 76, 105, 188.

and to Muslims.” “Government should ensure standard measuring units in term of weights and volume for goods to ensure fairness in business transactions. Price and quality control task forces should be established at various levels to supervise and enforce strict adherence to Islamic laws on business transactions.”<sup>5</sup>

A variety of matters related to girls and women.

Hawking. “Regulation of street hawking particularly by girls [should be imposed] in order to safeguard public morality.” “We are all living witnesses of what is happening as regards female hawking. This has become a way through which the behaviour of young girls is easily spoilt because of the constant mingling with bad boys.”<sup>6</sup>

Problems related to education. “Protection of young girls in schools has become something of great concern.... [S]ome parents are afraid of what will happen if they send their children to school.” “Principals and duty masters should check staff involved in immoral relationships with the female students.... Roll calls should be observed to check students sneaking out of the school at night or during the daytime.... During visiting days only girls’ parents or those authorised by the parents should be allowed to visit the girl students.” “Government should with immediate effect bring an end to co-education.” “Prevail on the Federal Government to separate female students’ campuses from those of male students in the existing universities...[or] to set aside one or two of the existing universities in the country exclusively for women; and to be staffed from the vice-chancellor to the lowest staff by women.”<sup>7</sup>

Dressing. “Mode of dressing should be strictly in accordance with Islamic injunctions. This should apply to our academic institutions as well.” “Government should prohibit [females] moving around the city half naked. And students’ uniforms in schools should be changed to conform with Islam.”<sup>8</sup>

Public transportation. “It has been observed that the “achaba” [commercial motorcycle] mode of transportation does not become Muslim women.” “Ensure separate commuter buses for males and females.”<sup>9</sup>

Social mixing of men and women. “[P]ublic entertainment in which men and women intermingle in an indecent and un-Islamic manner be it in the form of dancing, drumming, singing, music, beauty contest, fashion parade and the like [should be banned].” “[A]ll forms of immoral gatherings and activities during marriage and naming ceremonies (such as luncheons, picnics, cocktail parties and disco) [should] be banned and made illegal and punishable.”<sup>10</sup>

The high cost of getting married. “Government should readdress the issue of marriage in our society today with a view to eradicating certain negative innovations....” “[H]igh financial demands...contribute towards the accumulation of so many unmarried

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<sup>5</sup> Ibid., 52, 91, 96.

<sup>6</sup> Ibid., 22, 52.

<sup>7</sup> Ibid., 53, 187, 76, 165.

<sup>8</sup> Ibid., 96, 57.

<sup>9</sup> Ibid., 105, 96.

<sup>10</sup> Fika Local Government Prohibition of Certain un-Islamic Practices Bye-Law 2002, Part IV.8.d infra, §5; Chapter 2, 185.

youths. These...have become used to visiting prostitutes in brothels, and the women on the other hand are there in high numbers with nobody to marry them....” “During marriage contract the suitor shall pay only *sadaq* (dowry) to the bride in accordance with the Sunnah. Payment of all forms of levies and other traditional gifts such as *kudin mai unguwa*, *kudin ’yan banga*, *kudin tobassai* etc. should be made illegal and punishable under the law.” “[A] law [should be made] against extravagance during marriage celebrations that is, like inviting traditional singers and dancers and showering money on them.”<sup>11</sup>

2. What this chapter comprises.

a. Documentary materials. In Part IV the reader will find many of the legislative enactments made in the Sharia States aimed at suppressing the social vices just mentioned. Some of the enactments included in Part IV – some of the “Omnibus Laws” in Part IV.1 and the laws aimed at “Other Social Vices” in Part IV.8 – also address other problems that have not been mentioned.

i. Completeness of the materials. Every effort has been made – successfully, we believe – to collect all enactments of the Houses of Assembly of the Sharia States aimed directly at suppressing social vices, and all that we have collected are published in Part IV. Some of the statutes are lengthy. In three such cases we have omitted some sections, so indicating at the appropriate places in the texts, with information about what the omitted sections are about and how to find their language.

On the other hand, we managed to collect only a small sample of the enactments – “bye-laws” – of the Local Government Councils (LGCs), which are much harder to come by. For instance, we have no LGC enactment from Bauchi State, but it seems that many were made in the early days of Sharia implementation, as this passage from the September 2000 Report of the Bauchi State Sharia Implementation Committee attests:

1. At the time of writing, it is known that almost half of the LGAs [Local Government Areas] have passed such legislation to:
  - i. prohibit prostitution and close down brothels....
  - ii. ban all forms of gambling and games of chance.
  - iii. prohibit consumption and dealings in liquor in predominantly Muslim areas, i.e. not applicable to non-Muslims.
  - iv. ban all public video-viewing houses/centres....<sup>12</sup>

We have not even published all the LGC enactments we collected: particularly in cases of enactments from LGCs in the same State, they tend to copy from one another in identical terms. We believe that the bye-laws we managed to collect and have published provide a fair sample of what the LGCs have done.

In the case of most of the subjects dealt with in this chapter – corruption, liquor, gambling, etc. – there are, besides the new laws which deal specifically with these subjects, also sections of the new Sharia Penal Codes that are relevant. A separate chapter of this work – Chapter 4 – deals comprehensively with the Sharia Penal Codes. But for ease of reference we have extracted from Chapter 4 the sections of the Sharia Penal Codes relevant to the subjects dealt with in this chapter, and placed them with the

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<sup>11</sup> Chapter 2, 96, 86, 185, 30.

<sup>12</sup> Ibid., 105.

appropriate materials in Part IV. The reader should thus be able to get a full picture of the state of the law in the Sharia States, on the subjects dealt with in this chapter, from this chapter alone.

Of course the Sharia States have not attempted to address all their social problems with the sort of legislation included in Part IV of this chapter. Other methods have also been used – for instance, the establishment of Hisbah Corps charged with conflict resolution, peace-making, and personal guidance as well as with ensuring compliance with the dictates of the Sharia, and of Zakat Boards to collect and distribute *zakat* particularly to the deserving poor. These organisations will be documented and discussed in later chapters of this work. In Kano State, Governor Shekarau has set up a whole new Directorate of Social Reorientation, *A Daidaitu Sabu*, which has instituted a multi-faceted programme aimed at combating indiscipline and “restoring our cherished values”: “uprightness, good manners, patriotism, and respect for law and order”.<sup>13</sup> *A Daidaitu Sabu*, which got under way in 2005, deserves a separate study of its own; it is not covered in this work.

ii. Annotations. Several of the laws published in Part IV are derived from other laws enacted previously, whether by the Northern Region, other States, or the Federal Government. Where we have identified such relationships we have annotated the laws published in Part IV, showing, section by section, where they come from and any material variations from their sources. In the case of Sharia Penal Code sections, the annotations also show variations from Sharia State to Sharia State.

iii. We mention finally that as with all the other documentary materials published in this work we have corrected and standardised spellings etc., as is discussed more fully in the Preface to Volumes I - V, in Vol. I.

b. Scholarly essays. As has been seen, an important bit of the logic of Sharia implementation was that the laws and legal institutions inherited from the British colonial masters had failed, and perhaps would inevitably fail Nigeria; that the country was unwell as a result; and that the only cure, at least in the predominantly Muslim states, would be to reform the laws and institutions, to bring them back into conformity – at least more into conformity – with the classical Sharia: Allah’s rules for mankind, not those of the British. Then things would begin to improve. The laws reproduced in Part IV are the output so far of this programme of legislative reform on the subjects dealt with in this chapter.

How far have the laws actually changed? This is a principal question addressed in the two essays that follow this Introduction, Parts II and III of this chapter. Part II, on “Changes in the Law in the Sharia States Aimed at Suppressing Social Vices”, by Philip Ostien and M.J. Umaru, deals with corruption, liquor, sexual immoralities, gambling, and unedifying media. Part III, on “Sharia Implementation and Female Muslims in Nigeria’s Sharia States”, by Jamila M. Nasir, surveys a wide range of matters relating to its title, including the “variety of matters related to girls and women” listed above. The basic plan of the first essay is, subject by subject, to articulate the position of the classical Sharia; to

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<sup>13</sup> Malam Ibrahim Shekarau, *Social Re-Orientations: Inaugural Address and Action Plan* (Kano: Kano State Government, 2004), 1, 3.

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outline the law in the Northern Region of Nigeria and the States into which it was subsequently divided, to 1999; and finally to summarise the changes in the law made in the Sharia States since Sharia implementation began in 1999, with frequent reference to the materials in Part IV. This exercise can be tedious but it can also be revealing, and it seems to be the only way to determine the net effect to date, on the state of the law, of the efforts of the Sharia States to bring their laws on the subjects at hand into closer conformity with the Sharia. The second essay, on women, paints a complex picture of female Muslims in Nigeria's Sharia States, the roles they have been playing in Sharia implementation, and the changes in the law affecting them in particular.

What difference have the changes in the law made? This question is difficult to answer, for two reasons. First, because hard data on changes in social conditions in the Sharia States since 1999 – as to levels of corruption, rates of consumption of liquor by Muslims, divorce rates, etc. – are not available: the evidence is at best anecdotal. Second, because of the causation problem: even if it could be shown that conditions have – or have not – improved, the question would remain, what brought this about? – modification of the laws? insufficient modification of the laws? some other factor or combination of other factors? all of the above? It takes a great deal of careful collection and analysis of well-constructed data to approach these questions with any degree of confidence. The best the essays in Parts II and III can do is to give some impressions of how Sharia implementation has affected the incidence of the social problems the essays discuss.

Chapter 3 Part II  
Changes in the Law in the Sharia States  
Aimed at Suppressing Social Vices

*Philip Ostien and M.J. Umaru\**

**Introduction**

The purpose of this essay is to discuss changes in the laws of the Sharia States, made since 1999 as parts of their programmes of Sharia implementation, with the goal of eliminating certain un-Islamic practices and other besetting “social vices”. The essay deals with these matters under six headings:

|                       |    |
|-----------------------|----|
| • Corruption          | 9  |
| • Liquor              | 29 |
| • Sexual immoralities | 44 |
| • Gambling            | 58 |
| • Unedifying media    | 63 |
| • Conclusion          | 73 |

In each case the discussion (1) begins with a discussion of the position of the Sharia on the subject in question; (2) proceeds with an outline of the statutory law on the subject in the Northern Region of Nigeria and the States into which it was subsequently divided, to 1999, bringing in Federal law as well where applicable; (3) summarises changes in the laws on the subject made in the Sharia States since Sharia implementation began in 1999; and (4) gives brief information or observations on the effects of the changes in the law. The summaries of changes in the law since 1999 make frequent reference to the documentary materials reproduced in Part IV of this chapter – where the reader will find the full texts of most of the new laws on these subjects that have been enacted in the Sharia States through 2006. A final section of the essay gives some concluding remarks. As the reader will see, the sections on corruption, liquor and sexual immoralities are fuller than those on gambling and the media, which need much more study than we have been able to give them here. In all cases further empirical investigation of actual social conditions is needed before any full understanding can be gained.

**Corruption**

1. The regulation of corruption in the Sharia.

We needn't look far afield to find authoritative statements of the rules ideally governing the behaviour of public officials in Islam. The *jihad* led by Shehu Uthman dan Fodio in the early nineteenth century was directed primarily against the corruption and abuses of the rulers of the Hausa states, and in the first years following the *jihad* its leaders – the Shehu himself, and his brother Abdullahi dan Fodio and son Muhammad Bello – all

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wrote treatises on how government should properly be conducted, for the guidance of those who ruled their far-flung empire.<sup>14</sup> Much of what they condemned is still familiar today: various forms of extortion by public officials; the giving and taking of bribes; illegal levies, taxes and confiscations; embezzlement of public funds; the buying and selling of offices; abusive market practices allowed to go unchecked; and so on. What they ideally required in their public officials – what the Sharia ideally requires – is what people everywhere wish for: competence; diligence; accessibility; modesty; patience; impartiality; scrupulous honesty; the shunning of bribes and gifts; strict adherence to the law; justice tempered with mercy. In sum, the perfect civil servant. The Qur'an and the Hadith are full of condemnations of public officials, from top rulers on down, who are incompetent, corrupt, or oppressive. Allah is not unmindful of what they do.<sup>15</sup> For them there is a painful punishment in store.<sup>16</sup>

The rules of this Divine Code of Conduct are not enforceable in the hereafter only. Rulers – in the days of the Shehu and his successors, the Sultan and the Emirs – are required to be vigilant in identifying and rooting out public officials under them who are incompetent or who become oppressive or corrupt. By extension this duty extends to all public officials high and low, who all have their various rights and obligations by delegation from the ruler;<sup>17</sup> all should take appropriate action against any departure from the Divine Code of Conduct whenever they see it. To assist with enforcement of the Code there are also of course the police, and special “Public Complaints Commissioners”<sup>18</sup> are also to be appointed, to receive and investigate complaints against public officials on behalf of the ruler and to report directly to him. Islamic scholars – the *ulama* – also have a special role to play: “they are expected to assume the role of prophets in thundering against corruption, social injustice and oppression in the society in which

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<sup>14</sup> These works include: Uthman dan Fodio, *Kitab al-Farq*, published in Arabic with English translation by M. Hiskett in *Bulletin of the School of Oriental and African Studies*, 23 (1960), 558-79; Abdullahi dan Fodio, *Diya al-Hukkam*, published in Arabic by Dar al-Arabia Li Diba'ati wa al-Nashur (Cairo, n.d.), Hausa translation published by Gaskiya Corporation (n.d.) and reprinted in 1984 by Sidi Umaru Press, Sokoto; Muhammad Bello, *Al-Gaith al-Wabl Fi Sirat al-Iman al-Adl* evidently never published, but discussed in S. Shagari and J. Boyd, *Uthman dan Fodio: The Theory and Practice of his Leadership* (Lagos: Islamic Publications Bureau, 1978) and S.U. Abdullahi, *On the Search for a Viable Political Culture: Reflections on the Political Thought of Shaikh Abdullahi Dan-Fodio* (Kaduna: New Nigerian Newspapers Ltd., 1984); see also S.U. Lawal, “The Fiscal Policies of Amir Al-Muminin Muhammadu Bello: Al-Gaith Al-Wabl Fisirat Al-Iman Al-Adl”, *African Economic History*, 20 (1992), 65-75.

<sup>15</sup> Qur'an 14:42.

<sup>16</sup> Qur'an 42:42.

<sup>17</sup> “The entire structure of the Islamic state is constituted by a series of delegations and representations.” S. Kumo, “Sharia Under Colonialism – Northern Nigeria”, in N. Alkali et al., eds., *Islam in Africa: Proceedings of the Islam in Africa Conference* (Ibadan: Spectrum Books Ltd., 1993), 1-22 at 5, quoting E. Tyan, *Histoire de l'Organisation Judiciaire en Pays Islam* (Leiden: E.I. Brill, 1960), 100.

<sup>18</sup> So called in Shagari and Boyd, *Uthman dan Fodio*, 24, citing A. dan Fodio, *Diya al-Hukkam*. This institution goes back to the days of Umar, the Second Caliph of Islam (r. 634-43), who set up a special office called *Raddul Madhalim* to investigate complaints against officers of the state. See A.S. Nu'mani, *Umar the Great* (English translation by M.Z. Ali Khan: Lahore: Sh. Muhammad Ashraf, 1957), II, 36-37.

they live. This is the very stance adopted by Sheikh Abdullahi Dan-Fodio.<sup>19</sup> Errant officials might be brought before the *qadi* for correction or punishment,<sup>20</sup> or they might be dealt with directly by the ruler, or by a special commission of inquiry appointed by him. “Punishments” can range from admonishment, reprimand, and exhortation, to deposition from office and confiscation of ill-gotten wealth. If actually applied in practice by a seriously high-minded *ummah*, this would be a perfectly satisfactory means of policing the Divine Code of Conduct in the here and now.

But what if the whole regime becomes corrupted, including the ruler at its head, and no relief is available within it? Here our authorities appear to differ. Abdullahi dan Fodio, the Shehu’s brother, advocated the course taken by the Shehu himself against the rulers of the Hausa states: forceful deposition and replacement by other rulers hopefully more godly. Muhammad Bello, the Shehu’s son and successor as Sultan of Sokoto (r. 1817-1837), took a softer line: Muslims who find themselves in the grip of a corrupt Muslim ruler should merely pray to Allah to free them – unless the ruler has apostatised outright. Bello, as Sultan, was concerned not only with enforcement of the Divine Code of Conduct, but also to maintain political stability within his realm, and it would not do to have wars of *jihad* fought against every corrupt and oppressive Emir in his turn.<sup>21</sup>

For in fact it seems that then, as now, enforcement was lax: the rule of Islamic law was not for long imposed on the North’s rulers at any level of the administration. “Deviations from Islamic models and from the Shehu’s instructions developed rapidly and grew apace”, and from not long after the Shehu’s death in 1817, conditions of mis-rule in the North seem to have reverted pretty much to what they were before he came.<sup>22</sup>

British rule was established in Northern Nigeria by 1903. As is well known British rule was “indirect”: as to the vast majority of the population, it was through native rulers, institutions and laws found already in place when the British arrived, which the British sought only to regulate and oversee, and gradually to develop. In the Muslim parts of the North, then, the same Muslim rulers, heirs of the *jihad*, were left in place, from the Sultan

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<sup>19</sup> Abdullahi, *On the Search for a Viable Political Culture*, 52.

<sup>20</sup> See S. Kumo, “The Rule of Law and Independence of the Judiciary Under the Sharia”, *Journal of Islamic & Comparative Law*, 8 (1978), 100-106 at 106: “[I]n general the position is that not only are the judges free from interference from the rulers, but that even the rulers themselves have been impleaded in the ordinary courts. In short, judicial independence has always been a living reality despite the fact that judges are *na’ibs* of rulers”, and then saying in a footnote: “Consider the numerous instances when the Caliph himself had to answer the summons of the judge.”

<sup>21</sup> Abdullahi, *On the Search for a Viable Political Culture*, 68-70

<sup>22</sup> Per M.G. Smith, “Historical and Cultural Conditions of Political Corruption Among the Hausa”, *Comparative Studies in Society and History*, 6 (Jan. 1964), 164-94; the quotation is from p. 174; see also Kumo, “Sharia Under Colonialism”, 2-4. P.K. Tibenderana, “The Irony of Indirect Rule in Sokoto Emirate, Nigeria, 1903-1944”, *African Studies Review*, 31 (Apr. 1988), 67-92 at 89 n. 9, argues that the “Sokoto emirate” itself was an exception. “[T]he caliph made pertinacious efforts to administer the Sokoto emirate in strict observance of the Sharia.... Thus, many of the existing works which depict the caliphal administration as ‘grossly corrupt and oppressive’ do not reflect the precolonial history of Sokoto. These works are largely based on the histories of Daura, Kano, Katsina and Zaria.” There is a further substantial literature on this subject to which the three works cited point.

and the Emirs on down.<sup>23</sup> As to corruption and abuse of office, the same Islamic rules about the behaviour of public officials, articulated by the Shehu and his brother and son in the previous century, still applied, and these rules could still be enforced in the courts of the alkalis, the Emirs, and the Sultan. The difference now was that the British were there to oversee, and, where necessary, to take action directly, or to encourage action by the “Native Authorities” themselves, against native officials who breached the public trust.

How well did the British and the North’s Muslim ruling classes and public officials together do, during the colonial period, in applying Islamic rules of official behaviour to Muslim officials in the North’s Muslim courts? There were indeed some famous cases, including one against Ahmadu Bello, *Sardauna* of Sokoto, subsequently Premier of the Northern Region, who was prosecuted in 1943 in the Sultan’s court for allegedly embezzling £136 cattle tax (*jangali*). Initially convicted, the *Sardauna* was allowed on remand after appeal to take the “oath of innocence” (*tubuma*), upon doing which he was acquitted and discharged.<sup>24</sup> But on the whole, it seems, Native Administration under the British was not less corrupt than it had been before the British came. One study suggests so,<sup>25</sup> and there are also the words of Malam (as he then was) Abubakar Tafawa Balewa, in his famous speech to the Northern House of Assembly in August 1950. The speech was in support of a motion

to appoint an Independent Commission to investigate the system of Native Administration in the Northern Provinces, and to make recommendations for its modernisation and reform....

The speech was a long one; here is the part that is relevant to this discussion:

Finally, Sir, I come to the sting in the tail. One feature of Native Administrations above all demands the immediate attention of the Commission [to be appointed]. It is as all of you are well aware, the twin curses of bribery and corruption which pervade every rank and department. It is notorious Sir that Native Administration servants have monetary obligations to their immediate superiors and to their Sole Native Authorities. It would be unseemly for me to particularise further but I cannot over-emphasise the importance of eradicating this ungodly evil. *No one* who has not lived among us can fully appreciate to what extent the giving and taking of bribes occupies the attention of all degrees to the exclusion of the ideals of disinterested service. Much of the attraction of a post lies in the opportunities it offers for extortion of one form or another. Unless the Commission fully realise the gravity of this problem, and tackle it with courage, any recommendations they make for superficial reforms are

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<sup>23</sup> Subject of course to the deposition and replacement by the British of particular office-holders from time to time.

<sup>24</sup> See T. Clark, *A Right Honourable Gentleman: The Life and Times of Albaji Sir Abubakar Tafawa Balewa* (Zaria: Hudahuda Pub. Co. 1991), 60; J.N. Paden, *Ahmadu Bello, Sardauna of Sokoto* (Zaria: Hudahuda Pub. Co. 1986), 119-23. There still exists no thorough, well-documented study of this episode.

<sup>25</sup> R. Tignor, “Political Corruption in Nigeria Before Independence”, *Journal of Modern Africa Studies*, 31 (June 1993), 175-202.

bound to fail. It is a most disturbing fact that few officials can afford to be honest.<sup>26</sup>

2. Statutory law relating to corruption in Northern Nigeria to 1999.

a. The Criminal Code. Running in parallel to Islamic penal law throughout the colonial period were not only the “native criminal laws and customs” of the North’s various non-Muslim peoples, but also a Criminal Code enacted by the British in 1916 for all of Nigeria. In the North this was applied only in the “English” courts – the High and Magistrates’ courts – and only to “non-natives”.<sup>27</sup> The Criminal Code included three chapters dealing expressly with official corruption. We mention them here primarily because they continue as part of the array of Federal anti-corruption legislation right up to the present:

Chapter XII: CORRUPTION AND ABUSE OF OFFICE, including sections on:

98. Official corruption [i.e. public official inviting or receiving gratification on account of official act].
99. Extortion by public officers.
100. Public officers receiving property to show favour.
101. Public officers interested in contracts.
102. Officers charged with administration of property of a special character or with special duties [i.e. having private interest in property, manufacture, trade or business as to which one has duties as public official].
103. False claims by officials.
104. Abuse of office
105. False certificates by public officers.

Chapter XIII: SELLING AND TRAFFICKING IN OFFICES, one section only; and

Chapter XIV: OFFENCES RELATING TO THE ADMINISTRATION OF JUSTICE, including sections on:

114. Judicial corruption.
115. Accepting reward to influence members of native tribunals.
116. Official corruption not judicial but relating to offences.

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<sup>26</sup> Regional Council Debates, Northern House of Assembly, Official Report, 19<sup>th</sup> August 1950. Tafawa Balewa’s speech is reprinted in full in A.D. Yahaya, *The Native Administration System in Northern Nigeria 1950-1970* (Zaria: Ahmadu Bello University Press, 1980), 225-29, and, in Tafawa Balewa’s own handwriting, in Clark, *A Right Honourable Gentleman*, 135-45. The speech and its impact are discussed at pp. 35-40 of Yahaya’s book and in C.S. Whitaker, Jr., *The Politics of Tradition: Continuity and Change in Northern Nigeria 1946-1966* (Princeton: Princeton University Press, 1970), 57, 58, and 96-99.

<sup>27</sup> For further discussion of the extreme legal pluralism of the colonial period and to whom the various laws applied, see Chapter 1 and the Introductions to Chapters 4 and 5 of this work, in Vols. I and IV respectively. 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.

Many other sections of the Code also defined and punished crimes which, if committed by public servants, might, in particular cases, also have been instances of corruption or abuse of office: the sections on stealing, for example, which include a separate section specifying the punishment “if the offender is a person employed in the public service and the thing stolen is the property of the State” (§390(5)).<sup>28</sup>

b. The Penal Code of 1960. The Northern Region’s Penal Code of 1960 – applied from 30<sup>th</sup> September 1960 in all of the North’s courts to all persons without regard to race, religion, or place of origin – supplanted Islamic penal law, other “native criminal law and custom”, and the English Criminal Code when it came into force. Again, in addition to all the “ordinary” crimes defined by the Code which public servants might corruptly commit, there is a separate chapter devoted specifically to OFFENCES BY OR RELATING TO PUBLIC SERVANTS, Chapter X. This includes the following sections:

115. Public servants taking gratification in respect of official act.
116. Taking gratification in order to influence public servant.
117. Abetment by public servant of offence mentioned in section 116.
118. Offering or giving gratification to public servant.
119. Public servant obtaining valuable thing without consideration from person concerned in proceeding or business transacted by such public servant.
120. Offering or giving valuable thing without consideration.
121. Third person profiting by gratification.
122. Public servant dishonestly receiving money or property not due.
123. Public servant disobeying direction of law with intent to cause injury or to save person from punishment or property from forfeiture.
124. Public servant framing incorrect document with intent to cause injury.
125. Public servant in judicial proceeding acting contrary to law.
126. Wrongful committal or confinement by public servant.
127. Public servant intentionally omitting to arrest or aiding escape.
128. Public servant negligently omitting to arrest or permitting escape.
129. Public servant causing danger by omitting to perform duty.
130. Abandonment of duty by public servant.
131. Public servant unlawfully purchasing property.

Just this list of sections already suggests some improvements on the corresponding chapters of the old Criminal Code. For instance, it is not only bribe-*taking* which is here condemned (as in the Criminal Code), but bribe-*giving* as well. The language of the Penal Code sections is also considerably simpler and easier to understand than that of the

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<sup>28</sup> C.O. Okonkwo and M.E. Naish, *Criminal Law in Nigeria, Excluding the North* (London: Street & Maxwell; Lagos: Nigerian Universities Press, 1964), Cap. 20 on “Corruption”, discuss the Criminal Code sections on corruption and the southern cases under them from the colonial period, noting the difficult wording of the sections, their frequently overlapping definitions of offences, and the consequent difficulties in their administration. The second edition of this work, *Okonkwo and Naish on Criminal Law in Nigeria* (London: Street & Maxwell; Ibadan: Spectrum, 1980), adds only a brief discussion of the 1966 amendments to the sections of the Code on corruption, as to which see below.

Criminal Code. The potential punishments for the crimes listed are substantial. For instance, under §115, for taking gratification in respect of an official act, the offender

shall be punished –

- (i) with imprisonment for a term which may extend to seven years or with fine or with both;
- (ii) if such public servant is ... acting in a judicial capacity or carrying out the duties of a police officer, with imprisonment for a term which may extend to fourteen years or with fine or with both.

There are also sections elsewhere in the Penal Code on breach of official trust (i.e. communicating information as to which there is an obligation of secrecy, §98), and on criminal breach of trust. The latter is worth quoting in full:

**311.** 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 to do so, commits criminal breach of trust.

The penalty for this crime is imprisonment for up to seven years or with fine or both (§312). But:

**315.** 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 fourteen years and shall also be liable to fine.

c. Further Federal anti-corruption legislation. Unfortunately for Nigeria, the anti-corruption provisions of the Criminal and Penal Codes proved – to say the least – to be ineffective. In short, after Independence, as to a large extent before it, these provisions were not enforced. The police, the prosecutors and the courts all joined in the general perversion of public office to private ends, and the corrupt acts the Codes prohibited became endemic throughout Nigeria in every branch and institution of government at every level, Local, State and Federal. There is a large literature discussing this phenomenon, its causes, and its probable effects on the country's development.<sup>29</sup>

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<sup>29</sup> To mention only a few of the works in which corruption in Nigeria is the main or an important topic: L. Diamond, *Class, Ethnicity and Democracy in Nigeria: The Failure of the First Republic* (London: Macmillan, 1988); R.A. Joseph, *Democracy and Prebendal Politics in Nigeria: The Rise and Fall of the Second Republic* (Oxford: University Press, 1987); L. Diamond, "Nigeria's Perennial Struggle Against Corruption: Prospects for the Third Republic", *Corruption Reform*, 7 (1993), 215; C. Achebe, *The Trouble With Nigeria* (Enugu: Fourth Dimension, 1984); A.U. Kalu and Y. Osinbajo, *Perspectives on Corruption and Other Economic Crimes in Nigeria* (Lagos: Federal Ministry of Justice, 1991); A. Gboyega, ed., *Corruption and Democratization in Nigeria* (Ibadan: Friedrich Ebert Foundation, 1996); O. Oko, "Subverting the Scourge of Corruption in Nigeria: A Reform Prospectus", *N.Y.U. Journal of International Law and Politics*, 34 (2001-02), 397-473.

Successive governments, civilian and military, have tried, or have purported to try, to address the problem of corruption. We mention only the main legislative episodes:

i. Criminal Code amendments. The Criminal Justice (Miscellaneous Provisions) Decree No. 84 of 1966, issued under General Yakubu Gowon, amended the anti-corruption provisions of the Criminal Code, clarifying and strengthening them in various ways.<sup>30</sup>

ii. Public Complaints Commission. Decree No. 31 of 1975, promulgated as part of General Murtala Mohammed's massive effort to clean up the public service during his brief period in power, established a Federal Public Complaints Commission (PCC), giving its Commissioners powers to investigate "any administrative action" taken by most Federal, State, and Local Government agencies, institutions and officials, as well as by public and private companies, and to recommend appropriate action, including administrative discipline or prosecution of errant officials. The Commissioners of the PCC were West Africa's first "ombudsmen", and their appointment was widely welcomed in Nigeria. It is reported that the PCC received 8,357 complaints in 1977, "an increase from the 6,777 received from the creation of the Commission on 16<sup>th</sup> October, 1975, to the end of 1976."<sup>31</sup> Unfortunately, whatever the numbers of complaints received may have been in subsequent years, it is generally conceded that the PCC has managed to do very little, over the years, to repress, or redress, the corrupt and otherwise unlawful practices of public servants.<sup>32</sup> The PCC and its staff too, one may speculate, soon joined the great game. The PCC still exists, with branches throughout the country.<sup>33</sup> Zamfara State's new Public Complaints Commission Law 2003, reproduced in Part IV.2.c of this chapter, closely tracks the Federal PCC Act; differences between them are noted in annotations to Zamfara's Law and in the discussion of Zamfara's PCC in the next section of this essay.

iii. Code of Conduct, Code of Conduct Bureau, Code of Conduct Tribunal. The Constitution Drafting Committee which sat in 1975-76, the architects Nigeria's 1979 Constitution, recommended inclusion in the new constitution of an enforceable Code of Conduct for Public Officers, "to ensure that persons who are entrusted with public authority do not abuse their trust to enrich themselves or defraud the nation."<sup>34</sup> This was done: the Fifth Schedule of the 1979 Constitution laid down a Code of Conduct, and established a Code of Conduct Bureau to administer it and a Code of Conduct Tribunal to enforce it. Sanctions available to the Tribunal included removal from office of public servants found guilty of violating the Code, their disqualification from further office for up to ten years, and seizure and forfeiture of "any property acquired in abuse

<sup>30</sup> For details see *Okonkwo and Naish on Criminal Law in Nigeria*, 375.

<sup>31</sup> J.S. Read, "The New Constitution of Nigeria, 1979: 'The Washington Model?'," *Journal of African Law*, 23 (1979), 131-174 at 145.

<sup>32</sup> For a study of the PCC's first five years see L. Adamolekun and E.L. Osunkunle, *Nigeria's Ombudsman System: Five Years of the Public Complaints Commission* (Ibadan: Heinemann, 1982), reviewed by V. Ayeni in *The Journal of Modern African Studies* 23 (1985), 538-39.

<sup>33</sup> The Public Complaints Commission Decree (with some modifications) entered LFN 1990 as Cap. 377, and LFN 2004 as Cap. P37.

<sup>34</sup> See *Report of the Constitution Drafting Committee* (Lagos: Government Printer, 1976), II, 40-49 and 56-63 (Report of the Sub-Committee on National Objectives and Public Accountability and the CDC's decisions thereon, on the question of the Code of Conduct and its enforcement).

or corruption of office.” Unfortunately the whole scheme got off to a bad start and never recovered. The new constitution came into force on 1 October 1979, the same day the new civilian regime of President Shagari took office. Under the Code of Conduct, all “public officers” – a very large class of people, ranging from the President and his ministers all the way down to policemen, soldiers, and all staff of the public universities – were required to submit to the Code of Conduct Bureau, within three months, “a written declaration of all his properties, assets and liabilities and those of his spouse, or unmarried children under the age of 21 years.” But President Shagari did not get around to appointing members to the Bureau until after the three-month deadline had expired; he never did appoint members to the Code of Conduct Tribunal; and the National Assembly never enacted the enabling legislation that would have empowered these bodies, as the Constitution said, “more effectively to discharge the functions conferred on [them] by this Schedule” – that would have empowered them, for example, to hire the staff needed to manage the huge volume of documents that were supposed to be submitted to them. The President, the Vice-President, and some few others eventually declared their assets to the Bureau; but many other public officers, including some members of Shagari’s own cabinet, never did, and nothing was ever done about it. “The Bureau never really functioned. The Tribunal never sat.”<sup>35</sup> Only in 1989 was the enabling legislation finally enacted;<sup>36</sup> but up to 2001, it appears, “no public officer [had] ever been arraigned before the Tribunal for violating the Code of Conduct.”<sup>37</sup> The Code of Conduct, the Code of Conduct Bureau and the Code of Conduct Tribunal nevertheless all still subsist today under the 1999 Constitution and the 1989 enabling legislation.<sup>38</sup>

iv. Recovery of Public Property Tribunals. Public funds were looted at record rates during the Shagari era, and one of General Buhari’s first enactments upon seizing power from Shagari (31 December 1983) was the Recovery of Public Property (Special Military Tribunals) Decree, No. 3 of 1984. This allowed the Head of State to appoint special panels to investigate public officials alleged to have engaged in corrupt practices, to have unjustly enriched themselves, or to have “in any other way been in breach of the Code of Conduct”, and then allowed him, if the investigative panels’ reports warranted, to constitute “special military tribunals”, composed of military officers, to try alleged offenders. Proceedings in these tribunals were secret, summary, and unencumbered by important elements of the “due process of law” applicable in the ordinary courts: for instance, the burden of proving no unjust enrichment was on the defendant, and there was an appeal only to another military tribunal again. Penalties upon conviction could include forfeiture of ill-gotten gains and imprisonment for up to life. These tools were used extensively by Buhari himself during his short reign: many politicians from the Shagari era were arrested and languished in prison awaiting trial; many others were convicted and sentenced.<sup>39</sup> But the tribunals became notorious for their arbitrary and

<sup>35</sup> L. Diamond, “Nigeria in Search of Democracy”, *Foreign Affairs*, 62 (1983-84), 905-927 at 913.

<sup>36</sup> Code of Conduct Bureau and Tribunal Decree, No. 1 of 1989, Cap. 56 LFN 1990.

<sup>37</sup> Oko, “Subverting the Scourge of Corruption in Nigeria”, 431.

<sup>38</sup> See the Fifth Schedule of the 1999 Constitution (Code of Conduct; Code of Conduct Tribunal); the Third Schedule Part I A (Code of Conduct Bureau); and Cap. C15 LFN 2004.

<sup>39</sup> See e.g. O. Ugochukwu, “A Parade of Gubernatorial Convicts”, *West Africa*, 2<sup>nd</sup> July 1984, 1349-51, cited in Oko, “Subverting the Scourge of Corruption in Nigeria”, 436 n. 200.

highhanded behaviour, to the point that the Nigerian Bar Association instructed its members not to appear before them; they were one reason why Buhari was deposed in August 1985. The tribunals were used much less by the military rulers who followed Buhari (Babangida, Abacha, Abdulsalami), and proceedings in them, to the extent there were any, were also brought under better control.<sup>40</sup> The Recovery of Public Property statute still remains on the books today, but with the military element eliminated completely.<sup>41</sup> The President may still appoint investigative panels under it as before, but trials are now before the Federal High Court, with appeals to the Court of Appeal and then to the Supreme Court. We do not know how often this tool has been used during the Obasanjo era.

v. Independent Corrupt Practices and Other Related Offences Commission (ICPC). President Obasanjo came to office in 1999 vowing to tackle corruption “head on at all levels”. Evidently not satisfied with the tools already available to him for this purpose, he took steps immediately to create a new one: the Independent Corrupt Practices and Other Related Offences Commission (“ICPC”). The Bill establishing the ICPC was submitted to the National Assembly within a month of Obasanjo’s taking office (i.e. in June 1999); after much negotiation of its details a modified version became law a year later.<sup>42</sup> In brief, the Act (1) establishes the ICPC, defining its membership, the mode of their appointment, their tenure of office, their powers and duties, etc.; (2) lays down a series of *Offences and Penalties* in the form of a criminal code chapter on bribery and corruption in the public service; (3) defines the powers of the ICPC to investigate alleged offences under the Act, and, in the course of doing so, to require suspected persons to surrender their travel documents and to seize property suspected of being “the subject matter of an offence or evidence relating to the offence”; and (4) defines the powers of the ICPC to arrest, detain subject to bail, “and, in appropriate cases, to prosecute the offenders”. The Act is very complex, betraying much mutual suspicion and attempts to impose reciprocal checks and balances between the executive and the legislative branches of the Federal Government, both all the while trying to appear zealous in the fight against corruption. Unfortunately – once again one must use this word – the ICPC has recorded only “modest achievements” during its first years of existence, “in the face of obvious constraints and difficulties.”<sup>43</sup> First the ICPC had to litigate an early challenge by one of the States to the constitutionality of the ICPC Act –

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<sup>40</sup> Cf. Cap. 389 LFN 1990, still providing for military tribunals, but with more safeguards than under the 1984 decree. E.g. the tribunals of first instance were now to be chaired by a serving or retired High Court judge, sitting with three military officers (§5), and appeals went to a “Special Appeal Tribunal” composed of two serving or retired Justices of the Court of Appeal, “one of whom shall be the Chairman”, sitting with three military officers (§15). According to Oko, “Subverting the Scourge of Corruption in Nigeria” 438 n. 213, “Though special military tribunals were not officially disbanded until 1999, they fell into disuse as early as 1986.”

<sup>41</sup> Recovery of Public Property (Special Provisions) Act, Cap. R4 LFN 2004.

<sup>42</sup> The Corrupt Practices and Other Related Offences Act, No. 5 of 2000, Cap. C31 LFN 2004.

<sup>43</sup> Ali Aku, *Anti-Corruption Crusade in Nigeria (The Challenge of ICPC in National Cleansing)* (Abuja: no publisher named, 2003), ii. Aku was Special Assistant on Legal Matters to the first Chairman of the ICPC. His book is a valuable contribution to the literature on the ICPC and on the struggle against corruption in Nigeria more generally.

Ondo State questioning the power of the National Assembly to legislate in this field.<sup>44</sup> Having won that battle, the ICPC next had to ward off an attempt by the National Assembly to eviscerate the Act – this after the ICPC in late 2002, perhaps rashly, had commenced investigations into both the Speaker of the House of Representatives and the President of the Senate. With the help of the courts, the ICPC survived this too.<sup>45</sup> “In the interval, however, [it] had remained moribund, suspending all its activities and awaiting the final pronouncement from the courts.”<sup>46</sup> Meantime the ICPC has also had to live with chronic under-funding and resultant under-staffing;<sup>47</sup> and in the cases it has managed to pursue has had to contend with manipulation by defence lawyers of a “highly corrupt and opportunistic justice system”: “some of the leading lights in the legal profession ...are using [all the] dirty tricks in their books to frustrate the success of the anti-graft war”.<sup>48</sup> With not very many convictions to its credit so far, the ICPC speaks rather of its activities in other areas, including education and public enlightenment, and the establishment of “Anti-Corruption and Transparency Monitoring Units” in hundreds of Federal and State ministries, agencies, and other organisations.<sup>49</sup> Zamfara State’s new Anti-Corruption Commission Law 2003, reproduced in Part IV.2.a of this chapter, is largely drawn from the ICPC Act; differences between them are noted in annotations to Zamfara’s Law and in the discussion of Zamfara’s Anti-Corruption Commission in the next section of this essay.

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<sup>44</sup> On 7<sup>th</sup> June 2002, the Supreme Court upheld (under §15(5) of the Constitution) the power of the National Assembly to create Federal anti-corruption agencies like the ICPC, striking down only two provisions of the Act: the rule of §26(3), requiring that “A prosecution for an offence shall be concluded and judgment delivered within ninety working days of its commencement” (intrusion into the realm of the judiciary; separation of powers violation), and the rule of §35, allowing the ICPC to indefinitely detain persons who do not comply with summonses (infringement of fundamental right to personal liberty). See *Attorney-General of Ondo State v. Attorney-General of the Federation* (2002) 9 NWLR 222 S.C.

<sup>45</sup> The National Assembly’s “Corrupt Practices and Other Related Offences Bill 2003”, if it had become law, would have weakened the powers of the ICPC in ways spelled out in detail in Aku, *Anti-Corruption Crusade in Nigeria*, 180-182. Two separate lawsuits in the Federal High Court, Abuja challenged (1) the Bill as initially passed by the National Assembly in late February 2003 (*Hon. Bala Kajoje & Ors. v. The National Assembly & Ors.*, No. FHC/ABJ/CS/93/2003, filed 3<sup>rd</sup> March 2003), and (2) the same Bill, or Act, as purportedly passed into law over President Obasanjo’s purported veto in early May 2003 (*Attorney-General of the Federation v. Chief Anyim Pius Anyim & Ors.*, No. FHC/ABJ/CS/225/2003, filed 12<sup>th</sup> May 2003). The twists and turns of this saga are recounted in the judgments in these two cases, filed on 20<sup>th</sup> and 26<sup>th</sup> May 2003, respectively. The plaintiffs prevailed in both cases, with the effect that the purported enactment of the “Corrupt Practices and Other Related Offences Bill 2003” was held null and void and of no effect.

<sup>46</sup> Aku, *Anti-Corruption Crusade in Nigeria*, 185.

<sup>47</sup> The underfunding is apparently the fault of the Federal executive, not the legislature: “During the [first] three years of the Commission’s operations a total budgetary provision of ₦2.710 billion was approved [by the legislature] out of which only ₦1.210 billion was released [by the executive]”, Aku, *Anti-Corruption Crusade in Nigeria*, 150. This pattern has continued subsequently: See *ICPC News*, 1/10 (October 2006) at 13, speaking of “acute shortage of personnel” and saying “the Commission is still constrained by funds and this accounts for the inability of the Commission to have offices in the 36 states of the federation as required by the ICPC Act 2000.”

<sup>48</sup> *ICPC News*, 1/10 (October 2006), 13 and 10.

<sup>49</sup> *Ibid.*, 9-12.

vi. Economic and Financial Crimes Commission (EFCC). We come finally to the newest corruption-fighting agency of the Federal Government, the EFCC. We do not go here into any details about the EFCC – that would be beyond the scope of this essay. Suffice it to say that it was set up at the behest of a foreign body – the Financial Action Task Force on Money Laundering (FATF) – a creation of the G-7 group of rich nations and the European Commission.<sup>50</sup> FATF’s purpose is to “spearhead the effort to adopt and implement [in all countries of the world and in international law] measures designed to counter the use of the financial system by criminals” – specifically to stop “money-laundering”. Money-laundering is said to be a “threat posed to the banking system and to financial institutions”. It is also used to cover up other crimes which the FATF would like to see suppressed or eliminated entirely, such as drugs trafficking, human trafficking, fraud and financial malpractices in banks and other financial institutions, advance fee fraud, political corruption – and, since 9/11, terrorism. Nigerians have been much involved in all these sorts of crimes except terrorism – and even that has recently been making itself felt in the Niger Delta. To assist countries to know how to fight money-laundering, FATF issues a set of Forty Recommendations, updated from time to time, “which provide a comprehensive plan of action needed to fight against money laundering”. To encourage countries to implement the Recommendations FATF publishes a list of “Non-Cooperative Countries or Territories” – countries demonstrating “an unwillingness or inability” to implement the Recommendations – which are thus shamed and in some ways sanctioned. Nigeria was for many years on the list of “Non-Cooperative Countries”. This began to change when Obasanjo came into office. The FATF Annual Report for 2002/03 says that “since June 2001... [t]he Government of Nigeria has substantially improved its co-operation with the FATF and its willingness to address its anti-money laundering deficiencies”, citing new legislation on money-laundering and on banking and financial institutions – and the Economic and Financial Crimes Commission (Establishment) Act 2002, signed into law in December 2002.<sup>51</sup> The FATF Annual report for 2003/04 records further progress:

Nigeria enacted the Money-Laundering (Prohibition) Act 2004 on 29 March 2004 and the Economic and Financial Crimes Commission (Establishment) Act 2004 on 4 June 2004.<sup>[52]</sup> These laws repeal the previous versions and address the main remaining legal deficiencies. Nigeria must now focus on comprehensively implementing these AML [“anti-money laundering”] reforms, including fully establishing the EFCC to enable it to function as an effective FIU [“financial intelligence unit”].<sup>53</sup>

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<sup>50</sup> “About the FATF”, [http://www.fatf-gafi.org/pages/0,2966,en\\_32250379\\_32236836\\_1\\_1\\_1\\_1\\_1,00.html](http://www.fatf-gafi.org/pages/0,2966,en_32250379_32236836_1_1_1_1_1,00.html). FATF’s membership has grown from the original 16 (G7, EC, and eight other countries) in 1990, to 33 today. The information about FATF given in this paragraph is all taken from the FATF website.

<sup>51</sup> For the 2002 Act, see Cap. E1 LFN 2004. For FATF’s 2002/03 Annual Report see <http://www.fatf-gafi.org/dataoecd/4/30/33922392.PDF>.

<sup>52</sup> The 2004 version of the EFCC Act was not enacted in time for inclusion in LFN 2004: it may be found at [http://www.efccnigeria.org/index.php?option=com\\_content&task=view&id=36&Itemid=70](http://www.efccnigeria.org/index.php?option=com_content&task=view&id=36&Itemid=70).

<sup>53</sup> <http://www.fatf-gafi.org/dataoecd/3/52/33922473.PDF>.

In June 2006 Nigeria was taken off the list of “Non-Cooperative Countries”.

Today at its Plenary meeting, the Financial Action Task Force (FATF) decided to remove Nigeria from its list of countries and territories that are non-cooperative in the international community’s efforts to fight money laundering. This decision recognises the progress that Nigeria has made in implementing anti-money laundering reforms, including establishment of a financial intelligence unit and progress on money laundering investigations, prosecutions and convictions. In addition, Nigeria has taken steps at the highest levels to fight corruption. The FATF will continue to monitor the situation of Nigeria over the next year.<sup>54</sup>

Thus the origins of the EFCC. The EFCC Act includes some penal provisions of its own, but the Commission’s primary purpose is to enforce other Acts:

- (2) The Commission is charged with the responsibility of enforcing the provisions of—
- (a) the Money Laundering Act 2004; 2003 No. 7 1995 No. 13;<sup>55]</sup>
  - (b) the Advance Fee Fraud and Other Fraud Related Offences Act 1995 [LFN 2004 Cap. A6];
  - (c) the Failed Banks (Recovery of Debts) and Financial Malpractices in Banks Act 1994, as amended [LFN 2004 Cap. F2];
  - (d) the Banks and Other Financial Institutions Act 1991, as amended [LFN 2004 Cap. B3];
  - (e) Miscellaneous Offences Act [LFN 2004 Cap. M17];
  - (f) any other law or regulations relating to economic and financial crimes, including the Criminal Code or Penal Code.<sup>56</sup>

To do its work the EFCC has established various sub-units, among which is its “Economic Governance Section”:

This section mainly deals with cases that have flair [sic] with good governance, transparency and accountability. It investigates cases ranging from abuse of office, official corruption, bribery of government officials, diversion of public funds through fraudulent award of contracts, corruption in land allocation, tax fraud, capital market fraud, money laundering, oil bunkering etc.<sup>57</sup>

Under this heading the EFCC has become much involved in Nigerian politics, and has often been accused of permitting itself to be used by the President as a political weapon – but that is another story.<sup>58</sup> Certainly the EFCC has proved a much more formidable opponent of corruption and other crimes than any of its predecessors in this field,

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<sup>54</sup> <http://www.fatf-gafi.org/dataoecd/13/54/36995060.pdf>.

<sup>55</sup> LFN 2004 has only the 1995 version of the Money Laundering Act. The 2004 version, which repealed the earlier ones, is available at [http://www.efccnigeria.org/index.php?option=com\\_docman&task-cat\\_view&gid=75](http://www.efccnigeria.org/index.php?option=com_docman&task-cat_view&gid=75).

<sup>56</sup> “The Establishment Act”, [http://www.efccnigeria.org/index.php?option=com\\_content&task=view&id=36&Itemid=70](http://www.efccnigeria.org/index.php?option=com_content&task=view&id=36&Itemid=70), §7(2).

<sup>57</sup> “What We Investigate”, [http://www.efccnigeria.org/index.php?option=com\\_content&task=blogcategory&id=91&Itemid=90](http://www.efccnigeria.org/index.php?option=com_content&task=blogcategory&id=91&Itemid=90).

<sup>58</sup> The role played by the EFCC in the 2007 elections deserves a full-length study of its own.

although it too, like the ICPC, has been frustrated by the ability of criminals with plenty of money, including politicians, to manipulate the courts:

[A]ny time we commence full prosecution, lawyers...will use the court to stall prosecution.... It is only the poor that go to prison. It is high time we brought the rich who are criminals to justice. They have money and use their money to buy their way out. Today, there is no rich man in Nigerian prisons.<sup>59</sup>

### 3. Changes in the laws relating to corruption in the Sharia States since 1999.

All of this long background and alphabet soup are necessary to set the stage for what two of the Sharia States have done – as part of their Sharia implementation efforts – in the fight against corruption.

a. Zamfara State. Among the other avowed aims of the pioneer Sharia implementation efforts of Governor Ahmad Sani of Zamfara State, was to try to clean up government.

Propelled by Islamic principles and belief that leadership is a trust, a deliberate policy was evolved in consonance with the Sharia legal code, to rid the system of governance based on corruption and with a view to instilling public accountability and transparency in the use of public funds.<sup>60</sup>

Among other things, external auditors of the State's accounts were appointed; periodic publication in the newspapers of statements of the accounts was undertaken; and

Government gave credence to these efforts, when within two months of assuming office [i.e. in July 1999], Governor Ahmad Sani constituted an Anti-Corruption Commission, with the primary aim of fighting corruption in public and private life.<sup>61</sup>

The Anti-Corruption Commission (ACC), as thus initially established by administrative fiat, combined in one body the two rather different functions of “corruption-fighter” and “ombudsman”; one may read this in the first Anti-Corruption Commission (Establishment) Law that Zamfara enacted to give statutory backing to the new Commission, No. 17 of 2000.<sup>62</sup> Apparently because this combination of functions was felt to be administratively inconvenient,<sup>63</sup> in 2003 the initial ACC Law was repealed and replaced by two new ones: the Zamfara State Anti-Corruption Commission Law 2003,<sup>64</sup>

<sup>59</sup> “419: Judiciary used to frustrate trial, says Ribadu”, *ThisDay*, 29<sup>th</sup> October 2003, quoted in O. Oko, “Seeking Justice in Transitional Societies: An Analysis of the Problems and Failures of the Judiciary in Nigeria”, *Brooklyn Journal of International Law*, 31 (2005-2006), 9-82, at 16 n. 30. On the EFCC and the background to it the reader is also referred to A.Y. Shehu, *Economic and Financial Crimes in Nigeria: Policy Issues and Options* (Lagos: National Open University of Nigeria, 2006).

<sup>60</sup> M.A. Musa et al., eds., *Development of Zamfara State and the Introduction of Shariah Legal System Under the Leadership of the Executive Governor Albaji Ahmad Sani* (Nigeria: M.A. Musa et al., 2002), 145.

<sup>61</sup> Musa et al., *Development of Zamfara State*, 146.

<sup>62</sup> It appears that this Law was never gazetted; a typescript of the Bill for the Law is in the possession of the authors.

<sup>63</sup> Per interview with ACC Directors, Gusau, 29<sup>th</sup> March 2007, by A. Garba. There may also have been issues about the initial anti-corruption statute, which as noted was never gazetted and seems to have been badly drafted.

<sup>64</sup> No. 12 of 2003, assented to 28<sup>th</sup> July 2003; published in Zamfara State of Nigeria Gazette No. 1 Vol. 2, 10<sup>th</sup> October 2003 pp. A1-A27.

and the Zamfara State Public Complaints Commission Law 2003.<sup>65</sup> We briefly discuss these Laws and the Commissions they create in turn.

i. Zamfara Anti-Corruption Commission. Zamfara's ACC as newly constituted in 2003 is modelled on the Federal ICPC discussed above. Zamfara's Anti-Corruption Commission (Establishment) Law 2003 is reproduced as Part IV.2.a below, with annotations showing sources in and some of the variations from the Federal ICPC Act; the reader is referred to that text for further details. Although Zamfara's ACC Law is clearly based on the ICPC Act, there are important differences.

- Zamfara's Law is much more detailed and explicit about the powers of the ACC (§6) than the Act is about those of the ICPC (also §6); and to the powers of its Anti-Corruption Commission, Zamfara's Law adds an equally detailed list of powers of the Commissioners severally (§8), which the ICPC Act does not.
- Zamfara's ACC may establish offices in each of the State's 14 Local Government Areas (LGAs) (§6(1)(h)). The ICPC has offices only in State capitals (and not even in all of those, as we have seen). Zamfara's ACC may thus be brought much closer to the people. In fact Zamfara's ACC has not yet established full-fledged offices in all LGAs, but has designated "liaison agents" who hear peoples' complaints, and either act on them themselves or pass them in to the head office in Gusau. There is an appeal from any decisions of the liaison agents to the central ACC (§6(1)(k)).
- The powers of the ACC and the ICPC overlap: for instance, complaints of corruption against public servants employed by Zamfara State or its Local Governments are within the jurisdiction of both the Zamfara ACC and the Federal ICPC (ACC Law §6(1)(a); ICPC Act §2, definition of covered "public officer"). Because of these and other overlapping jurisdictions Zamfara's ACC is specifically empowered to refer particular cases to "the Code of Conduct Bureau or the Police" (§6(2)) and in practice also sometimes sends cases to the ICPC or the EFCC.<sup>66</sup>
- Zamfara's Law specifies an interesting range of "punishments" the ACC can recommend to the appropriate authority or office in case it concludes an official has erred, ranging from "admonishing (*wa'aḥ*)" through "transfer or suspension" to "prosecution and or dismissal from the service" (§17(2)); there is nothing like this in the ICPC Act.
- Prosecutions under Zamfara's Law may be in either of two classes of courts created and managed by the State: Upper Sharia Courts (for Muslims) or District Courts (for non-Muslims); prosecutions under the ICPC Act are in the State High Courts, a step up the judicial ladder.
- Zamfara's Law omits quite a few of the rather complex sections on *Offences and Penalties* contained in the ICPC Act: "Too much *turanci!*" no doubt – "Too much

<sup>65</sup> No. 19 of 2003, assented to 28<sup>th</sup> July 2003; published in Zamfara State of Nigeria Gazette No. 3 Vol. 5, 10<sup>th</sup> October 2003 pp. A18-A25.

<sup>66</sup> Interview with ACC Directors, Gusau, 29<sup>th</sup> March 2007, by A. Garba.

English!” Despite these redactions the reader of Zamfara’s Law will see that there is still a great deal of “English” in it, not only in the definitions of offences but in the provisions for investigations and prosecutions. If prosecutions are ever brought under the Law the judges of the Sharia Courts in particular will have a lot of unfamiliar “grammar” to contend with.

- The Grand Kadi of Zamfara State’s Sharia Court of Appeal and the Chief Judge of its High Court must jointly assign the judges – Upper Sharia Court and Principal District Court – who may hear at first instance cases prosecuted under the ACC Law (§43(2)); perhaps, in view of the complexities of the Law, they will designate only judges who are qualified legal practitioners. Under the ICPC Act this right of designation of judges is given to the Chief Judges of the State High Courts alone (§61(3)).
- As cases may be tried at first instance either in the Sharia or the District Courts, so appeals from convictions under Zamfara’s Law may be either to the Sharia Court of Appeal or to the High Court of the State, at the election of the convicted person (§48), with further appeals to the Federal Court of Appeal and then the Supreme Court if desired.<sup>67</sup> Under the ICPC Act appeals go straight from the State High Courts to the Federal Court of Appeal.

Zamfara’s ACC statute is an interesting case of Sharia implementation and deserves much more study than we can give it here. In Part IV.2.b below the reader will find two brief documents kindly supplied to us by the ACC giving some idea of its activities in recent years.

ii. Zamfara Public Complaints Commission. Split off from the Anti-Corruption Commission in 2003, Zamfara State’s Public Complaints Commission is modelled on the more or less moribund Federal Public Complaints Commission first set up in 1975, discussed above. Zamfara’s Public Complaints Commission Law is reproduced in full in Part IV.2.c below, with annotations showing sources in and some of the variations from the Federal PCC Act; the reader is referred to that text for further details. We note here only a few points about the two statutes and the Commissions they create.

- Again Zamfara’s PCC may establish offices all the State’s Local Government Areas (§1(2)), while the Federal PCC has offices only in State capitals; Zamfara’s PCC may thus be brought much closer to the people. According to the report reproduced in Part IV.2.d below Zamfara’s PCC has established branches in each LGA, which hear peoples’ complaints and, if they are within the PCC Law, pass them on to the PCC or to one of its Commissioners.
- Complaints entertained by the Zamfara PCC may be on “any administrative action taken by any Department or Ministry of the State Government; or Local Government or such other Government Agencies and Parastatals” (§6(1)). The PCC’s job is to ensure that administrative action “will not result in the

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<sup>67</sup> Although, interestingly enough, no single appeal from the Sharia Court of Appeal of any Sharia State, to the Federal Court of Appeal, in a criminal matter, had so far been recorded when we last checked with the Northern Divisions of the Court of Appeal in mid-2006. This will be discussed further in the chapter of this work on “Court Reorganisation”, forthcoming.

commission of any act of injustice” – that administrative action is not, for instance, contrary to law, arbitrary, unreasonable, unfair, oppressive, improperly motivated, or unclear or inadequately explained, among others (§6(2)(c)). The Federal PCC covers all this same territory and much more (§5(2)). In short, there is again overlapping jurisdiction between these State and Federal agencies.

- As to complaints it can handle, Zamfara’s PCC opens its doors wider than the Federal PCC, because it omits three entry barriers set up by the Federal Act, including “exhaust[ion of] all available legal or administrative procedures” (whatever that may mean in the case of a supposedly front-line Public Complaints Commission ) (compare Zamfara §7 with Federal §6).
- Zamfara PCC Commissioners are appointed, may be removed, and their pay is determined by the State Governor (§2); Federal PCC Commissioners are appointed and removed by the National Assembly (§2(1)-(3)), to which they are also said to be responsible (§5(1)), although their pay is “as the President may from time to time direct” (§2(4)-(5)). So the Zamfara PCC is an instrument of the Governor, however zealous in the cause of good government he may be, while the Federal PCC is under the thumb of both the National Assembly and the Presidency, a likely recipe for ineffectuality.
- Under both statutes, it is the Commissioners severally who are given the power to investigate complaints in the first instance (Zamfara §6, Federal §5). In Zamfara, the power to proceed further with a complaint then goes to the Commission (§8), while under the Federal PCC Act it remains with the Commissioners severally (§7). In both cases, however, powers to proceed beyond the stage of investigation are restricted essentially to recommending to other authorities that some action or other be taken: e.g. that a matter be reconsidered; that a regulation or ruling be altered; that reasons for a particular act be given; that a person be disciplined or prosecuted.
- In addition to its duty to investigate complaints, the Zamfara PCC is also told to “organise workshops, seminars, public campaigns and enlightenment in the media”, presumably on the proper behaviour of public officials and the rights of citizens to lodge complaints against them with the State PCC and other agencies (§6(8)). There is nothing like this in the Federal PCC Act.

Zamfara’s PCC has kindly supplied us with a report on its activities for the years 2003-2005: this is reproduced in full in Part IV.2.d below. This report gives a clear picture of the kinds and numbers of complaints the Commission has been receiving and of how it deals with them.

b. Kano State. Kano State began its programme of Sharia implementation under the Governor it elected in 1999, Rabi’u Musa Kwankwaso, who – apparently reluctantly, but under tremendous pressure from the citizenry to do something – established Sharia Courts and brought in a Sharia Penal Code.<sup>68</sup> It was not enough: Kwankwaso was defeated in the 2003 elections by Malam Ibrahim Shekarau, who said Kwankwaso’s heart

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<sup>68</sup> On the early problems of Sharia implementation in Kano State, see I.N. Sada’s essay “The Making of the Zamfara and Kano State Sharia Penal Codes”, Chapter 4 Part II.

was not in Sharia implementation and that he – Shekarau – would do better. He has in fact done a great deal, making Kano one of the few Sharia States in which Sharia implementation has been actively pursued and expanded since 2003. Among other things, Kano under Shekarau has established a new Sharia Commission, a new Zakkah and Hubusi Commission, and new *Hisbah* Board (all in 2003); undertaken a wide-ranging programme of “social reorientation”, *A Daidaita Sabu* (2004); and – our point here – established in April 2005, by executive fiat, a new Public Complaints and Anti-Corruption Directorate.

i. Kano’s Public Complaints and Anti-Corruption Directorate. The purpose of the Directorate is

to foster accountability in public and civil service, social justice and social cohesion, and to guarantee the rights of the weak and vulnerable members of the society in accordance with the teachings of Sharia.<sup>69</sup>

Like Zamfara State’s first Anti-Corruption Commission, Kano’s Directorate of Public Complaints and Anti-Corruption combines the two functions of “corruption-fighter” and “ombudsman”, (1) receiving, investigating, and if appropriate prosecuting allegations of corrupt practices against public servants, on the one hand, and (2) receiving, investigating and acting on complaints of administrative injustices and official ineptitude, including administrative decisions based on mistakes, bias, or abuse of powers. The Directorate has also been engaged in a campaign to inform the public about itself and its activities, about citizens’ rights and the fight against corruption, and about how complaints and petitions may be submitted to it. It is reported that by early 2007 the Directorate had “so far received more than five hundred complaints and petitions.”<sup>70</sup> As of early 2007 there was a bill pending in the Kano State House of Assembly that would have established the Directorate by statute; this bill was however not enacted before the 2007 elections and lapsed when the old House was replaced by a new one after the elections. We are informed that the bill will be reintroduced in due course. Meantime the Directorate continues its activities as an executive agency of the Kano State Government.

ii. Severe penalty for corruption in Kano’s Sharia Penal Code. Kano has also put in place a second very interesting anti-corruption measure – this one in its Sharia Penal Code, enacted during the reign of Governor Kwankwaso.

All of the Sharia Penal Codes continue, with minor modifications, the anti-corruption provisions of the Penal Code of 1960 outlined above; the reader is referred to Part IV.2.e below, and to Chapter 4 of this work for details. The most interesting variation in these sections, among all the codes, is Kano’s treatment of the crime of “criminal breach of trust by public servant or by banker, merchant or agent”, the Penal Code version of which (§315) was quoted above. All Sharia Penal Codes except Kano’s

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<sup>69</sup> A. Yahya, “Between an Invading Centre and a Marauding Periphery: The Sharia-Based Governance of Malam Ibrahim Shekarau”, as far as we know unpublished; copy sent by email in the possession of the authors. From internal evidence it appears that the essay was written in February or March 2007. Yahya teaches in the Department of Islamic Studies, Federal College of Education, Kano.

<sup>70</sup> Ibid.

include the Penal Code version of this section essentially unchanged (except for variations in punishments), group it with other species of criminal breach of trust, and punish it with terms of imprisonment, fine, and lashing.<sup>71</sup> Kano instead has redefined this crime, put it under the heading of *Theft*, and treated it thus:

**134B.** (1) 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.

(2) 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.

Certainly no one has ever been punished under this section of the Kano Code; we doubt – despite several corruption scandals in Kano in the intervening years – whether anyone has even been charged under it. The history of the section is discussed in interesting detail in the essay by I.N. Sada on “The Making of the Sharia Penal and Criminal Procedure Codes”, Chapter 4 Part II.

#### 4. Concluding remarks.

Corruption of course did not by magic disappear with the onset of Sharia implementation, and one has continued to read about it in the news from the Sharia States. To give the reader an idea of the nature of the problem, we give, next, summaries of a number of corruption-related stories from two Nigerian newspapers for the period December 2004 through August 2005; no doubt a review of the same or other newspapers from other periods would turn up similar numbers of similar stories. The first series of reports all relate to Local Government Councils (LGCs), which seem to have presented particular problems:

For allegedly misappropriating about ₦14 million the Biu Council Chairman in Borno State...has been removed from office. \*\*\* Three more LG chairmen sacked in Borno following inquiries into their financial activities occasioned by a deluge of petitions. \*\*\* To check misappropriation of public funds, the Borno State Government and the State House of Assembly may invoke the 2000 Local Government Law limiting to ₦2 million how much LG chairmen can spend on capital projects. The Governor, Ali Modu Sherriff, was very angry about one LG chairman who has allegedly misappropriated all the money and done nothing. \*\*\* The Jigawa State Government has expressed concern at the rate at which fraud and other corrupt practices are being perpetrated in most LGCs in the State. \*\*\* The Niger State House of Assembly will investigate the fiscal dealings of the LGCs following public outcry against their alleged non-performance. \*\*\* Kano lawmakers okay the sack of the Ungogo Council

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<sup>71</sup> See Penal Code §315; Harmonised Sharia Penal Code §167.

chairman: he misappropriated public funds. \*\*\* Kebbi State House of Assembly has endorsed the suspension of the chairman of Bagudo LGC...for 3 months: he took a bank loan without getting approval from the proper authority and now he can't account for the money; he travels out without approval of the State Government; he doesn't work with his councillors, contrary to the Local Government Law. \*\*\* Yahaya Gusau, a venerable Northern leader, says, "It would seem that the funds being channelled into LGCs are spent almost entirely on administration and the welfare of officials. Nothing is left for real work, and our LGCs have busied themselves persuading us as to why they should bear no responsibility for anything."<sup>72</sup>

But Local Governments Councils were not the only problems, as the following reports, again all from the same newspapers for the same period, attest:

Jigawa: ghost workers among primary school teachers and LG staffers across the State are costing the State Government ₦26 million monthly. \*\*\* The Zamfara Commissioner for Information has expressed concern over the general laxity and dereliction of duty among civil servants in the State. They don't come on time, they don't stay on seat, and there is a lot of dishonesty in their official dealings. \*\*\* The Zamfara Governor says Government is aware that some officials connive with contractors to get approval of payment for contract jobs that have not been executed. They are warned. A State Projects Implementation Advisory Committee has been put in place to ensure that projects are strictly monitored, the budgets strictly implemented, etc. \*\*\* The Kaduna State Government said it observed with dismay some discrepancies and fraud on its recurrent expenditure release amounting to about ₦1.5 million in three Ministries. \*\*\* Six senior officials of the Kebbi State Government, including the current and former Commissioners for Finance, have been handed over to the police for interrogation for alleged illegal withdrawal of State funds. This follows the report of an investigating committee set up by the State Government. The six have been advised to pay back the money or face the ICPC. \*\*\* The Zamfara State ANPP [a political party] has sacked the leader of its women wing...for misappropriating funds meant for the welfare of her members. A committee investigated the embezzlement and found her guilty. \*\*\* A Permanent Secretary and a Deputy Director in the Kebbi Commerce Ministry, a former Finance Commissioner, and one other have been named by the State Government as having sold shares in eight different companies, belonging to the Government and to civil servants, worth ₦200 million, without authorisation. \*\*\* Kebbi has uncovered another fraud involving diversion of drugs worth millions by some officials of the State Ministry of Health. \*\*\* The District Head of Janbako in Maradun LG of Zamfara State has been suspended for diverting 2000 bags of fertiliser meant for farmers. \*\*\* The Economic and Financial Crimes Commission has arrested a top official of the Bauchi Pensions

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<sup>72</sup> All but the last item are from 2005: *The Guardian*, 19<sup>th</sup> February, 5 \*\*\* *New Nigerian*, 24<sup>th</sup> June, 2 \*\*\* *The Guardian*, 29<sup>th</sup> June, 80 \*\*\* *New Nigerian*, 21<sup>st</sup> April, 28 \*\*\* *New Nigerian*, 11<sup>th</sup> August, 6 \*\*\* *The Guardian*, 13<sup>th</sup> April, 6 \*\*\* *New Nigerian*, 7<sup>th</sup> March, 6 \*\*\* *The Guardian*, 6<sup>th</sup> December 2004 (quoting Yahaya Gusau, a venerable Northern leader).

Board over the alleged disappearance of more than ₦300 million from the pension fund.<sup>73</sup>

This is to say nothing of the Governors themselves, several of whom have had their own difficulties with the EFCC.<sup>74</sup>

So corruption is not going to be easy to root out, and the struggle continues, all over Nigeria. We think it is significant that out of Nigeria's thirty-six States, it is only Sharia States, and only two of them, that have taken Nigeria's fight against corruption enough to heart to set up special State agencies to help combat it. It is true that what has been done largely replicates other laws and institutions already in place, only setting up new agencies for monitoring and enforcement. It is equally true that the hoped-for beneficial effects of these new agencies on the public services will only gradually be felt – if, indeed, the new agencies do not go the way of their ancestors, into almost total ineffectuality. But it seems important that this fight, against corruption and for more competent, diligent, law-abiding and accountable public servants, has been made local and is now to be waged by local people, who will come to “own” it in ways they have not done in the past. This is a step forward in political maturity and in the improvement of the moral climate; we can only wish it well.

### Liquor

#### 1. The regulation of liquor in the Sharia.

Islam adopted a gradual approach to the regulation of alcohol (*khamsr*: wine, and by extension not only other alcoholic drinks but other intoxicants as well<sup>75</sup>) among Muslims. Initially, nothing was said about it. In due course a caution was issued against its use.<sup>76</sup> Next the offering of prayers while under the influence was prohibited.<sup>77</sup> Finally, a total ban was imposed.<sup>78</sup> The use of even small amounts is prohibited: “If a bucketful

<sup>73</sup> These items are all from *New Nigerian* of the following dates in 2005: 12<sup>th</sup> March, 1 \*\*\* 25<sup>th</sup> March, 23 \*\*\* 26<sup>th</sup> March, 2 \*\*\* 14<sup>th</sup> April, 1 \*\*\* 20<sup>th</sup> April, 1 \*\*\* 14<sup>th</sup> July, 6 \*\*\* 12<sup>th</sup> May, 1 \*\*\* 4<sup>th</sup> August, 21 \*\*\* 21<sup>st</sup> August, 2 \*\*\* 25<sup>th</sup> August, 3.

<sup>74</sup> See e.g. C. Ekpunobi, “Corruption: EFCC names 31 governors: 15 in court next week”, *The Champion*, 28<sup>th</sup> September 2006, posted on the EFCC's website at [http://www.efccnigeria.org/ind ex.php?option=com\\_content&task=view&id=1051&Itemid=2](http://www.efccnigeria.org/ind ex.php?option=com_content&task=view&id=1051&Itemid=2), reporting that the EFCC Chairman “told the Senate that 31 serving Governors alleged to be involved in money laundering, diversion of [LGC] funds [and] misappropriation of state funds are being investigated by the Commission.” Included were the Governors of nine Sharia States. But as has been observed above, the EFCC has been accused of playing politics with its investigations, and as at the time of this writing (July 2007) only one of the Sharia State Governors, the now ex-Governor of Jigawa State, has actually been charged to court.

<sup>75</sup> “*Khamsr* is what befores the mind”, Y. al-Qaradawi, *The Lawful and the Prohibited in Islam* (Tr. K. el-Helbawy et al.: Lagos: Al-Tawheed Pub. Co., 1989) p. 76. The Prophet is reported to have said that “Every intoxicant is *khamsr*, and every *khamsr* is *haram*.” *Sabih al-Muslim* hadith no. 1262, quoted in al-Qaradawi p. 72.

<sup>76</sup> “They ask you concerning alcoholic drink and gambling. Say: ‘In them is a great sin, and (some) benefits for men, but the sin of them is greater than their benefit.’” Qur’an 2:219.

<sup>77</sup> “O you who believe! Do not approach *salah* while you in a drunken state until you know what you are saying....” Qur’an 4:43.

<sup>78</sup> “O you who believe! *Khamsr*...[is a] *rijs* [abomination] of Shaytan's handiwork. So avoid that in order that you may be successful. Shaytan wants only to excite enmity and hatred between you

intoxicates, a sip is *haram*.<sup>79</sup> The ban extends not only to the consumption of *ksamr* but also to its production, transport, and sale.

Truly, Allah has cursed *ksamr* and has cursed the one who produces it, the one for whom it is produced, the one who drinks it, the one who serves it, the one who carries it, the one for whom it is carried, the one who sells it, the one who earns from the sale of it, the one who buys it, and the one for whom it is bought.<sup>80</sup>

Consumption of *ksamr* is regarded as the mother of all vices (*umm al-khabaith*), capable of destroying lives and families. The habitual consumer will go to any length to sustain his habit. In his desperate moment, he is ready to commit any crime. While intoxicated, he is no longer in control of his reasoning faculty. He may therefore then also commit crimes; in any case he will certainly not be able to say his prayers or worship God appropriately. He loses not only guidance from Allah but will also move nearer to Satan and fall into his traps.

The Qur'an prescribes no punishment for the consumption of *ksamr* by a Muslim, but various hadiths suggest beating or lashing, without specifying the number of blows to be administered.<sup>81</sup> Of the four main Sunni schools of law, three, including the Maliki school adhered to by most Nigerian Muslims, agree on eighty lashes; in Shafi'i law the punishment is forty lashes. Furthermore, the Prophet is reported to have said:

whoever drinks it (intoxicant), his prayers (*salat*) will not be accepted (by Allah) for forty days. If he dies and there is wine in his stomach, he has died the death of the *jabiliyyah* (the period before the advent of Islam).<sup>82</sup>

While the Sharia thus strictly forbids Muslims to consume or deal in alcohol or other intoxicants, it does not extend the same prohibition to non-Muslims living in Muslim lands.

[Islamic law] tends to relieve non-Muslim subjects from any Islamic prohibition relating to matters which are permitted in their respective religions. The best examples of this are intoxicants and pork. The practice of the Prophet and that of all caliphs had been that whereas these are forbidden to Muslims, *dhimmi* subjects are permitted their free use and allowed to trade in them.<sup>83</sup>

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with *ksamr* ..., and hinder you from the remembrance of Allah and from the *salah* (the prayer). So, will you not then abstain?" Qur'an 5:90-91.

<sup>79</sup> A hadith reported by Ahmad, Abu Daoud and al-Tirmidhi, quoted in al-Qaradawi, *The Lawful and the Prohibited*, p. 72.

<sup>80</sup> A hadith reported by al-Tirmidhi and Ibn Majah, quoted in al-Qaradawi, *The Lawful and the Prohibited*, pp. 72-73.

<sup>81</sup> See *Sahih al-Bukhari* (tr. by Dr. Muhammad Muhsin Khan: Beirut: Dar al-Arabia, 1980.), vol. 8, "Kitab al-Hudud" pp. 504-508 hadiths no. 764-772. Two of these hadiths indicate that Abu Bakr, the first Caliph, administered 40 lashes.

<sup>82</sup> S. Sabiq *Fiqh al-Sunnah* (Kuwait: Dar al-Bayan, 1968), vol. 9, 32.

<sup>83</sup> S. Ramadan, *Islamic Law: Its Scope and Equity* (1<sup>st</sup> ed: London: P.R. MacMillan, 1961; 2<sup>nd</sup> ed. evidently published in Pakistan in 1970), quotation from 2<sup>nd</sup> ed. p. 154.

Non-Muslims are however “required to act discreetly in these matters”, “to prevent any possibility of corruption or disturbance within the Muslim society”.<sup>84</sup>

These rules – strict prohibition of alcohol for Muslims, tolerance of its use by non-Muslim subjects – seem to have been well-observed in the parts of Northern Nigeria that came under the rule of the Sultan and the Emirs in the nineteenth century – with some breakdown around the edges as the century neared its end.

The Sokoto jihad of the nineteenth century and the resultant revival in Muslim practice had ensured strict application of Islamic injunctions against liquor trafficking. Heinrich Barth, who visited the Central Sudan in the middle of the century, confirmed that both the Bible and liquor were anathema in Borno. In any case, the Muslim states of Northern Nigeria were generally oriented [as to trade] toward their co-religionists in north Africa and the Middle East. This apparently precluded the influx of foreign liquor especially from the Atlantic coast of Nigeria. ... [But liquor was nevertheless consumed] in the Muslim and non-Muslim parts of Northern Nigeria. On the one hand, inhabitants of the “pagan” areas, even those who owed allegiance to the Muslim emirs, consumed local beer without [interference]. For, as Lugard noted, “Moslems are often indifferent to the use of intoxicants by pagans under their control.” On the other hand, imported liquor from the Atlantic coast filtered into the prohibition zone, especially the emirates of Bida and Ilorin in the south-west.<sup>85</sup>

Bida and Ilorin were trading towns not far from the Niger River, along which European commerce first entered the Muslim North; in the 1870s and '80s Bida was said to be “the Zanzibar of the Central Sudan”.<sup>86</sup> Among the articles of trade was imported liquor – including distilled spirits, notably gin. This was not the despised local beer of the peasants; the trade in it was not discreet; and the local Muslim society was corrupted and disturbed. “The Mohamedan [sic] Aristocracy...are not ashamed to be seen intoxicated but look upon it as a mark of independent wealth, so high is the price of gin.’ ... ‘Addiction’ may not be too strong a word for the attraction of the Bida princes to European spirits.”<sup>87</sup>

Such was the gravity of the situation that Etsu Maliki (1882-1895) pleaded with Bishop Ajayi Crowther and the C.M.S. to urge Queen Victoria to halt the liquor traffic, which he claimed “has ruined my people very much...[and] has made...them become mad.”<sup>88</sup>

In 1890 the importation of liquor into all parts of Africa north of 7° north latitude – north of a line, that is, running just south of Abeokuta, Opoje, and Idah – was in fact

<sup>84</sup> Y. al-Qaradawi, *Non Muslims in the Islamic Society* (tr. by K.M. Hamad and S.M.A. Shah: Indianapolis: American Trust Publications, 1985), pp. 25 and 12.

<sup>85</sup> A. Olukoju, “Prohibition and Paternalism: The State and the Clandestine Liquor Traffic in Northern Nigeria, c. 1898-1918”, *The International Journal of African Historical Studies*, 24/2 (1991), 349-68 at 351 (footnotes omitted).

<sup>86</sup> Ibid.

<sup>87</sup> Ibid., citing M. Mason, *Foundations of the Bida Kingdom* (Zaria: Ahmadu Bello University Press, 1981), various pages.

<sup>88</sup> Ibid., citing E.A. Ayandele, “The Relations between the Church Missionary Society and the Royal Niger Company, 1886-1900”, *Journal of the Historical Society of Nigeria*, IV/3 (1968), 405.

prohibited by international agreement.<sup>89</sup> All of what subsequently became the Northern Region of Nigeria fell within the “prohibition zone”, and for a time the entry of imported liquor into the North was slowed to a trickle. But during the colonial period the ban on importation broke down more or less completely, and for other reasons as well alcoholic drinks of all kinds became available – at least in the cities and towns – pretty much to anyone who wanted them. Although Islamic strictures against the consumption of *kbamm* by Muslims remained in force, and violators could still be punished with the *badd* of eighty lashes, ready availability and increasingly wide-spread use seem again, as had happened earlier in Bida, to have subverted the will to observe and enforce these rules. We next consider briefly how this came about.<sup>90</sup>

## 2. Statutory law relating to liquor in Northern Nigeria to 1999.

The British colonial masters did not wish to inflict alcoholic beverages on the Muslims of Northern Nigeria; on the contrary, they wished, and for many years tried, in cooperation with the Muslim leaders through whom they ruled, to keep them from them.

On the other hand, the British working in the North did not wish to do without their liquor themselves. Furthermore, the “Junior Service” of the British administration was for many years made up largely of “Southern Nigerians, Gold Coasters, Sierra Leoneans, and West Indians, four peoples accustomed to drinking strong liquor”;<sup>91</sup> and the British were well aware that

[t]he difficulties which we now experience in securing good and reliable clerks and mechanics from the coast protectorates will be immensely increased if they are prohibited from purchasing alcohol, and few will be found willing to serve in Northern Nigeria.<sup>92</sup>

Furthermore, the reorientation of the North’s connections and commerce towards the south, and its opening during the colonial period to new trades and industries of all sorts, attracted increasing numbers of other migrants from the South who came for jobs or business – and who also liked their drink.

The result of these conflicting motivations and cross-currents was a complex regulatory framework, put in place during the colonial period, that was intended to allow the British and their Junior Service employees their imported liquors; to allow Northern pagans as before, but now also non-Muslim migrants from the South, their local beers; and to keep all of this as much as possible from Northern Muslims. Many parts of this framework were settled early and have persisted ever since. For instance, the essential elements of the Liquor Law of the Northern Region, Cap. 64 of the 1963 edition of the

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<sup>89</sup> Reached at the Brussels African Conference of 1889-90.

<sup>90</sup> Relying largely on Olukoju and on S. Heap, “We Think Prohibition is a Farce’: Drinking in the Alcohol-Prohibited Zone of Colonial Northern Nigeria”, *The International Journal of African Historical Studies*, 31/1 (1998) 23-51. There is a large literature on alcohol in Africa, to which the articles of Heap and Olukoju point.

<sup>91</sup> Heap, “We Think”, 37.

<sup>92</sup> *Ibid.*, 38, quoting a 1910 letter from the then-governor of Northern Nigeria to the Colonial Secretary.

Laws of Northern Nigeria, date from 1917-18. Without attempting to trace its colonial roots or evolution in detail, we sum up here the regulatory framework as found in the 1963 Laws, which until 1999 persisted virtually unchanged in all Northern States.

a. Manufacture and sale.

(1) The statutes divide alcoholic beverages into three classes: **native liquor** (i.e. local beers, usually fermented from grains, called *burkutu*, *pito*, etc., but also including palm wine); **beers and wines** containing less than 20% alcohol; and **spirits** – distilled liquors and everything else containing more than 20% alcohol.

(2) Manufacture and sale of **native liquor** is left unregulated by the Liquor Law. However, section 38(57) of the Native Authority Law (Cap. 77 of the 1963 Laws) gave Native Authorities the power to make rules “prohibiting, restricting or regulating the manufacture, distillation, sale, transport, distribution, supply, possession and consumption of native liquor” within their jurisdictions, and Section 3 of the Native Liquor (Townships and Certain Areas) Law (Cap. 79) gave the Governor the same power as to townships and other areas the Governor might specify. Possibly some Native Authorities used this power to prohibit the manufacture and sale of native liquor within their domains: we do not know. In the townships the Government took the opposite tack: it licensed the production and sale of native liquor, both to try to bring it under regulatory control, and to generate an income by taxing it. Policy on whether and where to license “*pito* shops” fluctuated. Where they were not licensed they often went into business illegally anyway. Sometimes they were licensed to help combat the use of stronger spirits as these became more widely available: the lesser of two evils. Inevitably *pito* shops in the *sabon garis* (“new towns”, for migrants from the South) adjacent to Northern cities like Kano attracted Muslims who should have stayed away. Simon Heap’s article, “We Think Prohibition is a Farce”, has an interesting section on this subject of “licensed indigenous liquor” in and around the North’s towns and cities which we recommend for further reading.<sup>93</sup> When in 1976-77 the whole system of local government in Nigeria was reformed, the power to regulate native liquor (now called “local liquor”) passed to the new Local Government Councils.<sup>94</sup> The extent to which this power has been exercised in the northern States would be an interesting subject for further research.

(3) The Liquor Law itself was then left to regulate the two remaining classes of alcoholic beverages: **beer and wine**, and **spirits** (lumped together for most purposes as “liquor” or “intoxicating liquor”).

(4) The Liquor Law divides the regulated territory – formerly the Northern Region, now the States – into three classes of areas: “prohibited”, “licensed”, and “restricted”. By default, the entire territory is “prohibited”; only specific designation by the Governor can change an area into “licensed” or “restricted”. In fact throughout the colonial period the entire Northern Region remained a prohibited area under the Liquor Law, thus maintaining at least nominal compliance with the international agreement of 1890 banning the importation of liquor into the prohibition zone north of 7° north latitude.

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<sup>93</sup> Ibid., 29-35.

<sup>94</sup> See e.g. Laws of Borno State 1994 Cap. 82 §65(gg); Laws of Sokoto State 1996 Cap. 82 §68(59).

(5) But a “prohibited area” under the Liquor Law was not what one might think: an area in which the importation, sale, consumption, etc. of intoxicating liquor was absolutely prohibited. It was rather an area

in which intoxicating liquor may not be sold *except under licence*, and in which the sale of *spirits* to, and the possession of *spirits* by *natives of [the] prohibited area* is prohibited [§4(a), emphasis added].

So intoxicating liquors of all sorts could after all be (and were) legally imported into the North and sold, under licence. Furthermore they could be sold – at least as far as the Liquor Law was concerned<sup>95</sup> – to absolutely anybody, with one exception: spirits (but not beer or wine) were forbidden to “natives of the prohibited area”, i.e. to “any person one of whose parents was a member of any tribe indigenous to [Northern Nigeria]...and the descendants of such persons” (§2). Thus did the Liquor Law attempt to protect the North’s Muslims (and other indigenes) against strong drink, which it otherwise permitted to exist in plentiful supply all around them. For much intoxicating liquor, including spirits, came legally into the North for sale under licence,<sup>96</sup> and was sold not only to Europeans, and not only to employees of the Junior Service, but eventually also to the many other non-indigenes who settled in the Region. Inevitably, even in the early days of this regulatory regime when attempts were made to actually enforce it, there was “leakage of imported liquor into northern hands.”<sup>97</sup> In later years, certainly in the years following independence, all attempts to enforce the ban on “the sale of spirits to, and the possession of spirits by natives of the prohibited area” were abandoned.

(6) The Liquor Law did absolutely prohibit the manufacture of spirits in the Northern Region:

8. (1) No person shall distil any spirits or possess, sell, or dispose of any spirits distilled in Nigeria.
- (2) The distribution, sale, disposal and possession of stills, and of all apparatus or portions of apparatus suitable for the distillation of alcohol and the rectification or redistillation of spirits are hereby prohibited.

Nevertheless by the 1930s spirits were being illegally distilled in the North and sold.<sup>98</sup> Spirits – often ones illegally distilled in other parts of Nigeria – were also smuggled into the North in more or less large volumes throughout the colonial period<sup>99</sup> and no doubt subsequently.

(7) In 1951 the Liquor Law was amended to permit the government to license the manufacture of beer and wine in the North (§§9 and 23). Nigerian Breweries opened a plant at Kaduna in 1963 to make Star lager beer; other breweries followed in later

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<sup>95</sup> There was for a time an attempt to regulate sales even to government employees through a permit system built into the licences authorising sale, into which we will not go further here, but see *ibid.*, 35-42.

<sup>96</sup> §13 of the Liquor Law also permits importation by various persons other than holders of licences authorising sale, “travellers” for instance.

<sup>97</sup> Heap, “We Think”, 41.

<sup>98</sup> *Ibid.*, 48-49.

<sup>99</sup> *Ibid.*, 42-45 and 49.

years.<sup>100</sup> This obviously further increased the availability of this type of drink throughout the North.

– But let us forbear from further details. Enough has been said to give an idea not only of laws that have existed – still exist – in the North for the regulation of the liquor trade, but also of their result in practice, which has been to make alcoholic beverages of all sorts available in plentiful supply to anyone who wants them. Readers who are interested in further details of the law are referred to Part IV.3.b of this chapter, where the Liquor Law, as amended in 2001 by Niger State as part of its programme of Sharia implementation, is reproduced, with annotations showing how Niger’s amendments have changed the old Law.

b. Consumption. Although liquor became readily available in the North from colonial times onward, for Muslims the ban on consumption has always continued, enforceable before 1960 as part of the application of Islamic penal law in the North’s Native Courts, and enforceable since 1960 under the Penal Code that came into force that year. Section 403 of the Penal Code provides that:

**403.** Whoever being of the Moslem faith drinks anything containing alcohol other than for a medicinal purpose shall be punished with imprisonment for a term which may extend to one month or with fine which may extend to five pounds or both.

Section 404 doubles the punishment for a second offence within six months and triples it for a third. In addition, section 68 of the Penal Code, which enumerates the types of punishments that may be imposed under the code, provides as follows in subsection (2):

[68](2) 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 the offences contrary to sections ... 403 and 404 of this Penal Code.

In sum, at all times, during the colonial period and subsequently, it has been against the law for Muslims to consume alcoholic beverages of any kind (other than for medicinal purposes), and at all times they have been liable upon conviction for doing so to the *hadd* of eighty lashes. This was one rule of Islamic penal law with which the British never interfered.

Unfortunately, temptation has been all around, and the will of the Muslim community to punish indulgence has seemed to diminish as the number of erring sinners has increased. This trend was apparent already in colonial days, as this 1938 report from Kano indicates:

Alcohol – that is, whiskey, gin, liqueurs, beer, wines, etc. – is allowed under the system of “permits” to all who came from countries where the sale was not prohibited. Unfortunately the drink is resold illicitly in quantity to Moslems who come from the city [Kano, to the adjacent *Sabon Gari*] in numbers every evening to buy and drink it, as well as other native-brewed alcoholic drinks. They return considerably inebriated, but making futile attempts either to disguise the fact or to become sober before they reach the city, where all this is *haram*, for there is

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<sup>100</sup> Ibid., 49.

risk of getting arrested and imprisoned by the city guard and police. This risk, however, becomes less every year, as the city by participation in the enjoyment becomes less intent on punishing the more flagrant offenders.<sup>101</sup>

We venture to guess that enforcement of the law against drinking by Muslims fell into complete abeyance after Independence – another interesting subject for further research. We do not know the current number of drinkers among the Muslims, but judging from the concern about it expressed in 1999-2000 when Sharia implementation was getting underway, the use and abuse of liquor had by then become a serious problem for the Muslim community, and doing something about it was an important goal of the Sharia implementation programme in every Sharia State.

### 3. Changes in the laws relating to liquor in the Sharia States since 1999.

The regulatory framework reviewed above, enacted as it was for the whole of the ethnically and religiously complex Northern Region, is adaptable to the various desires of local populations. As to predominantly Muslim areas, the local authorities – formerly the Native Authorities, now the Local Government Councils – had and have the power to ban the manufacture, sale, and consumption of native liquor within their jurisdictions. In a new departure under the 1999 Constitution, unrelated to Sharia implementation but congruent with it, the power of Local Government Councils in this field were expanded to include “licensing, regulation and control of the sale of liquor” – unrestricted to native or local liquor.<sup>102</sup> Under the Liquor Law State Governments could and can declare whole States or specified areas thereof to be prohibited areas and refuse to issue any licences at all for the sale of intoxicating liquors therein. The Penal Code ban on drinking by Muslims was and is there to be enforced, complete with *baddi* lashing. In view of this already-existing authority, some, but not all, of the Sharia States have not felt it necessary to make any changes in their laws on the regulation of the manufacture, sale, and consumption of liquor: they simply revoked existing liquor licences, refused to issue more of them, tried to enforce the resulting ban on liquor sales, and attempted better enforcement of laws against consumption by Muslims. Other States however have thought it necessary to make more far-reaching changes.

#### a. Manufacture and sale.

i. Revocation of existing liquor licences and refusal to issue new ones. One obvious way to address the liquor problem was simply to revoke all existing licences for the sale of liquor and to refuse to issue new ones – in effect, to make the State a “dry” State, where the sale of liquor (except native or local liquor, to be dealt with separately) would be absolutely prohibited. In short, choke the supply side: put all sellers of beer, wine, and spirits out of business, or at least outside the law. This would cut down to some extent on casual consumption of liquor by Muslims, some of whom would not buy or consume at all if it were officially frowned on or if to do so became more difficult or dangerous. And the enforcement problem as to the sellers – for there would certainly still be a fairly strong demand from the buyer side – would change from the impossible one of trying to prevent sales of “spirits” to “natives” within an otherwise wide-open

<sup>101</sup> W. Miller, *Yesterday and To-Morrow in Northern Nigeria* (London: Student Christian Movement Press, 1938), 18, quoted in the articles of both Heap and Olukoju cited above.

<sup>102</sup> 1999 Constitution, Fourth Schedule on “Functions of a Local Government Council”, §1(k)(vi).

and glutted market, with the more approachable problem of trying to prevent any sales of liquor at all, to anyone. Liquor would become another illegal drug, just like Indian hemp: still in fairly wide use, no doubt, but more controllable. Whatever the actual effect on liquor consumption among Muslims, all righteousness would be fulfilled by the Government. More than fulfilled, in fact, because non-Muslims would be cut off along with Muslims, something, as we have seen, which the Sharia does not require, but which might well be considered essential if the Muslim community itself were to be dried out. Something like this, no doubt, was the reasoning behind the decisions of many Sharia States to revoke all existing liquor licences and to refuse to issue new ones.

In some States liquor licences were revoked by executive fiat. Zamfara is an example: among his very first acts of Sharia implementation Governor Sani revoked, by executive order, all licences to sell alcoholic beverages in the State; sellers at retail and dealers at wholesale were given three weeks to close shop or face prosecution.<sup>103</sup> Certainly the Governors of some, perhaps most, other Sharia States did the same; unfortunately we do not have further details on this point. In four States, existing liquor licences were revoked by statute: for further details the reader is referred to the following sections of Part IV below: 1.a and 3.g (Borno), 1.b (Yobe), 3.d (Kebbi), and 3.e (Bauchi).

Under §29(1) of the old Liquor Law, every licence “shall expire on the 31<sup>st</sup> day of December in the year in which it is issued.” There is no provision for premature revocation or forfeiture of any licence, except §53: “Whenever a licence-holder shall be convicted of an offence under this Law, his licence shall be liable to forfeiture.” As far as we know §53 was the basis of none of the liquor licence revocations in the Sharia States: all were simply commanded, whether by executive fiat or by statute. In effect, vested property rights (the licences), bought and paid for, were compulsorily acquired by the States. The Nigerian Constitution has a provision on this subject, §44, which among other things, bans compulsory acquisition of property “except in the manner and for the purposes prescribed by a law”, and requires the prompt payment of compensation for the property acquired. Probably none of the liquor licence revocations met either of these requirements, and there was certainly an outcry from the liquor dealers at the time. Our impression is that this problem was handled informally by the State Governments, through delays in enforcement of the revocations in some cases, and through one-time payments or “soft loans” to the licensees in others. This whole episode deserves more study than we can give it here.

ii. Statutory bans on manufacture and sale. All of the Sharia Penal Codes contain the following provision, quoted here from the Harmonised Sharia Penal Code:

**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.

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<sup>103</sup> *ThisDay*, 13<sup>th</sup> October 1999, pp. 1-2.

However, this ban applies – like the Sharia Penal Codes in which it is laid down – to Muslims only.

Four States – Borno, Yobe, Bauchi, and Kano – have gone further. All have repealed their old Liquor Laws entirely – so there is no more provision for liquor licences in those four States – and all have furthermore enacted bans, applicable to *all* persons, on the manufacture and sale of liquor. Borno and Yobe enacted their bans as parts of separate statutes; Bauchi and Kano enacted theirs as amendments to their Penal Codes. The reader is referred to sections IV.1.a and 3.g (Borno), 1.b (Yobe), 3.e and 3.f (Bauchi), and 3.h (Kano) for further details.

In Borno, Yobe, and Kano, the bans on dealings in liquor are total. Bauchi's, on the other hand, is qualified: here, much abbreviated, is the relevant provision of the Bauchi State Penal Code as amended (with emphasis added):

[403.] (1) Whoever prepares alcohol or any intoxicant...or loads alcohol...or trades in alcohol...*in predominantly Muslim towns and villages* commits an offence....

It is not clear what the effect of the limitation of the ban to predominantly Muslim towns and villages is as to other towns and villages (of which Bauchi State has many) -- since no one is any more licensed to sell liquor in any case; but perhaps with the repeal of the Liquor Law there is no more need to have a licence, all forms of liquor now being treated like “native” or “local” liquor. This too deserves further study.

One other provision of Bauchi's new §403 should be noted:

- (2) Without prejudice to sub-section (1) above, the preparation, sale, storing, consumption or otherwise dealing in or handling alcoholic drinks is not punishable where it occurs in any of the following areas in the State:
- (a) Military and police barracks and mess.
  - (b) National and international tourist centres.

The second exception, for tourist centres, applies most obviously to the Yankari Game Reserve in central Bauchi State, which attracts many visitors every year. The tourist centre at Yankari is far inside the game reserve and quite isolated: what goes on there is not likely to contaminate the rest of the State. But the first exception, for military and police barracks and messes, is much more problematic. The military and the police are agencies of the Federal Government; both are recruited from all over Nigeria and include people of all religious backgrounds; both have their own cultures and traditions, of which the consumption of alcohol is a not unimportant part; and both have installations, larger or smaller, scattered throughout the country and by no means isolated from the rest of the population. When Sharia implementation began both the military and the police let it be known that no ban on alcohol would be permitted to affect them or the “mammy markets” – markets inside or adjacent especially to military installations where you can buy pretty much anything you may desire – which serve them. All Sharia States, even those most intent on trying to stamp out the sale and consumption of alcohol particularly among Muslims, have had to tolerate the mammy markets, where anyone can – and many Muslims do – go and drink as they like. Three other States besides Bauchi have made the exception for the military, the police, and the mammy markets explicit in their anti-liquor statutes: the reader is referred to sections IV.3.b (Niger), 3.d (Kebbi), and 3.g (Borno) for further details.

iii. New liquor law in Kebbi State. We have mentioned four of the States that repealed their old Liquor Laws: Borno, Yobe, Bauchi, and Kano. In these States there is at present no law at all regulating the manufacture and sale of liquor, which are simply banned (with qualifications we have noted).

One other State – Kebbi – also repealed its old Liquor Law, but in this case the old law was replaced by a much simplified new one, which still allows the licensing of the manufacture and sale of liquor in the State. The reader is referred to section IV.3.d below for further details.

In sum, then, in eight out of the twelve of the Sharia States there is still a liquor law on the books which allows the licensing of the manufacture and sale of liquor. We may presume that in most States the power to issue such licences is never or only rarely exercised, but this again requires further study.

iv. Niger State's liquor law amendments and enforcement programme. We have included in Part IV.3.b the whole of Niger State's Liquor Law as amended in 2001 as part of the State's programme of Sharia implementation. The law is annotated to show variations between it and the old Liquor Law; the interested reader may thus study both laws by reading the one and the annotations to it. Niger changed many details; let us note here only one major simplification effected. Section 4 of the old Liquor Law divided States into "prohibited areas", "licensed areas", and "restricted areas"; and as we have seen, the sale of liquor in "prohibited areas" was not really prohibited, but only prohibited "except under a licence" – with only sales of *spirits* to *natives* absolutely banned. Niger has much simplified this scheme, and thereby made its provisions much more readily enforceable. Niger's new §4 divides the State into only two types of areas, "prohibited" and "licensed"; and in Niger "prohibited" areas really are prohibited: they are "areas...in which intoxicating liquor may not be sold", full stop. A great deal of Niger's Sharia implementation energy has gone into enforcement of this prohibition,<sup>104</sup> and other States recognise its successes in this respect.<sup>105</sup> Defined areas of the State can still be made "licensed areas", and liquor may still be sold there under licence; but in new regulations Niger State has also hugely increased the cost of such licences, see Part IV.3.c. Thus has Niger State tried to dry itself out as much as possible while still catering for those of the people who live there for whom drink is not *haram* and who still like to indulge.

v. Legislation by the Local Government Councils. Finally, let us simply note without further analysis that many of the Local Government Councils of the Sharia States have exercised their new power under the 1999 Constitution to license, regulate and control the sale of liquor – unrestricted to native or local liquor as previously.<sup>106</sup> The reader is referred to the following sections of Part IV for further details about how some of them have done this: 1.c (Giwa Local Government, Kaduna State), 1.d (Makarfi Local

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<sup>104</sup> See the interview with Umaru Kawu, the then-Attorney-General of Niger State, published in *The Guardian* of 12<sup>th</sup> July 2005, 67: "We try to focus attention on two fundamental areas: prostitution and alcoholism.... We thought that these are two fundamental twin evils that if we can curtail them, it will go a long way in improving the lives of our people."

<sup>105</sup> E.g. Sheikh Abba Koki, interviewed in Kano on 29<sup>th</sup> November 2005 by S. Mohammed and A. Garba: "Even Niger State is performing better than Kano in this area...."

<sup>106</sup> 1999 Constitution, Fourth Schedule on "Functions of a Local Government Council", §1(k)(vi).

Government, Kaduna State), 1.f (Kaura Namoda Local Government, Zamfara State), 3.i (Jibia Local Government, Katsina State), 3.j (Tarauni Local Government, Kano State), 3.k (Gummi Local Government, Zamfara State), and 3.l (Talata Mafara Local Government, Zamfara State). This is only a small sample of all the recent legislation by Local Governments on the subject of liquor and other social vices: for instance, although there is here no bye-law from Bauchi State, the September 2000 Report of the Bauchi State Sharia Implementation Committee reproduced in Chapter 2 attests that:

At the time of writing, it is known that almost half of the LGAs [in Bauchi State] have passed such legislation to:

- i. prohibit prostitution and close down brothels....
- ii. ban all forms of gambling and games of chance.
- iii. prohibit consumption and dealings in liquor in predominantly Muslim areas, i.e. not applicable to non-Muslims.
- iv. ban all public video-viewing houses/centres....<sup>107</sup>

The Local Government bye-laws are not easy to gather; but any full study of the new legislation in the Sharia States on the subject of the manufacture and sale of liquor would have to try to track down and analyse a wider sample of them than we have available to us here. Nevertheless what is published in Part IV is probably a reasonably fair sample of the whole, and merits more attention than we can give it here.

b. Consumption. Consumption is a shorter matter than manufacture and sale: it divides into only two parts.

i. Consumption by Muslims. The Sharia Penal Codes, applicable to Muslims only, all contain essentially the same provision on this subject, here quoted from the Harmonised Sharia Penal Code:

**148.** Whoever drinks alcohol or any other intoxicant knowingly and voluntarily, shall be punished with caning of eighty lashes.<sup>108</sup>

This actually reduces the punishment under the Penal Code for consumption of alcohol by Muslims, which may include, besides *haddi* lashing, imprisonment or a fine or both, and which may be increased for second and subsequent offences. The Sharia Penal Codes also include penalties for drunk and disorderly conduct similar to those of the Penal Code; the reader is referred to section IV.3.m below for further details. Two States – Borno and Yobe – before their Sharia Penal Codes were ready, included prohibitions on drinking by Muslims in briefer laws that were easier to prepare and enact, see IV.1.b (Yobe) and 3.g (Borno). Presumably these provisions have been superseded by the Sharia Penal Codes now in place in Borno and Yobe States.

ii. Consumption by non-Muslims. One State only – Kano – has enacted a total ban on consumption of alcohol even by non-Muslims. Here is the provision, as laid down in Kano's Penal Code (Amendment) Law (2004):

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<sup>107</sup> Chapter 2, 105.

<sup>108</sup> 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.”

**401.** The manufacture, distillation, distribution, disposal, haulage, *consumption* and possession of all brands of intoxicating liquors, trade spirits and any other intoxicating substance is hereby prohibited throughout the State [emphasis added].

It is worth noting that although this provision was enacted in 2004, no serious attempt at enforcement had been made up to mid-2007, and the drinking in Kano – according to all reports – continued more or less unabated.

Several Local Governments have also enacted total bans on consumption of alcohol within their jurisdictions, even by non-Muslims. Giwa's (Kaduna State, see IV.1.c) is an example:

**4.** (a) From the commencement of this Bye-Law sale and drinking of alcohol is prohibited throughout the Local Government.

See also sections IV.1.f (Kaura Namoda, Zamfara State), 3.j (Tarauni, Kano State), 3.k (Gummi, Zamfara State) and 3.l (Talata Mafara, Zamfara State). We have no information on how successful enforcement of these provisions has been.

Finally, two States have enacted less comprehensive restrictions on drinking by non-Muslims. Kebbi prohibits it in “prohibited areas” of the State where manufacture and sale are also prohibited:

**3.** (1) No person shall sell, manufacture, *consume* or possess liquor within the prohibited areas of the State [emphasis added; see IV.3.d].

Borno prohibits drinking by non-Muslims in public:

**4.** (2) Any other person [i.e. other than a Muslim] who takes alcohol, liquor or intoxicating substance in an open or public place shall be guilty of an offence and shall on conviction be liable to a fine of two thousand naira ₦2,000.00 [see IV.3.g].

#### 4. Concluding remarks.

How serious is the drinking problem in the northern States of Nigeria? More specifically, how serious is it in the Sharia States? How serious is the drinking problem among Muslims in these States in particular? And if the problem is “serious” – in some sense to be defined – then what should the State Governments be trying to do about it? These are very good questions, to which we have only very partial answers.

We are aware of no empirical studies of the seriousness of the drinking problem in the Sharia States. One might ask, for example, what percentages of people in these States drink alcoholic beverages? How much do they drink? How old are the drinkers? Are they male or female? Are they Muslims, Christians or pagans? What do they drink? When and where and why do they drink? What problems is their drinking causing for anybody – for themselves, for their families, for the wider communities in which they live? As far as we know there exist no scientific studies of any of these or related questions one could think of. No one really knows the answers. There are at best anecdotal evidence and general impressions to go on.

We will only venture the impressions that yes, there is still quite a lot of drinking going on in all of the Sharia States, of various alcoholic beverages, by various groups of people in various contexts; that yes, many of the drinkers are Muslims; and that yes, drinking does cause some problems for the citizens of these States, mostly borne by the drinkers' families. Our impression is that general crime is not much fuelled by drink, as opposed perhaps to other drugs consumed in certain segments of the population.

Certainly the Sharia States are right to regulate the availability and consumption of alcohol, as every government does. Our review of the new legislation has revealed little change in the liquor laws of most Sharia States from what was inherited from the past. Several States have tried to block sales by refusing to issue liquor licences under existing laws themselves left unaffected. Two States – Niger and Kebbi – tightened the laws under which they still issue licences; no doubt other Sharia States also still issue licences under the old Liquor Law. Only three States repealed the old Liquor Law and enacted total bans on liquor sales. And only Kano has gone all the way to ban – so far ineffectually – not only sales but also consumption by Muslims and non-Muslims alike. This variety of strategies for dealing with the drinking problem – whatever the problem may be from State to State – no doubt reflects in part the different social conditions of the different States, in part different estimates of how best to deal with whatever the drinking problem is, and in part different types and degrees of ideological fervour.

Whatever the legislative strategies for dealing with drink, the real difficulty as always is with enforcement. We have noted the problem about the mammy markets and other locations where the States cannot prevent or even regulate alcohol sales. A lot of beer, wine, and spirits are also sold illegally – smuggled in and sold without licence – to say nothing of all the local liquor manufactured and consumed. Many people in all these States – non-Muslims and Muslims – like their drink and see nothing wrong with it. The presumed front-line enforcers of the laws relating to alcohol – the police – are prominent among this latter class of people; the police are beholden not to the Sharia States but to the Federal Government; many stories are told of their reluctance or refusal to enforce the liquor laws; and they can also be bribed. To try and stiffen enforcement, some Sharia States have turned to their *hisbah* groups; but this has been met with resistance both from the general public and from the Federal Government. The overall result is that notwithstanding the relatively minor changes in the laws of the Sharia States relating to liquor which we have reviewed above, not much has really changed on the ground: the sinning continues. All of this can be read in the following excerpts from the report of two of our researchers of interviews conducted in Kano in late 2005. In what follows all statements attributed to the interviewees are summaries by the researchers, in English, of what was said no doubt at much greater length in Hausa:<sup>109</sup>

Sheikh Ja'afar Mahmoud Adam.<sup>110</sup> The sale, display, storage and consumption of alcohol in Sabon Gari is still well pronounced despite the implementation of Sharia in

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<sup>109</sup> All three interviews were conducted by S. Mohammed and A. Garba, in Kano, during their research trip there from 28<sup>th</sup> November to 2<sup>nd</sup> December 2005.

<sup>110</sup> Sheikh Ja'afar was a prominent and influential Kano scholar and imam, who among other things served on the Hisbah Board set up by Governor Shekarau in 2004, until his resignation in 2005 in protest at what he saw as the poor funding and performance of the Board. Sheikh Ja'afar

the State. This is one issue that no one seems to have an answer to in Kano today. (We [researchers] witnessed individuals selling and consuming alcohol openly and freely in Sabon Gari.) The *hisbah* seem incapable of doing anything.

Sheikh Abba Koki.<sup>111</sup> Failure of Government in stopping dealings in alcohol is still a problem. 90% of alcohol sellers in Kano are Christians but 95 % of the consumers are Muslims. Every table you see in Sabon Gari full with bottles and two or more gourds is that of a Muslim and if otherwise, is a Christian. A serving Commissioner in this regime once said that they will not stop people from selling alcohol if the Government has not provided an option for such people. Up to now, licences for the sale of alcohol in Kano State have not been withdrawn. Local Governments are made to enforce Sharia. This is impossible. Even Niger State is performing better than Kano in this area particularly in the area of legislation to abolish any dealing in alcohol. Sayyidina Umar (Khalif) destroyed alcohol during his time. Why can't Kano do the same? What is their model?

Sheikh Farouq Chedi.<sup>112</sup> The police are not cooperating with the *hisbah* people. They do not protect them as they perform their assigned functions. (He attributed this to the fact that the Federal Government does not want Sharia.) The *hisbah* have had some clashes with the police. We provided for police representation in the Hisbah Board, but up till now the police have not sent their representatives despite repeated demands by our office. Because of lack of support from the Federal Government, we have found it difficult to implement the law on ban of alcohol. During Kwankwaso, because the Sharia was only pretence, it received the support of the Federal Government. But now that it is real, they refuse to support it. Our boys arrested a vehicle full of alcohol but mobile police arrested about 23 of our boys and detained them. The Governor of the State had to intervene before they were released. Another time, we arrested some vehicles including a police vehicle with about 7,000 bottles of alcohol. The police refused to prosecute the matter. The Attorney-General intervened and they were all released without being prosecuted. There was intimidation and threats by the Commissioner of Police in his office during a meeting. Because of these problems, it became necessary for us to strategise and resort to gradual implementation of Sharia. With this approach (gradualism) the police now have begun to enforce the law on alcohol. Not long ago, I was congratulated by the Attorney-General of the State on that development.

– One imagines that the situation in other States is not far different.

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was assassinated by unknown assailants while praying in the mosque in the early morning of 13<sup>th</sup> April 2007.

<sup>111</sup> Sheikh Koki, also a prominent Kano scholar, among other things served on the Sharia Commission set up by Governor Shekarau in 2004, until his resignation in 2005, like Sheikh Ja'afar, in protest at what he saw as the poor funding and performance of the Commission.

<sup>112</sup> Sheikh Chedi was appointed in 2004 to serve as the Chairman and Commander-General of the Kano *hisbah*. In February 2006 the Federal Government declared the Kano *hisbah* to be unlawful and arrested Sheikh Chedi, who has however subsequently been released and continues to run the *hisbah*, which is still in operation. This episode is discussed in the chapter of this work on the *hisbah* organisations, forthcoming.

### Sexual immoralities

#### 1. The regulation of sexual practices in the Sharia

In Islam, sexual intercourse is lawful only if it takes place between a man and a woman who are married validly according to law. Any sexual intercourse outside marriage is termed *zina* and is strictly prohibited. From the Islamic perspective, *zina* is a great sin and an act which leads to many other shameful evils such as quarrels, murders, etc. It ruins reputations and spreads diseases. It destroys the very foundation of the family. Muslims are therefore commanded to keep far from *zina*: “Do not come near *zina*, for it is a shameful deed and an evil, opening the road to other evils.”<sup>113</sup> Not coming near *zina* includes avoiding “every step and every means” that might lead to it: “whatever excites passions, opens ways for illicit sexual relations between a man and a woman, [or] promotes indecency and obscenity, is *haram*” – thus, private meetings between men and women who are not closely related, looking with desire upon a member of the opposite sex, looking at certain parts of the body, excessive (or in the opinion of some any) adornment of women, etc., in rather considerable detail.<sup>114</sup> These things are not themselves *zina* but they may lead to it, so with varying degrees of strictness in different times and places they have been frowned on and punished under the heading of *ta’azir*: punishment, ranging from warning, admonition, and upwards, by the *qadi* at his more or less unfettered discretion.

The punishment for *zina* itself on the other hand is a matter of *hadd*: it is fixed by God and cannot be varied or waived. The punishment depends on the marital status of the individual sinner. If he or she has never been married, the punishment, laid down in the Qur’an, is a public flogging of 100 lashes.<sup>115</sup> But if he or she is or has previously been married, the punishment, in addition to the flogging, or, in the opinion of some jurists, instead of it, is *rajm*, stoning to death. This is not laid down in the Qur’an, but is derived from the Sunnah of the Prophet. According to one hadith,

Abdullah bin Mas’ud (may Allah be pleased with him) narrated that the Prophet (peace be upon him) said, “It is impermissible to take the life of a Muslim...except in one of three cases: the adulterer, a life for a life, and the renegade Muslim [apostate], who abandons the Muslim community.”<sup>116</sup>

There are also reports of occasions on which the Prophet ordered or sanctioned the stoning of persons guilty of *zina*.<sup>117</sup> Thus, both the sayings and the practice of the Prophet appear to support *rajm* as a punishment for *zina*.

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<sup>113</sup> Qur’an 17:32.

<sup>114</sup> Al-Qaradawi, *The Lawful and the Prohibited in Islam*, 149-169.

<sup>115</sup> Qur’an 24:2: “The woman and the men guilty of *zina*, flog each of them with a hundred stripes. Let no compassion move you in their case, in a matter prescribed by God, if ye believe in God and the last Day. And let a party of the Believers witness their punishment.”

<sup>116</sup> *Arba’una Hadith*, no. 14, quoted from Ibn Rajab, *Jami Al-Ulum Wal-Hikam, A Collection of Knowledge and Wisdom*, rendered into English by Muhammad Fadl (Umm Al-Qura: Al-Mansura, Egypt: 2002), 175.

<sup>117</sup> E.g. the story of Ma’iz, reported in *Sahihul Bukhari*, hadith no. 806, and in *Sahihul Muslim*, hadith no. 1692. *Hadith Ma’iz* is much discussed in the records of proceedings and opinions of the courts in the Safiyatu Hussaini and Amina Lawal cases that are reproduced in Chapter 6.

Various complications are provided for in the *fiqh*. There is considerable discussion of whether sex with concubines, slave-girls, or women captured in war is *zina*: opinion is divided, depending on the circumstances, but this seems generally to be condoned at least if the man has appropriate “rights” over the woman (women may never have such rights over men). Sex with a common prostitute is different: it is *zina*, and both the man and the woman are liable to the punishment for *zina* depending on their marital status. Incest is *zina*, of the most heinous type. Rape is *zina*, but a man cannot rape his own wife; a victim of rape, not having consented, is not liable to the *hadd* punishment. As to consensual acts of anal intercourse between two men, opinion is divided, some jurists saying this is not *zina* and should be punished with *ta’azir*, some saying it should be punished with the *hadd* of *zina*, depending on the marital status of the offenders, and some – the Malikis – saying that both participants should be stoned to death regardless of their marital status. Anal intercourse with a woman seems to divide opinion along the same lines, except that everyone agrees that anal intercourse with one’s own wife, although subject to punishment, will not attract the *hadd* of *zina* but only *ta’azir*. Sex acts between women also divide the opinions of the jurists along similar lines. Bestiality does too, except here the Malikis, instead of taking the harshest view of the matter take the most lenient, saying bestiality should be punished only with *ta’azir* and that the flesh of the animal is lawful; the Hanbalis and the Shafi’is say that both the offender and the animal should be subjected to *rajm* and that the flesh of the animal is *haram*. As to aiders and abettors – pimps, procurers, the proprietors of brothels, etc. – they are not per se guilty of *zina* but are liable to *ta’azir*. There is a great deal more to the doctrine, but enough has been said to give the reader an idea of its complexity and detail.<sup>118</sup>

The great problem with all this part of the law – or the great saving grace – is the extremely high standard of proof required to sustain a charge of *zina*. 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.<sup>119</sup> Even the evidentiary effect of a pregnancy out of wedlock is

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<sup>118</sup> Our thanks to Ahmed Garba for the research on which this paragraph is based. Garba’s memorandum cites various pages of Ibn Rushd, *Bidayat al-Mujtabid wa Nihayat al-Muqtasid*, published in English, in a translation by I.A.K. Nyazee, as *The Distinguished Jurist’s Primer and the Intermediate Jurist’s Goal* (UK: Garnet, 2003); M.S. el-Awa, *Punishment in Islamic Law* (Indianapolis: American Trust Publications, 1998); A.R.I. Doi, *Shariah: The Islamic Law* (Nigeria: Iksan Islamic Publishers, 1990); S.M. bin Uthman Adh-Dhahabi, *The Major Sins: Al-Kaba’r* (Beirut: Dar El Fikr, 1993); M. bin Abdul-Aziz al-Musnad, collector, *Fatawa Islamiyah: Islamic Verdicts* (Riyadh etc.: Darussalam, 2002); and Qaradawi, *The Lawful and the Prohibited in Islam*, op. cit. See also two of the papers presented at the 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, held at Abuja 8<sup>th</sup> and 9<sup>th</sup> March, 2006: Justice Muntaka-Commassie, “The Sharia Criminal Procedure in *Qisas* Offences”, and M.B. Uthman, “Criminal Procedure in *Ta’azir* Cases”, both of which touch on many issues involved in the law of *zina* and related offences.

<sup>119</sup> See e.g. Ibn Abi Zayd, *Matn ar-Risala*, rendered into English by F.A.Z. Matraji, corrected and revised by M. Matraji (Beirut: Dar al-Fikr, 1994), 592: “The prescribed punishment of *zina* will only be inflicted on the one who confesses to it, or the manifestation of pregnancy or the evidence of four witnesses, who must be male, freeborn, adult and just and they must witness the

mitigated by the rule relied on by the Sharia Courts of Appeal in the cases of both Safiyatu Hussaini and Amina Lawal, that if the woman has previously been married – a condition precedent for the infliction of *rajm* – the pregnancy will be attributed to her ex-husband if the divorce is less than five years old (some scholars say seven). “If the woman delivers within this period the child is affiliated to the former husband and the prescribed punishment shall not be inflicted on her.”<sup>120</sup> In any case most acts of *zina* do not result in pregnancy, and of course never in the case of men, so in most cases of women and in all cases of men guilty of acts of *zina*, if a guilty party does not voluntarily confess, he or she can never be convicted – four male Muslim eyewitness (of good character etc.) to the very act of penetration being unheard of. This virtual impossibility of proving *zina* is fine – one may think – when the *zina* involves only consenting adults; in much of the world such acts have been decriminalised entirely, the guilty parties being left to their consciences and to God. But what of incest, especially involving children? What of rape? These are crimes against real victims, innocent victims, that everyone agrees must be combated. Here the difficulty of proving *zina* can permit guilty perpetrators to escape the punishment they so richly deserve. Indeed, in Islamic law there is yet another barrier to successful prosecutions in such cases: the rule that if the evidence is not sufficient to convict, the complainant may be charged with *qadhf* – false accusation of *zina* – the *hadd* punishment for which is eighty lashes; this rule must deter many victims from complaining at all. Again there are further complications in all this part of the law, but we must move on to the next subject.

## 2. Statutory law relating to sexual practices in Northern Nigeria to 1999.

The Northern Penal Code of 1960 covers much the same ground as the Sharia as to disapproved sexual practices, but with some shifts of definition and dramatic changes in the penalties applied to the offence of *zina* in all its various forms. *Rajm* as a punishment is not permitted under the Penal Code. Prison terms of various lengths are substituted, with the maximum length of the term depending on the seriousness with which the drafters of the Code viewed the each particular offence.

### a. Adultery. Section 387 of the Penal Code provides that:

**387.** Whoever, being a man subject to any native law or custom in which extra-marital intercourse is recognised as a criminal offence, has sexual intercourse with a person who is not and whom he knows or has reason to believe is not his wife, such sexual intercourse not amounting to the offence of rape [or, we might add, incest], 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.

Section 388 deals with adultery by a woman in identical terms, except that the clause “such sexual intercourse not amounting to the offence of rape” is omitted. These provisions clearly apply to Muslims, the term ‘native law and custom’ being defined to

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commission of the offence clearly as a stick enters into a container, and they must witness the offence at the same time.”

<sup>120</sup> Al-Juzairi, *Fiqhu ala Madhabibil Arba’a*, quoted in the majority judgment of the Sharia Court of Appeal of Katsina State in the Amina Lawal case, Chapter 6, 105

include Islamic law;<sup>121</sup> so under the Penal Code adultery is and has been a crime for Muslims, subject, however, not to the punishment of *rajm* in the case of married offenders, but only to a term of imprisonment. How far “native law and custom” on the subject of adultery is actually incorporated into these two sections, is likely to remain forever unclear. Thus, for example, if a Muslim man had a concubine and had sex with her, would he have committed an offence under §387, even though he would not have done so under Islamic law? This is unclear. It is also unknown, and perhaps unknowable, how many Muslim (or other) offenders have ever been prosecuted under §§387 and 388. One’s impression is that the answer is: very few or none.

b. Rape and incest. These two special cases extra-marital sexual intercourse are dealt with in separate sections of the Penal Code. Rape is treated in the chapter on OFFENCES AFFECTING THE HUMAN BODY:

**282.** (1) A man is said to commit rape who, save in the case referred in subsection (2), 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;
- (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 fourteen years of age or of unsound mind.

(2) Sexual intercourse by a man with his own wife is not rape, if she has attained to puberty.

**283.** Whoever commits rape, shall be punished with imprisonment for life or for any less term and shall also be liable to fine.

Incest is treated in the chapter on OFFENCES RELATING TO MARRIAGE AND INCEST:

**390.** 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 brother or sister or his paternal or maternal aunt and 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

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<sup>121</sup> See the interpretation sections (§§2) of both the High Court and the Native Court Laws, Caps. 49 and 78 Laws of Northern Nigeria 1963: “‘native law and custom’ includes Moslem Law”. This assimilation of Islamic law to “native law and custom” in the legal terminology of the Northern Region had been made by the British since the earliest days of their rule, see E.A Key and S.S. Richardson, *The Native and Customary Courts of Nigeria* (London: Sweet & Maxwell; Lagos: African Universities Press, 1966), p. 228. Many Sharia States have explicitly rejected it in legislation enacted since 1999, as will be documented in the chapter of this work on “Court Reorganisation”.

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, shall be punished with imprisonment for a term which may extend to seven years and shall also be liable to fine.

Only up to two years for adultery, but up to seven years for incest and up to life for rape: it is clear which offences the drafters of the Penal Code thought were the more serious.

c. Prostitution and related offences. Engaging in sexual intercourse with a prostitute to whom one is not married is adultery; so under §§387 and 388 of the Penal Code sexual intercourse by a Muslim with a prostitute is a crime punishable with up to two years imprisonment or fine or both; and the prostitute, if also a Muslim, would be equally guilty of the offence and equally punishable.

Soliciting for prostitution, pimping by males and male prostitution are addressed in the chapter on VAGABONDS, as follows:

**405.** In this chapter—

(1) The term "idle person" shall include—

\* \* \*

(d) any common prostitute behaving in a disorderly or indecent manner in a public place or persistently importuning or soliciting persons for the purpose of prostitution;

\* \* \*

(2) The term "vagabond" shall include—

\* \* \*

(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; and

(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.

The punishments for idle persons and vagabonds are prescribed in §§406 and 407 as one month or fine or both, and one year or fine or both, respectively. "Incorrigible vagabonds" can get up to two years.

Brothels are prohibited in the chapter on PUBLIC NUISANCES:

**201.** Whoever keeps or manages a brothel shall be punished with imprisonment which may extend to one year or with fine or with both.

A series of sections of the chapter on OFFENCES AFFECTING THE HUMAN BODY, under the heading of *Kidnapping, Abduction and Forced Labour*, deal with: procurement of a minor girl or importation of a girl from a foreign country "with intent . . . or knowing it to be likely that she will be forced or seduced to illicit intercourse with another person" (§§275 and 276); buying, selling, hiring, or letting to hire any person under the age of eighteen with intent "that such person shall be employed or used for the purpose of prostitution or for any unlawful or immoral purpose" or with knowledge that this result

is likely (§278); and procuring, enticing or leading away “even with her consent, any woman or girl for immoral purposes” (§281). These crimes are punishable with serious prison terms: up to seven years in the last case, up to ten in all the others; and in all cases the offender “shall also be liable to fine”.

The net result of all these various sections is that engaging in prostitution per se, at least by non-Muslim females, is not a crime under the Penal Code. We are aware of no study of the incidence of prostitution in the northern States of Nigeria. But judging from the great concern about it expressed in the memoranda submitted to the Sharia Implementation Committees, and in the Reports of the Committees themselves, prostitution, not only by non-Muslim females, and sometimes by young girls ostensibly engaged in hawking goods, has been widely practised. The principal cause, all agree, is poverty.<sup>122</sup> The Local Government Laws of several States appear to recognise this, allowing Local Governments “to be responsible for and to make bye-laws for all or any of the following matters, that is: \* \* \* (m) control of beggars, of prostitution and repatriation of destitutes”.<sup>123</sup> It would be interesting to know whether and if so how any Local Governments may have exercised this power.

d. “Unnatural and Indecent Offences”. As we have seen, a male person “who practises sodomy as a means of livelihood or as a profession” can be punished – fairly lightly – as a vagabond. If he is convicted of sodomy itself, however, he is liable to a much heavier punishment, under the section of the Penal Code on “Unnatural offences”:

**284.** 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.

The code does not define “carnal intercourse against the order of nature”, saying only, by way of explanation to §284, that “mere penetration” is sufficient to constitute it; but apparently this section is aimed not only at sodomy but at other unconventional sexual practices as well. The next section, on “acts of gross indecency”, continues:

**285.** Whoever commits an act of gross indecency upon the person of another without his consent or by the use of force or threats compels a person to join with him in the commission of such act, shall be punished with imprisonment for a term which may extend to seven years and shall also be liable to fine.

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<sup>122</sup> The problem of prostitution and what to do about it are discussed at many places in Chapter 2 of this work, containing Sharia Implementation Committee Reports and related White Papers. See e.g. 38; 54-55 (“Prostitution has existed in this country for long”); 57; 58; 61 (problem of “hospitals that allow abortions for young girls and prostitutes”); 76; 77 (“poverty is the principal factor behind most of the social ills bedeviling our societies, including prostitution”); 86 (“youths have become used to visiting prostitutes in brothels, and the women on the other hand are there in high numbers”); etc. etc. As to hawking see pp. 22 (need to regulate “street hawking particularly by girls in order to safeguard public morality”); 52 (“We are all living witnesses of what is happening as regards female hawking”); 96; 127; etc. The problem of hawking by young girls is discussed further in the essay by Jamila Nasir which follows this one, Part III below.

<sup>123</sup> Quoting the Laws of Borno State 1994 Cap. 82 §65(1)(m); the same provision occurs in Kano (Cap. 84 §41(l)), Katsina (Cap. 79 §69(1)(m)) and Yobe (Cap. 82 §65(1)(m)), probably among others.

Provided that a consent given by a person below the age of sixteen years to such an act when done by his 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.

Again, “act of gross indecency upon the person of another” is not defined.

One more section of the Penal Code may be mentioned here: §200, on obscene or indecent acts:

**200.** Whoever to the annoyance of others does any obscene or indecent act in a public place, shall be punished with imprisonment for a term which may extend to two years or with fine or with both.

It would be interesting to know whether anyone has ever been prosecuted under these sections of the Penal Code, and if so, for what “unnatural and indecent offences” in particular. There are in fact communities of gays and lesbians in the larger Northern cities, those in Kano being the most famous.<sup>124</sup> Whether, before Sharia implementation, they ever got in trouble with the law, is unknown to us. As we shall see below, even after Sharia implementation they apparently continue to thrive.

So much for the treatment of sexual practices in the Penal Code of 1960.

### 3. Changes in the law relating to sexual practices in the Sharia States since 1999.

#### *The Sharia Penal Codes*

The reader will find in the documentary materials included in this chapter, Part IV.5.e, the sections of the Harmonised Sharia Penal Code Annotated (given in full in Chapter 4) corresponding to the sections of the Penal Code of 1960 which have just been discussed. Without reproducing those sections again here, we simply point out some of the ways in which the Sharia Penal Codes have changed, as to Muslims, the law on the subject of sexual immoralities. All references to section numbers in this part of the discussion are to sections of the Harmonised Sharia Penal Code Annotated reproduced in Part IV.5.e below.

a. *Zina* (§§125-126). Adultery, according to the Penal Code, is “sexual intercourse with a person who is not ... [one’s wife or husband]”. *Zina*, according to the Sharia Penal Codes is “sexual intercourse through the genital of a person over whom [one] has no sexual rights and in circumstances in which no doubt exists as to the illegality of the act”. A great deal of definitional complication is present here which we will not go into further; the reader is referred to the discussion above and to Chapter 6, which contains the proceedings and judgments in the Safiyatu Hussaini and Amina Lawal cases – both *zina* cases and both going in great detail into the definition of *zina* and the means of proving it. In general we may say that most acts of adultery committed by Muslims are acts of *zina* and vice versa; but, as we have seen, unless the offender confesses and persists in his or her confession until the punishment is inflicted, *zina* is much harder to

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<sup>124</sup> See R. Gaudio, “Unreal Women and the Men Who Love Them: Gay Gender Roles in Hausa Muslim Society”, *Socialist Review*, 95/2 (1995) and “Male Lesbians and Other Queer Notions in Hausa”, in S.O. Murray and W. Roscoe, eds., *Boy Wives and Female Husbands: Studies of African Homosexualities* (New York: Palgrave, 2001), 117.

prove, in most cases requiring the eye-witness testimony of four pious male Muslims to the very act.

In accordance with the Sharia, *zina* is punishable under the Sharia Penal Codes with *rajm* if the offender is married, and with 100 lashes if he or she is unmarried. Again there is a complication: “if married” does not mean “if married at the time of the commission of the offence”, but rather “if married at that time or has previously been married”; for instance, both Safiyatu and Amina were divorcees at the times they were said to have committed *zina*, but both were nevertheless liable to the punishment of *rajm*. It is also interesting to see an element extraneous to the Sharia brought in to these punishment provisions: under §126(a) an unmarried person who commits *zina* gets 100 lashes, “and where the offender is a man [or, in seven States, a man or a woman] shall also be liable to imprisonment for a term of one year.” This brings an element of *ta’azir* into an offence for which a *hadd* punishment is prescribed.

The punishment for *zina* committed by married persons is much heavier than the punishment under the Penal Code for adultery. This is said to be a sign of the seriousness with which Muslims take this offence, and a deterrent to committing it. But at the same time *zina* is much harder to prove than adultery, indeed, it is virtually impossible to prove, barring the guilty person’s full and free confession; and furthermore, at least according to the Sharia Court of Appeal of Sokoto State, it is even “*haram* to initiate an action against a person for *zina* based on other people’s reports”: apparently the guilty person must report himself or herself to the authorities for prosecution.<sup>125</sup> So which, one wonders, is more of a deterrent to the commission of the offence, the threat of prosecution for adultery under the Penal Code or the threat of prosecution for *zina* under the Sharia Penal Code? The truth is that neither one is much of a deterrent. As in much of the developed world, where adultery is no longer even a crime, the true deterrents, such as they are, are social sanctions short of criminal prosecution, and the consciences of individuals.

b. Rape and incest (§§127-128 and 131-132). For some reason, the Sharia Penal Codes of both Kano and Katsina States omit the offence of incest.

In the other Sharia Penal Codes, the definitions of these two offences are very similar to the Penal Code definitions. The only differences:

- As to rape, the Sharia Penal Codes raise the age at which a girl can validly consent to sexual intercourse from fourteen (as in the Penal Code) to fifteen (except that Bauchi and Kaduna introduce some uncertainty by using, instead of a definite age, the locutions “the age of maturity” and “the age of *taklif*”). On the other hand, the Sharia Penal Codes provide less protection to very young

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<sup>125</sup> See numbered section 10 of the Sharia Court of Appeal’s rulings on the various grounds of appeal in the Safiyatu Hussaini case, Chapter 6, 47-49. See also §141 of the Harmonised Sharia Criminal Procedure Code in Chapter 5, limiting the persons who can bring a complaint of *zina* to the husband of the woman involved, or if she is unmarried, her father, “or in his absence... some person who had care of such woman on his behalf at the time when the offence was committed”. The same limitation on prosecutions for adultery under the Penal Code is found in §142 of the Criminal Procedure Code of 1960. This section has however been omitted from all the actual Sharia Criminal Procedure Codes of the Sharia States.

wives. Instead of saying, as the Penal Code does, that “sexual intercourse by a man with his own wife is not rape, if she has attained to puberty”, they say flatly that “sexual intercourse by a man with his own wife is not rape”.

- As to incest, the Sharia Penal Codes merely put the definition of the offence in its own separate section (§131), and split it into two subsections, one for men and one for women, but in terms identical to the Penal Code.

It is in the punishment provisions that the Sharia Penal Codes depart dramatically from the Penal Code. In short, as in the classical Sharia, they assimilate rape and incest to *zina*, punishing all the same: if the offender is unmarried, 100 lashes; if married, *rajm*. But again some elements of *ta'azir* come in. An unmarried offender in both cases, in addition to receiving 100 lashes, may be sentenced to prison: an unmarried rapist in Bauchi can get up to 14 years; in Kano and Katsina he can get up to life; but in all States an unmarried person who commits incest can get only up to one year. And then all States provide that a rapist, whether married or unmarried, shall also pay the dower of the woman's equals (*sadaq al-mithli*).

Perhaps the most serious consequence of the assimilation of rape and incest to *zina* is the assimilation of proof of these crimes to proof of *zina*. This is made explicit in Kano and Katsina as to rape:

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.

Again, in its section on punishment for incest Kebbi says: “Prove: four trustworthy male witnesses to the act of incest”. The same rules as to proof of rape and incest certainly apply in the Sharia Courts of the other Sharia States. So just as *zina* is virtually impossible to prove, barring the guilty person's full and free confession, so rape and incest are virtually impossible to prove. Many may regard this as an undesirable result of Sharia implementation.

c. Prostitution and related offences. Engaging in sexual intercourse with a prostitute to whom one is not married is *zina*; so under the Sharia Penal Codes sexual intercourse by a Muslim with a prostitute is a crime punishable with 100 lashes if the offender is unmarried and with *rajm* if he or she is married; and the prostitute, if also a Muslim, would be equally guilty of the offence and equally punishable. The problem of course would be to prove that the offence had been committed.

The offences related to prostitution dealt with in the Penal Code are defined and punished similarly in the Sharia Penal Codes. Without further discussion, the reader is referred to the following sections of Part IV.5.e of this chapter:

- Soliciting for prostitution, male pimping, cross-dressing, and male prostitution: §§376-378.
- Brothels: §373.

- Inducement, procurement, importation, trafficking etc. for prostitution or other immoral purposes: §§234, 235, 237 and 239.

In some Sharia States and in some of their Local Government Areas, prostitution and related offences have been dealt with also in legislation directed specifically at them; see the discussion below of other changes in the law relating to sexual practices.

d. “Unnatural and Indecent Offences”. The “unnatural offences” dealt with by the Penal Code in a single section are unbundled in the Sharia Penal Codes into two sections each on:

- sodomy (§§129-130), punished in four States as *zina* and in the others by *rajm* irrespective of the marital status of the offender, with some qualifications and exceptions; this divergence is consistent with the differences of opinion among the Islamic scholars which have been noted above.
- lesbianism (§§133-134), punished lightly in most States (up to 50 lashes and up to six months) but in Bauchi with up to five years imprisonment and in Kano and Katsina with *rajm*; again these differences are consistent with the differences of opinion among the Islamic scholars.
- bestiality (§§135-136), again punished lightly in most States (up to 50 lashes and up to six months) but in Bauchi “with caning of 40 lashes and in addition shall be sentenced to a term of imprisonment of fourteen years and the animal shall be caused to be killed.”

It is not clear from the codes how these offences are to be proved, but some indication is given following Kebbi’s sections on bestiality, where it says: “Prove: 1. Self-confession; 2. Sound mind; 3. Four male witnesses in act of bestiality who shall be trustworthy Muslims.” So it seems likely that proof of these offences would also have to be up to the standards of proof of *zina*.

As with the Penal Code, the Sharia Penal Codes all have sections on “acts of gross indecency” (§137) and “obscene or indecent acts” (§372). The reader is referred to Part IV.5.e for the details; there are variations in the definitions of these offences as between the various codes. Most significantly, perhaps, whereas the Penal Code and six of the Sharia Penal Codes, in their sections on “acts of gross indecency”, seem to punish sexual offences, i.e. “acts of gross indecency upon the person of another without his consent”, the other Sharia Penal Codes change the whole idea, by punishing “acts 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”. This brings the idea of acts of gross indecency close to that of obscene or indecent acts, already punished in a separate section.

The gay and lesbian communities of some Northern cities have already been mentioned. As one can see, in the Sharia States the punishments at least for homosexual sex acts have gone up: *rajm* for sodomy in most places; *rajm* for lesbianism in Kano and Katsina. The saving grace, again, is the impossible standard of proof (barring confession). Judging from the recent news, the new laws do not seem to have suppressed the gays and lesbians:

Nigeria transvestite handed fine. A Nigerian Islamic court has sentenced a man to six months in prison and fined him \$38 for living as a woman for seven years in the northern city of Kano. The judge told 19-year-old Abubakar Hamza, who used his female identity to sell aphrodisiacs, to desist from “immoral behaviour”. Mr. Hamza, who appeared in court dressed in a pink kaftan and matching cap, said he was now “a reformed man”.<sup>126</sup>

Polygamous lesbians flee Sharia. A Nigerian lesbian who “married” four women last weekend in Kano State has gone into hiding from the Islamic police, with her partners. Under Sharia law, adopted in the State seven years ago, homosexuality and same-sex marriages are outlawed and considered very serious offences. The theatre where the elaborate wedding celebration was held on Sunday has been demolished by Kano city's authorities. Kano's Hisbah Board, which uses volunteers to enforce Islamic law, told the BBC that the women's marriage was “unacceptable”. The BBC's Bala Ibrahim in Kano says Auntie Maiduguri and her four “wives” are thought to have gone into hiding the day after they married. All five women, who are believed to be film actresses in the local home-video industry, were born Muslims, otherwise they would not be covered by Sharia law.<sup>127</sup>

18 arraigned in Bauchi Sharia Court for homosexuality. 18 young men, whose ages range from 18 to 21 years, are on trial in a Bauchi Sharia Court for allegedly engaging in homosexuality, an offence which attracts death penalty under the Islamic legal code. The First Information Report...said the suspects were arrested in a hotel in the city as they planned to contract a marriage between two of them, against the Sharia law practised in the State. The report alleged that all of them wore female clothing when they were arrested, and had come to the city from Gombe, Plateau, Yobe, Jigawa and Bauchi to celebrate a gay “marriage”.<sup>128</sup>

Our latest information is that the charges against the Bauchi 18 have been reduced apparently to cross-dressing, punishable with up to a year in prison and up to thirty lashes, see Part IV.5.e §§376(e) and 378. In any case the point remains: the gay and lesbian communities in the Sharia States apparently continue to thrive.

e. Criminal charms. All the Sharia Penal Codes have essentially the same provision (derived from the Penal Code of 1960) 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:

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

<sup>126</sup> <http://news.bbc.co.uk/2/hi/africa/4266773.stm>, 15<sup>th</sup> February 2005.

<sup>127</sup> <http://news.bbc.co.uk/2/hi/africa/6599437.stm>, 27<sup>th</sup> April 2007.

<sup>128</sup> *Daily Independent*, 13<sup>th</sup> August 2007, 1.

fine of fifty thousand naira and shall also be liable to caning of sixty [Katsina: 50] lashes.<sup>129</sup>

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 would allow conviction upon lesser evidence than would be required to convict, for instance, of *zina*.

*Other changes in the law relating to sexual practices*

We have been discussing changes in the law related to sexual practices that are embodied in the new Sharia Penal Codes. But several of the Sharia States and Local Governments within them also enacted other laws covering some of the same territory. We discuss these laws briefly.

Three States – Borno, Kano, and Yobe – enacted separate laws dealing at least in part with prostitution, other disapproved sexual practices, and those who aid and abet them such as pimps and keepers of brothels.

- Kano: Prostitution and Other Immoral Acts (Prohibition) Law (signed into law in June 2000), banning prostitution, solicitation for prostitution, the keeping of brothels, and acting, behaving or dressing by males “in a manner which imitates the behavioural attitude of women”, and providing fairly modest punishments for these acts – up to one year for first offences in all cases or fines or both. (Part IV.5.c)
- Yobe: Prohibition of Certain un-Islamic Practices Law 2000 (signed into law in October 2000), banning (among other things) prostitution (up to one year or fine) and keeping or managing a brothel (up to three years or fine or both). (Part IV.1.b)
- Borno: Prostitution, Lesbianism, Homosexuality, Operation of Brothels and Other Sexual Immoralities (Prohibition) Law (signed into law in December 2000), banning prostitution (up to one year or fine), pimping (same), operating a brothel (large fine), having sex with a person of the same gender (death), screening, concealing, harbouring or accommodating a prostitute, lesbian or homosexual (one year or fine), and “facilitating other immoral sex acts” (20 lashes). (Part IV.5.b)

One reason why these laws were enacted was probably the need of the Governors and Houses of Assembly of these States to be seen to be doing something in the cause of Sharia implementation, pending enactment of full Sharia Penal Codes – not done in these States until November 2000, March 2001, and March 2003, respectively. But there might have been another reason as well: defining and punishing the acts in question, particularly prostitution, outside the confines of the law of *zina*, with its very heavy punishment and its correspondingly strict proof requirements. If one wants to drive out prostitutes with threats of prosecution and punishment, it makes sense to threaten prosecution of offences one can actually prove in court and punishments the judges will actually impose.

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<sup>129</sup> §§388 and 394 of the Kano and Katsina Sharia Penal Codes, respectively.

Finally, the reader is referred to the “omnibus” laws reproduced in Part IV, nos. 1.c to 1.f. These are all enactments of Local Government Councils which among other things ban prostitution and brothels; the reader can consult them for further details. The Gummi Local Government Law “for the prohibition of processions, commuting female passengers by motorcyclist, musical concerts and any other expenses during naming and wedding festivities”, Part IV.8.b, includes what seems to be a less direct attack on prostitution:

Save in absolute necessity no motorcyclist shall commute female passenger between the hours of 10:00 p.m. - 6.00 a.m. throughout the Local Government Area.<sup>130</sup>

#### 4. Concluding remarks.

In the early days of Sharia implementation there were concerted efforts in many of the Sharia States to clamp down on two social vices in particular: drinking and prostitution. For the first time in a long time attempts were made to actually enforce the laws – existing ones and new ones – against these two phenomena. In the case of prostitution, known brothels were shut down and the premises turned to other uses, and prostitutes were chased out of many of the Sharia States under credible threats of arrest and prosecution. For a time the cities and towns of neighbouring States were glutted with prostitutes – perhaps some of them now ex-prostitutes? – seeking refuge from Sharia. Not all fled: some chose to stay and try to earn their livings in other ways. For them programmes of rehabilitation and retraining were instituted, and considerable sympathy was shown for their poverty-induced plight.<sup>131</sup>

Several years on, it is difficult to know how successful the programme of prostitution-suppression has been. It is interesting to note to begin with that in their official crime statistics reports the police do not even show separately – as they do for 38 other specific crimes – numbers of reports, investigations and prosecutions for prostitution. This indicates the lack of seriousness with which prostitution is regarded as a social problem worth spending much effort on by the Governments and their agents the police, many of whom are perhaps steady customers themselves. This lack of

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<sup>130</sup> Cf. *New Nigerian*, 14<sup>th</sup> December 2005, 28, where the Commander-General of the Kano *bisbab*, Farouq Chedi, is quoted as saying that “It has been observed that carrying of females on motorcycles...has given room for prostitution to thrive.”

<sup>131</sup> This may be read in various places in Chapter 2. See also this recent news item from Kano: “A hundred prostitutes are being trained by the Kano State Sharia Commission after they denounced their immoral trade at a ceremony organised to integrate them into skills acquisition centres and get them off the streets. The prostitutes were immediately matriculated after the ceremony for a one-month intensive training on religious observance and skill acquisition [sewing, knitting and other domestic crafts]. Ustaz Sani Kabo, chairman of the State’s Sharia Commission, described them as committed and God-fearing. The occasion was organised in Wudil Local Government...as part of the ongoing efforts to rid the society of harmful and condemnable practices with prostitution entails.... [and more: of Sheikh Kabo’s sermon; the training programme to include Christians and married women as well as single Muslims; the Sharia Commission to take responsibility for those trainees who get married, and pay their wedding expenses including dowry; and the trainees to be given loans to start businesses after completing their courses].” *Daily Trust*, 27<sup>th</sup> March 2007, 10.

seriousness also makes it difficult to estimate what the level of prostitution is now as compared to what it used to be.<sup>132</sup>

There are reports of some successes in the fight against prostitution. According to the Governor of Bauchi State, speaking at a 2006 conference on the dividends of Sharia implementation:

As a result of Sharia implementation, Bauchi State has recorded a wonderful social transformation, and a noticeable decrease in crime and social evils. This has not been achieved overnight. We have taken time, using tact and wisdom to ensure a crisis-free enforcement of Sharia laws particularly in cases such as consumption and sale of alcohol, prostitution, gambling, etc. At various times and stages, we engaged in enlightenment, counselling, dialogue, and even resorted to offering soft loans in order to facilitate compliance. In the end there is now a great measure of sanity, and such vices that used to be committed in the open, are now hardly ever seen public as before.<sup>133</sup>

A representative of the Governor of Kebbi State, speaking at the same conference, said this:

Prostitution, promiscuity, sale and consumption of alcohol and other intoxicants have been checked to a large extent. Such activities are no longer conducted in the open. A lot of men and women engaged in such activities before have now reformed with a remarkable change in their lives. In trying to achieve this feat, the *hisbah* group (Sharia Social Orientation and Security outfit) has to date prosecuted, within the State capital and its immediate environs, well over 382 prostitutes, 185 gamblers, 21 drunkards and 110 drug pushers.... Besides, the public is actively participating in combating crimes. People now feel safe to report social misfits or those engaged in prohibited practices to the combined team of *hisbah* and the police for necessary corrective measures.<sup>134</sup>

And in Niger State, according to one official:

prostitution has drastically reduced in the State. Many brothels and hotels occupied by prostitutes have been converted into rented accommodation. With the introduction of the *hisbah*, indecent dressing by women is being checked at public places. Women dressed indecently and those who appear to be soliciting are also turned away at the gates [i.e. the gates of the many institutions of government – the biggest employer in the State – where they used to enter and solicit].<sup>135</sup>

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<sup>132</sup> We are aware of no systematic empirical study of prostitution in the northern parts of Nigeria.

<sup>133</sup> Governor Ahmadu Mu'azu of Bauchi State, address delivered 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<sup>th</sup>-12<sup>th</sup> July 2006 (copy in the possession of the authors).

<sup>134</sup> An unnamed representative of the Governor of Kebbi State, address delivered at the conference identified in the previous note (copy in the possession of the authors).

<sup>135</sup> Interview with Barrister Sanusi of the Ministry of Justice, Minna, in Minna, 28<sup>th</sup> November 2005, by S. Fwatshak and S. H. Liman.

Reports from some other States are not always so positive, however. Let this interview report from Kano be representative of similar ones from other States:

Sheikh Ibrahim Khalil.<sup>136</sup> Got to his house at 10:20 a.m. and waited for 30 minutes to allow him finish with people that assembled to see him. This sheikh is the closest person to the Governor of Kano State. Played significant role in the election of Mal. Shekarau as Governor of Kano State (2003). Generally supports the policies of the Government. But now, it is becoming clear that to actually implement Sharia is going to be more difficult than anticipated. The people have embraced it, but, unfortunately, the Sharia is not there for the people. Prostitution has gone up now, and all other immoralities. Up till now, public office holders are in the forefront of committing crimes. Sabon Gari has gone back to its old ways. This is despite the numerous beautiful advices the Government got from different individuals and organisations such as the Supreme Council for Sharia etc. In the early days of Sharia implementation, prostitutes were chased away. [But things have changed now.] *Hisbah* is only being used as a complaint-receiving team. Those persons employed and inaugurated were not given appropriate offers of employment in writing. The number of Kano Government *hisbah* personnel is only 750. It is not true that they are about 9,000. There are reckless people inside *hisbah*. It is said that even prostitutes visit them at their offices. There is now a law on prostitution and other immoralities. They have also gotten the list of houses where immoral acts take place. It will be enforced very soon.

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We turn now to two other classes of social vices – gambling and unedifying media – which are treated only in outline form: much work remains to be done before these phenomena and the laws relating to them are properly understood.

### **Gambling**

#### 1. The regulation of gambling in the Sharia.

As with alcohol, Islam prohibited gambling in gradual steps. In the beginning, Islam apparently condoned gambling.<sup>137</sup> But, later, gambling was totally prohibited.<sup>138</sup> Gambling is classified among the major sins in Islam. It includes games played with dice, pebbles, perhaps chess especially if betting on the outcome is involved, certainly backgammon, cards, lotteries, or any kind of sporting contest on which bets are placed in return for wins or losses depending on the outcome. Gambling is not among the *hudud* offences as its punishment is not specifically stated in the Qur'an or the Hadith. Rather, it is punished under the heading of *ta'azir*, i.e. according to the discretion of the *qadi* as directed if at all by the political authorities.

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<sup>136</sup> Interviewed in Kano, 28<sup>th</sup> November 2005, by S. Mohammed and A. Garba.

<sup>137</sup> "They ask you about alcohol and gambling. Say: in this there is great harm and also benefit for the people, but the harm far outweighs their benefit." Qur'an 2:219.

<sup>138</sup> "O you who believe! Intoxicants and gambling, (dedication) of stones, and (divination by) arrows are an abomination, of Satan's handiwork. Eschew such (abomination) that you may prosper." Qur'an 5:93. "Satan's plan is (but) to excite enmity and hatred between you, with intoxicants and gambling, and hinder you from the remembrance of God and from prayer. Will you not then abstain?" Qur'an 5:95. "God forbids immorality and evil." Qur'an 16:90.

2. Statutory law relating to gambling in Northern Nigeria to 1999.

Again as with alcohol, the ban of the Sharia on gambling by Muslims was enforceable before 1960 as part of the application of (uncodified) Islamic penal law in the North's Native Courts. This lapsed when Penal Code came into effect (see below).

a. Native Authorities also had the authority to "issue orders, to be obeyed by all persons within [their] area to whom the orders relate, ... (1) prohibiting, restricting or regulating gambling." This is in the Native Authority Law, Cap. 77 LNN 1963 §44(1); it would be interesting to trace this authority backwards in the NA laws to see how early it entered. After the Local Government reforms of 1976, the new Local Government Councils also had the same authority, see e.g. Laws of Borno State 1994 Cap. 82 §65(1)(hh) and Laws of Sokoto State 1996 Cap. 82 §68(46). We do not know to what extent this power has been ever exercised by the NAs/LGCs of the north.

b. The Penal Code of 1960 addressed itself in two chapters to the subject of gambling. First, in Chapter XXV, on VAGABONDS, are found the following:

**405.** In this chapter— (1) The term "idle person" shall include— . . . (e) any person playing at any game of chance for money or money's worth in any public place.

**406.** Whoever is convicted as being an idle person shall be punished with imprisonment for a term which may extend to one month or with fine or with both.

Then, in Chapter XIV, on LOTTERIES AND GAMING HOUSES:

§205 prohibits the keeping of "any house or place to which *the public* (emphasis added) are admitted for the purpose of betting or playing any game of chance", the keeping of "any office or place for the purpose of drawing any lottery", and assisting "in the conduct of any such house or place or office." There is an exception for the use of "totalisators" by "race clubs" recognised by the Governor at race meetings. The punishment is up to two years imprisonment or fine or both.

§206 prohibits various acts related to *public lotteries* (emphasis added), including printing, selling or buying lottery tickets, drawing winners, and furnishing or receiving money. The punishment is up to six months or fine or both. There are three exceptions:

- raffles or lotteries of articles, permitted in writing by the Governor, held for the purpose of raising funds in aid of any institution of public character.
- lotteries or sweepstakes organised in connection with race meetings held by race clubs exempted from §206 by the Governor.
- lotteries held by private clubs licensed by the Governor to hold them, and held on club premises for the entertainment of members.

c. The Betting Tax Law: enacted in 1959; became Cap. 12 of LNN 1963. Imposed a 5% tax on all money bet on races or paid into lotteries run by authorised race clubs. This

law is still in the laws of all the Sharia States that we have been able to check: Cap. 12 in Kano, Katsina and Sokoto; Cap. 10 in Jigawa; Cap. 11 in Niger; 15 in Bauchi; and 18 in Borno and Yobe.

d. A series of other laws related to gambling enacted in the 1960s and 1970s in various Northern States, all *permitted* gambling in various forms, exempting them from the prohibitions of the Penal Code, but regulating and taxing them:

i. Gaming Machines (Licensing and Taxation) Laws. Enacted in 1969 in Kano State, in 1970 in North Central State, and in 1971 in North West and North East States: became Cap. 50 in Kano, Cap. 53 in Katsina, Cap. 54 in Sokoto and Bauchi, Cap. 57 in Borno and Yobe. These laws provide for the licensing of gaming machines (“any machine which is constructed or adapted for playing a game of chance by means of a machine”) and the taxation of gross revenues generated by such machines at the rate of 10%. Licensed proprietors of gaming machines are then exempted (§ 7) from the provisions of Cap. XIV of the Penal Code. In short, gaming houses to which the public were admitted were now perfectly legal, provided they were duly licensed and paid their taxes.

ii. Casino (Licensing and Taxation) Laws. Enacted in 1969 in Kano and North Central States; now Cap. 20 of the Kano Laws and Cap. 21 of Katsina and Jigawa. After enactment of the gaming machines and casino laws, in many northern cities gaming houses, or casinos, then came into being. It would be most interesting to dig out the history of this phenomenon.

iii. Pool Betting (Control and Taxation) Laws. Enacted in 1969 in North Central State, 1970 in Kano State, 1972 in North East State, 1984 in Niger State; became Cap. 111 in Kano, 101 in Katsina, 98 in Niger, and 105 in Borno and Yobe. Established a system of licensing of pool betting businesses and taxation of their revenues. Again, licensed pool betting businesses were exempted from the provisions of Cap. XIV of the Penal Code.

iv. Tombola (Licensing) [or (Licensing and Taxation)] Laws. Enacted in 1971 in Kano State, 1972 in North Central State, and 1973 in North East State. Tombola is “a game played with cards divided into numbered and blank squares and numbered disks to be drawn on the principle of a lottery whereby money or money’s worth is distributed or allotted” – very much like bingo. As with gaming machines and pool betting, the tombola laws set up regimes for the licensing of persons “for the operation of tombola”, and in some cases imposed a tax on revenues. Again licensed operators were exempted from the provisions of Cap. XIV of the Penal Code. Again, these laws are still on the books in most States, e.g. Kano Cap. 144; Katsina Cap. 133, Jigawa Cap. 147, Bauchi Cap. 157, Borno and Yobe Cap. 135.

e. Finally, Federal legislation. In 1977 the Federal Military Government issued a decree banning the importation, ownership or operation of gaming machines throughout Nigeria, cancelling all licences for such machines then subsisting, and prohibiting the issuance of any further licences. This was the Gaming Machines (Prohibition) Decree, No. 6 of 1977, which became Cap. 159 LFN 1990 and Cap. G1 LFN 2004. Again in 1979, in its last few months of existence, the Federal Military Government issued another decree, this time prohibiting both pool betting and casino gaming. This was the

Pool Betting and Casino Gaming Prohibition Decree, No. 19 of 1979, which became Cap. 360 LFN 1990. This law still seems to be in force, but it has not been included in LFN 2004.<sup>139</sup>

Question: why are the pool betting and gaming machine statutes of the States still on the books, in view of the Federal statutes prohibiting all such activities? Apparent answer: in the view of the States, the Federal Government has no constitutional authority to regulate gambling, and therefore the Federal statutes are null and void. And indeed, the regulation of gambling appears on neither the Exclusive nor the Concurrent Legislative lists of the Constitution, and would therefore appear to be a matter exclusively for the States. In the revised editions of their laws published in the late 1980s and early 1990s the States have therefore included their pool betting and gaming machines statutes, but they come with the following note: “Note: the application of this Law in \_\_\_ State is subject to a caveat: Federal Act 1979 No. 19.” But (except as noted subsequently) the State laws remain in effect, and pool betting businesses and gaming houses, including casinos, continue to flourish almost everywhere in Nigeria, including the Federal Capital City of Abuja.

3. Changes in the law relating to gambling in the Sharia States since 1999

a. Beginning with the Sharia Penal Codes enacted in all Sharia States: these tighten, as to Muslims, the Penal Code provisions discussed above, as follows; for details see section IV.4.b infra:

- The punishment for being an idle person – i.e. “any person playing at any game of chance for money or money's worth in any public place [Kano and Katsina have: in any place]” – goes up from up to one month or fine in the Penal Code, to up to one year and up to twenty lashes. Kano and Katsina also add to their sections on lotteries a similar provision: “any person who plays a game of chance or delegates another to play on his behalf, or plays on behalf of another person” commits an offence.
- Whereas the Penal Code prohibits the keeping of “any house or place to which *the public* are admitted for the purpose of betting or playing any game of chance”, the Sharia Penal Codes prohibit the keeping of “any house or place to which *persons* are admitted for the purpose of betting *or gambling* or playing any game of chance” – and there are no exceptions. But under the Harmonised Sharia Penal Code the punishment goes down from up to two years or fine, as in the Penal Code, to up to six months or up to twenty lashes or fine or any two of the above.
- Whereas the Penal Code prohibits various acts related to *public lotteries*, the Sharia Penal Codes prohibit all the same acts related to *any lottery* – and again there are no exceptions. The punishment changes from six months or fine again to up to six months or up to twenty lashes or fine or any two of the above.

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<sup>139</sup> Volume 1 of the LFN 2004 contains, at the front, a “Table of Acts Considered”. The Pool Betting and Casino Gaming Prohibition Law of 1979, Cap. 360 of the LFN 1990, is listed. In the column of the table that indicates whether the law has been repealed, omitted for other reasons, or retained, this law is said to have been “Retained as Cap. 360.” In the “List of Acts Printed”, however, this law is omitted, and indeed it is not included in the laws printed in LFN 2004.

- The Sharia Penal Codes all add that on conviction of any of these offences, “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.”

b. Two States, Borno and Yobe, have gone farther than this, by repealing their Gaming Machines, Pool Betting, and (in the case of Borno) Tombola laws, and making it a crime for any person (not just Muslims) to engage in such businesses, see sections IV.1.a §§3 and 4(1) and 1.b §§11-14, 21A and 22. Yobe also revoked all licences issued under the laws revoked. Borno adds that:

Any person who engages in gambling or practises any game of chance with the expectation and purpose of winning money or other property shall be guilty of an offence....

c. Several Local Governments have exercised their powers to regulate gambling; the reader is referred to the indicated sections of Part IV:

- 1.c: Giwa Local Government, Kaduna State
- 1.d: Makarfi Local Government, Kaduna State
- 1.e: Gusau Local Government, Zamfara State
- 1.f: Kaura Namoda Local Government, Zamfara State

That such efforts at the Local Government level still continue is indicated by this news report from mid-2005:

In Katsina state, four Local Government Councils have restated their earlier bans on gambling, sales of alcohol and other related criminal offences in their Areas. They also said district heads and traditional title holders would be warned against bailing anyone found committing such offences.<sup>140</sup>

4. Concluding remarks. The picture as to gambling, several years on, seems very similar to the pictures as to drinking and prostitution: very mixed. The laws of the Sharia States related to gambling have not changed very much. These are not crimes that cause very many problems or that the police have ever been very interested in trying to quell. Early enforcement-enthusiasm in Sharia-implementing circles has waned. Our researchers, visiting various Sharia States and going about the cities discreetly asking questions and keeping their eyes open, report a great deal of petty gambling going on among the common people as before. It is also interesting to note that only two of the Sharia States have repealed their Gaming Machines, Pool Betting, and (in the case of Borno) Tombola laws: these laws remain on the books in most Sharia States and our information is that there is still pool betting going on in Kano (for example), evidently open to the public, per the Pool Betting Law, and that gaming machines and casinos are still in operation there, but restricted to private clubs for members only; the elites, both Muslim “clerics” and businessmen, are said to participate in these activities. “Katsina, Sokoto, Gusau and Maiduguri are all in the same league. There are itinerant gamblers who gamble from city to city.”<sup>141</sup> We are aware of no empirical study of gambling in the

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<sup>140</sup> *New Nigerian*, 29<sup>th</sup> July 2005, 25.

<sup>141</sup> Per a Kano businessman, telephone discussion with Ostien of 8<sup>th</sup> February 2007.

northern parts of Nigeria or the social problems it causes. This is yet another interesting subject for someone to work on.

### Unedifying media

#### 1. The regulation of media in the Sharia

A principle laid down in the *fiqh* is that

if something is prohibited, anything which leads to it is likewise prohibited. By this means Islam intends to block all avenues leading to what is *haram*. For example, as Islam has prohibited sex outside marriage, it has also prohibited anything which leads to it or makes it attractive, such as seductive clothing, private meetings and casual mixing between men and women, the depiction of nudity, pornographic literature, obscene songs, and so on.<sup>142</sup>

The aim is to sanitize the society. Any act that is considered capable of corrupting the morality of members of the society is seriously frowned at. Such acts attract discretionary punishment – *ta'azir*.

#### 2. Statutory law relating to media in Northern Nigeria to 1999.

As the reader will see from the brief outline given in this section, most matters relating to the media are subject to both Federal and State regulation in Nigeria, and both the Federation and the States have regulated them. We can do no more here than quickly indicate what the relevant legislation is under various headings, without further analysis of any of the complications, which are many. There are several books covering various parts of the general subject of the law relating to the media in Nigeria, to which the interested reader is referred.<sup>143</sup>

##### a. Radio and television.

i. The Constitution. Under Nigeria's constitutions dating probably from probably from 1954 onward but certainly from 1960, it has been the exclusive prerogative of the Federal Government to regulate:

Wireless, broadcasting and television other than broadcasting and television provided by the Government of a Region; allocation of wavelengths for wireless, broadcasting and television transmission.<sup>144</sup>

ii. Federal legislation. Under this constitutional authority, the Federal Government has enacted the following:

- Nigerian Broadcasting Corporation Ordinance, No. 39 of 1956, Cap. 133 LFN&L, 1958, "An Ordinance to provide for the establishment of a

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<sup>142</sup> Al Qaradawi, *The Lawful and the Prohibited in Islam*, 28.

<sup>143</sup> N. Udoakah, *Government and the Media in Nigeria*, (Calabar: Centaur Publishers, c1988); Y. Osinbajo and P.K. Fogam, *Nigerian Media Law* (Lagos: Gravitas Publishments, 1991); N.S. Gusau, *The Mass Media in Nigeria* (Nigeria: no publisher given, 1994); and N. Okoro and A.M. Okolie, *Law, Politics, and Mass Media in Nigeria* (Nsukka: Prize Publishers, 2004). See also the "Annual Report[s] on the State of the Media in Nigeria" published by the Media Rights Agenda, Lagos.

<sup>144</sup> We have not checked the 1954 Constitution. The quoted article is found in: 1960 Constitution: The Schedule: The Legislative Lists: Part I: The Exclusive Legislative List, §42. 1979 and 1999 Constitutions: Second Schedule: Legislative Powers: Part I: Exclusive Legislative List, §§65 and 66, respectively.

Corporation to be known as the Nigerian Broadcasting Corporation, for the transfer to the Corporation of the broadcasting services now undertaken by the Government of the Federation, for the functions of the Corporation and for purposes connected to the matters aforesaid.” This law was replaced by the Nigerian Television Authority Act and the Federal Radio Corporation of Nigeria Act, below.

- Wireless Telegraphy Act, No. 31 of 1961, Cap. 469 LFN 1990, Cap. W5 LFN 2004, regulating, among other things, “the conveying of messages, sound or visual images” by “wireless telegraphy”, all broadly defined, which can be done only under licence issued by the Federal Government. Probably it is under this Act that new media such as the Internet are being regulated in Nigeria today, but we have not gone so far in our investigations.
- Nigerian Television Authority Act, No. 24 of 1977, Cap. 329 LFN 1990, Cap. N136 LFN 2004, “An Act to establish the Nigerian Television Authority to be charged with the responsibility for the provision of television broadcasting in Nigeria and other matters related thereto.” There is a national television channel, NTA, which is dispersed and to some extent localised throughout the Federation. There are now also more and more TV channels run by the State Governments, apparently under some sort of licence from NTA, see below.

These Acts perhaps originally contemplated federal government monopolies on TV and radio broadcasting, but it seems they are now being interpreted to allow the national authorities to license the States, and also private broadcasting corporations, to operate, as more and more such stations are on the air. It should also be noted that various satellite television services – like DSTV from South Africa and NileSat from Egypt – are now available in Nigeria, for fairly modest costs; many people are able to afford one or another of them. They provide access to larger or smaller numbers of different channels with varying content, depending on who you buy from and how much you pay.

- Federal Radio Corporation of Nigeria Act, No. 8 of 1979, Cap. 140 LFN 1990, Cap. F18 LFN 2004, “An Act to establish the Federal Radio Corporation of Nigeria which in addition to providing effective radio broadcasting services on a national scale, will also be responsible for providing external broadcasting services.” The Corporation does provide broadcasting services on a national scale, on radio station FRCN, with offices and broadcast centres throughout the Federation.

iii. Regional and State legislation. The Northern Region, and later the States into which it was subsequently divided, have established their own radio and in some cases television broadcasting services under the following laws. Note: the authors have not had access to the laws of all Northern or even all Sharia States, so the following listing must be considered partial only; it is nevertheless probably fairly representative of all the legislation in this field that has been enacted in the Northern States.

- The Northern Region’s Radio Law. The Northern Nigeria Radio Law was enacted in 1960.<sup>145</sup> This became Cap. 114 of LNN 1963. It has been superseded by the following State laws which to a large extent perpetuate its provisions.

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<sup>145</sup>N.R. 40 of 1960 effective from 15<sup>th</sup> January, 1961.

#### CHANGES IN THE LAW AIMED AT SUPPRESSING SOCIAL VICES

- Broadcasting Corporation Laws: enacted in Kano in 1976, Kaduna State (now Kaduna and Katsina) 1979, Sokoto 1979, Niger 1981, and inherited from Kano in Jigawa, now: Kano, Jigawa and Niger Cap. 15, Katsina and Sokoto Cap. 16.
- Radio Corporation Laws: Bauchi enacted a new one in 1979, Borno enacted a new one in 1980. Bauchi's is now Cap. 128 of the Bauchi Laws; Borno's was repealed by the Radio Television Corporation Law discussed below.
- Television Corporation Laws: enacted in Kano in 1983, Bauchi 1988, and inherited from Kano in Jigawa: now Kano Cap. 143, Jigawa Cap. 146, Bauchi Cap. 155
- Radio Television Corporation Law: Borno enacted this in 1984, it is now Cap. 116 of the 1994 Laws of both Borno and Yobe States.

All of these laws are similar. They establish corporations charged with providing radio, television, and other broadcasting services on behalf first of the Region and subsequently of the States; lay down the powers and duties of the corporation; and make provision for finances, auditing, etc. As to content all of them contain essentially this same provision:

The Corporation shall satisfy itself that the programmes broadcast by the Corporation or on its behalf comply with the following requirements:

- (a) that nothing is included in the programmes which is likely to offend against good taste or decency or is likely to encourage or incite to crime or lead to disorder or to be offensive to public feeling, or to contain any offensive representation of, or reference to, a living person;
- (b) that the programmes maintain a proper balance in their subject-matter and a general high standard of quality;
- (c) that any news given in the programmes (in whatever form) is presented with due accuracy, impartiality and objectivity;
- (d) that due impartiality is preserved in respect of matters of political or industrial controversy or relating to current public policy.

Some of the States have their own TV stations; it seems that there are no private TV stations anywhere except in Lagos (although able to broadcast nationally in part via satellite); probably most States have their own radio stations; and private radio stations are slowly beginning to come on the air. It seems the States have been quite reluctant to give up their monopolies on local radio broadcasting, but they are slowly and cautiously beginning to do so.

#### b. Films, videos, etc.

##### i. Federal legislation.

- There was a Cinematograph Ordinance, Cap. 32 of the 1948 Laws of Nigeria, which applied to the whole of Nigeria. We have not seen this Ordinance; it does not appear in the 1958 Laws of the Federation & Lagos.
- In 1963 the Cinematograph Act, No. 7 of 1963, Cap. 49 of the 1990 Laws of the Federation replaced the Cinematograph Ordinance. We have not studied the

relations between the two. The 1963 Act required approval from the Federal Board of Film Censors before any film could be exhibited.

- These old laws could not keep up with the proliferation of media in which films – or “films” – could be shown to audiences for a fee. Hence the National Film and Video Censors Board Decree, No. 85 of 1993, now Cap. N40 of the 2004 Laws of the Federation of Nigeria. This decree repealed and replaced the 1963 Cinematograph Act. It establishes Nat. Film and Video Censors Board to license persons and premises to exhibit films and videos, to censor same, and to regulate for safety etc.

ii. The Constitution. The following provision entered the Concurrent Legislative List of Nigeria’s Constitution in 1979; it is also now in the Concurrent Legislative List of the 1999 Constitution:<sup>146</sup>

**16.** The National Assembly may make laws for the establishment of an authority with power to carry out censorship of cinematograph films and to prohibit or restrict the exhibition of such films; and nothing herein shall—

- (a) preclude a House of Assembly from making provision for a similar authority in that State; or
- (b) authorise the exhibition of a cinematograph film in a State without the sanction of the authority established by the Law of that State for the censorship of such films.

This apparently ratified the already existing situation, because from the earliest days after Independence the Northern Region, and probably other Regions as well, was regulating the exhibition of films: the Constitution being silent on this subject, both the Federal and Regional Governments were claiming the right to regulate, and probably in strict constitutional law the Regions had the better of the argument, the rule being that if the Constitution is silent the matter is reserved for the Regions – now States.

iii. Regional and State legislation.

- Northern Region Cinematograph Law, enacted in 1960 (N.R. 9 of that year). We have not seen this law. In any case it was replaced by:
- Northern Region Cinematograph (Licensing) Law, enacted in 1962 (N.N. 49 of that year), which became Cap. 22 of LNN 1963. This (1) repealed the old Federal Cinematograph Ordinance insofar as it still had effect in N. Nigeria; (2) repealed the Region’s Cinematograph Law of 1960, and (3) enacted a new scheme for the licensing and regulation of cinematograph exhibitions including measures to ensure the public safety.
- Detailed Northern Region Cinematograph (Licensing) Regulations were issued in 1963 under the authority of the Cinematograph (Licensing) Law of the previous year. See *The Laws of Northern Nigeria for 1963*, Vol. 1, B27-B50.

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<sup>146</sup> The provision next quoted is at the same place in both Constitutions: Second Schedule: Legislative Powers: Part II: Concurrent Legislative List: Extent of Federal and State Legislative Powers: §16.

CHANGES IN THE LAW AIMED AT SUPPRESSING SOCIAL VICES

- The Northern Region Cinematograph (Censorship) Law, was added in 1964, see The Laws of Northern Nigeria for 1964, Vol. 1, A63-A66. This authorised the Regional Commissioner in charge of social welfare to appoint a board of film censors to approve films before they could be exhibited.

The last three items – the Cinematograph (Licensing) and Cinematograph (Censorship) Laws and the regulations issued under the former – found their ways into the laws of all the States into which the Northern Region was subsequently divided and are still there in the latest editions – produced in the 1980s and 1990s – of the collected laws of all Northern States. See, of the ones we have had access to: Kano, Sokoto, Jigawa: Caps. 23 & 24; Katsina 24 & 25; Niger 21 & 22; Bauchi 26 & 27; Borno/Yobe 27 & 28.

It is worth noting also one provision of the northern Cinematograph (Censorship) Law, as it now appears in Cap. 23 of the 1991 Laws of Kano State. Section 4(1) thereof provides that:

... [N]o person shall exhibit or cause or allow to be exhibited any film, approved for exhibition in Nigeria by the Federal board of film censors under the provisions of the Cinematograph Act, 1963, unless the exhibition of such film in Northern Nigeria has also been approved by the [Northern] Board [of film censors].

In other words, the Northern Region, without challenging the right of the Federation to censor films, was asserting that it could censor more strictly than the Federation if it so desired. This position was endorsed in §16 of the Concurrent Legislative List of the 1979 Constitution, quoted above.

- At least two States – Borno and Yobe – have enacted an additional law in this field: Control of Commercial Video Exhibitions Law, Borno State No. 3 of 1993, Cap. 36 of the 1994 Laws of Borno and Yobe States. Evidently Borno State felt that the cinematograph laws, and decided to fill the gap with this law. The Borno/Yobe law gives the Commissioner of Information, Youth, Sports, Social Welfare and Culture the power to license premises for commercial video exhibition, to make regulations regarding safety, “for prescribing any description of cassette as of immoral or obscene nature”, etc. As we shall see Yobe State repealed this law in 2000.

As far as we know no other State enacted any similar law before 1999 – but it is difficult to know this without going around to all the States and checking, which we have not done.

- Finally, note that the Native Authority Law, Cap. 77 LNN 1963, contained the following provision:

38. [A] native authority...may make rules—

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- (47) (a) for the licensing of buildings or other places for the performance of stage plays or the display of cinematograph films;

### CHAPTER 3: SANITIZING SOCIETY

- (b) prescribing the building materials thereof and the mode of building, seating accommodation, entrances, exits and all other matters appertaining to the same;
- (c) prescribing against overcrowding and for the control and prevention of fire; and
- (d) prescribing for the maintenance of good order therein and for the entry and inspection during any performance or display at any time by any police officer or person authorised so to do.

We do not know when this provision entered the Native Authority Law, which had a long history in colonial days. We do not know if or to what extent it was ever implemented by the Native Authorities. We do not find any continuation of this provision in the Local Government Laws enacted in 1976-77. Perhaps it was overtaken by State and Federal regulation.

c. Print media and other matters.

i. Federal legislation. Except for the Penal Code, all statutes in this field are Federal. Regulation of newspapers and printing presses began early in the colonial era:

- The Newspapers Act dates from 1917; as from time to time amended, it became Cap. 129 LFN&L 1958, Cap. 291 LFN 1990, and has been “retained as Cap. 291” of LFN 2004 but not published in the loose-leaf edition. This Act requires the registration with the Government of all newspapers, the giving of a bond against any penalties which may be imposed by reason of anything published, including damages and costs in actions for libel, and other things.
- Printing Presses Regulation Ordinance, No. 21 of 1933, Cap. 158 LFN&L 1958, “An Ordinance for the regulation of printing presses and of books and papers printed in Nigeria”, requiring all printing presses to be declared to the Government and that every book or paper printed bear on the front page the name and address of the printer and of the publisher. This was evidently repealed at some point, it is not in the 1990 or 2004 LFN.
- News Agency of Nigeria Act, No. 19 of 1976, Cap. 290 LFN 1990, Cap. N85 LFN 2004, “An act to establish the News Agency of Nigeria for obtaining news from all sources, both within and outside Nigeria and to supply same to the subscribers of the Agency for a fee; and matters related thereto.”
- Nigerian Media Council Act, No. 59 of 1988, Cap. 316 LFN 1990, repealed by No. 85 of 1992 and replaced by Nigerian Press Council Act, Cap. N128 LFN 2004. The Council is established “to promote high professional standards for the Nigerian press and to deal with complaints from members of the public about the conduct of the media and journalists in their professional capacity or complaints emanating from the press about the conduct of persons or organisations towards the press.” Among other things, the Council is empowered to promulgate a “Code of Conduct of the Nigeria Union of Journalists to guide the media and journalists in the performance of their duties”, to investigate complaints of violation, and to discipline violators.

ii. Regional and State legislation. The Northern Penal Code of 1960 had the following provisions on “Sale of obscene books, etc.” and “Obscene songs, etc.”:

**202.** 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 two years or with fine or with both.

**203.** Whoever to the annoyance of others sings, recites, utters or reproduces by any mechanical any obscene song or words in or near any place, shall be punished with imprisonment for a term which may extend to three months or with fine or with both.

Perhaps the best way to sum up this very quick review of the statutory law relating to media in Northern Nigeria to 1999, is to say that all the media have always been very much subject, and subjected to, regulation, including regulation of their content according to stated criteria – as much, that is to say, as the governments could keep up with the rapid changes in this field.

3. Changes in the law relating to media in the Sharia States since 1999.

a. Radio and television. We are aware of no changes here.

b. Films, videos, etc..

i. Executive action. Some States, in the early days of Sharia implementation, took action by executive fiat to bring films and videos under better control, under laws and institutions already in place. Zamfara State is an example:

The Zamfara Commissioner for Religious Affairs ordered all cinema houses and video viewing centres to close pending the imposition of new regulations “in line with the efforts of the State Government to check the spread of immorality packaged as cultural products.”<sup>147</sup>

It is not clear under what authority the Commissioner ordered these commercial establishments to close, but they probably mostly did so anyway, at least for a time. Whether Zamfara State has issued new regulations as it said it would is not known. Probably some other States also took similar actions.

ii. New legislation. Only Yobe and Kano States, as part of their Sharia implementation programmes, felt the need to change the Cinematography (Licensing) and (Censorship) Laws.

- The Yobe Prohibition of Certain un-Islamic Practices Law 2000, see section IV.1.b below, repeals the 1964 Cinematography (Censorship) Law and the 1993 Commercial Video Exhibition Law in force there, and replaces it with the following brief provision:

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<sup>147</sup> *Nigerian Tribune*, 26<sup>th</sup> January 2000, 1.

3. (1) Any person who exhibits or causes to be exhibited any un-Islamic video pictures, films, or other optical effects produced by way of video camera, machines, projector, mobile cinema or other similar apparatus in the State commits an offence.

(2) Any person who contravenes the provision of subsection (1) shall be liable on conviction to a fine of fifty thousand naira (₦50,000.00) or five years imprisonment.

Then §4 provides for inspections and enforcement by the police.

- Kano City is actually a centre of movie-making – mostly short dramas in Hausa – known as “Kannywood”, by analogy with India’s “Bollywood” and Southern Nigeria’s “Nollywood”. The authorities of the Kano State Government are therefore very active in the regulation, including censorship, of film and video production, sales and exhibitions. Perhaps because of this Kano felt the need to modify its laws in this field. Its new Censorship Film Board Law 2001 repeals both the old Cinematography (Licensing) and Cinematography (Censorship) Laws, and replaces them with a single new law, reproduced in part in section IV.7.c below. For the most part the new law merely consolidates, in a single new Censorship Film Board, the functions formerly assigned severally to the Commissioner in charge of social welfare and to the Board of Film Censors under the old laws. But there are some possibly significant new sections as well, see §§8, 9(2), and 17. There is a literature on the Hausa films of Kannywood, to which the reader is referred.<sup>148</sup>
- There are also in Kano new Cinematography (Licensing) (Censorship) Regulations 2001, see section IV.7.d for further details.
- Finally, some Local Governments, as part of their Sharia implementation programmes, enacted new bye-laws regulating the showing of films and videos, see sections IV.7.a and .b

c. Print media and other matters. The Sharia Penal Codes have continued the two sections of the Penal Code discussed above, on obscenity matters, but somewhat varying the punishments, and have all added a new subsection (2) to the section on sale of obscene books etc., quoted here from the Harmonised Sharia Penal Code:

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<sup>148</sup> See e.g. J. Haynes, *Nigerian Video Films* (Ibadan: Kraft Books Ltd., 1997), which includes essays on filmmaking in Kano as well as in other places in Nigeria; Y.M. Adamu, “Between the Word and the Screen: A Historical Perspective on the Hausa Literary Movement and the Home Video Invasion”, *Journal of African Cultural Studies*, 15 (2002), 203-213; and B. Larkin, “Indian Films and Nigerian Lovers: Media and the Creation of Parallel Modernities”, *Africa: Journal of the International African Institute*, 67 (1997), 406-440 and “Degraded Images, Distorted Sounds: Nigerian Video and the Infrastructure of Piracy”, *Public Culture*, 16 (2004), 289-314. Y.A. Ibrahim, “Kannywood: I joined film industry for leisure, but... – Kubra Dhako”, *Weekly Trust*, 20<sup>th</sup> July 2007, reports an interview with a Kannywood star who has appeared in over 50 films. At the National Conference on Leadership, State & Society under the Sharia in Nigeria: The Dividends, see n. 133 supra, N.W. Khalil gave a paper on “Parallel Advocacy: The Representation of Shari’a in Kannywood and Nollywood Films”, copy in the possession of the authors.

[374.] (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.

For further details see section IV.7.e below. One wonders whether it is a good idea to entrust to the alkalis of the Sharia Courts, who will have to enforce these provisions, the responsibility, not only for deciding what is obscene, as under the Penal Code, but now also what is “contrary to public morality” or “contrary to public policy”.

#### 4. Concluding remarks.

It is clear from the foregoing that there has been very little change in the Sharia States in the laws relating to the media. To conclude this part of the essay, we simply give here, without further comment, some reports of activities undertaken since Sharia implementation began to try and clean up the problem of unedifying media.

a. From the report of an interview with Abdulkadir A. Kurama, Director Film Production and Development, Kano State Censorship Board, Farm Centre, Kano:<sup>149</sup>

The Kano State Censorship Board was established as part of the implementation of Sharia law in Kano State. The purpose of the Board is to sanitize the film and video industry to conform to the dominant norms, traditions, culture and religion of the people of Kano. This is done through regulation and monitoring of video and film production, sales and exhibition. In the past, for example, film and video houses would mix male and female customers on one seat contrary to the principles of Islam. Local Hausa and Igbo films also did not conform to the traditional culture and Islamic religion, thus offending public morality and religious sensibility.

The activities of the Board are not limited to regulation and monitoring of films and videos but also print matter. Thus, the Board scrutinizes publication of journals, newspapers, books, posters, handbills and billboards also.

In order to operate a cinema house or TV viewing centre, for example, an application form has to be purchased from the Censorship Board. The form is attached with three forms for recommendations one each from the Local Government, District Head and DPO of the application. All three recommendations must be returned with positive results. The person making the recommendation must be satisfied that the applicant has met certain conditions by visiting the proposed site. The site must not be close to a school, or mosque. Upon receipt of the three recommendations and the completed application form, the Board goes on physical inspection of the site in company of the Fire Service unit, and the Environmental Protection Agency. If the Board is satisfied, it grants a one-year licence to the operator who pays a token of ₦18,500 for a video viewing centre. The rates for cinema houses vary according to whether it is in the City or a Local Government.

After grant of licences, the Board has ways of monitoring the operators. One is through regular checks by the State monitoring team, which involve the staff of the Board and some Board members. The team go into town any time any day and check a

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<sup>149</sup> Interviewed in Kano, 26<sup>th</sup> March 2003, by S. Fwatshak, K.A. Umar and D. Abubakar.

specific industry, film or video: enter premises of operators requiring them to produce operational licences. Failure to produce a licence leads to the confiscation of the films or video and the defaulter is asked to come to the Board and pay the licence fee and fine. There is another monitoring organised by a judge. This is the mobile court operation in which the judge fixes a day and the Board is notified. The team includes the judge, a police officer, and a prosecutor and some staff of the Board. Premises of operators are entered and licences sought. Defaulters are then charged and prosecuted immediately and orders made and fines imposed.<sup>150</sup>

b. From the report of an interview with Ben Bakoshi and M.B. Yahaya, both of the Federal Censorship Board, Kano State Branch.<sup>151</sup>

The Federal Censorship Board was established by law...which is currently being reviewed.

Kano State has its own Censorship Board. The Federal Board works in close cooperation with the State Board, the police and Fire Service, the objective being the protection of public morality. Some films have been banned (list attached).<sup>152</sup> The main activity of the Board is the monitoring and control of films. The monitoring is done through public enlightenment, involving talks to producers, marketers using various media like radio and TV. Patrols also provide another avenue for monitoring. These are carried out regularly by a team comprising the police, as banned films are confiscated and defaulters charged to court. There is one case pending in Kaduna.

The activities of the Federal and State Boards led to an improvement in public morality. Local film producers now adopt decent dressing for female artists in line with the culture and Islamic religion of the people of Kano unlike the case in the past.

c. In Sokoto State, cinema houses were acquired by the Government and converted to mosques and educational institutions. Owners of such cinema houses were compensated.<sup>153</sup>

d. On 20<sup>th</sup> September, 2002 some vendors were reported to have been arrested in Sokoto and taken to Kebbi by the Kebbi State Police Command in conjunction with the State Sharia Implementation Committee, for selling pornographic magazines.<sup>154</sup>

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<sup>150</sup> Appended to this report is a handwritten list of cassettes confiscated and burnt by the Kano State Censorship Board, as follows: "The Adulteress" (47 copies), "Say My Name" (9), "Osama Bin Laden" Parts 1 & 2 (4), "9½ Weeks" (1), "Love Affair" (1), "Ashes" (6), "Blind Angel" (1), "Lady Blanca" (7), "The Prostitute" (1), "Out Kast" (1), "Ashawo" (6), "Shattered Home" (4), "Married Woman" (4), "Double Platinum" (2), "Body Chemistry" (1), "Play Game" (1), and pornographic posters (2).

<sup>151</sup> Interviewed in Kano, 26<sup>th</sup> March 2003, by S. Fwatshak, K.A. Umar and D. Abubakar.

<sup>152</sup> The list includes 44 films "released illegally into the market", including e.g. "Evil Doers", "House Girl", "Akpu Nku", "The Pastor and the Harlot", etc., and 7 "banned films as at December 4, 2002, including "Shattered Home", "Outkast" (Parts 1 & 2) "Night Out (Girls for Sale)", "Omo Empire", "Issakaba" (Part 4), "Terrorist Attack" and "Unseen Forces".

<sup>153</sup> Per M.J. Umar, who lives in Sokoto and practises law there.

<sup>154</sup> *Daily Trust*, 23<sup>rd</sup> September 2002, with the headline "Sokoto Vendors Call for AIG Intervention Over Detained Members".

e. It has also been reported that Islamic Aid Group in Zamfara State took away vendors along with hundreds of copies of some offensive materials on the order of Atiku Zawiyya, the Director-General of the Sharia Monitoring and Implementation Committee. The vendors were arraigned before a Sharia Court which tried, convicted and sentenced them to a fine of ₦1,000 each and ordered that the said offensive materials be burnt. The offensive materials included *Hint, Today Romance, Love, IMT Heart* and *Soul*, etc.<sup>155</sup>

f. In 2005 the Kano State Government was reported to have recently rehabilitated and equipped its State media outfits; improved salary and welfare packages for government media personnel; introduced community-based enlightenment programs; and sensitised community and religious leaders and other stakeholders involved in information dissemination; and extended hands of friendship to all media men and women who happened to be posted to the State.<sup>156</sup>

### Conclusion

We make just a few observations in conclusion.

1. Sharia implementation has not meant very much change in the laws of the Sharia States on the subjects which we have examined in this essay – corruption, liquor, sexual malpractices, gambling, and unedifying media. This is evident from the previous pages.

2. It is interesting to see so much variation among the Sharia States in the changes they have made in their laws on the subjects we have examined. This is exactly as it should be, each State's officials making their best judgments about how best to balance the competing interests with which they must contend – their own, their constituents', and God's as they understand them.

3. Sometimes the legislative changes that have been made seem quite sensible as a matter of social policy, sometimes they do not. For instance, in the liquor laws, tightening and simplifying the definition of "prohibited area" – as Niger and Kebbi States have done – to prohibit the sale of liquor in prohibited areas, full stop. This makes the law governing prohibited areas much easier to enforce, and still allows "licensed areas" within the States, where liquor can still be sold under licence. There probably should be licensed areas in most Sharia States, to cater for the parts of the population for whom drinking alcoholic drink is not a sin. Only Niger and Kebbi States have clarified their liquor laws in this helpful way. Six other States have left their liquor laws unmodified – and therefore still in some respects impossible to enforce as long as licences for the sale of alcohol are being issued at all (as some should be). Four others have repealed their old liquor laws entirely and replaced them with (probably unenforceable) stricter regimes for regulating alcohol. Kano, for instance, will almost certainly never be able to stop the sale and consumption of all alcoholic drink by all persons within the State. The law will inevitably be flouted more or less openly (not a good thing in terms of fostering respect for the rule of law), and trying to drive drink underground will only turn a lot of otherwise perfectly decent people into criminals.

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<sup>155</sup> *Daily Trust*, 28<sup>th</sup> August 2002, with the headline "Sharia Court Fines Vendors for Selling Pornographic Magazines and Calendars".

<sup>156</sup> *Weekly Trust*, 12<sup>th</sup> - 18<sup>th</sup> November 2005, 36.

Better that sales under licence, and consumption, be legalised and controlled, than that the whole thing should become a criminal enterprise. This approach is moreover entirely consistent with Islamic law on the use of liquor by non-Muslims. As to Muslim users: well, if they are caught, let them receive their eighty lashes.

4. There is a similar point about the law relating to sexual malpractices. This seems to have been quite thoroughly “*zina*-ised”. That is, the law of *zina* has taken over not only the punishment (if at all) of normal extramarital sexual encounters between consenting adults, including prostitution (all “adultery” under the Penal Code), but also the punishment of much more serious crimes like incest involving children, and rape. The evidence required by the Sharia to prove *zina* is impossible: the eyewitness testimony of four adult male Muslims of good and pious character to the very act of penetration. Without such evidence you cannot convict of *zina*, unless the offender fully and freely confesses before the Court.<sup>157</sup> This evidentiary barrier is good as to ordinary adult fornicators and adulterers: as in most parts of the world, they are left under Islamic law to their own perdition. It is not good as to perpetrators of incest and rape, who should be caught and dealt with; but the law of *zina* can in the way. One way the police in many Sharia States seem to be getting around this is to charge many serious offences, like rape, to the Magistrates’ and High Courts, where they are tried under the Penal and Criminal Procedure Codes, where the law of rape does not carry such impossible evidentiary requirements as it does in the Sharia Courts under the Sharia Penal and Criminal Procedure Codes. This interesting subject is studied in more detail in the chapter of this work on “Court Reorganisation”, forthcoming. It is also true, however, that a number of convictions in the Sharia Courts for incest and rape have been reported – presumably based on the confessions of the perpetrators.<sup>158</sup>

5. As always in Nigeria, lax enforcement of the laws on the books already, not the particular laws that happen to be on the books, whether “English” or “Islamic” – is the real problem in the Sharia States as it is on all other parts of the country. To be strict about enforcing rules – i.e., if you like, to be strict about the rule of law, even when it pinches – is not yet very much a part of any of the many Nigerian cultures, including those of the Muslim North. Nigerians are a very forgiving people, perhaps in some matters too forgiving both of themselves and of others.

6. Strict enforcement of the laws related to the “social vices” examined in this chapter – with the exception of corruption – is surely not the most pressing thing the Sharia State Governments have to do. Drinking, gambling, chasing women, homosexuality, looking at dirty pictures – these are not very big problems for the Governments or for most of their constituents. The Governments rightly try to direct their States’ resources to more important problems, like improving infrastructure, education, and the public health.

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<sup>157</sup> There is a third way: pregnancy in an unmarried female, as to which see Chapter 6.

<sup>158</sup> See G. Weimann, “Judicial Practice in Islamic Criminal Law in Nigeria 2000 to 2004 – A Tentative Overview”, *Islamic Law & Society*, 14/2 (2007), 240-286, comprehensively surveying what is publicly known about the imposition and execution of “Islamic” sentences by the Sharia Courts in the years 2000 to 2004; quite a few rape and some incest cases are reported.

7. At the same time, it is perhaps true to say that the new laws have worked some improvement in the moral climate in the Sharia States, or in some of them anyway: stands have officially been taken, and some efforts of enforcement are under way; these can be tightened. What most Sharia implementers say is that it is inevitably going to be a gradual and long process, and that progress is being made. In closing let us quote from the report from Kebbi State already quoted once before above:<sup>159</sup>

The impact of Sharia implementation has strengthened the consciousness of the people to abhor bribery and other corrupt financial practices. The attitude of our traders in the market is also gradually changing for the better. People insist on standard measures and the use of scales. Lost but found properties are being returned to their owners. ... The current administration's commitment to develop and harness human and material resources, as well as the judicious use of public funds, is hinged on the principle of Sharia. Our leadership has always been guided by the need to be Sharia compliant in all our dealings. This was clearly echoed in his Excellency's inaugural speech at the swearing-in ceremony ushering in his second term. He said and I quote: "As a Government committed to the implementation of the Sharia system in our society, we must set high moral and ethical standards in both our private and official conducts." ... The level of compliance with the Sharia in our private and official conducts leaves no one in doubt of the need to redouble the current efforts towards the total appreciation of all its provisions. This is by no means an easy task but we are determined to continue with the struggle as a prerequisite of being vicegerents of Allah on earth, *insha* Allah.

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<sup>159</sup> An unnamed representative of the Governor of Kebbi State, address delivered at the National Conference on Leadership, State & Society under the Sharia in Nigeria: The Dividends, see nn. 133 and 134 *supra* and accompanying text.

## Chapter 3 Part III

### Sharia Implementation and Female Muslims in Nigeria's Sharia States

*Jamila M. Nasir\**

#### 1. Introduction.

A great many female Muslims live in the twelve Sharia States of Northern Nigeria – nineteen or twenty million of them altogether. Of these, about 44% – between eight and nine million – are girls under 15 years old.<sup>160</sup> The aim of this essay is to give a survey, first, of available generalisations about the condition under which all these girls and women live; then of some of the roles that Muslim women played and are playing in the Sharia implementation programme begun in 1999; and finally of the ways in which some of the laws affecting girls and women were changed as part of this programme. Let me emphasise the word “survey”. I have touched on quite a wide range of topics, and at the same time tried to stick quite close to the facts, bringing in only briefly, if at all, the many debates – philosophical, theological, jurisprudential, empirical, policy-related – that surround almost every topic touched on. Every single topic bears further investigation and analysis in depth, not provided here. This is a survey, wide but shallow. If it helps to stimulate further work in depth, that will be all to the good. There is in fact already a literature on the women of Northern Nigeria, particularly the Hausa, to which the reader is referred.<sup>161</sup>

Two subjects are excluded from this essay:

Sharia implementation and non-Muslim females. There are varying numbers of non-Muslims in the Sharia States: cumulatively about fourteen million.<sup>162</sup> About half of these are girls and women. Most are Christians of one denomination or another, but some are practitioners of African Traditional Religions or other faiths. Sharia implementation will no doubt have had some impact on some of these women, particularly the ones living in the cities and large towns: for instance, early attempts in some Sharia States to enforce rules against women riding on commercial motorcycles, while they lasted, clearly affected

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<sup>160</sup> See the demographic data on Nigeria's Sharia States given in Vol. I, xix.

<sup>161</sup> For a sample of the literature see: B.J. Callaway, *Muslim Hausa Women in Nigeria: Tradition and Change* (Syracuse: Syracuse University Press, 1987); C. Coles and B. Mack, eds., *Hausa Women in the Twentieth Century* (Madison: University of Wisconsin Press, 1991); J. Barkow, “Hausa Women and Islam”, *Canadian Journal of African Studies* 6 (1973), 317-28; B. Cooper, “Gender and Religion in Hausaland: Variations in Islamic Practice in Niger and Nigeria”, in H.L. Bodman and N. Tohidi, eds., *Women in Muslim Societies: Diversity Within Unity* (London: Lynne Rienner Pub., 1998). Other works on specific subjects are cited in subsequent notes.

<sup>162</sup> Calculated from the demographic data on Nigeria's Sharia States, Vol. I, xix.

non-Muslim women.<sup>163</sup> But this essay does not further consider such effects, as to which (again) further research is called for.

Sexual immoralities. This essay does not deal with prostitution or with other cases of fornication and adultery, all of which, for Muslims, are and always have been crimes in the Sharia States. Changes in the laws of the Sharia States on these subjects, made as part of Sharia implementation, are discussed in detail in Part II of this chapter, and the new laws themselves are reproduced in Part IV.5. The complete court records in the two famous *zina* cases of Safiyatu Hussaini and Amina Lawal are reproduced in Chapter 6, with other information about the cases and citations to some of the literature on them.

## 2. Background on female Muslims in Nigeria's Sharia States.

In this part of the paper I want to try and sketch in a broad picture of the Muslim women of Northern Nigeria, building this up primarily around statistics found in a publication of Nigeria's National Population Commission (NPC) entitled *Nigeria Population Census 1991 Analysis: Gender and Sustainable Development*.<sup>164</sup> This publication analyses data gathered in Nigeria's 1991 population census, with some reference to other work published in the subsequent ten years to 2001 when the NPC analysis was published. Therefore most of the information on which the NPC generalisations are based is now over fifteen years old. But more recent statistical information, particularly information allowing one to distinguish Northern women, or Sharia State women, from other women elsewhere in Nigeria – which the NPC publication does – is very difficult to come by, if at all.<sup>165</sup> And the rate of social change is (and always has been) slower in the North than elsewhere in the country, so the old data are still likely to fit the Northern States quite well. But none of the statistical information I have seen includes “religion” as a variable at all, so it is impossible from such data to distinguish Muslim women, wherever located, from the rest of the women – except in terms of their estimated numbers in the Sharia State populations already referred to. In sum, most generalisations about the Muslim women of the Sharia States must necessarily, to varying extents, be educated guesswork. Nevertheless the data do converge around certain themes, and they can be supplemented with other materials which help round out the picture.

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<sup>163</sup> We have e.g. this report from Zamfara State, taken down by one of our researchers, Prof. Musa Gaiya, during interviews with Christian leaders in Gusau in January 2003: “A clear case of the infringement of Christians' rights is the Gusau Local Government's bye-law banning women from riding motorcycles. Christian women who were seen on motorcycles were molested. A pastor's wife, Mrs. Bature, was beaten because she rode on a motorcycle. A pregnant woman was beaten when she was being conveyed to the hospital. She was in labour. She almost gave birth on the street. CAN [Christian Association of Nigeria] condemned in strong terms the application of the bye-law to Christians and we added that Christians would not obey such a law because it was not meant for them.”

<sup>164</sup> Abuja: NPC, 2001. Pages of this report hereafter referred to in the text as “NPC nn”.

<sup>165</sup> Some data from Nigeria's 2006 population census is available (population figures by State, see [http://en.wikipedia.org/wiki/Demographics\\_of\\_Nigeria](http://en.wikipedia.org/wiki/Demographics_of_Nigeria)), no further analysis of the data collected has yet been published. 2005 statistics on quite a number of subjects are available from UNICEF, see [http://www.unicef.org/infobycountry/nigeria\\_statistics.html](http://www.unicef.org/infobycountry/nigeria_statistics.html), but none of this is broken down by Nigerian region or state and only a few items are broken down by rural/urban. Other available data have similar deficiencies.

a. Rural vs. urban. One important consideration is that a fairly high percentage of Nigeria's people live in "rural" as opposed to "urban" areas, as these terms are defined by the demographers. The 1991 census put the rural population at 64% for all of Nigeria (calculated from the table on NPC 11). Probably the figures are higher in most Northern States than in most others, so the North's population is still predominantly rural, and farming and farm-related work are among many peoples' principal activities. In general, "There are more women than men in the rural areas. In the urban areas there are more men than women" (NPC 7). "This suggests that in Nigeria more males than females migrate out of their home villages to urban centres" (NPC 11). "Most elderly men and women live in rural areas" (ibid.). "For both sexes, the population of dependent children (0-14) is higher in rural than in urban areas" (ibid.). Although the NPC report does not say this, the rural areas also suffer by comparison with the urban areas in terms of all forms of infrastructure like roads, electrification, telecommunications, and health and educational facilities. UNICEF data for 2004 give a bit of further information (pan-Nigerian) about the rural vs. the urban populations:<sup>166</sup>

|   | Urban | Rural |
|---|-------|-------|
| % of population using improved drinking water sources, 2004 | 67    | 31    |
| % of population using adequate sanitation facilities, 2004  | 53    | 36    |

b. Literacy; education. "[L]iteracy rates are higher for males than for females" (NPC 29).<sup>167</sup> "Urban males and females are more literate than their rural counterparts" (ibid.).<sup>168</sup> "Literacy rates are higher in the southern states" (ibid.). In particular, of the twelve States with the lowest literacy rates in 1991 (counting two 1991 States, Bauchi and Sokoto, twice each, as they were both split in 1995), ten were Sharia States; Yobe came last with male and female literacy rates of 42.6% and 20.9%, respectively (NPC 35). "The widest gender gap in literacy is found in the northern states, a result of the historical reluctance to enrol females in school" (NPC 29). Reasons given for this reluctance include early marriage; the view that "a woman's place is in the home"; the belief that females do not need education for the kinds of work that they will do in life; to some extent the practice of female seclusion; and various fears of "excessive emancipation": "that educated women do not make 'good' (submissive?) wives; that they are morally corrupt or promiscuous; that they are barren...; that educated girls will reject parental choice of husbands; that they will find it difficult to get a husband" (NPC 39-40, quoting Federal Ministry of Education 1989 *Blueprint on Women Education in Nigeria*). As with literacy, levels of educational attainment are also higher for men than for women, and higher in the southern states than in the northern ones (NPC 41 and 43). Although even in the North, Primary School enrolment is higher for females than for males, at all higher educational levels, beginning with Junior Secondary School, Northern females quickly fall behind, and do so faster and farther than Southern females do (NPC 43). "Marked differences appear at the Senior Secondary, Technical and higher levels of education

<sup>166</sup> From [http://www.unicef.org/infobycountry/nigeria\\_statistics.html](http://www.unicef.org/infobycountry/nigeria_statistics.html).

<sup>167</sup> The table on p. 31 indicates that for all age-groups undifferentiated by location 65.7% of males and 47.8% of females are literate.

<sup>168</sup> The table on p. 37 indicates that for all age-groups 57% of rural males and 39% of rural females are literate, as opposed to 80% and 64% of urban males and females.

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[Poly/College and University] where there were more males than females” (NPC 41). In the North, the highest educational attainments of large percentages of both males and females are outside the “Western” educational system, in a category called “Others” and said to be “mostly Koranic and other religious education”:

| <b>Educational Attainment</b>                           | <b>Total %</b> | <b>Male %</b> | <b>Female%</b> |
|---|----------------|---------------|----------------|
| <b>North East Region</b>                                |                |               |                |
| ...   |                |               |                |
| Others [“mostly Koranic and other religious education”] | 37.9           | 36.9          | 39.9           |
| <b>North West Region</b>                                |                |               |                |
| ...   |                |               |                |
| Others  | 33.1           | 32.0          | 34.7           |
| <b>South East Region</b>                                |                |               |                |
| ...   |                |               |                |
| Others  | 6.6            | 6.2           | 7.0            |
| <b>South West Region</b>                                |                |               |                |
| ...   |                |               |                |
| Others  | 6.6            | 6.1           | 6.8            |

In other words, in the Muslim North large numbers of both boys and girls are receiving at least the rudiments of an Islamic education – and this is the highest education they do receive. This includes some instruction in the Arabic language, at least as part of learning the Qur’an. But for purposes of the NPC study, “literacy” was defined as “the ability to read and write with understanding in any language local or foreign” (NPC 29), and as we have seen even using this broad definition literacy rates are low in the North, especially among females. There are large literatures on the history and problems of education in Northern Nigeria in general,<sup>169</sup> and on the education of Muslim women in particular,<sup>170</sup> to which the reader is referred.

<sup>169</sup> A sample, with thanks to Chikas Danfulani: A.B. Fafunwa, *A History of Education in Nigeria* (Ibadan: Ibadan University Press, 1991); D.H. Williams, *A Short Survey of Education in Northern Nigeria* (Kaduna: Northern Region Ministry of Education, 1959); A. Ozigi and L. Ocho, *Education in Northern Nigeria* (London: George Allen and Unwin Ltd., 1981); M. Hiskett, “Islamic Education in the Traditional and State Systems in Northern Nigeria”, in G. Brown and M. Hiskett, eds., *Conflict and Harmony in Education in Tropical Africa* (London: George Allen and Unwin Ltd., 1975), 134-51; M. Bray, *Universal Primary Education in Nigeria: A Case Study of Kano State* (London: Routledge and Kegan Paul, 1981); M.S. Umar, “Education and Islamic Trends in Northern Nigeria: 1975-1990”, *Africa Today*, 48 (2001), 127-150 and “Islamic Arguments for Western Education in Northern Nigeria”, *Islam et Societes au Sud du Sahara* 16 (2002), 85-106.

<sup>170</sup> A sample, again with thanks to Chikas Danfulani: P.K. Tibenderana, “The Beginning of Girls’ Education in the Native Administration Schools of Northern Nigeria, 1930-1945”, *Journal of African History*, 26 (1985), 93-109; J. Trevor, “Western Education and Muslim Fulani/Hausa Women in Sokoto, Northern Nigeria”, in Brown and Hiskett, *Conflict and Harmony in Education in Tropical Africa*, 247-70; M. Csapo, Religious and Economic Factors Hindering the Education of Girls in Northern Nigeria”, *Comparative Education*, 17 (1981), 311-319; B. Callaway and S. Enid, “Law, Education and Social Change: Implications for Hausa Muslim Women in Nigeria”, in L.B.

c. “Economic work”.

i. Female labour force participation. The NPC data on labour force participation distinguish between “people in the labour force” – i.e. those actually employed or seeking employment in “economic work”<sup>171</sup> – and “people in the economically active population” i.e. *all* those 10+ years of age. The ratio between the labour force and the economically active population is called the “refined activity rate” (RAR). The data indicate that for all of Nigeria the RAR for males was 58.9%, while for females it was only 34.3% – i.e. a much larger percentage of economically active males than females were employed or seeking employment. (NPC 54-56). “Female labour force participation rates are higher in the southern than in the northern states” (NPC 47). In fact, twelve of the thirteen States with the lowest female RARs are the twelve Sharia States, ranging from Katsina, with a female RAR of 6.6%, to Borno at 22.4% (NPC 56, again counting Bauchi and Sokoto twice so as to include Gombe and Zamfara). This “gives the impression that women were not particularly active”, which is likely to be misleading in various ways; among other things, “defining women’s participation in economic activity is especially difficult in rural agricultural economies”, which the Sharia States predominantly are (NPC 48).<sup>172</sup> Certainly the millions of poverty-stricken Muslim women and girls throughout the rural North who spend their days gathering firewood, fetching water, caring for children and the elderly, and cooking for large numbers of people, would be surprised to hear they are not particularly active. To the extent that the low RARs for Northern females reflect reality, this is attributed to “the effects of factors such as history, religion and other socio-cultural practices” (NPC 67, mentioning such practices as *purdah*, Hausa *kulle*), marriage and child-bearing and consequent confinement to home-related work, and the loss of face some husbands might feel if their wives worked outside the home). As to which percentages of people who are in the labour force do which kinds of work, “Men dominate in gainful employment in all

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Iglitzen and R. Ross, eds., *Women in the World, 1975-1985: The Women’s Decade* (Santa Barbara: ABC Clio Press, 1985), 181-205; N.N. Knipp, *Women’s Western Education and Change: A Case Study of the Hausa-Fulani of Northern Nigeria* (Ph.D. dissertation, Northwestern University, 1987); F. Lawson, *Islamic Fundamentalism and Continuing Education for Hausa Muslim Women in Northern Nigeria* (Ph.D. dissertation, University of Minnesota, 1989); F.S. Niles, “Parental Attitudes Towards Female Education in Northern Nigeria”, *Journal of Social Psychology* 129 (1989).

<sup>171</sup> “Economic work” is defined as “any activity for which the respondent received some pay or remuneration, profit or which generated family gains at any time during the reference period” (p. 47), thus evidently excluding subsistence farming and activities related thereto, and all the work of keeping households going – gathering firewood, fetching water, etc. – that has to be done in poverty-stricken rural economies. The NPC recognises the difference between its definition of “economic work” and the definition of work used in the UN Report on Women, which “includes subsistence production of goods for their own households and non-economic activities such as domestic work, family and elder care, construction or repair of owner-occupied buildings, and volunteer work for which individuals receive no remuneration” (ibid.). See also next footnote.

<sup>172</sup> A text box on NPC 49 discusses some of the difficulties of measuring women’s labour force participation. See also p. 58: “[I]n Nigeria males often undertake the preparation of land for cultivation, and are regularly regarded as *‘the farmers.’* Agricultural activities of women, for example, planting, harvesting and processing of the harvested products, may not be recorded directly as agricultural work. Hence, women’s contributions in agriculture are often relegated to the background and assumed to lag behind those of men....”

occupational categories except in sales and service” (NPC 47). A full 39.4% of women in the labour force are employed in “sales”, as opposed to 12.3% for men; these numbers are representative of the average for the Sharia States as well as for the rest of the country (NPC 59).

ii. Hawking by young girls. A great deal of the sales activity of women is petty trading or, in the case of many young girls, the hawking of small items – groundnuts, biscuits, oranges, etc. – by carrying them on their heads on trays from place to place around the town. There are many worries in the Muslim community about this hawking by young girls. On the one hand, “mothers support girls in going out hawking because of the benefit they receive from the proceeds. The proceeds can be used [among other things] to bring *kayan daki* (marriage trousseau) for the girl and other preparations for the girl’s marriage.”<sup>173</sup> But for the girls the consequences can be dire. They may start as early as 7 a.m. and close at 5 or 6 p.m. They are withheld from school, so their educations suffer. Worse, they are sometimes lured into prostitution at that early age, selling themselves for the equivalent of \$1 or less to gatemen at private houses, workers on building construction sites, and so on. Sometimes they become pregnant.<sup>174</sup> There have been efforts in the past in the North to control hawking by young girls.<sup>175</sup> But the practice still persists, as will indeed be visible to any traveller in Northern towns and cities.

iii. Income levels. The NPC data do not include information on income levels. I insert here some UNICEF information on Nigerian per capita and household incomes, unfortunately not broken down by location:<sup>176</sup>

|  |      |
|--|------|
| GNI per capita (US\$), 2005                              | 560  |
| GDP per capita average annual growth rate (%), 1970-1990 | -1.4 |
| GDP per capita average annual growth rate (%), 1990-2005 | 0.7  |
| % share of household income 1994-2004*, lowest 40%       | 15   |
| % share of household income 1994-2004*, highest 20%      | 49   |
| Average annual rate of inflation (%), 1990-2005          | 23   |
| % of population below \$1 a day, 1994-2004               | 71   |

<sup>173</sup> E. Schildkrout, “The Employment of Children in Kano (Nigeria)”, in G. Rodgers and G. Standing, eds., *Child Work, Poverty and Underdevelopment* (Geneva: ILO, 1985), 81-113, quoted in I.N. Sada, F.C. Adamu and A. Ahmad, eds. *Promoting Women’s Rights through Sharia in Northern Nigeria* (Zaria: Centre for Islamic Legal Studies, Ahmadu Bello University, 2005), available at [www2.dfid.gov.uk/pubs/files/promoting-women-sharia.pdf](http://www2.dfid.gov.uk/pubs/files/promoting-women-sharia.pdf), 9.

<sup>174</sup> See letter from Buhari A. Gabari on female hawking in Kano, *New Nigerian*, 15<sup>th</sup> February 2006, 17. See also Chapter 2, 52.

<sup>175</sup> Sokoto State Legal Notice No. 24 of 1977 (Control of Hawking); Katsina State Hawking (Control) Law of 1985, Cap. 57 of the 1991 Laws; Kano State Petty Trading (Prohibition of Female Juveniles) Law of 1988, Cap. 109 of the 1991 Laws; Jigawa State Petty Trading (Prohibition of Female Juveniles) Law, Cap. 110 of the 1998 Laws.

<sup>176</sup> From [http://www.unicef.org/infobycountry/nigeria\\_statistics.html](http://www.unicef.org/infobycountry/nigeria_statistics.html).

iv. Higher-paying jobs. But returning to the census data on who does what kinds of work: in the administrative/managerial category, male employment was 3% compared to 1.5% for females; for professional/technical workers the figures were 7.2% and 6.1%, respectively, with the numbers in both categories generally lower in the Sharia States (NPC 59). As to the better-paying jobs, requiring more education, the NPC volume includes an interesting essay by Aisha Umar Yusuf, a prominent journalist and publisher, written in 2000, describing the process by which the Muslim North is gradually being persuaded to open up to more education and better employment opportunities for girls and women; this is worth quoting at length.

[A] few families began to include the odd daughter or two in the annual school enrolment programme.... Subsequent government policies like free or subsidised education encouraged certain parents to send both their male and female children to school.... [W]hen the advantages of girl-child education began to manifest with young women taking up government appointments and living relatively better lives than their uneducated peers, many more families felt encouraged to send their female children to school. ... But there were still those who were not so impressed by the promise of a better life for their daughters into compromising their chastity.... NGOs helped to enlighten such communities that girl-child education does not in any way lead to wayward daughters but that lack of proper parental guidance and other societal influences do.... The next obstacle faced by the now educated Northern woman was her role in public life. Many husbands and fathers still said that education was acceptable but after getting the certificate, it's back to the house for girls. Still more enlightenment campaigns followed.... A popular argument presented before those who opposed a working life for women is whether they would rather have men teaching their daughters in schools or attending to their wives in hospitals than fellow women? This helped the situation a little since most men readily acceded that it was a lesser evil to have their daughters work, than to have them perpetually at the mercy of men in such critical areas.... Today in almost all facets of human existence, the Northern Nigerian woman is there as a factor to reckon with in major professions like medicine, engineering, law, pharmacy, architecture and banking. Northern women of different tribes and religious affiliations are very visible indeed. So also in more liberal careers like teaching, nursing, journalism as well as commercial and trading ventures, Northern women can really be said to have come a long way.... Nigeria also celebrates Northern women in politics and academia. Though ministerial appointments and their likes at the State and Local Government levels are dismissed as mere tokenism by women empowerment NGOs, it is still a pointer to how far women have come especially in this part of Nigeria.<sup>177</sup>

v. Women in politics. Speaking of women in politics, let me pause to give the scorecard of how women from the Sharia States fared in the 2007 elections to Federal and State offices, as best I have been able to determine it. Appointments of women from these States to President Yar'Adua's cabinet are also shown.

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<sup>177</sup> A.U. Yusuf, "The New Northern Woman", *Weekly Trust*, 25<sup>th</sup>-31<sup>st</sup> August 2000, quoted in NPC 67-68.

SHARIA IMPLEMENTATION AND FEMALE MUSLIMS IN NIGERIA'S SHARIA STATES

**Sharia State Females in Selected Offices: 2007<sup>178</sup>**

| State   | Federal Senate | Federal House of Reps | Federal Ministers | Govs/ Deputy Govs | State Houses of Assembly |
|---------|----------------|-----------------------|-------------------|-------------------|--------------------------|
| Bauchi  | 0/3            | 0/12                  | 0/1               | 0/2               | 2/31                     |
| Borno   | 0/3            | 0/10                  | 0/1               | 0/2               | 0/28                     |
| Gombe   | 0/3            | 0/6                   | 1/1               | 0/2               | 0/24                     |
| Jigawa  | 0/3            | 0/11                  | 0/1               | 0/2               | 0/30                     |
| Kaduna  | 0/3            | 1/16                  | 0/0               | 0/2               | 2/34                     |
| Kano    | 0/3            | 0/25                  | 0/2               | 0/2               | 0/40                     |
| Katsina | 0/3            | 0/15                  | 0/1               | 0/2               | 0/34                     |
| Kebbi   | 0/3            | 1/8                   | 1/1               | 0/2               | 0/24                     |
| Niger   | 1/3            | 0/10                  | 0/1               | 0/2               | 2/27                     |
| Sokoto  | 0/3            | 0/11                  | 0/1               | 0/2               | 0/30                     |
| Yobe    | 0/3            | 0/6                   | 0/1               | 0/2               | 0/24                     |
| Zamfara | 0/3            | 0/7                   | 1/1               | 0/2               | 0/24                     |
| Totals  | 1/36           | 2/137                 | 3/12              | 0/24              | 6/360                    |

These numbers are of course pitiful. The next table adds some national and historical perspective:

**Total Females in Selected Offices: 1999, 2003, 2007<sup>179</sup>**

| Elected or appointed in: | Federal Senate | Federal House of Reps | Federal Ministers | Govs/ Deputy Govs       | State Houses of Assembly |
|--------------------------|----------------|-----------------------|-------------------|-------------------------|--------------------------|
| 1999                     | 3/109          | 13/360                | 5/47              | Govs: 0/36<br>DGs: 3/36 | 12/990                   |
| 2003                     | 4/109          | 21/360                | 6/40              | Govs: 0/36<br>DGs: 3/36 | 39/990                   |
| 2007                     | 9/109          | 32/360                | 8/42              | Govs: 0/36<br>DGs: 6/36 | 53/990                   |

So it appears that some small progress is being made at the national level. Nevertheless, the data clearly show the continuing monopoly of political power at all levels by males, all over the country.

<sup>178</sup> Senate: [www.nassnig.org/senate/](http://www.nassnig.org/senate/); House of Reps: [www.nassnig.org/House/](http://www.nassnig.org/House/); Ministers: [www.guide2womenleaders.com/Nigeria.htm](http://www.guide2womenleaders.com/Nigeria.htm) and [www.newswatchngr.com/editorial/allaccess/nigeria/10730171737.htm](http://www.newswatchngr.com/editorial/allaccess/nigeria/10730171737.htm); Govs/Deputy Govs and Houses of Assembly: telephone calls to the National Orientation Agency or other contacts in each State, with thanks to Messrs. Bulus Dabit and Emmanuel Igomu for their assistance with this. Mrs. Saudatu Mahdi, the Secretary-General of WRAPA, also provided numbers for the Houses of Assembly, for which I am grateful; I have used her numbers in cases of conflicts with other sources.

<sup>179</sup> Senate, House of Reps and Houses of Assembly for 1999 and 2003: O. Nzeshi, "Women, Still Underdogs in Nigerian Politics", *ThisDay*, 11<sup>th</sup> May 2007, 9. Ministers for 1999 and 2003: *Nigeria Standard*, 1<sup>st</sup> July 1999, 1 and *ThisDay* 17<sup>th</sup> July 2003 1. Senate, House of Reps and Ministers for 2007: websites mentioned in previous note. Govs and Deputy Govs all years: per Messrs. Dabit and Igomu. Houses of Assembly for 2007: Mrs. Saudatu Mahdi.

d. Family life. It is in this field that Muslim women's rights activists have focussed many of their efforts: in the struggle to adjust ways of thinking about and structures of power and control within families, in order to make males and females more equal partners in the family enterprise from youth to age: gender equity in short. In Nigeria the family, including the still-thriving extended family, is at the heart of society, and making family life fairer for women will make all of life fairer for them. This struggle has many dimensions.

i. Marriage. Almost everybody in Nigeria gets married at least once. "The 1991 census data show that only 3.3% of Nigeria's population aged 45-49 had never been married at the time of the census" (NPC 20). The figure for females is even lower: only 2.2% of females aged 45-49 had never been married (NPC 21). Most marriages are under customary law or, in the case of Muslims, under Islamic law (*nikah*); no records are kept of such marriages in any government office.<sup>180</sup> Many Nigerians, especially the men, get married several times during the course of their lifetimes, because of widespread polygyny, and (among both men and women), because of divorce and remarriage. Both of these factor are discussed in more detail below.<sup>181</sup>

ii. Early marriage for females. "Females enter marital unions at earlier ages than males: more than two thirds are married by age 24. In contrast, only one in five males is married by that age" (NPC 7). A table, partially reproduced here, bears this out.<sup>182</sup>

| Age Group (years) | % Married |        |
|-------------------|-----------|--------|
|                   | Male      | Female |
| 10-14             | 3.9       | 7.0    |
| 15-19             | 6.2       | 35.1   |
| 20-24             | 22.1      | 67.8   |
| 25-29             | 50.3      | 83.8   |
| 30-34             | 75.6      | 89.9   |
| 35-39             | 86.9      | 89.3   |
| 40-44             | 90.3      | 85.0   |
| 45-49             | 91.8      | 78.1   |
| 50-54             | 92.1      | 70.1   |
| 55-59             | 92.1      | 61.3   |
| 60-64             | 90.0      | 53.3   |

<sup>180</sup> According to a 2005 survey by DFID, 76% of Muslim respondents were married under Islamic law and 18% more were married under customary law. British Council Development Services, "Results of Women's Rights Survey, Muslim Respondents Only", July 2005 (PowerPoint presentation, copy in the possession of the author), slide 8. The results of the national survey, not limited to Muslim respondents only, is available at <http://www.gsdrc.org/go/topic-guides/justice/safety-security-and-access-to-justice>, "Results of Women's Rights Survey".

<sup>181</sup> And see L.M. Solivetti, "Family, Marriage and Divorce in a Hausa Community: A Sociological Model", *Africa* 64 (1994), 252-271.

<sup>182</sup> NPC 21. See also *New Nigerian*, 18<sup>th</sup> November 2003, 20, reporting that according to the 2003 National Democratic and Health Survey (NDHS), at least 25 percent of Nigerian girls are married off before the age of 15 years.

The NPC analysis does not break these data down by State, but it is clear that the percentages of females married off very young – to much older men – are higher in the Muslim North than elsewhere in the country. As we have seen this is one factor that stands in the way of girl-child education in the North. It also contributes to serious public health problems, notably vesico-vaginal fistula (VVF). This condition, which is associated with early pregnancy and child-birth, before the girl's body has properly matured, results in an uncontrollable passage of faeces or urine through the vagina. It leads in many cases to early divorce by their husbands of affected girls, and leaves the girls incapable of further pregnancy or child-birth, which in turn reduces their chances of remarriage. Its incidence in Northern Nigeria is very high.<sup>183</sup>

Women's rights activists are addressing the problem of the early marrying-off of girls in at least two ways. One is to attack "the gross abuse of the power of *ij'bar* (the right of a father or his legal substitutes to give the hand of a daughter in marriage without necessarily obtaining her consent.)"<sup>184</sup>

Regarding the power of *ij'bar*, women expect the curtailment of the power to only the biological father, and even then, subject to no obvious potential worldly gains by him. This will curtail the brazen violation of the right of a girl to consent to her marriage and will also reduce the incidence of "forced" marriage, a common cause for runaway brides who mostly end up in prostitution or become disoriented about marriage all their lives.<sup>185</sup>

Another tool in the fight against early marriage is Nigeria's Child Rights Act, the domesticated version of the UN Convention on the Rights of the Child. The most controversial provision of the Child Rights Act has been one putting the minimum age for marriage at eighteen years. The interesting story of how the Act has fared so far is well told in the following report:

Nigeria ratified the Convention on the Rights of the Child (CRC) on April 16<sup>th</sup>, 1991.... In 1996, Nigeria submitted its first Report on the Implementation of the CRC to the UN Committee on the Rights of the Child.... One of the major recommendations made by the Committee was to finally ensure the domestication of the CRC, as this is necessary for its full implementation under Nigerian law. A first Bill on Children's rights had already been elaborated in 1993, but could not be passed into law by the military government because of opposition from religious groups and traditionalists. A special committee was subsequently set up to "harmonise the Children's Bill with Nigerian religious

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<sup>183</sup> See *New Nigerian*, 8<sup>th</sup> November 2006, 26: "The United Nations Population Fund (UNFPA) recently stated that about 800,000 cases of VVF are recorded in Nigeria annually and with 20,000 new cases added each year. In places like Kano an average of about 30 new cases are now recorded daily."

<sup>184</sup> S. Mahdi, "Sharia and Women in Nigeria: The Expectations", a paper presented at the international conference on "The Implementation of Sharia in a Democracy: The Nigerian Experience", organised by the Centre for Islamic Legal Studies, Zaria and the Center for Islam and Democracy, Washington, D.C., held at Abuja 7<sup>th</sup>-9<sup>th</sup> July 2004, copy in the possession of the author, p. 3.

<sup>185</sup> *Ibid.*, 5-6.

and customary beliefs.” The Bill, providing for the rights and the responsibilities of children in Nigeria, as well as for a renewed system of juvenile justice administration, was rejected by the Parliament [i.e. National Assembly] in October 2002 – again on grounds of its contents being contrary to Islamic values, traditions and culture. “The main objection targeted a provision setting 18 years as the minimum age for marriage. This was [said to be] incompatible with religious and cultural traditions in various parts of the country, where [girls] are given in marriage at a younger age.” Many national and international NGOs, as well as other sectors of the civil society in Nigeria, criticised this decision and forced the legislator to reconsider its decision to oppose to the Child Rights Bill [sic]. Finally, it was adopted in September 2003. ... Nonetheless, very few States have passed the Child Rights Act into law so far.<sup>186</sup>

The minimum age for marriage set in the Act continues to be one of the principal reasons why up to date it has proved very difficult to persuade Northern Houses of Assembly to ratify it. A 2005 speech by Hajiya Inna Mariam Ciroma, then the Federal Minister of Women Affairs, gives an indication of the nature of the debate:

“It is erroneously believed that if a girl does not marry earlier than 18 years of age, she will not be able to produce [more than] two or three children. Those who hold this belief also conjure that it is a ploy to introduce Western standards with the ultimate aim of reducing the Muslim population”, she said. She added, “Your Excellency [the Governor of Borno State], you and I know that nothing could be further from the truth given that a woman is productive until she reaches menopause and assuming a 3 year interval between pregnancies, the average woman who gets married between ages 18 and 20, is capable of having at least 8 children if Allah so permits.”<sup>187</sup>

iii. Polygyny. The NPC census data do not go into the question of polygyny. I simply state briefly a few propositions on the subject. Polygyny has from time immemorial been sanctioned in the customary laws of all Nigerian ethnic groups; it is also sanctioned under Islamic law; and traditionally, high percentages of males of every tribe and kindred have been polygynists. Correspondingly high percentages of females have traditionally married into households which were already polygynous at the time of the marriage or subsequently became so. Although under the influence of economic change and Christianity open polygyny is declining among other religious groups, it is probably not doing so – or not much, anyway – among the Muslims, who according to Islamic law – i.e. divine, not merely customary law – are allowed and even encouraged to have up to four wives at a time, and frequently do have at least two or three.<sup>188</sup> Together

<sup>186</sup> E.E.O. Alemika et al., *Rights of the Child in Nigeria: Report on the implementation of the Convention on the Rights of the Child by Nigeria*, prepared for the UN Committee on the Rights of the Child, 38<sup>th</sup> Session, Geneva, Jan. 2005, available at [http://www.cleen.org/nigeria\\_ngo\\_report\\_OMCT.pdf](http://www.cleen.org/nigeria_ngo_report_OMCT.pdf), pp. 4-5 (footnotes omitted).

<sup>187</sup> K. Nwezeh and M. Mohammad, “Islam is No Hindrance to Women Child's Rights – Gov”, *ThisDay*, 29<sup>th</sup> August 2005 (internet edition).

<sup>188</sup> According to the 2005 DFID survey already cited, 63% of male Muslim respondents had only one wife, 28% had two, 5% had three, and 3% had four. British Council Development Services, “Results of Women’s Rights Survey, Muslim Respondents Only”, slide 7.

with high rates of divorce and remarriage this implies quite a number of wives for many Muslim men over the course of their lives.

iv. Fertility and related matters. I simply quote several of the key findings of the NPC analysis of the data on “Gender and Reproductive Health” from the 1991 census, all quoted from NPC 70:

- “The fertility rate is still high in Nigeria and varies among the States. The Total Fertility Rate (TFR) for the country was 5.89 in 1991. The TFR ranges between 5.1 in Ogun State to 7.8 in Adamawa State. In general, fertility is higher in the northern than the southern states.”
- “Total Fertility Rate decreases with increase in the number of years spent in school. TFR for women with post secondary school education is 4.6 compared to 6.1 for women with no education.”
- “The lowest fertility rate (3.58) is found among women in administrative/managerial occupations. Women in the agricultural sector, with minimal education, have the highest TFR of 5.99.”
- “Infant Mortality Rate (IMR) is high in Nigeria. The national average is 93 infant deaths per 1000 live births and it is higher among male infants. High IMR is common in states where the proportion of births given by young women under age 20 is high.” In fact the five States with the highest infant mortality rates are all Sharia States, and the same five States also lead in the category of Child Mortality Rates (NPC 79 and 81).
- “Contraceptive prevalence is very low in the country.”
- “Female Genital Mutilation is practiced mostly in the southern parts of the country.”

v. Divorce. The divorce rate is also quite high particularly among the Muslims, where for a man divorce is easy: he may simply declare in an official tone that he is divorcing one of his wives and send her away (*talak*); he need not give any reason. Records of such divorces are not even officially kept so it is hard to know the rates at which men use it – but the complaints from the women suggest the rates are high, as this recent item from a Northern newspaper suggests:

In an effort to check the rampant cases of broken homes in Kano State, Voice of Divorcees, Widows and Orphans, an NGO, has called on the House of Assembly to enact a law that will stipulate heavy penalty on any man found to have unjustifiably divorced his wife. Most marriages get broken based on flimsy reasons, and it is the woman and children that suffer.<sup>189</sup>

A woman may also, theoretically at any rate, divorce her husband against his will, through the court, if she gives a reason the court will accept<sup>190</sup> and pays a compensation

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<sup>189</sup> *New Nigerian*, 14<sup>th</sup> September 2005, 11.

<sup>190</sup> The reason needn't be a very strong one: “There is also the well known case of Thabit bin Qasib and his wife, who asked for separation from Thabit because of his looks and the Holy Prophet allowed it requiring only of the wife the return of the garden Thabit gave her.” S.I. Nchi

to the husband, often set at the amount of the dower she received at the outset (*ketu*); or if she proves certain types of defects in the husband, such as impotence, insanity, or disease (*fashket*).<sup>191</sup> Women complain, however, that various factors conspire to prevent their using these avenues of escape from unwanted husbands as often as they might wish. “Provisions in Muslim family laws are blatantly violated, denied or ignored due to [cultural, economic and political factors that impair the enjoyment of women’s rights under Sharia]. Where their just application is available, there is a limitation to women’s access to the courts/mediation structures.”<sup>192</sup> I am aware of no data comparing rates of divorce separately for men and women – e.g., how many times, on average, do they (1) get married, and (2) get divorced, within their lifetimes: my guess is that the rates in both categories are much higher for men than for women. In any case the net result is that “at every age, females were at least twice as likely as males to be separated or divorced” (NPC 22). “Most males remain in marriage throughout their lives relative to most females who spend their older ages either divorced, separated or widowed” (NPC 7). The truth of this last statement is apparent from the table on p. 84 above, which shows the percentages of males who are married remaining high into the older age groups, while the percentages of females who are married steadily declines: this pattern continues into old age.

vi. Reasons for divorce. One reason women may wish to divorce their husbands is “their inability to secure enforcement of their right to maintenance and equity especially in [polygyny].”<sup>193</sup> The problem is not with the rights under Islamic law, which are very clear, but with their realisation and if necessary enforcement in practice. Another reason is that some husbands behave violently towards their wives.

Worst of all is the physical violation (wife battering) of women in gross violation of the symbolic stance of men’s right to “chastise” their wives. This is often without recourse to the laid-down actions [specified in the Qur’an] preceding the exercise of that avenue of correction.<sup>194</sup>

Unfortunately, men inclined to be violent towards their wives or others are to a large extent protected under the Northern Penal Code, the relevant section of which is worth quoting in full:

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and S.A. Mohammed, *Islamic Personal Law and Practice in Nigeria* (Makurdi: Oracle Publishing Company Ltd., 1999), 87.

<sup>191</sup> See Nchi and Mohammed, *Islamic Personal Law and Practice in Nigeria*, 87-97. There are further complications of the law of divorce, discussed amply in the source cited, which cannot be gone into here.

<sup>192</sup> S. Mahdi, “Sharia and Women in Nigeria”, 2; see also S. Mahdi, “Women’s Rights and Access to Justice”, in J. Ibrahim, ed., *Sharia Penal and Family Laws in Nigeria and in the Muslim World: Rights Based Approach* (Nigeria: Global Rights Partners for Justice, 2004), 173-182, detailing the problems Northern women have with access to justice; and see various of the essays in J.N. Ezeilo, M.T. Ladan and A. Afolabi-Akiyode, eds., *Sharia Implementation in Nigeria: Issues and Challenges on Women’s Rights and Access to Justice* (Enugu: Women’s Aid Collective, 2003).

<sup>193</sup> S. Mahdi, “Sharia and Women in Nigeria”, 2-3.

<sup>194</sup> Ibid., 3, citing Qur’an 4:34: “And for those on whose part you fear disobedience, admonish them and keep away from their beds and chastise them....”

55. (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 such child or ward being under eighteen years of age; or
  - (b) by a schoolmaster for the purpose of correcting a child under eighteen years of age entrusted to his charge; or
  - (c) by a master for the purpose of correcting his servant or apprentice such servant or apprentice being under eighteen years of age; or
  - (d) by a husband for the purpose of correcting his wife such husband and wife being subject to any native law or custom in which such correction is recognised as lawful.
- (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.

As Saudatu Mahdi among others has argued, this relic of the colonial days, a sanction for grown men to behave violently towards others including their wives and children, should be repealed.<sup>195</sup> Unfortunately, in the new Sharia Penal Codes, it has instead been perpetuated, in some States in even harsher form (quoted here from the Harmonised Sharia Penal Code Annotated and showing the variations among the States, see Chapter 4):

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;<sup>196</sup> or
  - (b) by a school master for the purpose of correcting a child entrusted to his charge;<sup>197</sup> or
  - (c) by a master for the purpose of correcting his apprentice such apprentice being under eighteen years of age;<sup>198</sup> or
  - (d) by a husband for the purpose of correcting his wife.

vii. Who are heads of households? – and the continuing strength of the patriarchy. When women are divorced, separated, or widowed, where do they go? The census data on distribution of heads of households by State and gender are revealing here. They show that the ten States with the lowest percentages of households headed by women are all Sharia States – ranging from 3.8% female heads of household in Kano State to 5.9% in Kaduna State. By contrast, in Delta State 32.5% of households are

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<sup>195</sup> Ibid.

<sup>196</sup> Gombe, Jigawa, Kano, Katsina, Kebbi, Yobe, Zamfara: “child or ward being under eighteen years of age”. Bauchi: “under the age of maturity”.

<sup>197</sup> Gombe, Jigawa, Kano, Katsina, Kebbi, Sokoto, Yobe, Zamfara: “child under eighteen years of age”. Bauchi: “under the age of maturity”.

<sup>198</sup> All Sharia States except Kaduna: “servant or apprentice”.

headed by females, and most other States are in the 20-30% range (NPC 19). In other words, in the Sharia States, most women by far, even if they are divorced, separated, or widowed, still live in households of which someone else – some male – is the head. This suggests the continuing strong hold of the old patriarchal social structure in the Muslim North, where most women are at least nominally members of some man's – her father's, her husband's, her brother's, or some other "guardian's" – household. In fact the patriarchy continues its hold all over Nigeria: women in all parts are at the mercy of men, who throughout the population are still able to control many aspects of their women's lives; and they – the men – often run things very arbitrarily, unreasonably and sometimes violently in their own favour, as many of the statistics we have been looking at quite clearly show. This is changing in all parts of the country. Women, including Muslim women, are gradually liberating themselves from the unfair control of men, which has up till now been customary in their societies. But it is changing faster in the south than it is in the Muslim North, which as ever is in many ways the most conservative party to the Nigerian federation.

e. Women's dressing.<sup>199</sup> The way women dress does not seem to have been much of an issue among Nigeria's Muslims until the mid-1970s. Up till then pretty much all girls and women, throughout the North in particular, from bottom to top of the social pyramid, dressed conservatively and modestly when outside the home and off the farm: the reader should think of the colourful wrappers, blouse and wrapper combinations, bou-bous, head-ties, etc. which spread throughout West Africa in the twentieth century. To these many Hausa women added the *gyale*, a light cloth, often silky or filmy in texture, perhaps one metre wide by two metres long, thrown over one shoulder, or over both shoulders from front to back or back to front, or draped over the head and down across the front, as the wearer's mood might dictate; in other parts of the North this light outer wrap came in different sizes and styles. Fashions could change – in terms of textiles, print designs, head-tie-tying styles, and so on. But the basic modest mode of dressing was quite consistent, and there does not seem to have been much worry among pious male Muslims about what the women were wearing.

But in the 1970s and 1980s at least two things changed. One was the expansion of the university system in the North, bringing new Federal universities to Sokoto, Maiduguri, Kano, Bauchi, Jos, Kaduna, Minna, Ilorin, and so on – all now in addition to the North's first university, Ahmadu Bello University in Zaria. This brought to these cities many modern young women from all parts of Nigeria, most of them non-Muslims, who came as students to the new universities (few Northern women could meet the admission requirements). These young women brought with them, and displayed publicly, many new ideas about female dressing – often anything but modest. There was therefore an increasing public presence of scantily-clad young females in Northern cities.

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<sup>199</sup> In addition to my own experience growing up and attending school and university in the post-colonial North, this section of the paper also draws on H. Mahdi, "The *hijab* in Nigeria, the woman's body and the feminist private/public discourse", a paper presented at the conference on Islam and the Public Sphere in Africa, sponsored by the Institute for the Study of Islamic Thought in Africa (ISITA), Northwestern University, 17<sup>th</sup>-19<sup>th</sup> May 2007, copy in the possession of the author, with thanks to Hauwa Mahdi.

This definitely did upset conservative Muslim males, and probably many other people as well, and there was bound to be a reaction.

The Muslim reaction became part of the much wider upsurge of political Islam in the 1970s and '80s, which – along with the changing climate of Muslim opinion worldwide – had at least two main instruments in Nigeria. One was the work of Sheikh Abubakar Gumi and the organisation with which he was closely associated, *Jama'atu Izalatil Bid'ah Wa'ikamatis Sunnah* (The Islamic Organisation for Eradicating Innovation and Establishing Sunnah), widely known as Izala. Izala's ideology was Sunni, and within Sunni Islam, more or less Wahabi. The other main instrument was Sheikh Ibrahim Yaqoub Zaqzaqi and the organisation he led, the Islamic Movement of Nigeria (IMN). This added “an Iranian Shi'i dimension to political Islam in the country.”<sup>200</sup> Each of these organisations had definite opinions about women and their roles. And one of the messages of both organisations was not just that women, including university students, should reject decadent Western styles and return to traditional modest modes of dressing, but more specifically that women – Muslim women at any rate – should adopt something up to then not much used in Nigeria – the *hijab*. Going well beyond the traditional modest dress of West African women including head-tie and *gyale*, the *hijab* imposes, on top of everything else, a further plain covering drawn tightly around the face and draping loosely down to the knees or so. As time went on one saw increasing numbers of Muslim women and girls wearing the *hijab*, and the subject of the *hijab* became an important matter of debate in Muslim circles in Nigeria as elsewhere in the world.

From the later part of the 1970s one could observe women, usually young, with the *hijab* in institutions of higher education in Nigeria. Because of where and who the wearers were, one could infer that the *hijab* has its origins in the values of the urban middle class. By the late 1980s, its use had spread to other classes of urban women and gradually to some of their rural sisters. By the 1990s, the idea of the *hijab* has played a role in the challenges posed to some federal and states' governments' uniforms policy in the public service sector such as the nursing profession. With the introduction of Islamic law in 1999 [i.e. Sharia implementation], some of the Muslim states introduced the *hijab* as a compulsory part of girls' uniforms in state schools. Thus, overall the dress change has become visually louder in the Nigerian public space and is fast becoming a compulsory part of female dressing.<sup>201</sup>

I shall return to this subject below when changes in the laws in the Sharia States especially affecting women are examined.

f. Women's organisations. I guess that most Nigerians, including most Muslim women, belong to at least two or three different social groups organised around common interests – ethnic, religious, occupational, gendered, or other. There are women's wings of many predominantly male organisations, like the Islamic Movement of Nigeria mentioned above. One large umbrella organisation of such religiously-centred

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<sup>200</sup> Ibid., 17.

<sup>201</sup> Ibid., 2.

groups, the Federation of Muslim Women's Associations in Nigeria (FOMWAN), has over 500 member organisations:

FOMWAN's aim is to promote the understanding and practice of the teaching of Qur'an and Sunnah through:

- a. education of women in the teachings of Islam;
- b. encouraging Muslim women to establish groups throughout the country for educational and Da'awah purposes;
- c. establishing a framework for national cooperation and unity among women Islamic associations;
- d. providing a forum for Muslim women's views to be expressed at national and state levels.<sup>202</sup>

But there are also associations, of market-women, women farmers, women lawyers, and other occupational groups;<sup>203</sup> and organisations struggling for the realisation of women's rights in general, like the Women's Rights Advancement and Protection Alternative (WRAPA),<sup>204</sup> BAOBAB for Women's Human Rights,<sup>205</sup> and the Voice of Divorcees, Widows and Orphans already mentioned. To some extent the Federal and State Governments are fostering these organisations. For instance, the Director of Women Affairs at the Kano State Ministry of Women Affairs and Social Development told our researchers in 2003 that

over 250 women NGOs work with the Ministry, including, for instance, FOMWAN and the Association of Muslim Women Doctors, who among other things visit with women in hospitals and provide free medical services. Many of the NGOs are formed to take advantage of government economic support programmes which give out soft loans used for the formation of cooperatives and other activities.<sup>206</sup>

Likewise, in Kaduna State

the Directorate of Women affairs [again within the State Ministry of Women Affairs and Social Development] networks with NGOs to fight anti-women policies or issues. Women are advocating for gender mainstreaming – not

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<sup>202</sup> L. Okunnu, "Women, Secularism and Democracy: Women's Role in the Regeneration of Society", a paper delivered at the Conference on Sharia held at the Commonwealth Centre, Commonwealth Institute, Kensington, London, 14<sup>th</sup>-15<sup>th</sup> April, 2001, available at [www.shariah2001.nmnonline.net/okunnu\\_paper.htm](http://www.shariah2001.nmnonline.net/okunnu_paper.htm), giving a great deal of further information about FOMWAN. There seem to be two FOMWAN-related websites, [www.fomwan.org/](http://www.fomwan.org/) and [www.themuslimwoman.org/entry/fomwan-working-for-nigerian-muslim-women/](http://www.themuslimwoman.org/entry/fomwan-working-for-nigerian-muslim-women/), neither of which would open when last checked (27<sup>th</sup> July 2007).

<sup>203</sup> See e.g. *New Nigerian*, 8<sup>th</sup> September 2005, 21, reporting a meeting chaired by the then-Federal Minister of Women Affairs and Social Development, Hajiya Inna Mariam Ciroma, for various women organisations in Borno State including the sorts mentioned.

<sup>204</sup> For information about WRAPA see <http://www.wrapifl.com/>.

<sup>205</sup> For information about BAOBAB see [www.baobabwomen.org/](http://www.baobabwomen.org/).

<sup>206</sup> Interview with Hajiya Amina Maude, Kano, 12<sup>th</sup> March 2003, by M. Gaiya, S. Fwatshak and K.A. Umar.

equality with men per se – in public offices. Part of the advocacy is that women should be given recognition as human beings and not just be used and dumped. Women are sensitized through workshops and seminars on their rights. They are advised to have good knowledge of their various religions and use it to defend their rights. In this advocacy campaign the Ministry works with women NGOs like FOMWAN, WRAPA, CAN [Christian Association of Nigeria] (WOMEN WING), BANTU FOR DEVELOPMENT, LEADS, GENDER ACTION TEAM, WOTCLEF. These organisations enlighten and educate women on their rights and take up issues of violations of the rights of women.<sup>207</sup>

In sum Nigerian women, including Muslim women of many different levels of educational attainment, occupations, and shades of opinion, have become increasingly active in the organised articulation and pursuit of their interests and their rights under the law, including Islamic law.

### 3. Roles of Muslim women in Sharia implementation.

a. Some generalisations about the attitudes of Muslim women toward Sharia implementation. Sharia implementation has unquestionably been primarily a “male thing”, conceived and driven along by core groups of Muslim men, who tapped into deep reservoirs of emotion among the Muslim masses. Muslim women too were carried along. As Muslims, mostly uneducated, how could they fail to follow their learned leaders, who promised so much betterment if only the *ummah* would return to conformity with the will of God? Moreover, the initial reactions of non-Muslims to the Sharia implementation programme were so violently negative that Muslims, including the women, were driven together into a large measure of unity; little space was left among them, at least at the beginning, for expression of doubt or debate about the details. This only opened up as time went on.

Let me give just two illustrations of the early reactions of women to the Sharia implementation programme. The first is an incident reported in the newspapers in December 1999 – after Zamfara State had got the ball rolling and intense pressure was building up on the Governments of other States to follow suit:

“Women protest delay in Sharia implementation in Kano”. Under the auspices of Women in Islam, an NGO, about 5,000 women stormed Government House, protesting the Government’s alleged foot-dragging in the full implementation of Sharia in the State. All the women can see are increased crime, thuggery, fuel hawking, exorbitant prices for food, alcoholism, and other anti-Sharia activities. They warned that Sharia might not realise its full potentials in the State until separate commuter vehicles for women are introduced. The Governor responded, saying there is no going back on Sharia implementation; there will be no half measures; but that care must be taken not to trample on the rights of non-Muslims and Christians.<sup>208</sup>

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<sup>207</sup> Interview with Mrs. Anna Gumwesh, a Deputy Director of the Directorate of Women Affairs, Kaduna, 8<sup>th</sup> November 2006, by S. Fwatshak and S.H. Liman.

<sup>208</sup> *The Guardian*, 13<sup>th</sup> December 1999, 6, here summarised not quoted.

This shows how Muslim women too were mobilised as part of organised campaigns pressing for Sharia implementation; the incident is set in the context of the Kano politics of the day in an essay by Dr. Ibrahim Na'ya Sada in another chapter of this work.<sup>209</sup>

The other illustration is a full-page advertisement taken out by FOMWAN in February 2000, signed by its National President and National Secretary. This “advertorial” stated that at its quarterly meeting held in Abuja on 28<sup>th</sup> and 29<sup>th</sup> January 2000, FOMWAN had adopted the following resolutions (here summarised not quoted):<sup>210</sup>

- FOMWAN appreciate the concern of various NGOs about the expansion of Sharia in parts of the country, particularly as it may affect women.
- FOMWAN believe this concern is largely misplaced, and urge all concerned to be humble and learn the tenets of Sharia from reliable sources rather than hold on to age-old misconceptions and misinformation.
- FOMWAN recognise that Nigeria is a multireligious and multicultural society and believe that in diversity lies our strength. We should therefore learn to show tolerance and mutual respect for our religious differences.
- FOMWAN support and salute the courage of the Governor of Zamfara State and other States that have responded to the yearnings of their predominantly Muslim populations by enlarging the scope of Sharia in their States. This is in keeping with the democratic principle that upholds the wishes of the majority.
- FOMWAN urge all States that are intending to enlarge the scope of Sharia to practice the system of *shura* (consultation) as prescribed in the Qur'an and practised by the Holy Prophet Muhammad so as to carry their people along with them.
- In interpreting and implementing the Sharia such States are urged to set an example of honesty, transparency and fear of Allah.

We see here remarkable restraint. There is a recognition of the concerns of non-Muslims about the potential adverse effects of Sharia implementation on women (expressed at the time by various women NGOs). But the non-Muslims are urged to calm down, to respect the beliefs and desires of their Muslim compatriots, and to wait and see how the proper application of Sharia might in fact benefit women, not harm them. Turning to their fellow Muslims – i.e. the men – the women say that in the process of Sharia implementation they wish to be consulted: this was also expressed in other forums.<sup>211</sup>

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<sup>209</sup> I.N. Sada, “The Making of the Zamfara and Kano State Sharia Penal Codes”, Chapter 4 (Vol. IV), 22-32, at 25-28.

<sup>210</sup> *The Guardian*, 10<sup>th</sup> February 2000, 36.

<sup>211</sup> See e.g. the summaries of written memoranda submitted to the Committee Set Up to Advise the State Government on the Implementation of Sharia in Sokoto State, contained in the Final Report of the Committee, submitted to the Governor on 16<sup>th</sup> December 1999 (copy in the possession of the author), submission of Hajija Laraba Dattijo of the Women Society: “Narrated the historic and constitutional basis for the adoption of Sharia in the State and the roles played by women in the history of Islam. She suggested the need to involve and encourage women to participate in the process and implementation of Sharia in Sokoto State. She further emphasised the need to protect the rights of women in the society as prescribed in the Sharia Law.”

The men in charge are also cautioned: be honest, act transparently, fear God. This expresses what was perhaps the greatest reservation among women about Sharia implementation: scepticism about the men managing it.

How many of them discharge their responsibilities and fulfil their primary duties and obligations as fathers, husbands, neighbours, leaders, and the sundry roles they find themselves in, as provided under the Sharia? Which of them can sincerely claim that they are fair in their relationships with others, or between their wives, if in a polygynous setting? How many are guided by the precepts of even-handedness and honesty in their business dealings with Muslims and non-Muslims alike, rather than their personal interest? How many more are transparent and accountable to the public, in all matters of leadership and governance?<sup>212</sup>

Nigerians have seen many “panaceas” come and go – good ideas ruined by maladministration. There was little reason to believe that this latest panacea, Sharia implementation, would in the end be any different. But most women were willing to wait and see, and in the meantime to do what they could to help make things work.

b. Women involvement in Sharia implementation.

i. The Sharia Implementation Committees. The main architects of Sharia implementation were the Sharia Implementation Committees appointed by the State Governors to advise them on how to proceed. In the course of our attempts to document the process, we were able to collect the reports of these committees from six States: Bauchi, Borno, Katsina, Kebbi, Niger, and Sokoto.<sup>213</sup> From the evidence of this sample, it appears that the wish of women to be consulted in the Sharia implementation process was hardly ever honoured. In only one State – Bauchi – were women included on the Sharia Implementation Committee itself: they were two out of a twenty-nine person committee.<sup>214</sup> In only one State – Katsina – did the Sharia Implementation Committee actively seek out a women’s organisation – FOMWAN – to solicit its views.<sup>215</sup> In only two States – Katsina and Sokoto – is there evidence that women – in fact one woman in each case – otherwise took part in the consultative processes of the committees.<sup>216</sup> Otherwise the Sharia Implementation Committees and those with whom

<sup>212</sup> M. Iman, “Punishments under Sharia and their Significance”, in *Newswatch*, 3<sup>rd</sup> November 2002, internet edition.

<sup>213</sup> For full details see Chapter 2 of this work, “The Sharia Implementation Committee Reports and Related White Papers” (Vol. II).

<sup>214</sup> See Chapter 2, 10-11. The two women were Dr. (Mrs.) Habiba Muda Lawal and Hajija Aisha Awak Ja’afar, both of whom served on the subcommittee on Public Enlightenment.

<sup>215</sup> Report of the Technical Committee on Constitutional Provisions for the Application of Sharia in Katsina State (dated January 2000), vol. I, Main Report, Appendix A, list of all the groups, associations, institutions and individuals contacted by the committee, listing FOMWAN Chairman.

<sup>216</sup> Katsina: see *ibid.*, vol. II, verbatim reports of hearings held around the state: Hajija Yaha Mani is reported as having chaired the hearings in Zone VI (Mani, Mashi, Dutsi and Bindawa, 16<sup>th</sup> November 1999). Sokoto: Hajija Laraba Dattijo of the Women Society submitted a memorandum to the committee, see n. 211 *supra*.

they consulted seem to have been all male – even though many issues affecting women were treated.

In Bauchi, even the inclusion of two females on the Sharia Implementation Committee was criticised. Here is how the Chairman of the Committee, Kadi (now Grand Kadi) Abdullahi Marafa, responded:

Another criticism which is of no effect on us is that there are women members in the Committee.... As to the inclusion of women in the Committee, it should be understood that this Committee is to come up with recommendations regarding the implementation of Sharia. It is not this Committee that will implement the recommendations. Therefore, the issue of involving women in the Committee is of no effect. Sayyidatina Aisha reported so many hadiths which are currently in use. If she had not been permitted to contribute in this way, we would not be benefiting from the application of those hadiths in our lives. Then also there are the allegations, aimed at confusing women about the aims of Sharia implementation, that with the coming of Sharia men will be asked to marry four wives, and that the amount of bride price men are expected to pay will be limited to some small amount. The women members of our Committee will assist greatly in explaining the real purposes of Sharia implementation to women and overcoming these confusions.<sup>217</sup>

ii. Other involvement of women in Sharia-implementing institutions. Sharia implementation has entailed the setting-up of various new organs of government – notably Sharia Courts, but also other administrative and advisory bodies: Sharia Commissions and Councils of Ulama, *zakat* boards, *hisbah* organisations, *da'awah* (preaching and teaching) groups, and others. Two States, Zamfara and Kano, have established anti-corruption commissions as parts of their Sharia implementation efforts.

Except for the *hisbah* and *da'awah* organisations, there is little involvement of women in any of these Sharia-implementing groups. Certainly there are no women among the alqas of the Sharia Courts (or probably anywhere in the administrative apparatus of these courts) – even though it might be as judges, administering Islamic law on a daily basis, that women could do the most to close the gap between the rights of women in Islamic legal theory, and women's practical enjoyment of those rights, at present impaired by the prejudices and practices of male judges derived not from Islam but from culture and self-interest. Are there precedents in Islamic history for female *qadis*? This may be debatable.<sup>218</sup> Certainly in most Sharia States there are females among the judges of the Magistrate and High Courts – Muslim women educated in the university faculties of law.<sup>219</sup> This is perhaps something that women's rights activists

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<sup>217</sup> Chapter 2, 147.

<sup>218</sup> Although Maliki authority is quite clear: *qadis* must be male. See e.g. Ibn Asim, *Jagorar Masu Hukunci* (Alhaji Usman Muhammad Daura's translation of *Tufah: Zaria: Hudahuda Publishing Co. Ltd., 1996*), pp. 3-4, listing the qualifications of *qadis*, and saying, among other things, that any judgment passed by a woman is null and void.

<sup>219</sup> In 2005 then-Chief Justice of Nigeria Uwais reported, at a meeting of the International Association of Women Judges, that only three Nigerian States – Jigawa, Katsina, and Nasarawa – did not then have any female judges. See *New Nigerian*, 20<sup>th</sup> October 2005, 28. This means that 10

should think about – working towards the appointment of qualified women as judges of the Sharia Courts. As far as I know this has not yet been on anyone's agenda. One reason perhaps is the low level of Islamic education among Muslim women: the schools of Islamic legal studies in particular, the pathways to posts as *alkalis*, remain male bastions. There are however growing numbers of women versed in Islamic studies and in the Arabic language which is the medium of such studies; growing numbers of women, in other words, among the *ulama*. Perhaps one day we shall see such women appointed at least to the Sharia Commissions and Councils of Ulama in the Sharia States. For now, they are completely absent from such bodies, except, as far as I know, in one State. Sometime after Sharia implementation began in Niger State, an Advisory Council of Ulama was established, with Sheikh Ahmed Lemu as its Chairman. The idea of appointing women to this body was proposed, the Chairman supported it, the Governor agreed, and women are now represented in the Council by Hajiya Diya Bala, a frontline politician, and Justice Amina Wambai of the Niger State High Court. According to the Secretary of the Council, Federal High Court Justice Mamman Kolo (retired), the women have proved very useful.<sup>220</sup>

It is in the *hisbah* and *da'awah* organisations that women are best represented – doing the work of these organisations among the women. To give the reader some idea what this work is, I quote selectively, without further comment, from the:

**Plan of Activities of [Bauchi State] Hisbah Women's Wing  
on Counselling the Lawful and Cautioning Against the Unlawful<sup>221</sup>**

*Alhamdu lillahi rabbil alamin. Wassalatu wassalam ala asbratil mursalin.*<sup>222</sup>

Introduction

We are pleased at the efforts being put in place to implement Sharia in Bauchi State. It is imperative to restate to ourselves that this task is squarely on us. If we fail to do it, nobody will do it for us. *Hisbah* work is a voluntary work, it is an act of worship and it is a means of assisting the religion of Allah. We are fully aware that Allah has promised to assist any person who assists His religion. We therefore need to be aware that *hisbah* work is not administration, it is not trading, it is not unskilled labouring and it is not contradicting; it is an act of worship. This is the understanding we require concerning *hisbah* work.

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out of 12 of the Sharia States did have them. For instance, the Chief Judge of the High Court of Sokoto State for some years has been Hon. Justice Aisha S. Dahiru. The Solicitor-General of Zamfara State in the early days of Sharia implementation, Mrs. Bilkisu Bello Aliyu, has since been appointed to the Federal Court of Appeal. Borno State got its first woman High Court judge in 2005 – Justice Adzira Gana Mshelia.

<sup>220</sup> Based on interviews with Hajiya Aisha Lemu, Minna, 7<sup>th</sup> April 2003, by J.M. Nasir, J.D. Gwamna and R. Awal, and with Justice Mamman Kolo, Minna, 29<sup>th</sup> November 2005, by S. Fwatshak and S.H. Liman.

<sup>221</sup> As contained in the Report of the Task Force on Sharia Implementation Bauchi State of Nigeria, Vol. V, Major Activities of the Task Force, submitted to the Governor of Bauchi State on 14<sup>th</sup> August 2001 (copy in the possession of the author).

<sup>222</sup> "We give thanks to Allah, the Lord of the worlds. We seek blessing and peace for the highest of messengers."

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Organisation of Ward committees

[In addition to the Central Committee] [t]wo subcommittees will be formed in every Ward as follows:

- a. Women Enlightenment Committee
- b. Women Dispute Resolution Committee

The Women Enlightenment Committee is responsible for conducting continuous preaching in every nook and cranny of the Ward. The committee is also responsible for identifying places where offences are committed and reporting upon them. ... The Women Dispute Resolution Committee is to comprise women representatives from different branches. It will assist the Enlightenment Committee in dispute resolution.

Qualifications of *hisbah* members

1. She should be God-fearing.
2. She should ensure that her activities/deeds accord with her words.
3. She should be truthful in all circumstances.
4. She should be a moderate and not an extremist.
5. She should possess reasonable knowledge of Sharia.
6. She should emphasise cordiality, respect and networking.
7. She should forgive her transgressors.
8. She should think for the good of the committee.
9. She should be generous even to the most niggardly.
10. Her words should always stress upon the positive development of the committee.
11. Her life should be focused on the principle of counselling the lawful and cautioning against the unlawful.

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Activities of the *hisbah* member

Briefly, the *hisbah* member can conduct her activities of counselling the lawful and cautioning against the unlawful in the following manner:

1. Performance of activities that have become unlawful under the Sharia (but not tradition).
2. Sharia must have explicitly counselled in favour or cautioned against that activity she intends to act upon.
3. She is to conduct her activity at the time the event is occurring or after the event has occurred in the community. These events include:
  - a. Harmful traditions that have turned the act of marriage into commerce.
  - b. Excessive materialism in all activities.
  - c. Ignoring excellent norms such as upholding trust, truthfulness and *dattako* (gentlemanly behaviour).
  - d. Lack of self respect which has given rise to begging and sycophancy.
  - e. Blind imitation of customs of Europeans and their abominable way of life.

- f. Failure to perform the *salat* at its appointed time.
- g. Setting up others as partners to Allah, especially sorcerers.
- h. Respecting the husband's trust.
- i. Removing *basada*, jealousy, enmity among colleagues (co-wives).
- j. To understand that wealth comes from Allah; it is not a creation of some person or an inheritance from the husband.
- k. Doing away with lies, fraud, harm and fornication.
- l. Understanding the essence of marriage and its importance.
- m. Respecting and enhancing the discipline of children.
- n. Creating conducive forum for the discipline.
- o. Receiving or giving interest on loan.
- p. Unity of Muslims, and
- q. Any other issue that affects the life of a Muslim or Islam.

Many seminars and workshops, led by prominent *ulama*, have been held all over the North for women members of *hisbah* and *da'awah* organisations; what they learn there the women put into practice when they return to their villages and towns.<sup>223</sup>

c. Representing and instructing women in legal matters. The early fears of some, about the potential adverse effects of Sharia implementation on women, have already been mentioned. These fears were not long in finding confirmation – in the famous *zina* cases of Safiyatu Hussaini (2001-02) and Amina Lawal (2002-03). What struck women about these cases was not only the extreme sentences imposed – *rajm*, stoning to death – I believe unprecedented in Nigeria even in the time of the Sokoto Caliphate of the nineteenth century – but most especially the manifest unfairness involved: the men, denying everything, getting off scot-free, while the women, pregnant out of wedlock, were condemned. Women's organisations, including WRAPA and BAOBAB, were very much involved in the successful prosecution of the appeals in these cases, which in the end set excellent precedents and demonstrated the ability of the Muslim courts to do justice in difficult cases.<sup>224</sup> The *zina* cases, and others involving very serious punishments like the amputation of hands for theft, had another good effect: they stimulated many women to a deeper study of Islamic law and its sources. Many women who identify with Islam, especially "modern" women (i.e. those with university educations), are not very keen on the penal aspects of the Sharia as classically interpreted. This is especially true among the women educated as lawyers. Their instinctive reaction is: this cannot be correct in this day and age. But to inquire about and debate its correctness in Islamic law such women have of necessity been drawn more and more to study and deepen their knowledge of Islam, so that they can take part in the discussions on a more equal basis with the men – including the *ulama*.<sup>225</sup> The resulting enhanced knowledge of women and

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<sup>223</sup> The *hisbah* organisations and their work will be the subject of a separate chapter of this work, forthcoming.

<sup>224</sup> For full details see Chapter 6 of this work (Vol. V).

<sup>225</sup> The last few sentences draw on an interview with two "modern" Muslim women who may remain nameless, Abuja, 6<sup>th</sup> December 2002, by P. Ostien. See also the essay by Maryam Iman, an Abuja-based lawyer, entitled "Punishments under Sharia and their Significance", already cited, questioning from within Islamic law the correctness of imposing such punishments as amputations and stonings to death in present-day Nigeria.

women's organisations, of Islamic law and of the rights of women under it, has in turn fed back into the work of individual women lawyers and of NGOs like WRAPA and BAOBAB, of providing legal education and counsel and representation to women in legal matters of all sorts – not only criminal cases, but especially family matters such as marriage contracts and divorce settlements, child custody, maintenance, and widows' inheritances. So this too has been an important role of some Muslim women in Sharia implementation: attempting to educate women about, and to vindicate in many concrete cases all over the North, the rights of women under the Sharia to equity and fairness in their dealings with men. "Many women believe they stand to benefit from a correct implementation more than from patriarchy, which subordinates them to men and denies them the full realisation of their human rights and potentials."<sup>226</sup>

d. The activist agenda. To conclude this section of the paper I summarise briefly a number of items on the agendas of Muslim women activists: ways in which they are trying to use Sharia implementation, or work with it, to improve the position of their sisters in the Sharia States. These are gleaned from several different sources and except in the case of the codification project will not be referenced further.<sup>227</sup> Some of the issues being addressed have been touched on already. In subsections (iii) and (iv) the items in brackets are my own suggestions.

i. Codification of Islamic personal law. Perhaps the most far-reaching project is to reduce the Islamic law of personal status applied in the Sharia Courts to codified form. In most countries with substantial Muslim populations this has already been done. In Nigeria it has never been done: the law is still whatever the judges – the alkalis, most of them not very well-educated – say it is from case to case. An important goal of WRAPA, led by its Secretary-General, Mrs. Saudatu Mahdi, has been to try to persuade the Governments of the Sharia States to codify their Islamic personal law,

in order to bring it into focus by defining the laws, rights, duties and obligations of parties. Specifically, codification would achieve the following:

1. Ensure that implementation of personal law is truly Islamic and not an arbitrary hybrid of principles derived from non-authoritative interpretations, traditions and customs, or the whims of individuals.
2. Ensure that women enjoy the rights granted to them by Allah within the framework of Sharia at all levels and in all instances of family life.

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<sup>226</sup> S. Mahdi, "The Role of Women in Sharia Implementation in Nigeria", a paper presented at the conference on The Sharia Debate and the Shaping of Muslim and Christian Identities in Northern Nigeria, held at the University of Bayreuth (Germany), 11<sup>th</sup>-13<sup>th</sup> July 2003 (copy in the possession of the author).

<sup>227</sup> In addition to the papers of Saudatu Mahdi and Maryam Iman already cited, see Bilkisu Yusuf, "Women and Empowerment in Islam", a paper presented at the Second National Conference of the Supreme Council on Sharia in Nigeria (SCSN) held at Damaturu, Yobe State, 21<sup>st</sup> October 2002, published in *Weekly Trust*, 13<sup>th</sup> December 2002 (internet edition); Ayesha Imam, "Recognition of Women's Human Rights in Nigeria", Dr. Imam's acceptance speech, on behalf of herself and BAOBAB, of the John Humphrey Freedom Award 2002, given at Montreal, 9<sup>th</sup> December 2002, see <http://www.ichrdd.ca/english/commdoc/humphrey2002/acceptancespecechhAyeshaImamEng.html>; and Abiola Akiyode-Afolabi, "Democracy, Women's Rights and Sharia Law", *ThisDay*, 29<sup>th</sup> January 2003 (internet edition).

3. Provide standards, consistency and enhance the administration of justice. Judges (especially at the lower courts) will be guided by the well-researched code thereby reducing instances of deficient rulings and other constraints due to scarcity of literature, which even where available is in classical voluminous Arabic texts.<sup>228</sup>

Mrs. Mahdi urges that those who undertake the work of codification should

draw from a broader study of all the schools of Islamic jurisprudence for application as appropriate with final benefit to the weak and vulnerable in society. Logically women also expect active, sustained enlightenment and advocacy by eminent Islamic scholars, jurists and activists, geared towards attitudinal reorientation and legal reforms for a demarcation between the true provisions of Sharia and cultural prejudices that clearly degrade women.<sup>229</sup>

This work has in fact gone ahead, slowly, with pilot studies in Sokoto and Zamfara States, in cooperation with the Centre for Islamic Legal Studies, ABU Zaria, and the Georgetown University Law Centre, with funding from Georgetown and from the MacArthur Foundation. For further information see <http://www.wrapaifl.com/>.

ii. Specific personal law issues.

- effectuation of the right to consent or refuse consent to a marriage
- effectuation of the right to consent or refuse consent to the terms and conditions of a marriage contract
- raising of the minimum age of marriage
- limitation of the power of *ij'bar*
- establishment of a system of registration of all marriages and marriage contracts, to provide documentary protection for the legal and social status of women
- effectuation of the right of wives and children to maintenance within marriage
- effectuation of the right to equality of treatment in polygynous households
- restrictions or a total ban on polygyny
- effectuation of the right to consultation within the family
- effectuation of the right of women, including married women, to engage in economic activity, including the power to enter into contracts, to own and dispose of property, and to take up employment
- limitation of the male power of *talak*
- effectuation of the female power of *kebul* where it is called for
- establishment of a system of registration of all divorces and divorce settlements to provide documentary protection for the legal and social status of women
- effectuation of the right of a mother to custody of her children upon divorce or the death of her spouse

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<sup>228</sup> From a summary provided by WRAPA, in the possession of the author; see also S. Mahdi, "Women's Rights in Shari'ah: A Case for Codification of Islamic Personal Law in Nigeria", in P. Ostien, J.M. Nasir and F. Kogelmann, *Comparative Perspectives on Shari'ah in Nigeria* (Ibadan: Spectrum Books Ltd., 2005), 1-6.

<sup>229</sup> S. Mahdi, "Sharia and Women in Nigeria", 4.

### CHAPTER 3: SANITIZING SOCIETY

- effectuation of the right of a woman and her children to maintenance for appropriate periods after divorce
- effectuation of the right of women to inherit from parents, husband, and children

#### iii. Penal law issues.

- harmonisation of the Sharia Penal Codes to provide uniformity in the application of Sharia law from State to State
- repeal of the sections of the Penal and Sharia Penal Codes that protect the physical abuse of wives and children by their husbands and fathers
- limitation or elimination of the right of physical “chastisement” of wives and children by their husbands and fathers
- [separation of the law of rape and incest from the law of ordinary *zina* between consenting adults, to make conviction for rape and incest easier?<sup>230</sup>]
- respect for the personal privacy of women and their protection from arbitrary arrest following unfounded or malicious charges

#### iv. Access to justice issues.

- better information to women about their rights and about how to effectuate them
- more and better legal services available to even the poorest of women
- reduction of court fees to enable easier access; many illegal fees are imposed by court staff; this should be stopped
- improvement of the quality of Sharia Court judges through better education and better pay
- improvement of Sharia Court administration
- improvement of the Sharia Court Inspectorates and the appellate process to ensure better supervision of the Sharia Courts
- [women appointed as Sharia Court judges?]

#### iv. Other issues.

- educating more women to higher levels in all fields, including the professions, and educating all women to at least minimal levels of literacy, numeracy, etc.
- improving the economic strength of women at all levels
- bringing more women into public office
- effectuation of the rights of women as provided in international agreements to which Nigeria is a party

This is a large and varied agenda. Various women and women’s organisations specialise in various parts of it. And many of the items on it – the wider social issues, affecting not only women but everybody – are being addressed not only by women activists, but by many other organisations, public and private, local and foreign, which

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<sup>230</sup> Suggested by P. Ostien and M.J. Umaru in their essay on “Changes in the Law in the Sharia States Aimed at Suppressing Social Vices”, Part II *supra*, pp. 45-46, 52 and 74.

see the need of improvement of so many aspects of Nigerian life and are willing to spend money to try and help. I mention briefly a few of these:

The need to improve the quality of the Sharia Courts and of the justice administered in them – along with the Area Courts and the Customary Courts in other parts of the country as well – is widely recognised. Most people agree that much more money needs to be invested in this crucial segment of the justice system (which bears a huge percentage of the load of litigation), in terms not only of better education and better pay for the judges, but better working conditions, better equipment, better court staffs, better administrative systems, and so forth. The problem is to persuade politicians to allocate sufficient funds to do all these things or even to begin to tackle them. This subject is meant to be discussed further in two forthcoming chapters of this work, one on “Court Reorganisation” and one on “The Judges of the Sharia Courts”.

Some access to justice issues are being addressed in a programme sponsored by the British Counsel and DFID: The Access to Justice Programme Nigeria, see <http://www.gsdc.org/go/topic-guides/justice/safety-security-and-access-to-justice>. One of the three or four States in which this programme is at work is Jigawa State – a Sharia State – where, according to the website, two sub-programmes are going on: one on “Land Rights of Women and the Poor in Jigawa State”, and one on “Resolution of Civil Disputes in Jigawa State”. Presumably these are meant to be pilot studies, with the hope of exporting to other States programmes that work well to bring about progress.

There has been a programme on at the Centre for Islamic Legal Studies, ABU Zaria (CILS), to harmonise the Sharia Penal Codes and Sharia Criminal Procedure Codes that have been adopted in the Sharia States. At the moment they are quite different from State to State, especially the Sharia Penal Codes – this is documented in detail in Chapters 4 and 5 of this work. The harmonisation project is not universally approved of and does not seem to be getting very far.<sup>231</sup> As far as I know no one is really talking about repealing §55 of the Penal Code or its equivalents in the Sharia Penal Codes.

CILS has also worked with DFID to produce the excellent publication already referred to, *Promoting Women's Rights Through Sharia in Northern Nigeria*.<sup>232</sup> This has chapters covering: Practices relating to the girl-child; Marriage and marital relationships; Divorce; The custody of children after divorce; Economic rights; Inheritance; Property ownership; Access to health and reproductive health services; Political participation; Access to justice; and Criminal justice. Under many sub-headings, as, for instance, “Education of the girl-child”, a problem is articulated, as, “According to the literature, the right of a girl to education has often been violated in the North.” The problem is further discussed and then there is a discussion of “What Sharia says”, as, “In Islam, parents are responsible for providing education and training to their children. Denying this is against Sharia, which expects both men and women to be equally educated”, referring to appropriate authorities. This publication will be an excellent tool in the effort to overcome age-old biases and prejudices among the men and ignorance among the women.

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<sup>231</sup> See Chapter 4, 20-21.

<sup>232</sup> See n. 173 supra.

The improvement of education in the North generally, and of girls' education in particular, has been widely supported and pursued, with the State Governments in the lead, supported by the Federal Government and by international organisations such as the World Bank and UNICEF. Northern religious leaders, including many prominent Emirs and *ulama*, have also spoken out about the dire need to provide much larger percentages of the North's children, including the girls, with much better educations, ideally combining Western with Islamic or other religious education. Let me illustrate with just one bit of news from Kano:

The Kano State Government has commenced integration of the State's modern educational system into the 26,000 Qur'anic education residential schools existing in the State, the Governor says. Qur'anic schools have existed in Kano for over 700 years and have produced thousands of literate citizens with high moral values that have contributed to the development of their society; but now introduction of Western education is necessary for national socioeconomic transformation and development. But it will take decades.<sup>233</sup>

A lot of money has been spent, on refurbishing school buildings, building new ones, school furniture, school books, more teachers, better conditions for teachers, and so on. One has the impression, though, that what is actually being accomplished so far is only reaching small percentages of the children: with over 17 million Muslim children under fifteen years of age, 8.5 million of them girls, scattered over such wide rural spaces where there are few amenities, how could it be otherwise? It is not only impossible to find enough qualified teachers to teach all these children, but even if they could be found, the teachers are not paid enough money to attract and hold them: it is not seldom that one hears of the elementary school teachers in some State going for months without being paid at all. So the North still has a long way to go to bring its educational systems up to even minimal standards of acceptability.

No doubt many other things are going on out there to try and improve the lives of women along with everyone else. But enough has been said to give the reader an impression of the kinds of efforts being made and of the difficulties confronting them. To conclude this section let me just recount a few of the positive comments we heard in our interviews with people in the Sharia States.

Mrs. Anna J. Wali, Lecturer, Katsina State Polytechnic; Financial Secretary, WRAPA, Katsina State.<sup>234</sup> Women view Sharia as a good thing because it makes their husbands to live up to their family responsibilities of providing maintenance. Sharia has liberated women... [and going on to discuss the work of WRAPA in Katsina State].

Hajiya Amina Maude, Director of Women Affairs at the Ministry of Women Affairs and Social Development, Kano State:<sup>235</sup> Women were initially apprehensive that Sharia was going to be disadvantageous to them. Later on however, they came to realise that if Sharia is fully and correctly implemented, it would be in their interest. For example, women's rights would be restored, husbands would become more alert to their

<sup>233</sup> *New Nigerian*, 15<sup>th</sup> August 2005, 43.

<sup>234</sup> Interviewed in Katsina, 20<sup>th</sup> February 2003, by M. Gaiya, S. Fwatshak and R. Awal.

<sup>235</sup> Interviewed in Kano, 12<sup>th</sup> March 2003, by M. Gaiya, S. Fwatshak, K.A. Umar.

family responsibilities – and so they were happy with it. The implementation of Sharia has led to the revival of traditional methods of conflict/dispute resolution. The ward heads, the district heads and emirs handle family problems before they go to the Social Welfare office if the need arises.

Musa Isa Lapai, Secretary, Niger State Sharia Commission. Before Sharia many people used to squander their salaries and did not take care of their families. Now many women have come back to thank the Commission for implementing Sharia such that their husbands take their responsibilities seriously.<sup>236</sup>

#### 4. Changes in the law affecting girls and women.

It must be said that next to the serious concerns we have just been discussing, many of the women-related measures enacted into law as part of the official Sharia implementation agenda seem trivial by comparison. To conclude this essay I next discuss a number of the new measures. The new laws themselves are presented in full in Part IV of this chapter, to which frequent reference will be made.

a. Women's dressing. One Sharia State has in fact enacted a law on how Muslim women are to dress – this is Yobe State, in its Prohibition of un-Islamic Dressing Law 2000, “A Law to Provide for the Prohibition of un-Islamic Dressing in the State and to Make Provision for Proper Dressing to Be Used by Female Muslims Throughout Yobe State”. The law is reprinted in full in Part IV.6.c of this chapter. Its core provisions are interesting enough to quote again here:

3. (1) This Law shall apply to all female Muslims of ten years and above throughout the State.  
(2) This Law shall not apply to such female Muslims when they are within their homes or when exclusively among females away from the view of men.
4. As from the commencement of this Law, un-Islamic dressing is prohibited in the State.
5. The proper dressing shall be that which covers the entire body of the women except her face and palms up to the wrist or *hijab* or *lifaya*.<sup>237</sup>
6. (1) Any person who contravenes the provision of this Law shall be guilty of an offence and liable on conviction to a fine of one thousand naira or one month imprisonment.  
(2) Where the convict is a minor his parent or guardian shall be liable for the penalty provided by this section.
7. (1) As from the commencement of this Law all authorities in charge of schools in the State shall ensure that the school uniform substantially conforms with the provisions of this Law.  
(2) Students who fail to comply with the decision of the school authority in respect of this Law shall be given appropriate punishment by the school authority

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<sup>236</sup> Interviewed in Minna, 29<sup>th</sup> November 2005, by S. Fwatshak and S.H. Liman.

<sup>237</sup> *Lifaya*: light outer wrap worn especially by Kanuri women. Like the *gyale* but larger.

10. Prosecution is at the instance of the Attorney-General and the police.
11. (1) For purposes of decency, it is required that non-Muslims should dress decently.
  - (2) Non-Muslims shall not be liable for punishment under this Law.

So non-Muslims are exempt, although they are still supposed to dress “decently”; but even if (in somebody’s opinion) they don’t, they are not subject to punishment under this law or probably any other. As to Muslims, the *hijab* requirement is imposed on “all female Muslims of 10 years and above”, except “when they are within their homes or when exclusively among females away from the view of men.” The requirement must be enforced on minors by their parents and guardians and on schoolchildren by the school authorities. As against adults who do not live up to their obligations under the law, either as Muslim women, as parents, or as school authorities, “Prosecution is at the instance of the Attorney-General and the police”, which is not likely to happen very often. Perhaps the real intendment of this law is to start the girls young wearing the *hijab*, and trust that as they grow older they will continue. Probably it is working quite well to bring that about.

The 2004 Human Rights Watch report “Political Sharia? Human Rights and Islamic Law in Northern Nigeria”,<sup>238</sup> at p. 67, cites a “Certain Consequential Reform (Socio-Economic, Moral, Religious and Cultural) Law 2001, allegedly enacted by Zamfara State, which contains a provision saying “Every female of Islamic faith shall put on dress to cover her entire body except for her feet, hand and face in the public or while attending the office both within or outside the State.” Our documentation project visited Zamfara State many times but never ran across this law; it was perhaps somebody’s draft, never enacted.

The documentation project did turn up one Local Government Council that has enacted a *hijab* requirement – Fika Local Government, also in Yobe State. In its interesting 2002 bye-law on miscellaneous un-Islamic practices, see Part IV.8.d below, the following is included as §11:

It shall be an offence for any Muslim female above the age of ten to move round within the Local Government Area at any time without wearing a *hijab* adequate to cover her head down to her toes.

Possibly other Local Governments have enacted similar bye-laws, I do not know because our project was not able to visit all Local Governments to try and collect their Sharia-related legislation.

Even where no law requires the wearing of the *hijab*, its wearing is often becoming “compulsory” as Hauwa Mahdi has said – through regulations governing State institutions, including schools; and outside such institutions through quasi-official pressure exerted by the *hisbah* organisations. The Human Rights Watch report just referred to discusses this quite fully and gives interesting instances from several States – including one from Bauchi State involving twenty-one Christian nurses suspended from their jobs at a Federal Medical Centre for refusing to wear the *hijab* – an aberration in

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<sup>238</sup> September 2004 Vol. 16, No. 9(A), available at [www.hrw.org/reports/2004/nigeria0904/nigeria0904.pdf](http://www.hrw.org/reports/2004/nigeria0904/nigeria0904.pdf).

many ways, that is not likely to be repeated.<sup>239</sup> To the HRW stories let me add a few more (a review of the newspapers would add many more to these).

From Zamfara State:

- February 2004: the Zamfara State Governor announced a dress code for female Corpers. This was necessitated by a series of complaints about indecent dressing by Corpers. [Corpers are young people just graduated from the universities, doing a year's service in the National Youth Service Corps.]<sup>240</sup>
- February 2005: the Zamfara State Governor introduced a new dress code for the State's cultural troupe to be sure they comply with Sharia. The troupe will not be allowed to dance or sing any more but will be allowed to do drama, focusing on the promotion of Sharia itself, religious harmony and tolerance in addition to promoting national cohesion and integration.<sup>241</sup>
- February 2006: the Chairman of the State Hisbah Board said, as to indecent dressing: the *hisbah* do arrest women engaged in indecent dressing. They sometimes take offenders to court.<sup>242</sup>

From Niger State:

- November 2005: an official of the Niger State Ministry of Justice says that with the introduction of the *hisbah*, indecent dressing by women is being checked at public places. Women dressed indecently and those who appear to be soliciting are also turned away at the gates.<sup>243</sup>

From Kano State:

- March 2003: the Director of Women Affairs at the Kano State Ministry of Women Affairs and Social Development says that the various Islamic sects in Kano are not yet agreed on what dress code should apply to women. Thus, women are now free to wear either the *hijab* or veil (*gyale*), so long as the essential parts of the body required by Islam are covered. Majority of Kano women are Muslims and have been used to decent dressing anyway.<sup>244</sup>
- July 2005: heads of tertiary institutions of learning in Kano State have been directed by Governor Shekarau to enforce the appropriate dress code on their students to save them from being visited by the Sharia police (*hisbah*). This directive was given as Shekarau inaugurated the State Hisbah Committee. "The Kano State Government will not condone any act of indecent dressing that

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<sup>239</sup> Ibid., 66-68.

<sup>240</sup> *The Guardian*, 2<sup>nd</sup> February 2004 (page number lost).

<sup>241</sup> *New Nigerian*, 2<sup>nd</sup> February 2005, 19.

<sup>242</sup> Interview with Engr. Sanusi Muh'd K/ Kwashi, Chairman of the Zamfara State Hisbah Board, Gusau, 9<sup>th</sup> February 2006, by S. Mohammed and A. Garba. It is not clear under what law violators would be taken to court, but see n. 238 supra and accompanying text.

<sup>243</sup> Interview with Barr. Sanusi of the Niger State Ministry of Justice, Minna, 28<sup>th</sup> November 2005, by S. Fwatshak and S.H. Liman.

<sup>244</sup> Interview with Hajiya Amina Maude, Kano, 12<sup>th</sup> March 2003, by M. Gaiya, S. Fwatshak and K.A. Umar.

exposes the nudity of any person. Right now, the 9,000 *hisbah* members have been given the powers to monitor all parts of the State and arrest Sharia violators.” Shekarau said that neither Islam nor Christianity condoned indecent dressing, drunkenness, womanising, prostitution or gambling.<sup>245</sup>

- August 2007: in a full-page advertorial the Kano State Government responds to news reports that the Northern Chapter of the Christian Association of Nigeria (CAN) is accusing it of “planning to announce a policy to force non-Muslim female students to wear *hijab*, among others.” The Government expresses sadness that CAN makes such statements based on rumours, without bothering to check with the Government first. In fact it has long been the rule that all female Muslim students in public schools must wear the *hijab*. But the rule does not apply to non-Muslims: they are only directed to dress decently. The new measure now is that the Government has decided to extend the *hijab* rule beyond the public schools, to the private schools in which increasing numbers of Muslim students are enrolling. At least the proprietors of private schools will be required to *allow* female Muslims to wear the *hijab*. Requesting students to dress decently is not exclusive to Kano State. “[E]ven universities and other tertiary institutions, including those located in non-Muslim communities as well as religious organisations now impose dress codes for their female students, emphasising decency and self-respect. ... Education is all about discipline and morality, and the purpose of sending our children and wards to schools will surely be defeated if we cannot instil into their young minds the discipline of decent dressing and general good conduct. The Kano State Government is committed to instilling a morally right dress code among its students and therefore expects Northern CAN and indeed all well-meaning organisations to join hands to stamp out immorality and indiscipline in our schools and society. Acting on rumour and cheap religious sentiments will not help us in our struggle for a united Nigeria.”<sup>246</sup>

And so the discussion goes on.

b. Females using commercial transportation. The imposition of the *hijab* is part of the campaign to keep unrelated men and women separated from one another so that the question of illicit sexual attraction will not even arise. It is interesting that Kano State, in its Cinematography Licensing Regulations (see Part IV.7.d *infra*) explicitly uses the term *hijab* in this sense:

69. (1) The admission of females [and] males in a cinema auditorium is prohibited except where the auditorium for film exhibition is partitioned for males and females respectively.
- (2) A partition in this regulation means a *hijab* or separation of the auditorium for males and females.

Another aspect of the campaign to separate the sexes has been the effort to stop females from riding on commercial motorcycles driven invariably by men, mostly young ones,

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<sup>245</sup> *The Guardian*, 5<sup>th</sup> July 2005, 3.

<sup>246</sup> *Daily Trust*, 13<sup>th</sup> August 2007, 25.

and to stop females from sitting in close proximity to unrelated men in taxis and buses. Probably several Local Governments have enacted laws on this subject. The one the documentation project collected is from the Gusau Local Government of Zamfara State: from July 2000, "A Bye-Law to Curb, Control and Eradicate Anti-Social Behaviours, Moral Decadence and Other Vices in the Society", which in fact deals exclusively with commercial motorcycles, known as *kabu-kabu* or *achaba*. The laws appears in full in Part IV.6.d below; here are its crucial provisions:

4. The conveying of any person of the opposite sex for the purpose of transporting same to any destination by a "*kabu-kabu*" operator is hereby prohibited. This prohibition does not apply to any person who conveys his or her relation of the opposite sex for the purpose of transporting same to any destination.

5. The prohibition stated in article 4 of this Bye-Law shall only apply against any person who professes the Islamic faith.

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7. Whoever violates the provisions of article 4 of this Bye-Law shall be guilty of an offence and liable to 20 lashes of the cane and shall have the motor-cycle detained for a period of two weeks in addition to the cancellation of the licence to operate the motor-cycle as *kabu-kabu* for a period not exceeding three months.

The only State<sup>247</sup> to have enacted similar legislation is Kano, in its 2005 amendment to its Road Traffic Law (reproduced in full in Part IV.6.e below): here are the crucial provisions:

44. (1) All commercial vehicles shall reserve a reasonable number of seats at the back in the vehicle for female passengers only.

(2) Any motor vehicle driver who carries male and female passengers mixed together in a manner which is offensive to the Sharia shall on conviction pay a fine of not less than ₦5,000.00 or be barred from driving any vehicle for a period which may extend to six months or ten strokes of the cane.

45. (1) Any motorcyclist who:

- (a) carries any female as a paying passenger;
- (b) carries more than one person;
- (c) overtakes any vehicle on the right hand side;
- (d) uses a motor vehicle horn on his motorcycle; or
- (e) does anything that hampers the smooth flow of traffic on any public way,

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<sup>247</sup> Again the Human Rights Watch report referred to earlier disagrees with the word 'only', again referring, at p. 65, to the "Certain Consequential Reform (Socio-Economic, Moral, Religious and Cultural) Law 2001", allegedly enacted by Zamfara State, which is said to include a section on "commuting by opposite sexes in public transport systems". HRW discusses various reports about enforcement of such laws at 65-66.

shall be guilty of an offence and upon conviction be liable to a fine of not less than ₦5,000.00 or be barred from driving any vehicle for a period which may extend to six months.

(2) Any tricyclist who chooses to carry male passengers shall not carry any female as a passenger, and where he chooses to carry female passengers shall also not carry any male passengers.

(3) Nothing in subsection (2) of this section shall preclude any person from being accompanied by a minor of 12 years of age and below and/or a *mubarrami*.

(4) In this section *mubarrami* means a person related to another in which the Sharia does not allow marriage between them.

These sorts of rules were also sometimes imposed by executive fiat: for instance, among the first things Governor Sani of Zamfara State did was to impose a ban (under what authority is not clear) on women travelling in the same taxis as men, or using *achaba*. “If you come to Zamfara State as a lady, as a Muslim woman or a Christian or whatever, we have taxis provided by the State [ladies only] which are to be used.”<sup>248</sup> Again, *bisbab* groups in some places have also exerted semi-official pressure to try to enforce such rules, even where not backed by any law or official pronouncement. For instance in Bauchi State some early attempts were made to enforce separation of male and female passengers in taxis and buses; but these quickly collapsed.<sup>249</sup> No doubt the same thing happened in other places as well.

The practical problem with all these rules is that they interfere with the lives and livelihoods of two large classes of people, most of them Muslims: the impoverished drivers of *achaba*, taxis and buses, who work long hours for minimal pay, and the equally impoverished women, without other means of transportation, who are among their principal customers. Notwithstanding the efforts of some States to provide “tricycles” for women to use – with a separate closed-in compartment behind the driver for two or three passengers – the demand of women for ad hoc transport far exceeds the supply of tricycles; and the rules mandating separation of the sexes in other commercial transportation have proved impossible to enforce. Kano tried, with unhappy results. Its Road Traffic Law amendments, quoted above, were enacted in May 2005. In November 2005 the Chairman of the Kano *bisbab*, Sheikh Farouk Chedi, said that enforcement would start as from 12<sup>th</sup> December 2005.<sup>250</sup> It did, and serious problems ensued, including several episodes of fighting between the *achaba* drivers and the *bisbab*. These disturbances, no doubt among other considerations, led Federal Government to ban the Kano *bisbab* and arrest its Chairman.

On the news of the arrest of Sheik Chedi several [*achaba* drivers] were seen jubilating: “We expected the action. It came at the right time. These *bisbab* guards started behaving as if they were laws unto themselves. They stopped us

<sup>248</sup> Quoted in *TELL*, 15<sup>th</sup> November 1999, 20. Governor Sani also says in this interview that his State’s primary and secondary schools have been segregated by sex.

<sup>249</sup> Interview with Kefas Magaji, Bauchi, 17<sup>th</sup> February 2003, by D. Gwamna and K.A. Umar.

<sup>250</sup> Interview with Sheikh Farouk Chedi, Kano, 28<sup>th</sup> November 2005, by S. Mohammed and A. Garba.

from carrying women; they seized our motorcycles and even made us pay fines ranging from ₦3,000 to ₦5,000. We never expected them to do this to us. Their action in recent times affected our means of livelihood. That is why you see us fighting them in various parts of the town.”<sup>251</sup>

The *bisbab* were not right away deterred:

Defying the Federal Government's directive, members of Kano *bisbab* at the weekend returned to the streets of Kano. They clashed with commercial motorcyclists scores of times when they tried to enforce the no gender-mixing rule sanctioned by the State Government recently. Governor Shekarau had ordered the *bisbab* to return to their duty posts. Scores of policemen were sighted patrolling the streets of Kano apparently to contain tension. Sermons delivered by clerics called for restraint on the part of Muslims to avoid breakdown of law and order.<sup>252</sup>

Things did calm down – because attempts to enforce the rules were quickly abandoned. Up to today one sees women, often wearing *hijab*, using *achaba* and sharing taxis and buses with men all over the North. But the efforts to stop it continue, as this very late news from Katsina indicates:

Women in Katsina State may in no time get an alternative transportation system as the State is planning to ban them from plying on commercial motorcycles popularly known as *achaba*. ... The ban, which is prompted by a visit to the Assembly by the chapter Chairman of the Supreme Council of Islamic Affairs, Sheikh Yakubu Musa Hassan, was however subject to the provision of alternative means of transportation by the State Government. The sponsor of the motion and member representing Kurfi Local Government Area ... said it is improper and contrary to the religious norms and traditions of the State for women to be transported by men on commercial motorcycles. He said: “Most married women, especially the pregnant ones were forced to hire this motorcycle to the hospital, market, and other public places with the high risk of being thrown out on the road or get involved in accident.” ... [T]he State Assembly has resolved to refer the matter to the House Committee on Transportation for action and report back to the Committee of the Whole House in two weeks.<sup>253</sup>

This gives some insight into the organisations promoting these particular rules, and some of the arguments they are using. It will be interesting to see how it develops.

c. Hawking by young girls. Another part of separating males from females is the attempt to put a stop to hawking by girls. As we have already seen this has been a matter of concern in the North for some time. As part of Sharia implementation, two additional States have enacted hawking bans. Kebbi State made an entire law on the subject, its 2000 “Law to Prohibit Female Hawking in the State and Others Connected Therewith”, see Part IV.7.b. Yobe State included its ban in its “Law for the Prohibition of

<sup>251</sup> *The Guardian*, 10<sup>th</sup> February 2006, 1-2.

<sup>252</sup> *The Guardian*, 12<sup>th</sup> February 2006, 3.

<sup>253</sup> *Daily Trust*, 31<sup>st</sup> August 2007, 6.

Prostitution and Other un-Islamic Practices, Including Cinematographic Exhibitions, Production and Sale of Liquor, and Other Matters Related Thereto”, see Part IV.1.b §18. And then some Local Governments have also enacted bye-laws including hawking bans, documented in Part IV.1.e with the “Law to Prohibit and Eradicate Prostitution, Gambling, Games of Chance and Other Forms and Sources of Social Vices and Moral Decadence in the [Local Government Area]”, §§13-15, enacted in 2000 by the Gusau Local Government Council in Zamfara State. Kano has started a project, *Fansar ’yan mata ’yan talla*, trying to abate street hawking by young girls, presumably in renewed efforts at enforcement of its 1988 law on this subject.<sup>254</sup> It is interesting to see hawking associated so persistently with social vice and moral decadence; evidently this is the case. As we have seen it also keeps young girls out of school. This is probably a practice that will only finally dry up when all young girls are kept in school for a great deal more of the time than they are now – which, besides keeping them off the streets and out of the clutches of wicked men, will improve their lives in many other ways as well. But up till now, as I have already said, one still sees many young girls hawking their wares around on their heads in most parts of the North.

d. Other mixing of males and females. There has been some attempt to stop social mixing by men and women – quite common and much enjoyed in the North at naming ceremonies, wedding parties and political events, among others. The Fika Local Government of Yobe State, whose 2002 bye-law on miscellaneous un-Islamic practices has already been quoted on the subject of the *hijab*, has this provision as well:

5. (1) It shall be an offence for a person or group of persons to encourage or engage in *ajo*, *koroso*<sup>255</sup> and other forms of public entertainment in which men and women intermingle in an indecent and un-Islamic manner be it in the form of dancing, drumming, singing, music, beauty contest, fashion parade and the like.
- (2) Whoever, being a Muslim encourages or engages in *ajo*, *koroso* and other forms of public entertainment prohibited in sub-section (1) above shall be punished with 1 months imprisonment or ₦2,000.00 fine.

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8. Any alkali or person authorised by him (i.e. *hisbah*) and any police may:
  - (a) Enter any premises at any time for the purpose of detecting or preventing any breach of the provisions of this Bye-Law within the Local Government Area.
  - (b) All laws that protect the police in the cause of his duty shall also be applicable to *hisbah* for the purpose of enforcing this Sharia Bye-Law within the Local Government Area.

The laws restricting the festivities at marriage and naming ceremonies, discussed further in the next subsection on cutting down the costs of getting married, perhaps have this purpose also, of cutting down on the attraction for mixed companies of men and women

<sup>254</sup> *New Nigerian*, 17<sup>th</sup> May 2005, 1; for the 1988 law see n. 175 supra.

<sup>255</sup> *Ajo*: donations made to the bride and groom during marriage ceremonies; the festive occasion at which the donations are made. *Koroso*: lit: the jingling anklets of dancers; the dancers and the dance.

to come together in a party mood. The following provisions, from the Gummi Local Government Area of Zamfara State,<sup>256</sup> give some indication:

2. This Bye-Law shall come into operation on a day to be appointed by the Council Chairman.
  - (i) All forms of procession during wedding and naming festivities are hereby prohibited as set-out in the schedule hereto.
  - (ii) Save in absolute necessity no motorcyclist shall commute female passenger between the hours of 10:00 p.m. – 6.00 a.m. throughout the Local Government Area.
  - (iii) All types of musical concerts during naming and wedding festivities as set out in the schedule are hereby prohibited throughout the Local Government.
  - (iv) Any other expenses during naming and wedding ceremonies as set out in the schedule hereto.
3. Any person who contravenes any provision of this Bye-Law shall be liable to a fine of three thousand naira (₦3,000.00) or six months imprisonment or both.
4. Residents of the Area/Ward and Village concerned or member(s) of the Islamic Joint Aid Group may report either to the police or the Local Government or lay a complaint before the court of law.

Besides these Local Government enactments, of which there are probably more, some State Governments have tried to take action from the top, through edicts – whose force is quite unclear – issued by officials of the Government. The following items from Katsina State are indicative of this; they also show how unwelcome the puritanism of some *ulama* is in many parts of the North:

Initially, the government-appointed Katsina State Sharia Commission had banned public musical performances as un-Islamic. In fact, two court cases against musicians were reported in April 2001. In Funtua, Dauda Maroki and Gambo Maibishi, two traditional Hausa praise singers, were given ten strokes of the cane in public. In the second case, the renowned traditional Hausa musician Sirajo Asharalle was pardoned after he promised never to play at weddings again. In August 2001, however, the Sharia Commission lifted the ban on performing music. The commission directed “that singing and drumming [are] desirable at wedding, Id prayers and circumcision ceremonies, and [can] also take place during wars or while welcoming a fellow Moslem from a trip.”<sup>257</sup>

This episode seems to have involved some sort of *fatwa* issued by the Sharia Commission, somehow enforced by the courts, until the *fatwa* was completely reversed some time later. It would be interesting to know about the whole thing in more detail, including under what law the musicians were prosecuted. Some further explanation was

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<sup>256</sup> Gummi Local Government (Zamfara State) law on processions, musical concerts, other expenses during naming and wedding ceremonies, etc. (2000), Part IV.8.b *infra*.

<sup>257</sup> G. Weimann, “Judicial Practice in Islamic Criminal Law in Nigeria 2000 to 2004 – A Tentative Overview”, *Islamic Law & Society*, 14/2 (2007), 260 (footnotes omitted).

gotten in 2005, in an interview with Sheikh Yakubu Musa Kafanchan, the founder of the *hisbah* movement in Katsina:

The issue of prohibiting dancing and traditional music in the State was one issue that generated a lot of controversy. The Governor<sup>258</sup> does not in any way fall in any love with any attempt let alone by law to prohibit that in the State. During the weddings of his children, so many traditional dancers were invited. It was during that time that the then-Grand Kadi [ex officio also the Chairman of the Sharia Commission] made a pronouncement in writing legitimising dance and music in the State. This Grand Kadi went to the extent of saying that any marriage celebrated without music and dance is incomplete, and invalid under Islam.<sup>259</sup>

So the partying continues in Katsina.

There is also the case of Governor Ahmad Sani of Zamfara State, who, like the Sharia Commission of Katsina State, seems also to have changed his opinions in this area. In 2001 the Governor hosted President Obasanjo on a visit to the State. The President and the Governor were of different parties – the President of the People’s Democratic Party (PDP), the Governor of the All Nigeria People’s Party (ANPP). Perhaps fearing a large turnout-of PDP supporters when the President came to visit, the State Government announced on the radio that

women would not be allowed to greet or talk to the President. “Zamfara is a Sharia State and the Sharia prohibits any mingling of men and women. So for this reason, no woman should come out to welcome the President,” he said. Normally, large crowds of men and women greet the President when he visits anywhere in the country, and present any grievances they might have. Asked how women could present any possible grievances to the President, [the Government spokesman] said this would be done on their behalf by the men of the State Government. “The State Government is the father of all. Therefore, whatever problems they have, the State Government will forward it on their behalf,” he said.<sup>260</sup>

But large numbers of women came out the next day to greet the President anyway, in spite of the ban:

Hundreds of women in Zamfara State on Thursday defied Gov. Ahmad Sani’s order, banning them from coming out from their purdah homes to welcome President Olusegun Obasanjo.... The women...started trooping out en-masse as early as 8 a.m. to take a vintage position to have a glimpse of the President. Women politicians, especially from the opposition Peoples Democratic Party (PDP), also trooped out, wearing attire signifying their party symbols. The attire worn by the women, was made of white buba with red and black headscarf. They were chanting the PDP slogan and saying “PDP, Power! Power!!

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<sup>258</sup> Umaru Musa Yar’Adua, elected President of the Federal Republic in 2007.

<sup>259</sup> Interview with Sheikh Yakubu Musa Kafanchan, Katsina, 9<sup>th</sup> December 2005, by S. Mohammed and A. Garba.

<sup>260</sup> *Vanguard*, 15<sup>th</sup> September 2001, internet edition.

Power!!!". Reacting to the Governor's order banning women from welcoming the President, a female gubernatorial aspirant in Zamfara State, Hajiya Hassatu Marshal, described the order as illegal and an infringement of the fundamental human rights of the women. Marshal maintained that President Obasanjo was the President for all Nigerians and not for men only, adding that when the politicians were looking for votes...they mobilised women to win their seats and now that they are in power, the womenfolk have been forgotten.<sup>261</sup>

In short, the conservative *ulama* – and politicians who try to use Sharia for their own purposes – do not have it all their own way. And then, when he himself was running for President, several years later, Governor Sani and his wife staged their own extravaganza: here is a summary of what the leader of the opposition had to say about that:

Zamfara PDP Chairman, Alh. Samaila Garkuwa, says Gov. Ahmad Sani is reckless; he is turning Government's business in to a joke and forgetting about the tenets of Sharia. He spent ₦1 million and donated 63 cars to musicians from Niger Republic who came to play at the inauguration of the Women's Wing of his 2007 presidential campaign organisation on 14<sup>th</sup> January 2006. The PDP Chairman says that Sharia forbids such public frolicking, as the law bans such immoral activities, including drumming and singing. "Several *ulamas* have condemned this wanton depravity, with one saying that what is happening in the State now is an insult to both Islam and Muslims the world over... It will take a lot to undo this bad example that Yarima and his family have set yet again", the statement said. The Chairman further alleged that during the inauguration, the Governor's wife, wives and children of State commissioners, legislators, permanent secretaries, special advisers, local council chairmen and traditional rulers present, lost all decorum and danced until they forgot to say their *zuhr* prayer on time. "And the First Lady, Dr. Karima, joined in the public merry-making to the extent that she and others were spraying the musicians with the top denominations of the naira", the statement went on. The Chairman said that in obedience to the Sharia tenets, the PDP was demanding that those who participated in that merriment be public reprimanded....<sup>262</sup>

– Thus demonstrating that the mantle of Sharia can be assumed by any politician whenever it is convenient. It is only fair to add that Governor Sani subsequently denied giving out any cars, and denied that the celebration was contrary to Sharia, implying that he had cleared it with his Council of Ulama first.<sup>263</sup> However that may be, the real lesson of this subsection is perhaps that the puritanism of some *ulama* about the social mixing of males and females at party-like events where there is music-making and dancing, is not shared by many of the North's Muslims, with whose customs it clashes; and it seems unlikely that this sort of puritanism will win out in very many places or for a very long time.

e. Reducing the costs of marriage. Finally, a bit of information on containing the costs of getting married, which always seem to be going up. This has been a problem

<sup>261</sup> *Vanguard*, 16<sup>th</sup> September 2001, internet edition.

<sup>262</sup> *The Guardian*, 20<sup>th</sup> January 2006, 7.

<sup>263</sup> Reported in *New Nigerian*, 24<sup>th</sup> January 2006, 4.

for a long time, as we can see from the fact that as far back as the 1980s some States were trying to address it through legislation: Sokoto in 1981, Kano in 1988, and perhaps there were others, it has not been possible to check the laws of all the Sharia States.<sup>264</sup> Concern about the problem was expressed at the time Sharia implementation was first being discussed:

“Government should readdress the issue of marriage in our society today with a view to eradicating certain negative innovations...” “[H]igh financial demands...contribute towards the accumulation of so many unmarried youths. These...have become used to visiting prostitutes in brothels, and the women on the other hand are there in high numbers with nobody to marry them...” “During marriage contract the suitor shall pay only *sadaq* (dowry) to the bride in accordance with the Sunnah. Payment of all forms of levies and other traditional gifts such as *kudin mai unguwa*, *kudin ’yan banga*, *kudin tobassai*<sup>265</sup> etc. should be made illegal and punishable under the law.” “[A] law [should be made] against extravagance during marriage celebrations that is, like inviting traditional singers and dancers and showering money on them.”<sup>266</sup>

Again, in 2005

A member of the Kaduna State House of Assembly has raised alarm over the increasing number of unmarried girls in the northern part of the country. He spoke at the Kaduna chapter of the Qur’anic Recitation Competition in Kaduna. The increasing number of unmarried girls and divorcees roaming the streets is alarming. He appealed to Muslims with only one wife to marry more to reduce the numbers...<sup>267</sup>

The only Sharia State that has enacted new legislation on this subject is Bauchi State, which has added the following new provision to its Sharia Penal Code (applicable to Muslims only), see Part IV.8.c:

**376A.** 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 wuta*, *wasan wuka*, *wasan bori*, etc.<sup>268</sup> is guilty of an offence and liable on conviction to

<sup>264</sup> See Sokoto Marriages (Customary Practices) Control Law 1981 and 1992, Cap. 90 Laws 1996; Kano Marriage (Customary Practices Control) Edict 1988, Cap. 91 Laws 1991; and Jigawa inherited Kano’s law, see Jigawa Marriage (Expenses Control) Law, Cap. 94 Laws of 1998.

<sup>265</sup> Money for the District Head, for the voluntary security groups, and for a third purpose which we have not been able to identify.

<sup>266</sup> Quoted from the Sharia Implementation Committee materials in Chapter 2: 96, 86, 185, 30.

<sup>267</sup> *New Nigerian*, 5<sup>th</sup> September 2005, 19.

<sup>268</sup> *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 operate. *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.

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 caning to twenty lashes.

I do not know if anyone has ever been prosecuted under this law. Then two Local Government Areas have enacted similar legislation: the provisions of the Gummi Local Government Area law on processions, musical concerts, other expenses during naming and wedding ceremonies, etc., have already been quoted; and see the Kaura Namoda Local Government (Zamfara State) ban on

All forms of procession during marriage, naming or any other ceremonies by motorcyclists (*kabu-kabu* operators) whether it was preceded with conveyance of members of the opposite sex or not, is hereby prohibited throughout the Local Government Area.<sup>269</sup>

It may be that other Local Governments have done similar things. Some State and Local Governments also take less formal steps to enable poor people to acquire the means to get married, as the following news item from Katsina State indicates: the piece also sheds more light on the work of *da'awah* groups:

22 motorcycles and 150 bicycles have been distributed to the Katsina State Da'awah Committee, as part of State Government efforts to ensure that the Sharia legal system is fully entrenched in the State. Various schemes have been introduced to enhance the welfare of new converts to Islam, including first aid, soft loans, educating new converts from primary up to university level. Women *da'awah* committees are to be formed. Workshops and seminars will soon be convened for Islamic instructors for them. The Chairman of the Katsina State Da'awah Committee, Malam Salisu Abdullahi Bakori, revealed that during the month of Ramadan 191 persons have converted to Islam in the State. About 26 girls were sponsored for marriages and thanked the Governor for supporting *da'awah* committees in the State.<sup>270</sup>

##### 5. Conclusion.

This essay has been a survey of various matters related to my assignment, which was to write on "Sharia Implementation and Female Muslims in Nigeria's Sharia States". Let me conclude by simply stating some few generalisations that seem to me to arise from the survey that has been made.

The situation is very complex. There are many different variously overlapping groups and sub-groups of female Muslims in Nigeria's Sharia States, variously affected by and taking various stances towards Sharia implementation.

Most Muslim women do not feel particularly oppressed by Sharia implementation most of the time, except where it has attempted to impinge on their livelihoods and

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<sup>269</sup> Kaura Namoda Local Government (Zamfara State) bye-law on liquor, prostitution, gambling and other social vices (2001), Part IV.1.f *infra*.

<sup>270</sup> *New Nigerian*, 22<sup>nd</sup> November 2005, 21. For another story about wedding expenses, including dowry, being paid by the State, in this case for reformed prostitutes, see Ostien and Umaru, "Changes in the Law", p. 56 *supra* n. 131.

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mobility and on their traditional modes of socialising and enjoyment. Some women think Sharia implementation has been good for them.

Most Muslim women activists are working within the Sharia implementation paradigm: trying to use the complexity and flexibility of the Islamic legal tradition to achieve more gender and social justice within Muslim families and communities. The enemy is “merely traditional practices” oppressive to women, which do not have – or should not have – the sanction of religion.

There is a lot of positive development in many directions.

But there is still a long way to go to achieve social justice in Nigeria – not only for females, but for all the people who suffer from poverty, disease, and especially from bad government.

## Chapter 3 Part IV

### Documentary Materials

The reader will see that sometimes, in reproducing the statutory materials that follow, we have given section titles by the side (e.g. 1.a); sometimes we have given them all together at the beginning (e.g. 1.b); and sometimes we haven't given them at all (e.g. 1.c). Where we have not given them at all, this is because no section titles were given in the materials reproduced. We have given them all at the beginning in the cases of the longer statutes, where significant space is saved by extracting the section titles and letting the statutory texts run across the whole page. We have left them at the side in the other cases, to give readers some sense of how the statutes are usually presented. Ideally the section titles should run along the outsides of pages, on the left on even-numbered pages and on the right on odd-numbered ones, but we have not taken the trouble to arrange this.

As elsewhere in this work, we have corrected (and in the cases of some words have standardised) spellings, and have also corrected other aspects of grammar and standardised the mode of presentation of the texts. See the Preface to Volumes I – V for further details.

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1.

**Omnibus laws**

**a. Borno State Repeals and Savings Provisions Law (2000)**<sup>271</sup>

A LAW TO REPEAL AND SAVE SOME BORNO STATE LAWS

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

1. This Law may be cited as the Borno State Repeals and Savings Provisions Law and shall be deemed to have come into effect on the ... day of ..... 2000. Title and commencement
2. In this Law unless the context otherwise requires:  
“gambling” means any game of chance with the purpose of winning money or other property but excludes sporting events.  
“Governor” means the Governor of the State;  
“State Laws” means all laws enacted or deemed to have been enacted by the State House of Assembly which are in force in the State.  
“State” means Borno State of Nigeria. Interpretation
3. The following laws of Borno State 1994 are hereby repealed: Repeal
  - (i) Betting Tax Law (CAP 18);
  - (ii) Gambling Machines (Licensing and Taxation) Law (CAP 57);
  - (iii) Tombola (Licensing and Taxation) Law (CAP 135);
  - (iv) Money Lenders Law (CAP 93);
  - (v) Pawnbrokers Law (CAP 100);
  - (vi) Pool Betting (Control and Taxation) Law (CAP 105); and
  - (vii) Liquor (Licensing) Law (CAP 81).
4. (1) Any person who directly or indirectly operates or otherwise engages in the operation of any of the businesses covered by the laws repealed under section 3 of this Bill shall be guilty of an offence and shall upon conviction be liable to punishment as contained in the Holy Qur’an and Hadith.  
  
(2) Any person who engages in gambling or practises any game of chance with the expectation and purpose of winning money or other property shall be guilty of an offence and be liable upon conviction to punishment as prescribed under sub-section 1 of this section. Prohibition and penal provisions
5. All other State Laws not repealed under Section 3 hereto shall remain in force. Savings
6. Any Sharia Court or Upper Sharia Court with jurisdiction in the area where an offence under this Law occurs shall have jurisdiction. Jurisdiction

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<sup>271</sup> Borno State of Nigeria Gazette No. 42 Vol. 26, 18<sup>th</sup> October 2001. The law was assented to by Governor Kachalla on 10<sup>th</sup> December 2000.

**b. Yobe State Prohibition of Certain un-Islamic Practices Law (2000)<sup>272</sup>**

A LAW FOR THE PROHIBITION OF PROSTITUTION AND OTHER UN-ISLAMIC PRACTICES, INCLUDING CINEMATOGRAPHIC EXHIBITIONS, PRODUCTION AND SALE OF LIQUOR, AND OTHER MATTERS RELATED THERETO

Arrangement of sections:<sup>273</sup>

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| 11. Prohibition of pool betting business.         | 23. General penal provision.                   |
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BE IT ENACTED by the Yobe State House of Assembly as follows:

1. This Law may be cited as the Yobe State Prohibition of Certain un-Islamic Practices Law 2000 and shall come into force on the 1<sup>st</sup> day of October, 2000.

2. In this Law unless the context otherwise requires:

“alkali” means an Area Court Judge;

“alcohol or intoxicant” means any liquid which, if used as a beverage may have an intoxicating effect and includes wine, beer, spirit and local liquor;

“brothel” includes a house, premises, or place where men pay, maintain, take women to have sex with other than offenders husband or with a person who is married to another or to commit fornication and it includes premises resorted to for homosexual practices;

“commercial video exhibition” means any commercial exhibition of pictures or other optical effects produced by video camera, machines or other similar apparatus;

“exhibition” means any display of un-Islamic picture or other optical effect produced by means of cinematography or other similar apparatus;

“film” means a film exceeding eight millimetres (8 mm) in width designed for use with a cinematograph, video machine or other similar apparatus;

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<sup>272</sup> As amended by the Yobe State Prohibition of Certain un-Islamic Practices (Amendment) Law 2000. The principal law was signed by Governor Bukar Abba Ibrahim on 7<sup>th</sup> August 2000; we have not been able to obtain a gazetted copy. The amending law is in Yobe State of Nigeria Gazette No. 3, Vol. 11 of 18<sup>th</sup> January 2001, Supplement Part C pp. C13-C14.

<sup>273</sup> For this list we have extracted the section titles from the law itself; we do not repeat the section titles subsequently.

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“game of chance” includes a game of chance or chance and skill combined for winnings in money or money’s worth, whether any person playing the game is at risk of losing money or money’s worth or not;

“gaming machine” means any machine which is constructed or adapted for playing of game of chance by means of a machine;

“local liquor” means fermented liquid essentially made by indigenes in or around Nigeria;

“machine” includes any apparatus;

“mobile cinema” means any cinematograph or other similar projection apparatus which is operated in, on or from a vehicle or which is carried from place to place for the purpose of being used for occasional exhibition;

“obscene picture, publication and song” means any picture, publication or song tending to corrupt public morals by its indecency or lewdness;

“prostitute” means one who permits common sexual activity for hire in distinction with sexual activity confined exclusively to lawfully married couples;

“prostitution” means act of performing or offering or agreeing to perform a sexual act for hire;

“premises” includes building, land and a mobile cinema;

“premises in relation to sections 5 and 7” includes any room or place where alcohol is suspected to be sold or stored;

“State” means Yobe State of Nigeria.

3. (1) Any person who exhibits or causes to be exhibited any un-Islamic video pictures, films, or other optical effects produced by way of video camera, machines, projector, mobile cinema or other similar apparatus in the State commits an offence.  
(2) Any person who contravenes the provision of subsection (1) shall be liable on conviction to a fine of fifty thousand naira (₦50,000.00) or five years imprisonment.
4. (1) Any police officer authorised by an alkali may at any time enter any premises in which he has reason to believe that an exhibition is being or is about to be carried out with a view to seeing whether the provisions of this Law or any regulation made thereunder has been complied with.  
(2) Any person who prevents or obstructs the entry of any officer referred to in subsection (1) of this section is guilty of an offence and shall be liable on conviction to a fine of twenty thousand naira (₦20,000.00) or two years imprisonment.
5. (1) Any adult Muslim legally responsible for his action who wilfully and without excuse or necessity or the pleading of an error on his part as to the nature of what he drunk yet drinks any intoxicating liquor even a small quantity insufficient to produce intoxication commits an offence and shall be liable on conviction to eighty lashes to be inflicted after he has recovered from his drunkenness.  
(2) Whoever being a Muslim brews, sells or deals in any way with anything; containing alcohol (*sharab*) or other intoxicants shall be punished with eighty lashes and one hundred thousand naira or ten years imprisonment.

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- (3) Any person who brews, sells or deals with anything containing alcohol (*sharab*) or any intoxicant shall be liable on conviction to a fine of one hundred thousand naira or ten years imprisonment.
6. Any police officer authorised in writing by an alkali may:
- (a) enter any premises at any time between the hours of 6.00 a.m. and 6.00 p.m. time for the purpose of detecting or preventing any breach of the provision of this Law;
  - (b) having reasonable ground for suspecting that intoxicating liquor is being sold, stored, introduced or otherwise dealt with, enter and inspect any premises and examine any package, vessel or conveyance;
  - (c) seize and detail any intoxicating liquor which he has reason to believe has been distilled, manufactured, imported, introduced, sold or removed or possessed contrary to the provision of this Law, for the purpose of sale and any receptacle containing the same and any vessel, conveyance or animal used in transporting liquor contrary to the provision of this Law.
7. (1) Any alkali may grant a warrant to any police officer to enter at any time and if need be by force any premises or place, whether a building or not, situated, within the limit specified in the warrant where the officer has reasonable ground for believing that an offence against this Law is being committed and examine and search the said premises or place for any spirit, stills, apparatus or portions of apparatus suitable for the distillation of alcohol or the rectification or the distillation of spirit and to seize and remove any spirit stills, apparatus as aforesaid together with any vessel cohabiting the same.
- (2) Where any spirit, stills, apparatus or portion of apparatus as aforesaid are removed from any premises or place in accordance with sub-section (1) the occupier of the premises or place may, if in the opinion of the officer executing the search warrant it is considered necessary so to do, be thereupon apprehended and there after dealt with in accordance with the provision of this Law.
- (3) No search warrant shall be granted the alkali granting the same shall be satisfied by information on earth taken in accordance with Islamic law:
- (a) that offences against the provision of this Law are prevalent in the area for which the warrant is being required;
  - (b) that owing to difficulties or communication or otherwise the course of justice might be defeated or delayed if it were necessary for a search warrant to be obtained as and when sufficient information was obtained in respect of each individual premises or places as aforesaid;
- (4) A warrant granted in accordance with the provision of this Law shall remain in force for seven days from the date thereof unless a shorter period is specified in the warrant.
8. The following things may be forfeited on the order of an alkali:
- (a) intoxicating liquor distilled, manufactured, sold, removed, transported, introduced, possessed or otherwise dealt with by contravention of this Law;
  - (b) any vessel, car, animal for conveyance used intentionally in conveying intoxicating liquor in contravention of this Law, and any vessel in which any goods are thrown overboard to prevent seizure;

9. Any person who sells or distributes, imports or prints or makes for sale or hire or willingly exhibits in public view any obscene book, pamphlet, paper or similar article, drawing, printing, representation of figure or attempt so to do or has in his possession any such obscene book or other thing with the purpose of sale and distribution for public exhibition, commits an offence and shall be liable on conviction to a fine of (₦50,000.00) fifty thousand naira or five years imprisonment.
10. Any person who sings, recite, utters or reproduces by any mechanical means any obscene song or word in it near any public place commits an offence and shall be liable on conviction to a fine of (₦25,000.00) twenty-five thousand naira or two years imprisonment.
11. No person shall under any form, pretence, description whatever or by means of any device, contrivance or by any other means whatsoever, carry on in the State a pools betting business and no person shall distribute, print or publish or cause to be done in the State any other thing for any purpose incidental to a pools betting business.
12. Any person who keeps any house or place or converges in a place for the purpose of betting or playing game of chance or keep any office for the purpose of drawing any lottery or assists in the conduct of any such house or place commits an offence and shall be liable on conviction to a fine of (₦50,000.00) fifty thousand naira or five years imprisonment.
13. Any person who operates gaming machine in the State commits an offence and shall be liable on conviction to a fine of (₦50,000.00) fifty thousand naira or five years imprisonment.
14. No advertisement of pools betting shall be published or otherwise exhibited within the State and any person who publishes such an advertisement or any person carrying on any pools betting business or advertisement is guilty of an offence and shall be liable on conviction to a fine of (₦50,000.00) fifty thousand naira or five years imprisonment.
15. (1) Any person who is satisfied by information on oath taken in accordance with Islamic Law that there is reasonable ground to suspect that any building or place is being used for the purpose of, or in connection with the commission of an offence under this Law, may issue a search warrant under his hand authorising any police officer at any time or times within seven days from the date thereof to enter, if necessary by force the said building or place and every part thereof of, and to search for, seize and remove any document, money or valuable thing found therein which he has reasonable ground to suspect is in such building or place for any purpose connected with the infringement of any provision of this Law.
- (2) Any person who realises or fails to answer any question put to him under sub-section (1) of this section respecting any matter or, who fails to produce for inspection any books or account, records or documents in his possession or under his control that he is required to produce for the purpose of inspection shall be guilty of an offence and liable on conviction to a fine of (₦20,000.00) twenty thousand naira or to imprisonment for a term of not less than two years.
16. (1) As from the commencement of this Law prostitution is hereby prohibited in the State.
- (2) Any person who contravenes sub-section (1) of this section is guilty of an offence and shall be liable on conviction to a fine of (₦10,000.00) ten thousand naira or one year imprisonment.

### CHAPTER 3: SANITIZING SOCIETY

17. Any person who keeps or manages a brothel shall be guilty of an offence and liable on conviction to a fine of (₦20,000.00) twenty thousand naira or to a punishment which may extend to a three years imprisonment or both.

18. (1) Hawking by female persons of 10 years and above is hereby prohibited.

(2) Any person who contravenes the provision of this section shall be guilty of an offence and liable on conviction:

(a) if the hawker is minor his parent, guardian or any other person responsible for causing the contravention shall be liable to a fine of two thousand naira (₦2,000.00) or one month imprisonment;

(b) if the hawker has attained the age of maturity, he shall be personally liable to a fine of two thousand naira (₦2,000.00) or one month imprisonment.

19. Trial of offences under this Law shall be at the instance of the police and the Attorney-General of the State.

20. For the purpose of trial and prosecution under this Law the Criminal Procedure Code shall be the procedural law applicable.

21. As from the commencement of this Law all licences issued in respect of:

- (a) the sale and production of liquor;
- (b) the operation of gaming houses; and
- (c) pool betting

are hereby revoked.

21A. Notwithstanding any other provisions in this Law any person who:

- (a) produces or sells liquor;
- (b) operates any gaming machine; or
- (c) operates any pool betting house

commits an offence and is liable on conviction to a fine of one hundred thousand naira or to five years imprisonment.

22. As from the commencement of this Law the following Laws are hereby repealed:

- (a) Betting Tax Cap 18;
- (b) Cinematograph (Censorship) Cap 27;
- (c) Commercial Video Exhibition Cap 33;
- (d) Gaming Machine (Licensing & Taxation) Cap 57;
- (e) Liquor Law Cap 81;
- (f) Pool Betting (Control & Taxation) Cap 105;

Laws of Yobe State of Nigeria.

23. Any person who contravenes any penal provision of this Law save where specific punishment is provided, commits an offence and is liable on conviction to fine of ten thousand naira or two years imprisonment.

24. Offences under this Law shall be triable in Area Court.

**c. Giwa Local Government (Kaduna State) bye-law on liquor, gambling and prostitution (1999)<sup>274</sup>**

In exercise of the powers conferred by the fourth schedule of the 1999 Constitution of the Federal Republic of Nigeria, the following Bye-Law is hereby made by the Giwa Local Government:

1. This Bye-Law may be cited as the Giwa Local Government Sale and Drinking of Alcohol, Gambling and Prostitution (Prohibition) Bye-Law 1999.
2. This Bye-Law shall come into operation on the 18<sup>th</sup> October, 1999.
3. In this Bye-Law unless the context otherwise requires:
  - “Local Government” means Giwa Local Government of Kaduna State.
  - “court” means Magistrate Courts.
  - “hotel” means any building held out to the public as a place of selling and drinking alcohol as well as prostituting.
  - “prostitute” means any woman who permits common indiscriminate sexual activity for hire.
  - “gambling” means a game of betting.
  - “gambler” means a person who practises games of chance or skill with the expectation and purpose of winning money or property.
4. (a) From the commencement of this Bye-Law sale and drinking of alcohol is prohibited throughout the Local Government
  - (b) All existing liquor licences issued by the Local Government are hereby cancelled.
  - (c) A liquor licence shall not be issued to any person to operate either a beer parlour or an hotel for the purpose of selling alcohol.
5. Any person who fails to comply with the provisions of section 4 shall be guilty of an offence and shall be liable on conviction:
  - (a) For a first offence to a fine not exceeding ~~₦~~20,000.00 in the case of a seller or to imprisonment for a period not exceeding two years or both.
  - (b) For a second or subsequent offence to a fine not exceeding ~~₦~~30,000.00 or to imprisonment for a period not exceeding four years or both in the case of a seller and in a case of a drunkard to a fine not exceeding ~~₦~~10,000.00 or to imprisonment not exceeding three years or both. In addition he shall be liable to eight lashes of *hadd* lashing.
6. From the commencement of this Bye-Law prostitution is prohibited throughout the Local Government.
  - (a) No house shall be used to accommodate free women for the purpose of prostitution in the Local Government.
  - (b) Any person who fails to comply with the provision of section 6 shall be guilty of an offence and shall be liable on conviction:

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<sup>274</sup> KD.S.L.G.L.N. No. 4 of 2000, dated 18<sup>th</sup> October 1999.

CHAPTER 3: SANITIZING SOCIETY

- (i) for a first offence to a fine not exceeding ₦30,000 or to imprisonment for a period not exceeding three years or both.
  - (ii) for a second or subsequent offence to a fine not exceeding ₦50,000.00 or five years imprisonment.
  - (iii) In addition such house shall be seized and or confiscated by the Local Government and same shall be forfeited to the Local Government property.
7. As from the commencement of this Bye-Law gambling is prohibited throughout the Local Government.
8. (a) Any person who fails to comply with the provision of section 7 shall be guilty of an offence and liable on conviction to a fine not exceeding ₦20,000.00 or to imprisonment for a term not exceeding two years or to both such fine and imprisonment for a first offence.
- (b) For a second or subsequent offence to fine not exceeding ₦30,000.00 or to imprisonment for a term not exceeding three years or to both such fine and imprisonment
9. Notwithstanding the provisions of the Criminal Procedure Code a Magistrate Court shall have jurisdiction to try the offences under this Bye-Law
10. All offences under this Bye-Law may be tried summarily and the full penalties and forfeiture authorised by this Bye-Law may be imposed upon summary conviction.
11. Any magistrate or a person authorised in writing by a magistrate and every police officer may: -
- (a) Enter any premises at any time for the purpose of detecting or preventing any breach of the provisions of this Bye-Law.
  - (b) Having reasonable grounds for suspecting that intoxicating liquor is being unlawfully sold, stored or a house is being used for prostituting or gambling enter and inspect such premises.

**d. Makarfi Local Government (Kaduna State) bye-law on liquor, brothels and gambling (2000)**<sup>275</sup>

In exercise of the powers conferred by the 4<sup>th</sup> Schedule of the Constitution of the Federal Republic of Nigeria 1999 and Local Government Law Cap 91 Laws of Kaduna State 1993, the following Bye-Law is hereby made by the Makarfi Local Government Council.

- 1. This Bye-Law may be cited as the Makarfi Local Government (Control of Liquor, Brothel and Gambling) Bye-Law 2000. Short title
- 2. This Bye-Law shall be deemed to have come into operation on the 30<sup>th</sup> day of June 2000. Commencement
- 3. In this Bye-Law unless the context otherwise requires: Interpretation  
“Chairman” means the Executive Chairman Makarfi Local Government.

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<sup>275</sup> KD.S.L.G.L.N. NO. 6 OF 2000, dated 1<sup>st</sup> July 2000.

DOCUMENTARY MATERIALS: OMNIBUS LAWS

“Local Government” means Makarfi Local Government.

“liquor” means any liquid which if used as a beverage, may have intoxicating effect and include wines, beer, spirits and any kind of fermented liquor usually made by natives of Nigeria or in the adjacent territories.

“retail” means the sale of liquor in quantities not exceeding one litre to any person.

“sale” includes exchange, barter and offering or exposing for sale.

“wholesale” means the sale of liquor in quantities of not less than one litre to any person.

“person in authority” includes a judge, village or ward head.

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|---|--|
| 4. All licences issued by the Local Government for the sale of liquor are revoked with effect from the date of commencement of this Bye-Law.  | Revocation of licences to sell liquor    |
| 5. Any person who sells liquor in wholesale or retail within the Local Government shall be guilty of an offence.  | Prohibition of sale of liquor            |
| 6. Any person who engages in any form of gambling within the Local Government Area shall be guilty of an offence.   | Prohibition of gambling                  |
| 7. Any person who keeps or manages a brothel shall be guilty of an offence.   | Prohibition of keeping a brothel         |
| 8. Any person who organises or otherwise controls any premises on which the act of gambling takes place shall be guilty of an offence.  | Prohibition of managing a gambling house |
| 9. (1) A person in authority having reasonable grounds for suspecting that intoxicating liquor is being unlawfully sold, stored, introduced or otherwise dealt with, may enter and inspect any premises and examine any package, vessel or conveyor and;<br><br>(2) A police officer may at any time enter any premises for the purpose of detecting or preventing any offence under the provisions of this Bye-Law.                                      | Authorisation of searches                |
| 10. Whoever is guilty of an offence under paragraph five of this Bye-Law shall upon conviction be punished with imprisonment for a term which may extend to five months or with fine which may extend to ten thousand naira or to both, provided that the trial court may in addition to the punishment imposed, order the forfeiture to Government of any liquor or container found in possession of the offender, at the time the offence is committed. | Punishment for sale of liquor            |
| 11. Whoever is guilty of an offence under paragraph six of this Bye-Law shall upon conviction be punished with imprisonment for a term which may extend to three months or with fine which may extend to two thousand naira or with both.   | Punishment for gambling                  |
| 12. Whoever is guilty of an offence under paragraph seven of this Bye-Law shall upon conviction be punished with imprisonment for a term which may extend to one year or with fine which may extend to twenty   | Punishment for keeping a brothel         |

thousand naira or to both.

13. Whoever is guilty of an offence under paragraph eight of this Bye-Law shall upon conviction be punished with imprisonment for a term which may extend to six months or with fine which may extend to ten thousand naira or with both. Punishment for managing a gambling house

14. All offences under this Bye-Law maybe tried summarily by a court of competent jurisdiction. Trial court

15. Nothing in this Bye-Law shall apply to: Exemptions

(a) any qualified medical practitioner or licensed pharmacist administering or selling for purely medical purposes any medicine containing intoxicating liquor.

(b) The conveyance of liquor for transit through the Local Government.

16. The Chairman may appoint any officer of the Local Government or agents with responsibility for giving effect to the provisions of this Bye-Law. Enforcement

**e. Gusau Local Government (Zamfara State) law on prostitution, gambling, and other social vices (2000)<sup>276</sup>**

**A LAW TO PROHIBIT AND ERADICATE PROSTITUTION, GAMBLING, GAMES OF CHANCE AND OTHER FORMS AND SOURCES OF SOCIAL VICIES AND MORAL DECADENCE IN THE STATE<sup>277</sup>**

WHEREAS the Local Government Council is vested with powers and responsibilities to ensure good governance and the socio-economic well-being of the people in the area;

AND WHEREAS the adoption of the Sharia Legal System in the State calls for the cultivation and protection of good moral standards of the people and to control rampant anti-social behaviours;

NOW THEREFORE the Council of the Gusau Local Government hereby enacts following Bye-Law:

1. This Bye-Law may be cited as the Prostitution, Gambling etc. (Prohibition and Control) Bye-Law, 2000.

2. The commencement date of this Bye-Law shall be the ..... day of ..... 2000.

3. The words used in this Bye-Law shall have, unless otherwise provided, the meaning ascribed to them in this section:

- i. "Prostitute" or "prostitution" means a person of the female sex, of easy virtue, who engages in sexually offering her womanhood to the opposite sex for monetary or other gains in a professional or otherwise way; this art is referred to as prostitution.

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<sup>276</sup> Bye-Law No. 3, 2000, dated 4<sup>th</sup> July 2000. No gazetted copy available; copy signed by the Local Government Chairman obtained from the Ministry for Local Government in Gusau.

<sup>277</sup> Sic: no doubt "in the Local Government Area" is meant.

DOCUMENTARY MATERIALS: OMNIBUS LAWS

- ii. "Local Government Council or Area" or "Council" means and refers to the Gusau Local Government Council of Zamfara State.
  - iii. "State" means Zamfara State of Nigeria.
  - iv. "Game of chance" means any game carried out by persons with a view to make unlawful or wrongful monetary or material gain therefrom or otherwise to take undue advantage that is illegal or wrongful under the principles of Sharia.
  - v. "Hawking" means to trade in wares or food or other items to the public or individuals by carrying the items around.
4. Prostitution in all its ramifications by women of easy virtue is hereby prohibited.
  5. Any woman found parading herself as a prostitute in any place commits an offence.
  6. Any person who keeps, conceals, harbours or allows any prostitute to live or stay in any dwelling house commits an offence.
  7. Whoever commits any of the offences in articles 4, 5 & 6 of this Bye-Law shall be liable to imprisonment for six months or a fine of three thousand naira or to both fine and imprisonment; and in either case, may in addition be sentenced to 50 strokes of the cane if the convict is of the Muslim faith.
  8. Any form of a game of chance including and not limited to pools betting, *kalo-kalo*, gambling with cards, ludo or (*kodago*) etc. is hereby prohibited.
  9. Any two or more people found playing a game of chance of whatever kind and in whatever form in any private or public place commits an offence.
  10. Whoever commits the offence of playing a game of chance shall be liable to imprisonment for three months or to a fine of two thousand naira or to both, and in either case may in addition be sentenced to 50 strokes of the cane if the convict is of the Muslim faith.
  11. Whoever admits any person into any dwelling place for money with the purpose of showing to that person any form of cinematography commits an offence.
  12. Whoever violates the provision of article 11 of this Bye-Law shall be punished with imprisonment for three months or to a fine of two thousand naira or to both.
  13. Hawking by unmarried girls of more than ten (10) years of age and divorcees in whatever form is hereby prohibited.
  14. Any unmarried girl of more than ten (10) years of age or divorcee found roaming about the street hawking in whatever form shall be guilty of an offence.
  15. Whoever commits the offence stated in articles 13 and 14 of this Bye-Law shall be liable to a fine of five hundred naira. If the said offence is committed by a girl who cannot afford to pay the fine the parent or guardian of that girl shall be held responsible for the payment of the said fine.
  16. All offences covered by this Bye-Law may be tried by a Magistrate Court or a Sharia Court in whose jurisdiction the offence is committed.

**f. Kaura Namoda Local Government (Zamfara State) bye-law on liquor, prostitution, gambling and other social vices (2001)<sup>278</sup>**

WHEREAS the 1999 Constitution and the Local Government Law of Zamfara State vest the Local Government with powers and responsibilities to ensure good governance and the socio-economic well-being of the people.

AND WHEREAS the adoption of the Sharia Legal System in the State calls for the cultivation and protection of good moral standards of the people, the control and eradication of anti-social vices and behaviours. This Bye-Law repeals Bye-Laws No. 1 and 2 of the year 2000.

NOW THEREFORE, The Council of the Kaura Namoda Local Government hereby enacts the following Bye-Law:

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|---|--------------|
| 1. This Bye-Law may be cited as The Prohibition, Eradication and Control of Anti-Social Vices and Behaviours Bye-Law 2001.  | Short title  |
| 2. The commencement date of this Bye-Law shall be the 16 <sup>th</sup> day of October, 2001.  | Commencement |
| 3. (i) The sale, consumption, prohibition and general dealing in liquor and alcoholic products and substances are prohibited within the Local Government Area.  | Liquor       |
| (ii) No person shall operate or rent out a hotel, beer parlour, tavern, off licence or any other place whether private or public and whatsoever name called for the purpose of the sale, consumption or production of liquor or related substances.   |              |
| (iii) Whoever is found in any private or public place for the production, sale, or consumption of liquor or if found to have violated the provisions of this section commits an offence.  |              |
| (iv) Whoever commits an offence under this section shall be liable on conviction to imprisonment for a period not exceeding 3 years or fine not exceeding twenty thousand naira: if the offender is of Islamic faith shall also be liable to appropriate lashes of the cane as prescribed under the Sharia Penal Code. In addition, the exhibit recovered be destroyed on the orders of convicting judge. | Punishment   |
| 4. (i) Prostitution in all forms is hereby prohibited.  | Prostitution |
| (ii) Any person who parades himself or herself as a prostitute, lesbian or homosexual commits an offence;   |              |
| (iii) Any person who solicits, pimps, engages, assists, keeps, conceals, harbours or facilitates another person to live or stay in a house to engage in prostitution, homosexual and lesbian commits an offence.  |              |
| (iv) Whoever commits any of the above offences shall be liable to imprisonment for a period not exceeding 2 years or a fine of ₦7,000.00 or both. If the offender is of Islamic faith, he shall in addition be liable   | Punishment   |

<sup>278</sup> Bye-Law No. 1 of 2001, dated 16<sup>th</sup> October 2001. No gazetted copy available; copy signed by the Local Government Chairman obtained from the Ministry for Local Government in Gusau.

DOCUMENTARY MATERIALS: OMNIBUS LAWS

- to punishment as prescribed by the Sharia Penal Code of the State.
5. (i) Gambling and all forms of games of chance including pools betting, gambling with cards, ludo, “*dara*”, *kodago* etc. are hereby prohibited. Gambling, games of chance  
 (ii) Any two or more people who engage in playing any game of chance of whatever kind and in any private or public place commit an offence;  
 (iii) Whoever commits an offence shall be liable to imprisonment for a period not exceeding 2 years or a fine not exceeding ₦10,000.00 and if the offender is of Islamic faith, shall in addition be liable to strokes of lashes not exceeding forty.
  6. (i) All forms of commercial display of video or cinema in any dwelling, private or public place for the purpose of showing to another person(s) the video or cinematography are prohibited, provided that the objective of such a show is not to educate and enlighten the people on worthy issues to the society. Video and cinematography shows  
 (ii) Whoever violates the provision of this Bye-Law commits an offence and shall be liable on conviction to imprisonment for a period not exceeding 2 years or ₦15,000.00 fine or both. The offender shall be liable to strokes of lashes not exceeding forty. Punishment
  7. (i) All forms of procession during marriage, naming or any other ceremonies by motorcyclists (*kebu-kebu* operators) whether it was preceded with conveyance of members of the opposite sex or not, is hereby prohibited throughout the Local Government Area. Processions  
 (ii) Bathing naked by members of opposite sex in a river, ponds, pools, lakes or in any other place is hereby prohibited throughout the Local Government Area. Bathing naked  
 (iii) Any person who violates the provision of this Bye-Law shall be liable to a fine of ₦5,000.00 or 1 year imprisonment or both. In addition, offenders who are of Islamic faith shall also be liable to strokes not exceeding forty. Punishment
  8. The provisions of this Bye-Law shall apply only in the area that falls within Kaura Namoda Local Government. Area of jurisdiction
  9. Any offender under this Bye-Law may be tried by a Magistrate or Sharia Court within the area of jurisdiction where the offence was committed. Court of trial
  10. “Alcohol” or liquor means any alcoholic or intoxicating substance e.g. Indian Hemp, solution, etc. Interpretation  
 “Dealing” means to either sell, purchase, consume, produce, transport, store, possess, advertise, propagate, hire or lease out premises to do with liquor or alcoholic substance.  
 “Prostitute/Prostitution” means a male or female who engages including a pimp in sexually offering himself or herself, manhood or womanhood for homosexual, lesbianism or fornication for monetary gain or otherwise.

CHAPTER 3: SANITIZING SOCIETY

“Local Government Council” means Kaura Namoda Local Government Council.

“State” means Zamfara State.

“Game of Chance” includes any game carried out by persons with a view to take monetary or valuable gains or otherwise to take undue or wrongful advantage contrary to the principles of Sharia.

2.

**Corruption**

**a. Zamfara State Anti-Corruption Commission Law (2003) Annotated<sup>279</sup>**

A LAW TO PROVIDE FOR THE ESTABLISHMENT, COMPOSITION AND  
POWERS OF ZAMFARA STATE ANTI-CORRUPTION COMMISSION<sup>280</sup>

Arrangement of sections:<sup>281</sup>

*Preamble*

*General Provisions*

1. Short title.
2. Commencement.
3. Interpretation.

*Establishment and Composition of the Anti-Corruption Commission*

4. Establishment of the Commission.
5. Composition of the Commission.
6. Powers of the Commission.
7. Inquiry to be specified.
8. Power of Commissioner with respect to obtaining of evidence and conduct of proceedings.
9. Proceedings of the Commission.
10. Remuneration of members.
11. Removal of members.
12. Independence of Commission.
13. Appointment and duties of Secretary.

*Offences and Punishment*

14. Prohibition on dealing with government property without lawful authority.
15. Misuse of government vehicles.
16. Prohibition of improper handling of government property.
17. Offence disclosed from investigation of another.
18. Official gratification defined.
19. Corrupt offers to public officers.
20. Corrupt demand by person.
21. Deliberate frustration of investigation by the Commission.
22. Making false statement of returns.
23. Gratification by and through agents.

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<sup>279</sup> Zamfara State's Anti-Corruption Commission Law draws heavily on the Federal Corrupt Practices and Other Related Offences Act, No. 5 of 2000, Cap. C31 of LFN 2004, although it evidently has other sources as well which we have not traced. The annotations to the sections of Zamfara's law which follow correlate its sections with those of the Corrupt Practices and Other Related Offences Act, where applicable, and note some but by no means all of the differences in their language. The Federal statute is referred to in the notes as "ICPC Act".

<sup>280</sup> No. 12 of 2003, assented to 28<sup>th</sup> July 2003; published in Zamfara State of Nigeria Gazette No. 1 Vol. 2, 10<sup>th</sup> October 2003 pp. A1-A27.

<sup>281</sup> For this list we have extracted the section titles from the gazetted version of the law; we do not repeat the section titles below.

CHAPTER 3: SANITIZING SOCIETY

24. Bribery for giving assistance etc. in regard to contracts.

*[Investigations and Prosecutions]*

25. Prosecutions; keeping report and books.
26. Power to examine person.
27. Summons against suspect.
28. Summons to be signed by Chairman.
29. Service against summons.
30. Substituted service.
31. Acknowledgement of service.
32. Detention of person refusing to acknowledge service.
33. Failure to appear after receipt.
34. Forceful entry of premises.
35. Seizure of movable or immovable property.
36. Custody of seized property etc.
37. Legal obligation to give information.
38. Obstruction of inspection and search.
39. Offence under this law to be bailable.
40. Right of the accused to be taken before a court of law.
41. Bail by the court of an accused person.
42. Presumption in certain offences etc.
43. Admissibility of translation of documents.
44. Protection of informers and information.
45. Protection of officer of the Commission.

*[Miscellaneous]*

46. Application of the provisions of this Law to any prescribed offence.
47. General penalty for other offences.
48. Right of appeal.
49. Repeal of Anti-Corruption Law No. 17 of 2000.

*Preamble*

WHEREAS by the provisions of section 15(5) of the 1999 Constitution, the State is mandated to abolish all corrupt practices and abuse of power;

AND WITHOUT PREJUDICE to the Code of Conduct contained in the Fifth Schedule of the 1999 Constitution;

NOW THEREFORE, be it enacted by the Zamfara State House of Assembly as follows:

*General Provisions*

1. This Law may be cited as the Zamfara State Anti-Corruption Commission (Establishment) Law, 2003.
2. This Law shall come into force on the 28<sup>th</sup> day of July, 2003.
3. In this Law, unless the context otherwise requires:
  - “Chairman” means the Chairman of the Commission;
  - “circulars” means Government directives to civil and public servants in the State on general administration of the State;

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“Commission” means the Anti-Corruption Commission established pursuant to section 4 of this Law or where the context so admits the Local Government Anti-Corruption offices established pursuant to the Law.

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

“contract” means any agreement entered by or on behalf of the Zamfara State Government and any other individual or company or organisation whether international or local to render services, supply goods, or exercise works etc. anywhere.

“Governor” means the Governor of Zamfara State.

“House of Assembly” means the House of Assembly of Zamfara State.

“Commissioner” means a Commissioner of the Commission and includes the Chairman of the State Anti-Corruption.

“powers” includes functions.

“State” means Zamfara State of Nigeria.

“offices” means Local Government offices of the Commission.

“employees and servants” means and includes supporting staff of the Commission.

“corruption” includes fraud, bribery and any other related offences.

“agent” includes a trustee, an administrator or executor of the deceased person, any person employed by or acting [for] such trustee, executor, administrator, or an officer serving in or under any public body in the State.

“false pretence” means any representation made by writing, conduct or by words, of a matter, which representation is false in fact, and which the person making it knows to be [false] or does not believe to be true.

“gratification” includes money, fees, donation, gift, reward, valuable security, property or interest in property being property of any description whether movable [or immovable] or any other advantage given or promise [made] to any person with intent to influence such a person in the performance of his duties.

“court” means Upper Sharia Court and Magistrate Court.

“person” means a natural person or juristic personality.

“Local Government” means Local Government Council in Zamfara State of Nigeria.

“public officer” means a person employed or engaged in any capacity in the public service of the State or Local Government and includes officers serving in the Sharia Courts, Magistrate Courts (District Courts) and Tribunals.

“property” includes real or personal property of every description including money.

“official working hours” means the period between 7:00 a.m. to 5:00 p.m.

*Establishment and Composition of the Anti-Corruption Commission*

4.<sup>282</sup> (1) There is hereby established a body for the State to be known as the State Anti-Corruption Commission in this Law referred to as the Commission.

(2) The Commission shall be a body corporate with perpetual succession and a common seal and shall have power to sue and be sued in its name.

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<sup>282</sup> Cf. ICPC Act §3(1) and (2).

- 5.<sup>283</sup> (1) The Commission shall consist of the following members to be appointed by the Governor:
- (a) Chairman;
  - (b) five Permanent Commissioners, of whom one must be a legal practitioner and knowledgeable in Islamic education; and
  - (c) not less than seven and not more than fifteen other part-time members at least seven of which must be ex-officio.
- (2) Persons to be appointed as members of the Commission shall be persons of proven integrity.
- (3) A member of this Commission shall remain a member for a period of four years from the date of his appointment and may be eligible for re-appointment.
- 6.<sup>284</sup> (1) Subject to the provisions of the Constitution and other enactments, the Commission shall have power:
- (a) to investigate any allegation of corrupt practices against any civil or public servant in the service of the State and to prosecute the accused on the advice of the Attorney-General of the State;
  - (b) to monitor proper handling of all Government movable and immovable properties;
  - (c) to monitor and inquire into any case of suspected corrupt practices in the public service of the State;
  - (d) to organise workshops, seminars, public campaigns against corrupt practices in the State;
  - (e) to receive and inquire into any public allegation concerning any public officer;
  - (f) to report to the office of the Attorney-General for legal advice and prosecution, and to the Governor for his information and notice;
  - (g) to seek information from other public officers and the general public regarding any case of corrupt practices reported to it;
  - (h) to establish offices in each of the Local Government Areas under their full control;
  - (i) to investigate and send to the Attorney-General any allegation of improper or non-performance of any Government contract for necessary legal action;
  - (j) to receive allegations submitted through the Local Government Anti-Corruption offices and act on same;
  - (k) to reverse, confirm or vary the decisions or findings of the Local Government Anti-Corruption offices; and
  - (l) to do any other things for the proper discharge of any or all of these powers.
- (2) Nothing in this section shall prevent the Commission from reporting a particular public officer to the Code of Conduct Bureau or the police for alleged allegation [sic] of corrupt practice.

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<sup>283</sup> Cf. ICPC Act §3(3), (6) & (7). There are significant differences in the compositions of the two Commissions.

<sup>284</sup> This section corresponds generally to ICPC Act §6, but specifies the powers of Zamfara State's Commission in much more detail.

7. The Commission shall specify the allegations and the subject of inquiry, and the inquiry must be held in public, provided that the Commission may exclude any person or persons from its proceedings for the preservation of order and in the interest of justice to any party in the conduct of the proceedings.

8. The Commissioners shall have the following powers:

(a) to procure all such evidence, written or oral, and to examine all such persons as witnesses, as the Commissioners may think it necessary or desirable to procure or examine.

(b) to require the evidence, whether written or oral, of any witness to be made on oath or declaration, such oath or declaration to be that which could be required of the witness if he were giving evidence in Magistrate Courts or Sharia Courts.

(c) to summon any person in Zamfara State to attend any meeting of the Commissioners to give evidence or produce any document or other thing in his possession and to examine him as a witness, subject to all just exceptions.

(d) to issue [sic: receive?] any evidence, whether written or oral, which might be inadmissible in civil or criminal proceedings;

(e) to admit or exclude the press from any meeting of the Commission;

(f) to enter upon any land, for the purpose of obtaining evidence or information required by, or which may be required by, or which may be of assistance to, the Commission;

(g) to direct any law enforcement agency within the State to question, investigate or interrogate any person whose conduct or affairs are under investigation or who is likely to impede or interfere with the conduct of their assignment;

(h) to do any other thing that is necessary or conducive to the attainment of the objectives of the inquiry.

9.<sup>285</sup> Subject to the provisions of this Law, the Chairman may make standing orders to regulate the proceedings of the Commission during inquiry.

10.<sup>286</sup> The Chairman and all other members of the Commission shall be paid such remuneration, whether by way of salary or allowances, as the Governor may determine.

11.<sup>287</sup> A member of the Commission appointed under this Law shall only be removed from office by the Governor for inability to discharge the function of the office (arising from unsoundness of mind of body) or for misconduct.

12.<sup>288</sup> In exercising its powers under this Law, the Commission shall not be subjected to the direction and control of any other authority.

13.<sup>289</sup> (1) There shall be a Secretary to the Commission to be appointed by the Governor.

(2) The Secretary of the Commission shall conduct the correspondence and keep the records thereof and perform such other duties as the Commission may from time to time direct or which are assigned to him under the provisions of this Law.

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<sup>285</sup> Cf. ICPC Act §§7(1) and 70.

<sup>286</sup> Cf. ICPC Act §3(5).

<sup>287</sup> Cf. ICPC Act §3(8).

<sup>288</sup> Cf. ICPC Act §3(14).

<sup>289</sup> Cf. ICPC Act §4(6).

(3) The Secretary shall be an officer and not a member of the Commission and he shall be the Accounting Officer, and shall be responsible to the Chairman.

*Offences and Punishment*

14. No person shall buy or sell or transfer or expose for sale or transfer or have in his possession for sale or transfer any movable property belonging to the Government without lawful authority.

15. No person shall use or order to be used any Government vehicle outside the official working hours without permission from the appropriate authority or official.

Provided that nothing shall be an offence by reason only that the vehicle is used for Government special services or upon obtaining a written permission from the appropriate authority.

16. (1) Any person who uses a Government vehicle not in accordance with the laid down rules shall be guilty of an offence and shall on conviction be sentenced to a term of one month imprisonment and/or a fine of ₦2,000.

(2) Any person who damages or causes to be damaged or in any way facilitates the destruction, damage, demolition or vandalism of any Government property whether movable or immovable shall be guilty of an offence, and shall be made to repair, renovate, refurbish or otherwise be surcharged to pay the value of the property damaged.

(3) Whoever negligently allows any Government property movable or immovable under his custody to be vandalised or damaged or destroyed shall be guilty of an offence under this Law and shall on conviction be liable to imprisonment for three months or a fine of ₦10,000.

(4) Whoever being in custody, control or entrusted with any Government money or property in his capacity as a public servant and uses the said money or property in contravention of the Government laid down principles, or to his own personal uses, shall be guilty of an offence which on conviction shall be sentenced to fifteen years imprisonment and shall also be liable to payment of the value and/or replacement of the property.

17. (1)<sup>290</sup> If in the course of any investigation or proceedings in any court in respect of the commission of an offence under this Law, there is disclosed an offence under any written law [not] being an offence [under this Law], whether the offence was committed by the same person or any other person, the officer of the Commission responsible for the investigation or proceeding shall notify the Attorney-General of the State.

(2)<sup>291</sup> The Commission may after the completion of investigation of an allegation recommend any of the following to the appropriate authority or office:

- (a) admonishing (*wa'az*);
- (b) transfer;
- (c) suspension;
- (d) prosecution; and/or
- (e) dismissal from the service.

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<sup>290</sup> Cf. ICPC Act §5(2).

<sup>291</sup> No correlate of this subsection is in ICPC Act.

DOCUMENTARY MATERIALS: CORRUPTION

18.<sup>292</sup> (1) Any person who corruptly:

- (a) asks for, receives or obtains property or benefit of any kind for himself or for any person; or
- (b) agrees or attempts to receive or obtain any property or benefit of any kind for himself or for any other person, on account of:
  - (i) anything already done or omitted to be done, or for any favour or disfavour already shown to any person by himself in the discharge of his official duties or in relation to any matter connected with the functions, affairs or business of a Government department, or other organisation or institution in which he is serving as an official; or
  - (ii) anything to be afterwards done or omitted to be done or favour or disfavour to be afterwards shown to any person, by himself in the discharge of his official duties or in relation to any such matter as aforesaid,

is guilty of an offence of official gratification [sic: corruption] and is liable to imprisonment for two years, and shall also be liable to canning which may extend to ten lashes.

(2) If in any proceedings for an offence under this section it is proved that any property or benefit of any kind, or any promise thereof, was received by a public officer, or by some other person at the instance of a public officer from a person -

- (a) holding or seeking to obtain a contract, licence, permit, employment or anything whatsoever from a Government department, public body or organisation or institution in which that public officer is serving as such;
- (b) concerned, or likely to be concerned, in any proceeding or business transacted before or by that public body or other organisation or institution in which that public officer is serving as such; and
- (c) acting on behalf of or related to such a person,

the property, benefit or promise shall, unless the contrary is proved, be presumed to have been received corruptly on account of omission, favour or disfavour as is mentioned in subsection (1)(a) or (b).

19.<sup>293</sup> (1) Any person who corruptly:

- (a) gives, confers or procures any property or benefit of any kind to, on or for a public officer or to, on or for any other person; or
- (b) promises or offers to give, confer, procure or attempt to procure any property or benefit of any kind to, on or for a public officer or any other person, on account of any such act, omission, favour or disfavour to be done or shown by the public officer except under threat or necessity,

is guilty of an offence of official corruption and shall on conviction be sentenced to imprisonment for two years, and shall be liable to canning which may extend to ten lashes.

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<sup>292</sup> Cf. ICPC Act §8, which however has two further subsections not included here.

<sup>293</sup> Cf. ICPC Act §9.

(2) If in any proceedings for an offence under this section it is proved that property or any promise thereof, was given to a public officer or some other person at the instance of a public officer, by a person:

- (a) holding or seeking to obtain a contract, licence, permit, employment or anything whatsoever from a Government department, public body or other organisation or institution in which that public officer is serving as such; or
- (b) concerned or likely to be concerned in any proceeding or business transacted, pending or likely to be transacted before [or by that public officer or] a Government department, public body or other organisation or institution in which that public officer is serving as such; or
- (c) acting on behalf of or relative to such a person,

the [property or] promise shall unless the contrary is proved, be deemed to have been given corruptly on account of such past or future act, omission, favour or disfavour as is mentioned in subsection (1)(b) and (2) of this section [sic].<sup>294</sup>

20.<sup>295</sup> Any person who asks for, receives or obtains property or benefits of any kind for himself or any other person, or agrees or attempts to receive or obtain any property [or benefit of any kind for himself or any other person] on account of—

- (a) anything already done [or omitted to be done] or any favour or disfavour already shown to any person, by a public officer in the discharge of his official duties or in relation to any matter connected with the functions, affairs or business of a Government department, public body or other organisation or institution in which the public officer is serving as such; or
- (b) anything to be afterwards done or omitted, or any favour or disfavour to be afterwards shown to any person, by a public officer in the discharge of his official duties in relation to any such matter as aforesaid,

is guilty of an offence of official corruption and shall on conviction be sentenced to imprisonment for a period not exceeding four years and may also be liable to caning which may extend to ten lashes.

21.<sup>296</sup> Any person who, with intent to defraud or conceal crime or frustrate the Commission in its investigation of any suspected crime of corruption under this Law or under any other law destroys, alters mutilates, or falsifies, any book, document, valuable security, account, computer system, diskette, computer printout or other electronic device which belongs to or is in the possession of his employer, or has been received by him on account of his employment, or any entry in any such book, document, accounts or electronic device, or is privy to any such act, is guilty of an offence, and shall on conviction be liable to two years imprisonment, and may also be liable to caning which may extend to ten lashes.

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<sup>294</sup> The corresponding clause of the ICPC Act refers back to what are here subsections (1) and (2) of section 18, which makes more sense than the gazetted text.

<sup>295</sup> Cf. ICPC Act §10.

<sup>296</sup> Cf. ICPC Act §15. In the ICPC Act, all the language from the word ‘destroys’ to the phrase ‘or is privy to any such act’ forms subsection (a); there are then two further subsections as follow: “(b) makes, or is privy to making any false entry in any such book, document, account or electronic record; or (c) omits, or is privy to omitting, any material particular from any such book, document, account or electronic record,” – is guilty of an offence etc.

22.<sup>297</sup> Any person who, being an officer responsible for custody or receipt, and collection of remuneration to the State, uses any part of the revenue or uses or mismanages or furnishes any false statement or return in respect any money received by him or entrusted to his care, or any balance of money in his possession or under his control, is guilty of an offence, and shall on conviction be sentenced to one year imprisonment.

23.<sup>298</sup> (1) Any person who corruptly–

(a) accepts, obtains or agrees to accept or obtain or attempts to obtain from any person for himself or for any other person, any gift or consideration as inducement or reward for doing, forbearing to do, or for having done, or forborne to do, any act or thing;

(b) gives or agrees to give or offers any gift or consideration to any agent as an inducement or reward for doing or forbearing to do, or for having done, or forborne to do, any act or thing in relation to his principal's affairs or business;

(c) knowingly gives to any agent, or being an agent knowingly uses with intent to deceive his principal, any receipt, account or other document in respect of which [the principal is interested and which contains any statement which] is false or erroneous or defective in any material particular, and which, to his knowledge, is intended to mislead his principal or any other person,

is guilty of an offence and shall on conviction be liable to one year imprisonment, and shall also be liable to canning which may extend to ten lashes.

(2) For the purposes of this section, the expression “consideration” includes valuable consideration of any kind; the expression “agent” includes any person employed by or acting for another; and the expression “principal” includes an employer.

24.<sup>299</sup> (1) Any person who, without lawful authority or reasonable excuse, offers an advantage to a public servant as an inducement to or reward for or otherwise on account of such public servant's giving assistance or using influence in the promotion, execution or procuring of–

(a) any contract with a public body for the performance of any work, the providing of any service, the supplying of any article, material or substance to be secured or supplied under any contract with a public body; or

(b) any sub-contract to perform any work, provide any article, materials or substance required to [be performed, provided, done or] supplied under any contract with a public body; or

(c) the payment of the price, consideration or other moneys stipulated or otherwise provided for in any such contract or sub-contract as foresaid,

shall be guilty of an offence.

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<sup>297</sup> Cf. ICPC Act §16.

<sup>298</sup> Cf. ICPC Act §17.

<sup>299</sup> Cf. ICPC Act §22. In the gazetted version of Zamfara's law the formatting of this section is badly garbled; we have corrected it here. ICPC Act includes four further subsections, three of which define other related offences and the last of which specifies the punishment for violation of subsection (1), which Zamfara has failed to do.

(2) Any public official who in the course of his official duties inflates the price of any goods or service above the prevailing market price or professional standards shall be guilty of an offence under this Law and shall on conviction be liable to imprisonment for a term of one year and indictment [sic: in addition] to a fine of the current price of the property.

*[Investigations and Prosecutions]*

25.<sup>300</sup> (1) Prosecution for an offence under this Law shall be initiated by the Attorney-General of the State or any person or authority to whom he shall delegate his authority, in the Court so designate by the Chief Judge, Grand Kadi of the State [sic] and every prosecution for an offence under this Law or any other law prohibiting bribery, corruption, fraud or any other related offence shall be deemed to be initiated by the Attorney-General of the State.

(2) Every report whether in writing or reduced into writing shall be entered in a book kept at the office of the Commission and there shall be appended to such entry the date and hour at which such report was made.

(3) Where an officer of the Commission has reason to suspect the commission of an offence under this Law following a report made [or information otherwise received by him, he shall cause investigation to be made] and for such purpose may exercise all the powers of investigation provided for under this Law or any other law.

(4) A report made shall not be disclosed by any person other than officers of the Commission or the Attorney-General until the accused person has been arrested or charged to court for an offence under this Law or any other written law arising from such report.

(5) Any document, certified by any officer of the Commission in respect of a report shall be admissible as evidence of the contents of the original and of the time, place and manner in which the report was recorded.

26.<sup>301</sup> (1) An officer of the Commission investigating an offence under this Law may—

(a) order any person to attend before him for the purpose of being examined in relation to any matter which may, in his opinion, assist in the investigation of the offence;

(b) order any person to produce before him any book, document or any other article which may, in his opinion, assist in the investigation of the offence; or

(c) by written notice require any person to furnish a statement in writing made under oath or affirmation setting out therein all such information required under the notice, being information which, in such officer's opinion, would be of assistance in the investigation of the offence.

(2) A person to whom an order has been given shall—

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<sup>300</sup> Subsection (1) of this section tracks ICPC Act §26(2); subsections (2)-(5) track ICPC Act §27(2)-(5). The gazetted version of Zamfara's law clearly omits some language necessary to the sense of subsection (3); it is an open question however whether the first clause inserted in brackets was or was not intended to be included.

<sup>301</sup> Cf. ICPC Act §28. Zamfara omits ICPC Act subsections (2), (4) and (7), and materially alters ICPC Act subsection (9) = Zamfara subsection (6).

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(a) attend in accordance with the terms of the order to be examined, and shall continue to attend from day to day where so directed until the examination is completed; and

(b) during such examination disclose all information required under the notice which is within his knowledge.

(3) A person to whom a written notice has been given shall, in his statement, furnish and disclose truthfully all information required under the notice which is within his knowledge, or which is available to him.

(4) A person to whom an order or notice is given shall comply with such order or notice.

(5) An officer of the Commission examining a person under this Law, shall record in writing any statement [made by the person and the statement] so recorded shall be read over to the maker who on being satisfied that it is a true [record] of his statement shall sign same before a superior officer of the Commission; and where such person refuses to sign the record, the officer shall endorse thereon under his hand the fact of such refusal and the reason therefore, if any, stated by the person examined; and any person who shall write [for a person] who is an illiterate shall also write on such document his own name and address as the writer of the document.

(6) The records of an examination or written statement on oath or affirmation made pursuant to [sic] or any book, document or article produced or otherwise in the course of an examination or under a written statement on oath or affirmation made shall notwithstanding any written law or rule of law to the contrary, be admissible in evidence in any proceedings in any court.

(7) Any person who contravenes this section shall be guilty of an offence punishable with a term of imprisonment not exceeding four months.

27.<sup>302</sup> Subject to the provisions of this Law the Commission may issue a summons directed to a person [complained against] to attend before the Commission for the purpose of being examined in relation to the direction [sic] or in relation to any other matter which may aid or facilitate the investigation of the allegation; and summons so issued shall state the substance of the complaint, and the time and place at which the inquiry is to be held.

28.<sup>303</sup> Every summons issued by the Commission under this Law shall be in duplicate and signed by the Chairman or such officer as the Chairman may authorise to issue summons.

29.<sup>304</sup> Every summons under this Law shall be served by an officer of the Commission in the manner prescribed in the Sheriffs and Civil Process Act and any other laws relating to the service [of process and the person effecting the service] shall have and exercise all the powers conferred by the law and any other law relating to the service of process.

30.<sup>305</sup> Where the person summoned by the Commission is in the service of Government, the Commission may deliver the summons in duplicate to the Head of Department in which such person is employed for the purpose of its being served on that person and such officer shall thereupon cause the summons to be served on that person.

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<sup>302</sup> Cf. ICPC Act §29.

<sup>303</sup> Cf. ICPC Act §30.

<sup>304</sup> Cf. ICPC Act §31.

<sup>305</sup> Cf. ICPC Act §32.

CHAPTER 3: SANITIZING SOCIETY

31.<sup>306</sup> Where a summons has been served upon a person to whom it is addressed or is delivered to any other person, the person to whom it is addressed or delivered as the case may be, shall sign a receipt therefor on the duplicate, and where service is not effected by handing the summons to an individual but by some other method approved by this Law, the person effecting service shall endorse on the duplicate particulars of the method by which the service was effected.

32.<sup>307</sup> A person required to sign a receipt on the back of the duplicate of the summons to the effect that he has received the summons who refuses to do so may be arrested by the person serving the summons and shall be guilty of an offence and upon conviction be liable to one month imprisonment or one thousand naira fine.

33.<sup>308</sup> Where the Commission is satisfied that a summons directed to a person complained against or any person has been served and that person does not appear at the time and place appointed in the summons, the Commission shall have power to arrest and detain any such person, [who] shall be brought before a court of law within 48 hours.<sup>309</sup>

34.<sup>310</sup> (1) Where it appears to the Chairman upon information and after such inquiry as he shall think necessary, that there is reasonable cause to suspect that in any place there is evidence of the commission of any offence under this Law, he may by written order direct an officer of the Commission to obtain a court order to—

- (a) enter any premises and make search for, seize and take possession of any book, document or other articles evidencing the commission of such offence;
- (b) inspect, make copies of, or take extras from any book, record or document;
- (c) search any person who is in or on such premises, and for the purpose of such search detain such person and remove him to such place as may be necessary to facilitate such search and seize and detain any article found on such person;
- (d) break open, examine, and search any article, container or receptacle; or
- (e) stop, search and seize any vehicle or conveyance.

(2) Whenever it is necessary so to do, an officer of the Commission exercising any power under subsection (1) shall obtain a warrant from a Sharia Court Judge or Magistrate to—

- (a) break open any outer or inner door or window of any premises and enter thereto, or otherwise forcibly enter the premises and every part thereof;
- (b) remove by force any obstruction to such entry, search, seizure or removal as he is empowered to effect; or
- (c) detain any person found in or on any premises or in any conveyance searched under subsection (1), or until such premises or conveyance has been searched.

(3) No person shall be searched under this section or under any section except by a person who is of the same gender as the person to be searched.

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<sup>306</sup> Cf. ICPC Act §33.

<sup>307</sup> Cf. ICPC Act §34.

<sup>308</sup> Cf. ICPC Act §35.

<sup>309</sup> The ICPC Act allowed detention “until the person complies with the summons”; this was found unconstitutional in *Attorney-General of Ondo State v. Attorney-General of the Federation* (2002) 9 NWLR 222 S.C.; Zamfara State has corrected this defect in the Federal Act.

<sup>310</sup> Cf. ICPC Act §36.

- 35.<sup>311</sup> (1) If in the course of an investigation into an offence under this Law any officer of the Commission has reasonable grounds to suspect that any movable or immovable property is the subject matter of an offence or evidence relating to the offence, he shall seize such property.
- (2) A list of all movable or immovable property seized pursuant to subsection (1) and of the place in which they are respectively found shall be prepared by the officer of the Commission effecting the seizure and signed by him.
- (3) A copy of the list referred to in subsection (2) shall be served on the owner of such property or on the person from whom the property was seized as soon as possible.
- 36.<sup>312</sup> (1) Where any movable property is seized under this Law, the seizure shall be effected by removing the movable property from the custody or control of the person from whom it is seized and placing it under the custody of such person or authority and at such place as an officer of the Commission may determine.
- (2) Where it is not practicable, or it is otherwise not desirable, to effect removal of any property under subsection (1), the officer referred to in that subsection may leave it at the premises in which it is seized under the custody of such person as he may detail for the purpose.
- (3) When any movable property has been seized under this Law, an officer who effected the seizure may, in his discretion—
- (a) temporarily return the movable property to the owner thereof, or to the person from whose possession, custody or control it was seized, or to such person as may be entitled thereto, subject to such terms and conditions as may be [imposed, and subject, in any case, to] sufficient security being furnished to ensure that the movable property shall be surrendered on demand being made by the officer who authorised the release or any other officer of the Commission and that such terms and conditions, if any, shall be complied with.
- (b) return the movable property to the owner thereof, or to the person from whose possession, custody or control it was seized, or to such person as may be entitled thereto, with liberty for the person to whom the movable property is so returned to dispose of the property, such return being subject to security being furnished in an amount not less than an amount which represents the present market value of such property on the date on which it is returned.
- (4) Where any person to whom movable property is temporarily returned [under subsection (3)(a) of this section] fails to surrender such property on demand or to comply with any term or condition imposed under that [subsection]—
- (a) the security furnished in respect of such property shall be forfeited; and
- (b) that person shall be guilty of an offence and shall on conviction be liable to a fine of not less than two times the amount of the security furnished by him, and to imprisonment for a term not exceeding one year.
- (5) Where any movable property seized is liable to decay or deterioration, or is property which cannot be maintained without difficulty, or which it is not practicable to maintain,

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<sup>311</sup> Cf. ICPC Act §37.

<sup>312</sup> Cf. ICPC Act §38.

and which cannot be dealt with [under subsection (3) of this section], an officer of the Commission may sell or cause such property to be sold at the prevailing market value and shall hold the proceeds of the sale after deducting therefrom the costs and expenses of the maintenance and of the [sale of the property, to abide with the] result of any proceedings under this Law.

37.<sup>313</sup> Subject to such limitation as is provided under this Law, every person required by an officer of the Commission to give information on any subject which it is the duty of such officer to inquire into [under] this Law and which it is in that person's statutory power to give, shall be legally bound to give information, failing which he shall be guilty of an offence on conviction liable to imprisonment for one month or a fine of five thousand naira.

38.<sup>314</sup> Any person who—

- (a) refuses any officer of the Commission access to any premises, or fails [to submit] to a search by a person authorised by the Commission to search him under this Law;
- (b) assaults or obstructs any [officer of the Commission or any] person [authorised by the Commission in the execution of his duty] under this Law;
- (c) fails to produce to or conceals from an officer of the Commission any book, document or article, in relation to which such officer has reasonable grounds for suspecting or believing that an offence under this Law or any other law prohibiting corruption has been or is being committed, or which is liable [to seizure] under this Law;
- (d) rescues or endeavours to rescue or cause to be rescued any person who has been duly [arrested or anything which has been duly] seized; or
- (e) destroys anything to prevent the seizure thereof, or the securing of the thing,

shall be guilty of an offence punishable with imprisonment for one month or option of five naira [sic] fine.

39.<sup>315</sup> (1) Every offence under this Law shall be a bailable offence for the propose of the Criminal Procedure Code.

(2) Every person arrested under subsection (1) may be released from custody on his executing a bond with sureties, as an officer of the Commission may require.

(3) Any person who has been released from custody may be re-arrested without warrant by any officer of the Commission—

- (a) if such officer has reasonable grounds for believing that any condition on or subject to which [such] person was released [or otherwise admitted to bail has been broken]; or
- (b) on being notified in writing by the [surety or] sureties of such person that such person has broken or is likely to break any condition on or subject to which [such] person was released and that the surety wishes to be relieved of his obligation as a surety.

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<sup>313</sup> Cf. ICPC Act §40.

<sup>314</sup> Cf. ICPC Act §41.

<sup>315</sup> Cf. ICPC Act §42(1)-(3). The formatting of Zamfara's §39 is garbled in the gazetted version, this has been corrected here.

40.<sup>316</sup> Any person arrested under this Law who is not released on bail shall, without unreasonable delay, and in any case within 48 hours (excluding the time for any necessary journey) be produced before the court.

41.<sup>317</sup> (1) If it appears to the court that any condition on or subject to which such person was released or otherwise admitted to bail has been or is likely to be broken, the court may—

(a) remand such person in custody; or

(b) admit such person to bail on the same condition or on other conditions as it thinks fit.

(2) Where a person who is arrested for an offence under this Law is serving a sentence of imprisonment or is in detention under any law relating to preventive detention, or is otherwise in lawful custody, he shall, upon an order in writing by an officer of the Commission be produced before such officer or before any other officer of the Commission for the purpose of investigation and for such purpose he may be kept in lawful custody for a period not exceeding five days.

(3) A person who is detained in lawful custody under subsection (2) or otherwise under any other written law may, at any time, be made available to an officer of the Commission for the purpose of investigation, or may be taken to any other place for the purpose of searching the place, seizing any property, or identifying any person [or for any other purpose related to the investigation].

(4) The period during which a person is under lawful custody under subsection (2) of this section shall count towards the period of his imprisonment, detention, or other custody.<sup>318</sup>

42.<sup>319</sup> (1) Where in any proceedings against any person for an offence under this Law it is proved that any gratification has been accepted or agreed to be accepted, obtained or attempted to be [obtained, solicited, given or agreed to be] solicited or given, promised or offered, by or to the accused, the gratification shall be presumed to have been corruptly accepted or agreed to be [accepted, obtained or attempted to be obtained, solicited, given or agreed to be solicited or given, promised or offered as an] inducement or a reward for or on account of the matters set out in the particulars of the offence, until the contrary is proved.

(2) Where in any proceedings against any person for an offence under this Law or any other law prohibiting corruption it is proved that such person has [accepted] or agreed to accept, obtained or attempted to obtain any gratification, such person shall be presumed to have done so as a motive or reward for the matters set out in the particulars of the offence, until the contrary is proved.

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<sup>316</sup> Cf. ICPC Act §42(4) (part). The gazetted version of the Zamfara Act again garbles things: part of ICPC Act §42(4) is put in Zamfara §40 and part in §41(1), and the division is made in such a way that §40 is left making little sense; the language has been reorganised (but not changed) here.

<sup>317</sup> Cf. ICPC Act §42(4) (part = what is here put as subsection (1)) and 42(5)-(7).

<sup>318</sup> In the gazetted version of Zamfara's Law this subsection (4) is run together incomprehensively with subsection (3); it is only by looking at ICPC Act §42 that one sees what was intended.

<sup>319</sup> Subsections (1)-(3) of §42 are copied from ICPC Act §53(1)-(3); subsections (4) and (5) are copied from ICPC Act §56(2)-(3).

(3) Where in any proceeding against any person for an offence under this Law or any other law prohibiting corruption it is proved that such person has accepted or attempted to obtain any valuable thing without consideration or for a consideration which he knows to be inadequate, such person shall be presumed to have done so with such knowledge as to the circumstances set out in the particulars of the offence, until the contrary is proved.

[In any trial on inquiry by a court into any offence under this Law, any statement, whether the statement amounts to a confession or not, and whether oral or in writing, made at any time, whether before or after the person is charged and whether or not in the course of an investigation, and whether wholly or partly in answer to a question, by the accused person to or in the hearing of any officer of the Commission, whether or not interpreted to him by any officers of the Commission or any other person concerned or not in the arrest of that person, shall, notwithstanding any written law or rule of law to the contrary, be admissible in evidence at the trial.]<sup>320</sup>

Provided that the officer who procured such statement shall make himself available at the trial for the purpose of cross-examination.

(4) No statement made under subsection (1) [sic: referring to the subsection inserted immediately above] shall be admissible or used as provided for in that subsection if the making of the statement appears to the court to have been caused by any inducement, threat or promise having reference to the charge against the person, proceeding from a person in authority and sufficient in the opinion of the court to give that person grounds which would appear to him reasonable [for supposing] that [by making it] he would gain any advantage or avoid any evil [of a] temporal nature in reference to the proceedings against him.

(5) Where any person is arrested or is informed that he may be prosecuted for any offence under this Law, he shall be served with notice in writing, which shall be explained to him, to the following effect—

“You have been arrested on the allegation concerning ..... and whatever you say or write may be used in any court of law hereafter.”

43. (1)<sup>321</sup> Where any document which is to be used in [any] proceedings against any person for an offence under this Law is in a language other than the English language, [a translation of such document into the English language] shall be admissible, where the translation is accompanied by a certificate of the person who translated the document, setting out that it is a true and faithful translation and the translation has been done by such person at the instance of the Chairman or an officer of the Commission.

(2)<sup>322</sup> The Chief Judge and the Grand Kadi of the State shall assign Principal District Court and Upper Sharia Court Judges by order under their hand, as they shall deem appropriate to hear and determine all cases of bribery, corruption, fraud or other related offences arising under this Law or any other law prohibiting fraud, bribery or corruption.

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<sup>320</sup> What is inserted here is the text of ICPC Act §56(1), which appears to have been inadvertently omitted from the gazetted version of Zamfara’s Law – except for the proviso to it which follows the inserted text. The subsection that follows the proviso in §42 of Zamfara’s Law – numbered (4) – refers to the omitted subsection, further evidence that it was meant to be included.

<sup>321</sup> Subsection 43(1) copies ICPC Act §59(1).

<sup>322</sup> Subsection 43(2) adapts ICPC Act §61(3).

[Miscellaneous]

44.<sup>323</sup> (1) Where any complaint made by any officer of the Commission states that the complaint is made in consequence of information [received by the officer making the complaint, the information] referred to in the complaint and the identity of the person from whom such information is received shall be secret between [the officer who made the complaint and] the person who gave the information, and everything contained in such information, the identity of the person who gave the information [and all other circumstances relating to the information,] including the place where it was given, shall not be disclosed in public but only to the trial judge and the defence lawyer in attendance in any civil, criminal or other proceedings in any court or tribunal.

(2) Any person who gives the information referred to in subsection (1) knowing the information to be false shall be guilty of an offence and shall on conviction be liable to imprisonment for a term not less than one month or a fine not exceeding ₦1,000.

Provided that subsection (1) and (2) shall not apply to any investigation or prosecution for any offence arising from any breach of the provisions of this subsection.

45.<sup>324</sup> No legal proceeding, civil or criminal, shall be instituted against any officer of the Commission or any other person assisting such officer for any act which is done in good faith by such officer or other person.

46.<sup>325</sup> Notwithstanding any other written law to the contrary, the provisions of this Law shall apply to [a prescribed offence regardless of whether the prosecution or] any other proceedings in respect of such offence are instituted or taken by an officer of the Commission [or] any other officer having power to investigate, prosecute or take any proceedings in respect of such offence.

47.<sup>326</sup> A person convicted for an offence under this Law for which no penalty is specifically provided shall be liable to a fine not exceeding ₦10,000 or to imprisonment for a term not exceeding one year or both.

48.<sup>327</sup> A person convicted for an offence under this Law or any other law prohibiting bribery or corruption shall have right of appeal to the High Court or Sharia Court of Appeal within thirty days.

49. The Zamfara State Anti-Corruption Commission (Establishment) Law No. 17 of 2000 is hereby repealed.

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<sup>323</sup> Cf. ICPC Act §64, subsection (2) of which is however omitted here.

<sup>324</sup> Cf. ICPC Act §65, which additionally protects officers of the Commission and their assistants from liability for *omissions* in good faith.

<sup>325</sup> Cf. ICPC Act §67.

<sup>326</sup> Cf. ICPC Act §68.

<sup>327</sup> Cf. ICPC Act §71.

**b. Two documents from the Zamfara Anti-Corruption Commission**

(i) PUBLIC ANNOUNCEMENT ON BRIBERY AND CORRUPTION<sup>328</sup>

Collecting bribes and engaging in corruption are violations of the rights of the people. Those who do these things bring enmity and dishonour on themselves in this world and in the hereafter, when the phrase “if only I had known” will have no place. We therefore call on all Muslims not to give or collect bribes and to avoid corruption on all its ramifications. Nor should you even help anybody in giving or collecting bribe, whether you are a chief, a common citizen, a civil servant, or a political appointee. Do your best to assist in the fight against this most unfortunate practice among our people. If you find yourself in a situation where you are asked to give a bribe, get in touch immediately with the Zamfara State Anti-Corruption Commission, Second Floor, Umaru Mai Littafai House, Zaria Road, Gusau, or call 203700 or 262124. You will definitely see a quick result.

This announcement is from the Zamfara State Anti-Corruption Commission, under the Chairmanship of Alhaji Muhammad Dansanda Maru.

Produced by :

[signed and dated 20-10-05]

Idris Haruna Magami  
ZRTV, Gusau

(ii) REPORT ON VISITS OF THE COMMISSION TO EMIRATES  
IN THE STATE: 7<sup>TH</sup> – 15<sup>TH</sup> MARCH 2005<sup>329</sup>

In the performance of its statutory functions, this Commission has laid down the following guidelines, with the aims of correcting the menace of corruption in our society, of ensuring peaceful co-existence among the people, and of fostering economic development. The general slogan is: DO NOT COLLECT AND DO NOT GIVE.

1. Bribery and corruption must be eliminated from every transaction.
2. The execution of all contracts awarded, whether by the State or Local Governments, must be closely monitored to ensure proper completion according to the terms of the contract.
3. The imposition and collection of “commissions” from citizens of the State, particularly by Ward Heads and District Heads, must be avoided.
4. Closer working relationships between farmers and cattle-rearers should be established, in order that there may be peace and harmony among them; this will also bring about an improved financial position in the State.

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<sup>328</sup> This announcement was sponsored by the Zamfara State Anti-Corruption Commission and read out from time to time, around the time it was prepared, on Zamfara State Radio and Television (ZRTV).

<sup>329</sup> Members of the Zamfara State Anti-Corruption Commission made a tour of the State’s seventeen Emirates on the dates indicated, meeting in each case with the Emirate Councils. This document was distributed and discussed during those meetings. Per interview with the Secretary of the Anti-Corruption Commission, Gusau, 11<sup>th</sup> May 2007, by A. Garba.

5. The practice according to which more powerful people deprive the less powerful of their farmlands by force, so that the lands may be kept, given out as gifts, sold, or turned into *burtali* (cattle tracks), must be avoided.
6. Selfishness and greediness among public servants, in all their ramifications, must be eliminated, in order to ensure justice and fairness.
7. It is not correct to connive with the police or with court staff to deny the common man – such as the Fulani – his rights, or to cheat him.
8. It is also an offence for a court staff or a District Head to benefit unlawfully from the property of a deceased person, and so on.
9. Emirs should cultivate the habit of visiting schools and hospitals regularly in order to know the conditions there and to advise the Government correctly.
10. The issue of ensuring the security of the people is a gigantic work. Authorities must be vigilant of strangers coming into the State, in order to reduce the number of undesirable elements.
11. Where bail is to be granted, it is free. Therefore, it is an offence to give or collect money for bail.
12. Payment of all types of debts should be ensured. Those who are unable to pay should not borrow more. This is because payment of just debts is an act of worship in Islam.

The function of this Commission is to work for the achievement of these goals. We call for the support of the Emirs in this important work. We need your support and co-operation to succeed in this effort.

*Wassalam.*

**c. Zamfara State Public Complaints Commission Law (2003) Annotated<sup>330</sup>**

A LAW TO ESTABLISH ZAMFARA STATE PUBLIC COMPLAINTS  
COMMISSION<sup>331</sup>

Arrangement of sections:<sup>332</sup>

1. Establishment of the Commission.
2. Appointment and tenure of office.
3. Removal of Chairman and members.

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<sup>330</sup> Zamfara State's Public Complaints Commission Law closely tracks the Federal Public Complaints Commission Act, enacted by Decree No. 31 of 1975, included as Cap. 377 of the 1990 LFN and now as Cap. P37 of the 2004 LFN. The annotations to the sections of Zamfara's law which follow below correlate the sections of the two statutes and note some but by no means all of the differences in their language. The Federal statute is referred to in the notes as "PCC Act".

<sup>331</sup> No. 19 of 2003, assented to 28<sup>th</sup> July 2003; published in Zamfara State of Nigeria Gazette No. 3 Vol. 5, 10<sup>th</sup> October 2003 pp. A18-A25.

<sup>332</sup> For this list we have extracted the section titles from the gazetted version of the law; we do not repeat the section titles below.

CHAPTER 3: SANITIZING SOCIETY

4. Remuneration of members.
5. Prohibition of holding any office of remuneration.
6. Powers and duties of the Commission.
7. Restrictions.
8. Recommendations after investigation.
9. Offences and penalties.
10. Meetings and quorum.
11. Votes.
12. Committees.
13. Resignation of member.
14. Power to summon persons.
15. Immunity from legal process.
16. Interpretation.
17. Short title.
18. Commencement.

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

1.<sup>333</sup> (1) There shall be established a Commission to be known as Zamfara State Public Complaints Commission (hereinafter referred to as the “Commission”) which shall consist of a Chairman and five other Permanent Commissioners.

(2) The Commission may establish offices in the thirty-four Local Government Areas of the State.

2.<sup>334</sup> (1) The Chairman and five other Permanent Commissioners, [of] whom one shall be a legal practitioner, shall be persons of proven integrity to be appointed by the Governor.

(2) Subject to subsection (1) of this section the Chairman and the Permanent Commissioners shall hold office for a term of four years in the first instance and may be eligible for re-appointment.

3.<sup>335</sup> The Chairman or any Commissioner may at any time be removed from his office or appointment by the Governor for inability to discharge his duties.

4.<sup>336</sup> There shall be paid to the Chairman and other Commissioners such remuneration and allowances as the Governor may from time to time direct.

5.<sup>337</sup> A Chairman or any other Commissioner shall not while holding office hold any other office of emolument whether in the public service or elsewhere.

6. [body to which Commissioners are responsible]<sup>338</sup>

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<sup>333</sup> Cf. PCC Act §1.

<sup>334</sup> Cf. PCC Act §2(1) and (2). In the case of the Federal Public Complaints Commission, the Commissioners are appointed by the National Assembly (not the President), to which they are responsible (PCC Act §5(1)) and by whom they may be removed (§2(3)). In Zamfara State, by contrast, the Commissioners are appointed and removable by the Governor, not the House of Assembly.

<sup>335</sup> Cf. PCC Act §2(3) (National Assembly may remove Federal Commissioners).

<sup>336</sup> Cf. PCC Act §2(4).

<sup>337</sup> Cf. PCC Act §2(7).

DOCUMENTARY MATERIALS: CORRUPTION

(1)<sup>339</sup> A Commissioner shall have power to investigate either on his own initiative or following complaints lodged before the Commission by any person, any administrative action taken by any Department or Ministry of the State Government, or Local Government or such other Government agencies and parastatals.

(2)<sup>340</sup> For the purposes of this Law:

(a) the Commission may determine the manner by which complaints are to be lodged;

[discretion of Commissioner to notify public]<sup>341</sup>

(b) the Chairman shall have access to all information necessary for the efficient performance of his duties under this Law and for this purpose may visit and inspect any premises belonging to any person or body mentioned under this Law;

(c) every Commissioner shall ensure that administrative action by any person mentioned under this Law will not result in the commission of any act of injustice against any citizen of the State or any other person resident in the State and for that purpose he shall investigate with special care administrative acts which are or appear to be:

(i) contrary to any law or regulation;

(ii) mistaken in law or arbitrary in the ascertainment of fact;

(iii) unreasonable, unfair, oppressive or inconsistent with the general functions of administrative organs;

(iv) improper in motivation or based on irrelevant considerations;

(v) unclear or inadequately explained; or

(vi) otherwise objectionable.

(3)<sup>342</sup> Where concurrent complaints are lodged with more than one Commissioner, the Chairman shall decide which Commissioner shall deal with the matter and his decision thereon shall be final.

(4)<sup>343</sup> The Chairman, Permanent Commissioners and the staff of the Commission shall maintain secrecy in respect of matters before it by reason of source or content, however a Commissioner may, in any report made by him, disclose such matters as in his opinion ought to be disclosed in order to establish grounds for his conclusions and recommendations.

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<sup>338</sup> PCC Act §5(1) provides: "All Commissioners shall be responsible to the National Assembly but the Chief Commissioner shall be responsible for coordinating the work of all other Commissioners."

<sup>339</sup> Cf. PCC Act §5(2). The investigative powers of the Federal PCC are of course far broader than those of Zamfara State's.

<sup>340</sup> Cf. PCC Act §5(3).

<sup>341</sup> The Zamfara law omits PCC Act §5(3)(b): "any Commissioner may decide in his absolute discretion whether, and if so, in what manner he should notify the public of his action or intended action in any particular case."

<sup>342</sup> Cf. PCC Act §5(4).

<sup>343</sup> Cf. PCC Act §5(5).

[freedom of Commissioners from direction or control of other persons and authorities]<sup>344</sup>

(5)<sup>345</sup> It shall be the duty of any body or person required by a Commissioner to furnish information pursuant to [subsection (2)(b)]<sup>346</sup> of this section to comply with such requirement not later than fifteen days from receipt thereof.

(6) [The Commission shall have the power:]<sup>347</sup>

- (a) to receive and inquire [into] any public complaint concerning any public officer;
- (b) to organise workshops, seminars, public campaigns and enlightenment in the media;
- (c) to ensure prompt and proper compliance with Government relevant rules, regulations and circulars;
- (d) to receive complaints submitted through the Local Government offices;
- (e) to reverse, confirm or vary the decisions or findings of the Local Government offices; and
- (f) to do any other things for the proper discharge of its powers.

7.<sup>348</sup> (1) A Commissioner shall not investigate any matter:

- (a) that is clearly outside his terms of reference; or
- (b) which is pending before the State House of Assembly or the Executive Council of the State; or
- (c) which is pending before any court of law in the State; or
- (d) relating to anything done or purported to be done in respect of any member of the Armed Forces in Nigeria or the Nigeria Police Force under the Nigerian Army Act, the Navy Act, the Air Force Act, or the Police Act, as the case may be except where the case involves members of these forces with an individual.<sup>349</sup>

[three further restrictions in PCC Act]<sup>350</sup>

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<sup>344</sup> The Zamfara law omits PCC §5(6), which provides: “In the exercise of the powers conferred upon a Commissioner by this section, the Commissioner shall not be subject to the direction or control of any other person or authority.”

<sup>345</sup> Cf. PCC Act §5(7).

<sup>346</sup> The gazetted version of the Zamfara law has “subsection (6)(c)” here, but this makes no sense, and from comparison with the Federal PCC act it is clear that the reference should be to Zamfara’s subsection (2)(b).

<sup>347</sup> Subsection 6(6) is missing from the Zamfara law, and then what are here shown as sub-subsections 6(6)(a)-(f) are given as subsections 6(7)-(12). It seems clear however that the arrangement should be as given here, with some such language as we have given for the introductory part of subsection 6(6). None of this subsection is in the PCC Act.

<sup>348</sup> Cf. PCC Act §6.

<sup>349</sup> PCC Act omits “except where the case involves members of these forces with an individual”.

<sup>350</sup> PCC Act includes three further restrictions: “(e) in which the complainant has not, in the opinion of the Commissioner, exhausted all available legal or administrative procedures; (f) relating to any act or thing done before 29<sup>th</sup> July 1975 in or respect of which the complaint is lodged later than twelve months after the date of the act or thing done from which the complaint arose; (g) in which the complainant has no personal interest.”

- (2) In any case where a Commissioner decides not to investigate a complaint he shall state his reasons therefor.
- 8.<sup>351</sup> (1) The Commission may recommend to the appropriate person or responsible administrative agency after due investigation of any complaint any of the following steps:
- (a) that a further consideration of the matter be made;
  - (b) that a modification or cancellation of the offending administrative or other act be effected;
  - (c) that an alteration of a regulation or ruling be effected;
  - (d) that full reasons behind a particular administrative or other act be given.
- (2) Where appropriate, the Commission may refer cases where it feels that existing laws or administrative regulations or procedures are inadequate to the State Assembly or the Governor or to any other appropriate person or body.
- (3) In every case where the Commission discovers that a crime may have been committed by any person, it shall report its findings to the appropriate authority or recommend that that person be prosecuted.
- (4) In every case where the Commission is of the opinion that the conduct of any person is such that disciplinary action against him be taken, it shall make a report in that regard to the appropriate authority which shall take further action as may be necessary in the circumstances.
- 9.<sup>352</sup> (1) Any complaint lodged before the Commission shall not be made public by any person except a Commissioner and any person who contravenes the provisions of this subsection shall be guilty of an offence and shall be liable on conviction to a fine of ₦10,000 or imprisonment for six months or to both such fine and imprisonment.
- (2) If any person required to furnish information under this Law fails to do so or in purported compliance with such requirement to furnish information knowingly or recklessly makes any statement which is false in a material particular, he shall be guilty of an offence and liable on conviction to a fine of ₦10,000 or imprisonment for six months or to both.
- (3) Any person who wilfully obstructs, interferes with, assaults or prevents any Commissioner or any other officer or servant of the Commission in the execution of his duty under this Law or who aids, invites, induces or abets any other person to obstruct, interfere with, assault or resist any such Commissioner, officer or servant shall be guilty of an offence and liable on conviction to a fine of ₦15,000 or imprisonment for six months or to both.
- (4) Any person who in respect of any complaint lodged by him knowingly makes to a Commissioner any statement, whether or not in writing, which is false in any material particular shall be guilty of an offence and shall on conviction be sentenced to imprisonment for one year or with a fine of ₦15,000.

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<sup>351</sup> Cf. PCC Act §7. The only notable difference is that the PCC Act refers to the Commissioners severally; the Zamfara law refers to the Commission.

<sup>352</sup> Cf. PCC Act §8.

CHAPTER 3: SANITIZING SOCIETY

- 10.<sup>353</sup> (1) The Commission shall have regular meetings in the conduct of its business. In any case members of this Commission shall meet at least once in every month.
- (2) The quorum for every meeting of the Commission shall be two-thirds of the members.
- (3) The Chairman shall preside at the meetings a which he is present and in his absence the members present shall elect one of them to be the Chairman of the meeting.
11. Questions for determination shall be decided by a majority of the votes of members present and voting. In the event that the votes are equal the Chairman shall have a second casting vote.
12. The Commission may appoint one or more committees either standing or ad hoc, to carry out on behalf of the Commission such functions as the Commission may determine.
13. A member of the Commission may resign his appointment by giving notice of his resignation in writing to the Chairman. Any such vacancy created shall be filled in by appointment of another person in accordance with the provisions of this Law.
- 14.<sup>354</sup> (1) In the discharge of its functions under the Law, the Commission shall have power to summon in writing any person who in the opinion of the Commission is in a position to testify on any matter before it, to give evidence in the matter, and any person who fails to appear when required to do so shall be guilty of an offence under this Law.
- (2) Any person guilty of an offence under this section shall on conviction be liable to a fine of ₦5,000 or imprisonment for six months or to both.
- 15.<sup>355</sup> (1) No Commissioner or any member, servant or employee of the Commission shall be liable to be sued in any court of law for any act done or omitted to be done in the due exercise of his duties under or pursuant to this Law.
- (2) Any report, statement or other communication or record of any meeting, investigation or proceedings which a Commissioner, officer or servant of the Commission may make in the due exercise of his functions shall be privileged in that its production may not be compelled in any legal proceedings if the Attorney-General of the State or any person delegated certifies that such production is not in the public interest.
- 16.<sup>356</sup> In this Law unless the context otherwise requires:
- “Commission” means the Public Complaints Commission established under section 1 of this Law;
- “law” means any law, and includes any subsidiary legislation made under any of them;
- “Commissioner” means any person appointed as such pursuant to section 2 of this Law and references to Commissioner or Commissioners include, where appropriate, references to the Chairman.
- 17.<sup>357</sup> (1) This Law may be cited as the Zamfara State Public Complaints Commission Law.

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<sup>353</sup> §§10-13 not in PCC Act.

<sup>354</sup> Cf. PCC Act §9. The only notable difference is that the PCC Act refers to the Commissioners severally; the Zamfara law refers to the Commission.

<sup>355</sup> Cf. PCC Act §10.

<sup>356</sup> Cf. PCC Act §11.

(2) The provisions of this Law are in addition to and do not in any manner derogate from the provisions of any other laws guaranteeing liberty of access to courts of law for redress.

(3) For the avoidance of doubt, the powers granted to a Commissioner or any member of the Commission, servants or employees under this Law, may be exercised by him notwithstanding the provisions of other laws which declare the finality of any administrative law.

18. This Law shall come into operation on the 28<sup>th</sup> day of July, 2003.

#### **d. Report of the Zamfara Public Complaints Commission 2003-2005**

##### REPORT OF ZAMFARA STATE PUBLIC COMPLAINTS COMMISSION SINCE ITS INCEPTION: 2003-2005

#### **Introduction**

Zamfara State Law No. 19 of 2003, assented to by Executive Governor Alhaji Ahmad Sani, *Yariman* Bakura, on 28<sup>th</sup> July 2003, establishes a Public Complaints Commission for the State.

The importance of the functions of the Public Complaints Commission are obvious. It ensures peaceful co-existence among the people by resolving conflicts related to various acts of dishonesty and the use of superior strength to violate people's rights among others.<sup>358</sup>

History reveals that Nigeria's first Public Complaints Commission was established in Kaduna State in 1975. A year later, the then Federal Military Government enacted a decree which established a Public Complaints Commission for the entire Federation.<sup>359</sup> Today this type of Commission can be found not only in Nigeria but in other African countries and other countries in the world. Public Complaints Commissions have become so popular because of their important function of resolving conflicts through mediation rather than through adversarial procedures resulting in judgments. This helps to reduce the caseloads of the courts.

The role of leaders in entertaining people's complaints is well entrenched in Sharia. It was reported that the Messenger of Allah (SAW) himself listened to people's complaints up to the period of the *sababat*. During the rule of Umar bin Khattab a special department for the purpose of entertaining people's complaints was established. Umar made this department to be directly under his control. Subsequent Islamic governments have made provisions for the entertainment of people's complaints right up to the present.

Here in Zamfara State, this type of Commission was first set up as a division of the State's Anti-Corruption Commission. Later, the Public Complaints Commission was

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<sup>357</sup> Cf. PCC Act §12. In PCC Act, the last words of subsection (3) are "the finality of any administrative act."

<sup>358</sup> "...dinke duk barakar da ke tasowa tsakanin su ga abinda ya shafi zalunce-zalunce, nuna fin karfi ta danne hakki da makamantan su."

<sup>359</sup> In fact the Federal Public Complaints Commission was established by Decree No. 31 of 1975 and the Commission began its work that same month. See p. 16 supra.

separated from the Anti-Corruption Commission and established under its own statute. This was as a result of the importance of its functions. The Commission's aim is to completely eradicate dishonesty and oppression among the people and to create an atmosphere that is in accordance with the Sharia. That is why the Commission commenced its activities immediately after its establishment and inauguration. In its first year of operation it gained popularity throughout the State.

The first factor contributing to its success was to have people of integrity as its leaders. Their commitment and perseverance in the discharge of their duties made it possible for the Commission to achieve a lot within a short time.

For instance, within two years of its inception, the Commission received 1288 complaints and disposed of 421 raising a variety of different issues. Out of this, it succeeded in resolving 278 cases, sent 85 cases to other agencies, and the rest were either stricken out or withdrawn by the complainant.

Of the 421 complaints disposed of, 115 cases were on debt, another 115 cases related to land and farm disputes, 76 involved disputes with various departments of Government, and 7 bordered on different Sharia-related issues.<sup>360</sup>

The Commission succeeded in recovering people's claims of about thirty-two million, one hundred and twenty five thousand, five hundred and seventy five naira (₦32,125,575.00) from various departments of Government (both State and Local), organisations, and individuals. This amount consisted of ₦10,993,075.00 cash and different items estimated at ₦21,132,500.00. For further details see the pages attached.

[Attachment]

### **Zamfara State Public Complaints Commission, Gusau**

1. Total number of complaints received:

|  |   |             |
|--|---|-------------|
| a. 2003  | – | 655         |
| (including 542 complaints inherited and 113 complaints received in 2003) |   |             |
| b. 2004  | – | 387         |
| c. 2005  | – | 246         |
| d. Total   | – | <b>1288</b> |

2. Of this number, the Commission succeeded in disposing of 421 complaints as follows:

|          |   |            |
|----------|---|------------|
| a. 2003  | – | 115        |
| b. 2004  | – | 185        |
| c. 2005  | – | 121        |
| d. Total | – | <b>421</b> |

3. The complaints disposed of related to alleged acts of dishonesty or oppression in various areas as follows:

|             |   |     |
|-------------|---|-----|
| a. Debt     | – | 115 |
| b. Land     | – | 115 |
| c. Marriage | – | 76  |

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<sup>360</sup> These numbers do not tally with those in the more detailed summaries below.

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|                |   |            |
|----------------|---|------------|
| d. Cheating    | – | 63         |
| e. Chieftaincy | – | 7          |
| f. Court cases | – | 7          |
| g. Hajj        | – | 4          |
| h. Government  | – | 13         |
| i. Other       | – | 21         |
| j. Total       | – | <b>421</b> |

4. How the 421 complaints were disposed of:

|                            |   |            |
|----------------------------|---|------------|
| a. Treated                 | – | 278        |
| b. Sent to other agencies  | – | 80         |
| c. Withdrawn or struck out | – | 63         |
| d. Total                   | – | <b>421</b> |

[...<sup>361</sup>]

[6. Breakdowns of disposed-of complaints by category:]

6.1. Treated complaints – 421

|                  |            |             |
|------------------|------------|-------------|
| i. Debt          | 115        | 27.3%       |
| ii. Land dispute | 115        | 27.3%       |
| iii. Marital     | 76         | 18.1%       |
| iv. Cheating     | 63         | 14.9%       |
| v. Court case    | 7          | 1.6%        |
| vi. Chieftaincy  | 7          | 1.6%        |
| vii. Admin Dept. | 13         | 3.1%        |
| viii. Hajj       | 4          | 0.9%        |
| ix. Others       | 21         | 4.9%        |
|                  | <b>421</b> | <b>100%</b> |

6.2. Settled complaints – 278

|                  |            |             |
|------------------|------------|-------------|
| i. Debt          | 91         | 32.7%       |
| ii. Land dispute | 63         | 22.6%       |
| iii. Marital     | 52         | 18.7%       |
| iv. Cheating     | 39         | 14.0%       |
| v. Court case    | 3          | 1.1%        |
| vi. Chieftaincy  | 0          | 0%          |
| vii. Admin Dept. | 3          | 1.1%        |
| viii. Hajj       | 9          | 3.2%        |
| ix. Others       | 18         | 6.5%        |
|                  | <b>278</b> | <b>100%</b> |

6.3. Referred complaints – 85

|         |    |       |
|---------|----|-------|
| i. Debt | 15 | 17.6% |
|---------|----|-------|

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<sup>361</sup> Item 4 of the summary ends at the bottom of a page. The next page begins with Item 6.1. In Items 6 and 7 the lists of types of complaints are given in English and in a slightly different order than in Item 3. There are discrepancies in the numbers that we cannot account for.

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|                  |           |             |
|------------------|-----------|-------------|
| ii. Land dispute | 34        | 40.0%       |
| iii. Marital     | 16        | 18.8%       |
| iv. Cheating     | 10        | 11.7%       |
| v. Court case    | 1         | 1.1%        |
| vi. Chieftaincy  | 5         | 5.8%        |
| vii. Admin Dept. | 1         | 1.1%        |
| viii. Hajj       | 1         | 1.1%        |
| ix. Others       | 2         | 2.3%        |
|                  | <b>85</b> | <b>100%</b> |

6.4. Struck out or withdrawn complaints<sup>362</sup> – 63

|                  |           |             |
|------------------|-----------|-------------|
| i. Debt          | 9         | 14.2%       |
| ii. Land dispute | 18        | 28.5%       |
| iii. Marital     | 10        | 15.8%       |
| iv. Cheating     | 17        | 26.9%       |
| v. Court case    | 3         | 4.7%        |
| vi. Chieftaincy  | 2         | 3.1%        |
| vii. Admin Dept. | 0         | 0.0%        |
| viii. Hajj       | 3         | 4.7%        |
| ix. Others       | 1         | 1.5%        |
|                  | <b>63</b> | <b>100%</b> |

[7. Progress recorded on treated complaints:]

7.1 Debt cases – 115

|                       |            |             |
|-----------------------|------------|-------------|
| i. Settled            | 91         | 79.4%       |
| ii. Referred          | 15         | 13%         |
| iii. Struck/withdrawn | 9          | 7.6%        |
|                       | <b>115</b> | <b>100%</b> |

7.2. Land Disputes – 115

|                       |            |             |
|-----------------------|------------|-------------|
| i. Settled            | 63         | 54.8%       |
| ii. Referred          | 34         | 29.6%       |
| iii. Struck/withdrawn | 18         | 15.6%       |
|                       | <b>115</b> | <b>100%</b> |

7.3. Marital – 78

|                       |           |             |
|-----------------------|-----------|-------------|
| i. Settled            | 52        | 66.6%       |
| ii. Referred          | 16        | 20.5%       |
| iii. Struck/withdrawn | 10        | 12.8%       |
|                       | <b>78</b> | <b>100%</b> |

7.4. Cheating – 66

|              |    |       |
|--------------|----|-------|
| i. Settled   | 39 | 59.1% |
| ii. Referred | 10 | 15.2% |

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<sup>362</sup> In the original: “Stroke or withdrawn”.

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|  |           |             |
|--|-----------|-------------|
| iii. Struck/withdrawn  | 17        | 25.6%       |
|  | <b>66</b> | <b>100%</b> |
| 7.5. Court cases – 7   |           |             |
| i. Settled   | 0         | 0.0%        |
| ii. Referred   | 5         | 71.5%       |
| iii. Struck/withdrawn  | 2         | 28.5%       |
|  | <b>7</b>  | <b>100%</b> |
| 7.6. Chieftaincy – 7   |           |             |
| i. Settled   | 3         | 42.8%       |
| ii. Referred   | 1         | 14.4%       |
| iii. Struck/withdrawn  | 3         | 42.8%       |
|  | <b>7</b>  | <b>100%</b> |
| 7.7. Admin Dept. – 13  |           |             |
| i. Settled   | 9         | 69.6%       |
| ii. Referred   | 1         | 7.7%        |
| iii. Struck/withdrawn  | 3         | 22.8%       |
|  | <b>13</b> | <b>100%</b> |
| 7.8. Hajj – 4  |           |             |
| i. Settled   | 3         | 75.0%       |
| ii. Referred   | 1         | 25.0%       |
| iii. Struck/withdrawn  | 0         | 0.0%        |
|  | <b>4</b>  | <b>100%</b> |
| 7.9. Others – 21   |           |             |
| i. Settled   | 18        | 85.7%       |
| ii. Referred   | 2         | 4.7%        |
| iii. Struck/withdrawn  | 1         | 9.5%        |
|  | <b>21</b> | <b>100%</b> |
| 1. [name omitted] <sup>363</sup> ₦325,440=00   |           |             |
| 2. [name omitted] ₦968,378=40  |           |             |
| 3. Complaints against court registrars for non-remittance of monies collected by the registrars on behalf of the complainants. |           |             |
| i. The court in [name omitted] ₦19,000=00  |           |             |
| ii. The court in [name omitted] ₦12,000=00   |           |             |

**Achievements**

Branches of the Commission were established in all fourteen Local Government Areas of the State.

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<sup>363</sup> Here and in items 2 and 3 following we omit names to preserve the privacy of the individuals involved.

**e. The Sharia Penal Codes on corruption and abuse of office**

As with the Penal Code of 1960, the Sharia Penal Codes all define and prescribe punishments for a variety of crimes which, if committed by public servants, might, in particular cases, also be instances of corruption or abuse of office. As set forth in the Harmonised Sharia Penal Code (see Chapter 4), these include groups of sections on:

- In the chapter on HUDUD AND HUDUD-RELATED OFFENCES:
  - *Theft* §§143-47
  - *Robbery* §§151-54
  - *Extortion* §§155-59
  - *Criminal Misappropriation* §§160-62
  - *Criminal Breach of Trust* §§163-67
  - *Receiving Stolen Property* §§168-71
  - *Cheating* §§172-177
- In the chapter on TA'AZIR OFFENCES:
  - *Criminal Intimidation* §§240-242
  - *Forgery* §§251-260
  - *Screening of Offenders* §§338-341
  - *Fraudulent Dealings with Property* §§345-48
  - *Miscellaneous Offences* §§349-353 including giving false information respecting an offence, taking gift to help recover stolen property, and influencing the course of justice.

The most interesting variation in these sections, among all the codes, is Kano's treatment of criminal breach of trust by a public servant or by a banker, merchant or agent, §167 in the Harmonised Sharia Penal Code. Kano puts this section under the heading of Theft and treats it thus:

- 134B. (1) 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.
- (2) 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 codes also define and punish the following offences related specifically to public servants:

- Breach of Official Trust §§272-73
- Public servant taking gratification in respect of official act §289
- Taking gratification in order to influence public servant §290
- Abetment by public servant of offence mentioned in section 290 §291
- Offering or giving gratification to public servant §292

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

The reader is referred to Chapter 4 for further details.

**3.**

**Liquor**

**a. Liquor in the omnibus laws**

The subject of liquor is dealt with in all but one of the laws reproduced in Part IV.1 above. Borno State's Repeals and Savings Provisions Law and Yobe State's Prohibition of Certain un-Islamic Practices Law both repeal the old Liquor Law and enact new provisions on the subject of alcohol, and all but one of the Local Government bye-laws also regulate liquor or dealings in it.

**b. Niger State Liquor Law (as amended 2001) Annotated**

**LIQUOR LAW**

Chapter 71 of the Laws of Niger State of Nigeria 1989

Incorporating all amendments through that signed into law on 5<sup>th</sup> January 2004.<sup>364</sup>

Arrangement of Sections:<sup>365</sup>

1. Short title.
2. Interpretation.
3. Exemptions.
4. Division of the State into prohibited and licensed areas.
5. Repealed.
6. Licensing Boards.
7. Prohibition of sale of trade spirits and injurious spirits.
8. Distillation of spirits prohibited.
9. Licence to manufacture wines.
10. Penalty for offence against sections 7 and 8.
11. Possession of tubing in certain places an offence unless shown not to be for purpose of distillation.
12. Introduction of liquor into a prohibited area.
13. Exemptions.
14. Penalty for conveying liquor into prohibited area.
15. Duty of persons in charge of transport to require production of permit.
16. Power to inspect and detain packages containing intoxication liquor.
17. Offence to supply spirits to an indigene in a prohibited area.
18. Indigenes not to purchase spirits in a prohibited area.
19. Possession of trade spirits.
20. Sale of liquor in a prohibited or licensed area.
21. Sale of liquor by a non-indigene in restricted area.
22. Sale of liquor by indigenes in a licensed area may be regulated.

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<sup>364</sup> The latest amendment being the Liquor (Amendment) Law, 2001, enacted as part of the programme of Sharia implementation in Niger State; signed by the Governor and coming into force on 5<sup>th</sup> January 2004. This text of the law as amended taken from a pamphlet, published by the Niger State Government, containing the full text.

<sup>365</sup> We give the section titles as they appear in the code itself; these are sometimes fuller than the titles given in the list at the front.

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23. Sale of beer or wine by the manufacturer thereof.
24. Licences authorising the sale of liquor.
25. Licences deemed to contain condition against discrimination.
26. Authority for the issue of licences.
27. Definition and conditions of licences.
28. Hours during which liquor may be sold.
29. Licences to expire on 31<sup>st</sup> day of December.
30. Application to whom made.
31. Form and time of making application.
32. Procedure on receipt of application.
33. Who may object to issue of licences.
34. Objections – how made.
35. Issue of licence by appropriate officer on unopposed applications for renewal.
36. Inquiry.
37. After inquiry application and report thereon to be furnished to the board.
38. Sitting of licensing boards.
39. Discretion of licensing boards.
40. Confirmation by the Commissioner of certificates for new licences may be required.
41. Notification of decision of the Board.
42. Extension of existing licence when renewal refused.
43. Death or insolvency of applicant.
44. Refused applications not to be renewed within 12 months.
45. Transfer of licence.
46. Removal of licensed premises.
47. Fresh application to be made on expiration of a licence transferred.
48. Death or insolvency of a licence-holder.
49. Duties and liabilities of a transferee.
50. Signboards.
51. Breach of condition by a licence-holder.
52. Both employer and employee liable for offence of latter.
53. Licence liable to forfeiture on conviction.
54. Local liquor.
55. Offences by retail licence-holder.
56. Persons under sixteen years prohibited from bars.
57. Restriction as to goods sold on certain licensed premises.
58. Conviction to be endorsed on licence.
59. Offences by persons other than the licence-holder or servant.
60. Power to expel drunkards, etc. from licensed premises.
61. Onus of proof of lawful possession of liquor in a prohibited area.
62. Power of magistrate and police officers.
63. Special search warrants in certain cases.
64. Offences may be tried summarily.
65. Imprisonment may be enforced on second or subsequent conviction.
66. Things liable to forfeiture.
67. Incriminated informer not to incur penalty.
68. Local liquor.
69. Power of Commissioner to rectify omissions and to order special meeting of licensing board.
70. When debt for liquor supplied not recoverable.

71. Power to make regulations.

First Schedule

Second Schedule

A LAW TO REGULATE THE MANUFACTURE AND SALE  
OF INTOXICATING LIQUOR

Date of Commencement: *1<sup>st</sup> January 1989*

1. This Law may be cited as the Niger State Liquor Law.<sup>366</sup>

2. Definitions:

“Liquor Law Cap. 71” means the Liquor Law Cap. 71 of the Laws of Niger State of Nigeria Revised Edition, 1989;<sup>367</sup>

“principal law” means the Liquor Law Cap. 71;<sup>368</sup>

“beer” includes every description of beer, porter, cider, and perry and any fermented malt liquor;

“club” includes an institute;

“denatured spirits” means an intoxicating liquor which by the addition of some substance has been rendered impossible for use as a beverage;

“indigene” includes all persons resident in a prohibited area;<sup>369</sup>

“injurious spirits” means distilled liquors containing essential oils or chemical products, which are recognised as being injurious to health, such as thujone, star anise, benzoic aldehyde, salicylic esters, hyssop, absinthe and similar substances, unless such spirits have been denatured;

“intoxicating liquor” and “liquor” mean any liquid which, if used as a beverage, may have an intoxicating effect, and include wines, beer, spirits, and local liquor;<sup>370</sup>

“licensed premises” and “premises” in relation to sections 54, 58, 59 and 61 include any room or place adjacent to and communicating with any portion of any premises licensed for the sale of liquor;

“local liquor” means fermented liquor usually made by indigenes in or about Nigeria, and palm wine.<sup>371</sup>

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<sup>366</sup> 1963: “as the Liquor Law”.

<sup>367</sup> Nothing similar in 1963.

<sup>368</sup> Nothing similar in 1963.

<sup>369</sup> Instead of ‘indigene’, 1963 defines ‘native of a prohibited area’; and wherever this statute subsequently has ‘indigene’, the 1963 statute had ‘native’: this will not be subsequently noted. ‘Native of a prohibited area’ was defined as “any person one of whose parents was a member of any tribe indigenous to a prohibited area as declared in section 5, and the descendants of such persons; provided that where a tribe occupies land both within and without a prohibited area this definition shall apply only to the part of the tribe which occupies land within such prohibited area”.

<sup>370</sup> 1963: “and include wines, beer and spirits, but do not include native liquor”.

<sup>371</sup> 1963: “‘native liquor’ means fermented liquor usually made by natives in or about Nigeria”.

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“retail” means the sale of liquor in quantities not exceeding two gallons to any one person during the space of twenty-four hours;

“sale” includes the distribution of liquor the property of the members of a club amongst such members;

“spirits” means distilled liquors and all mixtures and compounds made with such liquors, and includes any wine or beer containing more than twenty per centum of pure alcohol;

“the board” means a licensing board;

“trade spirits” means such spirits as under the Customs and Excise Management Act and the regulations made thereunder,<sup>372</sup> were to be regarded as “trade spirits”.

“wholesale” means the sale of liquor in quantities of not less than two gallons to be delivered at one time to one person.

### 3. Nothing in this Law other than the provisions of section 53<sup>373</sup> shall apply to:

\*\* [native liquor]<sup>374</sup>

(a) The possession, sale, transfer, conveyance or removal of denatured spirits imported to Nigeria or distilled in Nigeria under a licence;

(b) Any qualified medical practitioner, or licensed druggist administering or selling for purely medical purposes any *bona fide* medicine containing intoxicating liquor;

(c) The sale of intoxicating liquor by any person acting under the order of a court or selling liquor forfeited to the Government;

(d) The sale of intoxicating liquor by an executor or administrator when such liquor forms part of the estate of a deceased person;

(e) The sale by private arrangement of intoxicating liquor being the residue of a reasonable stock held for private consumption by a person about to leave Nigeria;

(f) The sale of liquor the property of the members of an officers' or non-commissioned officers' mess in the armed forces of the Federation or of any civilian mess approved in that behalf by the Governor to the members of such mess;

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<sup>372</sup> 1963: “as under the Customs Ordinance and the regulations made thereunder in force on the 31<sup>st</sup> day of March, 1959”.

<sup>373</sup> 1963 omits “other than the provisions of section 53”.

<sup>374</sup> 1963: subsection (a) exempts native liquor, and in a footnote says: “See the Native Authority Law (Cap. 77) and the Native Liquor (Townships and Certain Areas) Law (Cap. 79).” §2 of the Native Authority Law defined ‘native liquor’ as “palm-wine and any kind or description of fermented liquor usually made by natives of Nigeria or of the adjacent territories”; §38(57) then gave Native Authorities the power to make rules “prohibiting, restricting or regulating the manufacture, distillation, sale, transport, distribution, supply, possession and consumption of native liquor”. The Native Liquor (Townships and Certain Areas) Law, using the same definition of ‘native liquor’ as the Native Authority Law, permitted the Governor in Council to “make regulations prohibiting, restricting or regulating the manufacture, distillation, sale, transport, distribution, supply, possession and consumption of native liquor” in townships and other areas as the Governor in Council might specify.

(g) The conveyance of intoxicating liquor imported for transit through Nigeria subject to the provisions of the law regulating goods in transit;

(h) The sale of liquor to members of the crews of ships of the Nigerian Navy under conditions approved by the Head of the Nigerian Navy;

\*\* [the Government Hill Station at Jos]<sup>375</sup>

(i) The possession of imported spirits intended solely for the purpose of testing palm-oil by, or the sale thereof to any person in possession of a permit to sell or possess such spirits for such purpose;

(j) The sale of intoxicating liquor to any *bona fide* organisation engaged in supplying food or drink solely to members of the armed forces of the Federation.

\*\* [proviso]<sup>376</sup>

4. For the purposes of this Law the State<sup>377</sup> shall be divided into:

(a) Prohibited areas – areas “as contained in the First Schedule” in which intoxicating liquor may not be sold;<sup>378</sup>

(b) Licensed areas – areas “as contained in the Second Schedule” in which intoxicating liquor may not be sold except under a licence.<sup>379</sup>

\*\* [restricted areas]<sup>380</sup>

5. Repealed.<sup>381</sup>

6. (1) The Governor may by regulations appoint such licensing boards for the purposes of this Law as he may think proper, and define the areas over which such boards shall exercise jurisdiction.

(2) The Chairman and members of a licensing board shall be appointed by the Commissioner and shall hold their seats on the board during the pleasure of the Commissioner.

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<sup>375</sup> 1963 has here a subsection as follows: “the sale of intoxicating liquor by the management of the Government hill station at Jos to persons residing on the premises thereof”.

<sup>376</sup> 1963 has here a proviso: “Provided however that this section shall not apply to the case of a sale of spirits to a native in a prohibited area, except in the circumstances mentioned in paragraph (c) [here (b)]”.

<sup>377</sup> 1963: “Northern Nigeria”.

<sup>378</sup> 1963: “prohibited areas – areas in which intoxicating liquor may not be sold except under a licence, and in which the sale of spirits to, and the possession of spirits by natives of a prohibited area is prohibited”.

<sup>379</sup> 1963 does not include the clause “as contained in the Second Schedule”.

<sup>380</sup> 1963 has a subsection (c): “restricted areas – areas in which intoxicating liquor may not be sold by a non-native or native foreigner except under a licence, and in which the sale of liquor by natives may be restricted by by-laws made by a native authority”.

<sup>381</sup> 1963: “5. (1) The Governor in Council may by order declare any area therein defined to be a prohibited area or a licensed area. (2) Unless otherwise ordered the whole of Northern Nigeria shall be a prohibited area. (3) All parts of Northern Nigeria not included in a prohibited area or licensed are restricted areas.”

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(3) Every unofficial member of the board shall vacate his seat on the expiration of two years from the date of his appointment, but may be reappointed by the Commissioner.<sup>382</sup>

*Prohibition of Trade Spirits and Injurious Spirits*

7. The distribution, sale, disposal, and possession of trade spirits and injurious spirits is hereby prohibited.

\*\* [penalty]<sup>383</sup>

\*\* [subsection (2)]<sup>384</sup>

*Manufacture of Intoxicating Liquors*

8. (1) No person shall distil any spirits or possess, sell or dispose of any spirits distilled in the State.<sup>385</sup>

(2) The distribution, sale, disposal and possession of stills, and of all apparatus<sup>386</sup> suitable for the distillation of alcohol and the rectification or redistillation of spirits are hereby prohibited.

(3) Notwithstanding the provision of subsections (1) and (2) the Commissioner may grant licences with or without conditions to authorise:

(a) the distillation of spirits to be denatured or used exclusively for scientific, medical, surgical or pharmaceutical purposes. The provisions of subsection (1) shall not apply to spirits distilled under such licence;

(b) the distribution, sale, disposal or possession of distilling apparatus of the nature set out in the Schedule.<sup>387</sup>

(4) Any person found offending against the provision of this section may be arrested without a warrant.

(5) In any proceedings under subsection (1) of this section upon proof that the person charged possessed, sold or disposed of, any spirits which are certified by a Government

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<sup>382</sup> In this and subsequent sections 1963 refers to “the Minister” rather than “the Commissioner”. This is not noted subsequently. In neither law is it made clear which minister or commissioner is meant.

<sup>383</sup> 1963 provides after subsection (1) a penalty provision as follows: “Penalty: a fine of one hundred pounds for a first offence, and of five hundred pounds for any subsequent offence, and the spirits may be forfeited.” Compare §10 of the Niger law *infra*.

<sup>384</sup> 1963: subsection (2): “This section shall not apply to the distribution, sale, disposal or possession according to law of any spirits lawfully being in Nigeria on the 22<sup>nd</sup> day of December 1919.”

<sup>385</sup> 1963: “in Nigeria”.

<sup>386</sup> 1963 inserts here: “or portions of apparatus”.

<sup>387</sup> The only schedule to the 1963 law then lists (1) testing stills, (2) apparatus used for experiments in scientific institutions, (3) apparatus used for definite purposes other than the production of alcohol by qualified pharmacists and others who can show good cause for possession, and (4) apparatus necessary for the manufacture of alcohol for commercial persons and employed by duly authorised persons. Although the same schedule is evidently referred to in the Niger State law, it does not appear in the pamphlet version of the law published by the government of Niger State in 2004, which we have reproduced here.

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Chemist of the Federation or the State to be a liquid having the characteristics of locally and crudely prepared spirits, the burden of proof that such spirit were not illicitly distilled in Nigeria shall lie upon the person so charged.

9. No person shall manufacture wine except under a licence granted by the Commissioner, and subject to the prescribed conditions.

10. Any person who shall commit an offence under either section 7 or section 8<sup>388</sup> shall be liable for a first offence to a fine of not less than one hundred thousand naira and not more than two hundred and fifty thousand naira and in default to imprisonment for a term of not less than three years; and for any second or subsequent offence to a fine of not less than one hundred thousand naira and in default to imprisonment for a term of not less than five years.<sup>389</sup>

11. If any part of the State to which the Governor may by order apply this section any person shall have in his possession any metal tubing and shall not be able to show that it was not in his possession with a view to its being used by himself or any other person in connection with the distillation of spirits, he shall be guilty of an offence and shall be liable in the case of a first offence to a fine of two hundred thousand naira and in default to imprisonment for 12 months, and for any second or subsequent offence to a fine of two hundred thousand naira and default to imprisonment for twelve months, or to both such penalties.<sup>390</sup>

Provided that this section shall not apply to any person to whom the Commissioner has granted a licence under subsection (3) of section 8.

#### *Introduction of Intoxicating Liquor into a Prohibited Area*

12. Subject to the provision of section 13, no person shall introduce any intoxicating liquor into a prohibited area.

Penalty: a fine of not less than two hundred thousand naira for a first offence and not less than two hundred and fifty thousand naira for any subsequent offence and in default to imprisonment for a term of not less than five years.<sup>391</sup>

13. Intoxicating liquor other than trade spirits may be introduced into a prohibited area in the following cases without a permit:<sup>392</sup>

- (i) by a recognised instruction for teaching and research purpose;<sup>393</sup>
- (ii) by a traveller, not being an indigene of a prohibited area, in quantities not exceeding that which he may reasonably require for his personal use in the course of his journey;

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<sup>388</sup> 1963: "either section 8 or section 9". In the Niger law, the revisers made good their omission of the penalty originally provided under subsection (1) of §7 by putting it here; but they then omitted to provide any specific penalty for violation of §9.

<sup>389</sup> 1963: 1<sup>st</sup> offence: £500 and in default of payment to 3 years; 2<sup>nd</sup> or subsequent offences: same, or to 2 years, or both.

<sup>390</sup> 1963: 1<sup>st</sup> offence: £100 and in default of payment to 12 months; 2<sup>nd</sup> or subsequent offences: same, or 12 months, or both.

<sup>391</sup> 1963: 1<sup>st</sup> offence: £100; subsequent offences: £500, "and the liquor may be forfeited".

<sup>392</sup> 1963: has two subsections: (a), without a permit, and (b), with a permit issued by the prescribed authority. Here the three subsections are as in subsection (a) of 1963, except as noted.

<sup>393</sup> 1963: "(i) by the Minister or for government purposes".

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(iii) by the holder of a restaurant car licence, in quantities not exceeding that which may be reasonably required by the passengers travelling on the train on which the liquor is carried and to which the restaurant car is attached.

14. Except as provided in section 13, no intoxicating liquor shall be conveyed into a prohibited area or licensed area without licence.<sup>394</sup> In the case of a contravention of this section, the owner and the master or person in charge of any vessel, vehicle or other means of transport employed in such conveyance or any carrier shall each be liable to fine of not less than one hundred and fifty thousand naira and in default to imprisonment for a term of not less than three years.<sup>395</sup>

15. The master of a vessel, any railway servant, or other person in charge of transport or a carrier shall before accepting any intoxicating liquor for carriage into a prohibited area in circumstances or quantities other than those mentioned in section 13 require the production of the permit authorising the introduction of such liquor into the prohibited area.

Penalty: a fine of not less than one hundred thousand naira and in default to imprisonment for a term of not less than three years.<sup>396</sup>

16. (1) The master of a vessel, any railway servant, or other person in charge of transport or a carrier may open and inspect any package or parcel tendered for carriage, if he has reasons to suspect that the same contains intoxicating liquor, and may detain at the risk of the owner any package or parcel which may contain intoxicating liquor in respect of which a permit is required by this Law, and for which no such permit is produced, but shall forthwith report such detention to the nearest magistrate or superior police officer.

(2) The master of a vessel or any other person in charge of transport or any carrier who shall fail to report such detention as aforesaid shall be liable to a fine of fifty thousand naira.<sup>397</sup>

### *Sale, Supply and Possession of Intoxicating Liquor*

17. No person, whether a licence holder or not, shall in a prohibited area sell, give or supply to any indigene of a prohibited area any spirit:

Provided that no person shall be convicted of an offence against this section if he shall satisfy the court that the spirit was supplied to the indigene of a prohibited area for *bona fide* medical purposes.

Penalty: A fine of not less than two hundred thousand naira for a first offence and not less than three hundred thousand naira [for every subsequent offence] and in default to imprisonment for a term of not less than five years.<sup>398</sup>

18. No indigene of a prohibited area shall purchase or be in possession of any spirits in a prohibited area, unless for *bona fide* medical purposes.

Penalty: a fine of not less than one hundred thousand naira and in default to imprisonment for a term of not less than three years.<sup>399</sup>

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<sup>394</sup> 1963 omits "or licensed area without licence".

<sup>395</sup> 1963: £50.

<sup>396</sup> 1963: £50.

<sup>397</sup> 1963: £50.

<sup>398</sup> 1963: £100/£500; no provision for imprisonment in case of default of payment.

19. No person shall be in possession of trade spirits in a prohibited area.

Penalty: a fine of not less than two hundred thousand naira for a first offence and not less than three hundred thousand naira for any subsequent offence, and in default to imprisonment for a term of not less than three years.<sup>400</sup>

20. No person shall, within a prohibited area or licensed area possess or sell intoxicating liquor to any person except under a licence authorising such stock or sale.<sup>401</sup>

Penalty: a fine of not less than two hundred thousand naira for first offence, and not less than three hundred thousand naira for any subsequent offence, and in default to imprisonment for a term of not less than three years.<sup>402</sup>

21. No non-Nigerian shall within a prohibited area<sup>403</sup> sell intoxicating liquor to any person except under a licence authorising such sale.

Penalty: a fine of not less than five hundred thousand naira for a first offence, and not less than one million naira for any subsequent offence, and in default to imprisonment for a term of not less than five years.<sup>404</sup>

22. The governor may make rules, regulating the sale of intoxicating liquor by indigenes within a prohibited area.<sup>405</sup>

23. The holder of a licence to brew beer granted under the provisions of section 101 of the Customs and Excise Management Acts, 1958 or of a licence to manufacture wine granted under the provisions of this Law may sell by wholesale beer or wine manufactured by him to the holder of a licence to sell beer or wine.

*Licensing*

24. Licences of the several descriptions following authorising the sale of intoxicating liquor subject to the provisions of this Law may be issued by the prescribed officers:

- (a) a store liquor licence;
- (b) a tavern licence;
- (c) a wine and beer on licence;
- (d) a wine and beer off licence;
- (e) a general wholesale liquor licence;
- (f) a general retail liquor licence;
- (g) a hotel liquor licence;
- (h) a club liquor licence;

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<sup>399</sup> 1963: £50, “and the spirits shall be forfeited.”

<sup>400</sup> 1963: £100/£500, “and the spirits shall be forfeited.”

<sup>401</sup> 1963 omits “possess or” and “stock or”.

<sup>402</sup> 1963: £50/£100; no provision for imprisonment in case of default of payment.

<sup>403</sup> 1963: “No non-native or native foreigner shall within a restricted area”.

<sup>404</sup> 1963: £50/£100; no provision for imprisonment in case of default of payment.

<sup>405</sup> 1963: “(1) The Governor may make rules, or a native authority may make by-laws, regulating the sale of intoxicating liquor by natives within a restricted area. (2) A by-law made by a native authority under this section shall be binding on and apply to all natives within the area of the jurisdiction of the native authority whether such natives are ordinarily subject to the jurisdiction of a native court or not. (3) No by-law made by a native authority under this section shall come into operation until it has been submitted to and approved by the Minister.”

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\*\* [native club liquor licence]<sup>406</sup>

- (i) a railway station liquor licence;
- (j) a temporary liquor licence;
- (k) a local liquor licence.<sup>407</sup>

25. Every licence of a description mentioned in section 24<sup>408</sup> shall be subject to and shall be deemed to contain a condition that the holder of such licence shall not refuse to sell liquor to any person who may otherwise lawfully be supplied, on account of the race, colour or creed of such person.

26. Subject to the provisions of section 35, none of the licences (a) to (k) mentioned in section 24 shall be issued except on a certificate of a licensing board.<sup>409</sup>

27. The following definitions and provisions shall apply to the aforementioned licences:

- (a) a “*store liquor licence*” authorises the sales by retail of liquor, other than trade spirits, to be consumed elsewhere than on the licensed premises;
- (b) a “*tavern licence*” authorises the sale by retail of liquor, other than trade spirits, to be consumed on the licensed premises;
- (c) a “*wine and beer on licence*” authorises the sale by retail of wine and beer to be consumed on the licensed premises. The licence does not authorise the sale of wine or beer containing more than twenty per centum of pure alcohol;
- (d) a “*wine and beer off licence*” authorises the sale in quantities not exceeding two bottles to any one person during the space of twenty-four hours, of wine and beer to be consumed elsewhere than on the licensed premises. The licence does not authorise the sale of wine or beer containing more than twenty per centum of pure alcohol;
- (e) a “*general wholesale liquor licence*” authorises the sale by wholesale of any liquor for consumption off the licensed premises;
- (f) a “*general retail liquor licence*” authorises the sale by retail of any liquor for consumption off the licensed premises;
- (g) an “*hotel liquor licence*” authorises the sale of liquor, other than trade spirits, by retail:
  - (i) on any day and at any hour to persons sleeping on the premises to be consumed thereon;
  - (ii) to persons taking meals in the hotel to be consumed therein with the meals, on Christmas Day, Good Friday, or Sunday between the hours of 11.30 a.m. and 2.30 p.m. and 6.30 p.m. and 10.30 p.m. and on other days between the hours of 8.00 a.m. and 11.30 p.m.;
- (h) (i) a “*club liquor licence*” authorises the sale of liquor, other than trade spirits, to the members of the club to be consumed on the premises;

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<sup>406</sup> 1963 inserts here: “a native club liquor licence”.

<sup>407</sup> Not in 1963.

<sup>408</sup> 1963 inserts here: “other than a licence of a description mentioned in paragraph (h) [club] or paragraph (i) [native club] thereof”.

<sup>409</sup> 1963 has another subsection: “(2) A temporary liquor licence shall not be issued except with the approval of the Provincial Commissioner of the province.”

CHAPTER 3: SANITIZING SOCIETY

(ii) no place of accommodation, entertainment or refreshment shall be considered a club where other than members or their invited guests are allowed entry or accommodation or where other than members are charged or permitted to pay for any refreshment or accommodation they may obtain therein;

(iii) every club licence shall be issued to the proprietor, secretary or manager of the club;

Provided that no transfer of any such licence shall be necessary upon any change of any such proprietor, secretary or manager, but the person for the time being holding any such office shall be entitled to the privilege granted by the licence and subject to the duties and obligations imposed upon the holder thereof;

(iv) a copy of the rules of the club certified by the secretary or chairman shall be deposited by the applicant with the officer authorised to receive applications for the grant or renewal of licences;

\*\* [native club liquor licence]<sup>410</sup>

(i) a “*railway station liquor licence*” authorises the sale by retail of liquor, other than trade spirits, at any railway station refreshment room or other railway premises named in such licence, to *bona fide* passengers travelling by train to be consumed on the railway premises;

(j) (i) a “*temporary liquor licence*” may be issued to the holder of a licence to sell intoxicating liquor by retail<sup>411</sup> at any place of recreation or public amusement or other assembly, subject to such restrictions and conditions as the officer issuing the licence shall think proper;

(ii) a temporary liquor licence shall not be granted for any period exceeding three days;

(iii) the licence shall specify the number of days and the hours during which the sale thereunder is authorised;

(iv) the officer issuing the licence shall notify the senior police officer in the place of the issue of the licence and of the particulars thereof;

(k) a “*local liquor licence*” authorises the sale of all locally made liquor.<sup>412</sup>

28. The licences mentioned in section 24 shall only authorise the sale of liquor between the hours of 8:00 a.m. and 10.30 p.m.<sup>413</sup>

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<sup>410</sup> 1963 has here: “(i) a ‘native club liquor licence’ authorises the sale of wine and beer not containing more than twenty per centum of pure alcohol to the members of the club, to be consumed on the premises; (ii) the provisions of sub-paragraphs (ii), (iii) and (iv) of paragraph (h) shall apply to a native club liquor licence”.

<sup>411</sup> 1963 inserts here: “and authorises the holder to sell liquor by retail”.

<sup>412</sup> Not in 1963.

<sup>413</sup> 1963: “(1) No licence mentioned in section 24 other than licences (g), (h), (i), (j) and (k) [hotel, club, native club, railway station and temporary] authorises the sale of liquor on Christmas Day, Good Friday or Sunday, except between the hours of 12:30 p.m. and 2:00 p.m. and 5:00 p.m. and 8:00 p.m., or on any other day except after 6:00 a.m. and before 10:30 p.m. (2) Notwithstanding

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29. (1) Every licence mentioned in section 24 other than a temporary licence, shall expire on the 31<sup>st</sup> day of December in the year in which it is issued;

Provided that when proper application for the renewal of a licence has been made, such licence shall continue in force until such time as the applicant has been notified of the decision of the licensing board or of the Commissioner as the case may be.

- (2) Notwithstanding the provisions of subsection (1), where under any regulation the prescribed fee for any licence may be paid by instalments the licence shall become void as soon as any instalment is in arrear and shall thereafter be and remain of no effect.

*Application for Licences and Renewals*

30. All applications for new licences or for the renewal of licences, which may be issued on the certificate of a licensing board, shall be made to the secretary of the Local Government authority in the area.<sup>414</sup>

31. All applications for new licences or for the renewal of licences shall be made in the prescribed form in triplicate if for consideration at the meeting of the licensing board:

- (a) to be held in June – not later than the 15<sup>th</sup> day of April;  
(b) to be held in December – not later than the 15<sup>th</sup> day of October:

Provided that:

- (i) in case any such application shall through inadvertence not be made in due time, but shall be made before the necessary inquiry under section 36 has been concluded the officer holding the inquiry may, if he thinks fit, accept the same for consideration upon payment of the prescribed fee; and  
(ii) the Commissioner may, if he thinks fit, remit the whole or any part of such fee.

32. The officer authorised to receive applications for the grant or renewal of licences shall on the receipt of an application:

- (a) cause a copy of the application to be posted in some conspicuous place outside his court or on some other principal building in the place where his court is situate;  
(b) notify the applicant in writing, and the public by a notice posted as provided in paragraph (a) of the date and place at which he will sit to inquire into the application and hear objections thereto, which date shall not be less than ten days after the posting of such notice.

33. Any public officer or Local Government Council and any person residing in the district or place wherein the licence or renewal is applied for, may, either individually or jointly with others, object to the granting or renewal of a licence.

34. All objections to the granting or renewal of a licence shall be sent in writing to the officer to whom the application has been made, and where the objection is to the renewal of a licence, notice thereof stating the reasons for such objections shall be given to the applicant

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the provisions of subsection (1) a district officer may extend the hours during which liquor may be sold on any special occasion in respect of all or any licence holders.

<sup>414</sup> 1963: “shall be made—(a) in a township, to the local authority thereof; (b) in Kaduna, to the Administrator; (c) elsewhere than in a township or Kaduna, to the divisional officer of the division in which they are situate.”

either personally or by means of registered letter by the person objecting, at least two days before the inquiry:

Provided that the officer holding the inquiry may, in his discretion, hear an objector to the granting or renewal of a licence notwithstanding that he shall not have made his objections in writing or have given notice as aforesaid, but when the notice required has not been given to the applicant, the officer shall adjourn the inquiry for such time as he may think proper in the interest of the applicant.

35. (1) If no objection is made in accordance with the provisions of section 34 to the renewal of a licence:

- (a) Sections 36, 37, 38, 39, 40, 41, 42 and 43 shall not apply to an application; and
- (b) The officer to whom such application has been made shall on receipt of the prescribed fee issue the appropriate licence to the applicant; and
- (c) Such licence shall have effects as if it were a licence issued on a certificate of a licensing board.

(2) Such officer may in his discretion certify that any particular application for the renewal of a licence ought to be considered by a licensing board and in such case the provisions of subsection (1) shall not apply to such application.

(3) The section shall not apply to licences referred to in paragraphs (i) and (j) of section 24.

36. (1) The inquiry into an application for a new licence, or an opposed application for the renewal of a licence, or an application for the renewal of a licence certified by the appropriate officer under subsection (2) of section 35 shall be held by a public officer appointed by the Chairman of the Local Government Council.<sup>415</sup>

(2) Such officer shall hold an inquiry sitting alone unless the commissioner directs that such officer shall sit with two other persons, appointed by him for the purpose, resident in the Local Government Area where the premises in respect of which the application is made are situated.<sup>416</sup>

(3) Every applicant for a new licence shall appear either in person or by a representative at the time and place appointed for the inquiry or to which the inquiry may be adjourned.

(4) Every applicant for the renewal of a licence, and persons opposing an application, may, and shall if required by the officer holding the inquiry, appear in person before such officer,

(5) All persons appearing at any inquiry, whether as or for an applicant or a person opposing an application may be required to give evidence on oath on any question which the inquiring officer may think proper affecting the application or the opposition thereto.

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<sup>415</sup> 1963: “appointed by the Provincial Commissioner, or in the case of Kaduna, appointed by the Administrator”.

<sup>416</sup> 1963: “Such officer shall hold an inquiry sitting alone or, in the case of an inquiry into an application in respect of premises in a township or in Kaduna, if the Governor shall so direct sitting with two other persons resident in the township or in Kaduna, as the case may be who have been appointed by the Governor for that purpose.”

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(6) An inquiry may be adjourned from time to time as the officer holding the same may think proper, provided that the inquiry is completed by such time as will permit of the report thereon being furnished to the board within the time mentioned in section 37.

37. (1) Immediately on the completion of such inquiry, the officer shall forward a copy of the application together with the written opposition (if any) thereto, and a certified copy of any evidence taken thereon to the chairman of the licensing board, so that the same shall be received not later than the last day of the month next preceding that in which the meeting of the licensing board at which they are to be considered is to be held.

(2) The officer when forwarding the application shall report to the licensing board on all matters which may affect the decision of the licensing board in respect of the application, and shall furnish the board with his recommendation, and also when the inquiry has been held by him, sitting with other persons, with the recommendation of such persons.

\*\* [sections 38-53 omitted]<sup>417</sup>

54. (1) This section shall apply to such areas as the Governor may by order specify.<sup>418</sup>

(2) The Governor may make regulations authorising, prohibiting or regulating the manufacture, distillation, sale, transport, distribution, supply, possession and consumption of local liquor.

(3) Such regulations may be made in respect of all or any particular areas or area specified by the order under the provisions of subsection (1) and shall apply to the exclusion of any bye-laws made in respect of any such area by a Local Government Council.

\*\* [sections 55-71 omitted]<sup>419</sup>

FIRST SCHEDULE<sup>420</sup>

|    | <u>Town</u> | <u>Prohibited Areas</u>   |
|----|-------------|---|
| 1. | Minna       | All areas within 8 kilometres radius of the town from the old Post Office excluding the Military Barracks along Paiko Road. |
| 2. | Bida        | All areas within 8 kilometres radius of the town from the Post Office.  |
| 3. | Suleja      | All areas within 8 kilometres radius of the town the Post Office.   |

<sup>417</sup> These sections are identical to the corresponding sections of the 1963 law, except for changes in the monetary amounts of some penalties.

<sup>418</sup> This section is not in the 1963 law. Note: this same §54 of the Niger law is included twice, once as §54 and again as §68, except that in subsection (3) of §68, the words “and shall apply to the exclusion of any bye-laws made in respect of any such area by a local government council” are omitted.

<sup>419</sup> §§55-67 of the Niger law are identical to §§54-66 of the 1963 law, except for changes in the monetary amounts of some penalties. §68 of the Niger law repeats §54, see previous note. §§69-71 of the Niger law are then identical to §§67-69 of the 1963 law.

<sup>420</sup> The only schedule to the 1963 law lists distilling apparatus the distribution, sale, disposal or possession of which may be authorised by the Minister (Niger: Commissioner) under §8(3)(b), see note to that section. Although the same schedule is referred to in the Niger law, the schedule itself does not appear in the pamphleted version of the law published by the government of Niger State in 2004, which we have reproduced here.

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4. Kontagora All areas within 8 kilometres radius of the town from the Post Office excluding Nagwamatse Military Barracks.
5. Lapai All areas within 8 kilometres radius of the town from the Post Office.
6. Agaie All areas within 8 kilometres radius of the town from the Post Office.
7. Kogara All areas within 8 kilometres radius of the town from the Emir's Palace.
8. New Bussa All areas within 8 kilometres radius of the town from the Emir's Palace, excluding Military Barracks and Bases.
9. Mokwa All areas within 8 kilometres radius of the town from the District Head's Office.

#### SECOND SCHEDULE

All other towns, villages, hamlets, settlements etc. in the State not mentioned in the First Schedule.

#### **c. Niger State Liquor Licensing Regulations 2000**

##### THE LIQUOR LAW CAP 71 LIQUOR (LICENSING) REGULATIONS 2000<sup>421</sup>

In exercise of the power conferred upon me by section 71 of the Liquor Law Cap 71 and of all other powers enabling me in that behalf, I ENGR. ABDULKADIR A. KURE, Governor Niger State of Nigeria hereby make the following regulations:

1. These Regulations may be cited as the Liquor (Licensing) Regulations 2000 and shall come into force on the 27<sup>th</sup> day of April 2000.
2. In these regulations unless the context otherwise requires:
  - “Licensing Board” means the Licensing Board appointed under section 6(1) of the Liquor Law Cap. 71;
  - “Liquor Law Cap. 71” means the Liquor Law Cap. 71, the Laws of Niger State of Nigeria, Revised Edition 1989;
  - “prescribed fees” means the fees specified in the second column of the Schedule against a licence in the first column of the Schedule.
3. The Licensing Board shall not issue any licence under the Liquor Law Cap. 71 to any person except upon payment of the prescribed fees.

#### SCHEDULE

| <u>First Column</u>                    | <u>Second Column</u> |
|--|----------------------|
|  | <del>₦</del> K       |
| (a) a store liquor licence             | 500,000.00           |
| (b) a tavern licence                   | 200,000.00           |
| (c) a wine and beer on licence         | 200,000.00           |
| (d) a wine and beer off licence        | 200,000.00           |
| (e) a general wholesale liquor licence | 1,000,000.00         |
| (f) a general retail liquor licence    | 1 000,000.00         |

<sup>421</sup> Niger State of Nigeria Gazette No. 4 Vol. 25, 9<sup>th</sup> March 2000, Supplement Part B pp. B11-B12. The law was signed by Governor Kure on 9<sup>th</sup> February 2000.

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|                                      |            |
|--------------------------------------|------------|
| (g) a hotel liquor licence           | 500,000.00 |
| (h) a club liquor licence            | 500,000.00 |
| (i) a railway station liquor licence | 500,000.00 |
| (j) a temporary liquor licence       | 200,000.00 |
| (k) a local liquor licence           | 200,000.00 |

**d. Kebbi Liquor (Prohibition Restriction and Control) Law 2000**

A LAW TO REGULATE THE MANUFACTURE, SALE  
AND CONSUMPTION OF LIQUOR<sup>422</sup>

Arrangement of sections:<sup>423</sup>

1. Citation and commencement.
2. Interpretation.
3. Prohibition and restriction.
4. Offences.
5. Prohibited and restricted areas.
6. Power of Governor to declare any area as prohibited area.
7. Exemptions.
8. Cancellation of licences and permits.
9. Establishment of licensing boards.
10. Responsibilities of licensing boards.
11. Type of liquor licences.
12. Scope of liquor licences.
13. Application and issuance of licences.
14. Sign boards.
15. Forfeiture of liquor licence.
16. Summary trials.
17. Power of magistrate, justice of peace and police officers.
18. Court order.
19. Power to make regulations.
20. Repeal.

Schedule 1: Prohibited Areas.

Schedule 2: Restricted Areas.

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

1. This Law may be cited as the Liquor (Prohibition Restriction and Control) Law 2000 and shall come into effect on the \_\_\_\_ day of \_\_\_\_\_ 2000 [sic].

2. In this Law, unless the context otherwise requires: -

“beer” includes every description of beer, cider or perry and any fermented liquor;

“clubs” includes institute;

“spirits” means distilled liquor;

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<sup>422</sup> No. 10 of 2000, assented to 13<sup>th</sup> March 2000; published in Kebbi State Gazette No. 1 Vol. 1, 12<sup>th</sup> June 2000, pp. 85-91

<sup>423</sup> For this list we have extracted the section titles from the gazetted version of the law; we do not repeat the section titles below.

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“governor” means the Executive Governor of Kebbi State;  
“liquor” means any liquid which, if used as beverage, may have an intoxicating effect and includes wine, beer, spirits and local liquor;  
“local liquor” means crude or unrefined fermented liquor;  
“retail” means the sale of liquor otherwise than by wholesale;  
“sale” or “sell” includes display, distribution or conveyance of liquor;  
“board” means a Licensing Board established under section 9 of this Law;  
“licence” means a permit to sell or manufacture liquor;  
“wholesale” means the sale of liquor otherwise than by retail;  
“prohibited area” means a place or area in which the sale, manufacture, consumption or possession of liquor is prohibited;  
“restricted area” means a place or area in which the sale or manufacture of liquor is restricted under licence;  
“member” includes chairman;  
“manufacture” includes distillation howsoever prepared;  
“person” includes a company, institution or organisation;  
“State” means Kebbi State.

3. (1) No person shall sell, manufacture, consume or possess liquor within the prohibited areas of the State.  
(2) No person shall sell or manufacture liquor within restricted areas of the State except under a licence issued under this Law.
4. (1) Any person who contravenes the provisions of sub-section (1) of section 3 of this Law commits an offence and shall be liable on conviction to a fine of not less than ₦2,000.00 and not more than ₦20,000.00 or not less than 3 months imprisonment and not more than 1 year imprisonment or to both such fine and imprisonment.  
(2) Any person who contravenes the provisions of sub-section (2) of section 3 of this Law commits an offence and shall be liable on conviction to a fine of not less than ₦5,000.00 and not more than ₦25,000.00 or not less than 3 months imprisonment and not more than 1 year imprisonment or to both such fine and imprisonment.  
(3) Notwithstanding the provisions of sub-section (1) and (2) of this section, eighty *baddi* lashes shall be inflicted on any Muslim who contravenes the provisions of this section.
5. For the purposes of application of this Law, the State shall be divided into prohibited areas and restricted areas as defined under the Schedules to this Law.
6. The Governor may, subject to approval by resolution of the State House of Assembly, declare any area in the State as a prohibited area.
7. Nothing in this Law shall apply to: -
  - (a) the manufacture, possession, administering or sale of any bona fide medicine containing liquor;
  - (b) the sale of forfeited liquor by any person acting under the order of a court;

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- (c) the sale of liquor by an administrator or executor when such liquor forms part of the estate of a deceased person;
  - (d) the sale of liquor in army barracks or mammy markets or any other area approved by the Governor.
8. All liquor licences or permits given or issued within the prohibited areas before the commencement of this Law shall, as at the commencement of this Law, be deemed to be cancelled.
9. (1) There shall be established a Licensing Board in each Emirate Council Headquarters in the State.
- (2) Each Licensing Board shall comprise not more than 5 members, including the chairman, to be appointed by the Governor on the recommendation of the chairman of the Local Government Area in which the Emirate Headquarters is situated.
- (3) Every member of the board, other than ex-officio member, shall vacate his seat on the expiration of two years from the date of appointment and may be eligible for reappointment for one further term.
- (4) The remuneration or allowances of the members of the Licensing Boards shall be prescribed by the Governor subject to the approval of the House of Assembly.
10. The Licensing Board shall be responsible for the issuing of liquor licences or renewal of liquor licences on such terms and under such conditions as the Board may specify.
11. The following liquor licences may be issued by the Licensing Board: -
- (a) liquor manufacture licence;
  - (b) store liquor licence;
  - (c) wine and beer on licences;
  - (d) wine and beer off licence;
  - (e) general wholesale liquor licence;
  - (f) general retail liquor licence;
  - (g) hotel liquor licence;
  - (h) club liquor licence; and
  - (i) temporary liquor licence.
12. For the purposes of section 11 of this Law: -
- (a) a liquor manufacture licence authorises the manufacture of liquor;
  - (b) a store liquor licence authorises the sale of liquor by retail to be consumed elsewhere than on the licensed premises;
  - (c) a wine and beer on licence authorises the sale of wine and beer by retail to be consumed on the licensed premises;
  - (d) a wine and beer off licence authorises the sale of wine and beer to be consumed elsewhere on the licensed premises;
  - (e) a general wholesale liquor licence authorises the sale of liquor by wholesale for consumption off the licensed premises;
  - (f) a general retail liquor licence authorises the sale of liquor by retail for consumption off the licensed premises

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- (g) a hotel liquor licence authorises the sale of liquor by retail on the premises to be consumed thereon;
  - (h) a club liquor licence authorises the sale of liquor to members of the club to be consumed on the premises;
  - (i) a temporary liquor licence may be issued to a holder of any liquor licence to sell liquor by retail at any place of recreation or public amusement or other assembly for a period specified therein.
13. (1) Application for new licence or for the renewal of licence shall be made to the Licensing Board.
- (2) No new licence shall be issued and no licence shall be renewed by the Licensing Board except on the recommendation of the Local Government Chairman in whose jurisdiction the licence or renewal of the licence is being sought for.
- (3) There shall be paid such fees for new licences or for renewal of licences as the Governor may from time to time determine.
- (4) Every liquor licence, other than temporary liquor licence, shall expire after 1 year from the date it is issued and may upon application thereof, be renewed.
14. (1) Every holder of a liquor licence (other than club licence) shall affix and maintain over the entrance to the licensed premises a signboard of a reasonable size on which shall be inscribed or printed in legible characters the name and class of the licence to which he is a holder.
- (2) Any person who contravenes the provisions of sub-section (1) of this section commits an offence and shall be liable on conviction to a fine of not more than ₦10,000.00.
15. Where a licence holder is convicted for an offence under this Law, the licence of such holder and any liquor recovered therefrom shall be forfeited.
16. Offences under this Law shall be tried summarily in Magistrate Court.
17. Any justice of peace or magistrate or person authorised in writing by a magistrate or any police officer may: -
- (a) enter any licensed premises at any time for the purpose of detecting or preventing any breach of the provisions of this Law or of any licence granted under this Law;
  - (b) at any time demand the production of any licence or permit under this Law;
  - (c) having reasonable grounds for suspecting that liquor is being unlawfully sold, stored, consumed or otherwise manufactured, enter and inspect any premises and examine any package, vessel or conveyance; and
  - (d) seize and detain any liquor which he has reasonable grounds to believe is being sold, manufactured, consumed or possessed contrary to the provisions of this Law.
18. The court may order the forfeiture of any: -
- (a) liquor sold, manufactured, conveyed, transported or possessed in contravention of any of the provisions of this Law;
  - (b) receptacle or package containing liquor liable for forfeiture;

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(c) vessel, cart, carriage animal, vehicle, machine or any conveyance used in contravention of any of the provisions of this Law; and

(d) apparatus, implements, materials used for the manufacture of liquor contrary to the provisions of this Law.

19. The Governor may make regulations for the purpose of giving effect to any of the provisions of this Law.

20. The Liquor Law Cap. 81 1978 and the Liquor (Prohibition and Restriction) Law 2000 are hereby repealed.

#### SCHEDULE 1: PROHIBITED AREAS

Subject to section 7 of this Law, the prohibited areas appearing in the first column of this Schedule shall be as delineated or demarcated in the second column of this Schedule.

| <u>Column I</u>  | <u>Column II</u>  |
|--|---|
| 1. Gwandu Emirate<br>Headquarters, Birnin<br>Kebbi   | (1) All the areas comprising the Old Town, including Baiti, Kofar Sauna, Yar'yara, Gamagira, Takalafiya, Kofar Dindi, Kofar Kola, Illela and Zoramawa.<br>(2) All the areas comprising the Nasarawa area, including Makerar Gandu, Rafin Atiku, Shiyar Sarakuna, Shiyar Fada, Junji and Shiyar Zabarmawa.<br>(3) The whole of Badariya Area.<br>(4) The whole of Gwadangwaji. |
| 2. Argungu Emirate<br>Headquarters,<br>Argungu   | All the areas of Argungu town comprising Dankoji, Merawa, Tudun Wada, Dagwau, Filin Sukuwa, Matan Fada, Bakin Kasuwa, Bakin Gari, Yar'Mahauta, Sabon Garin Kanta, Wazange and Yar'Aduwa.  |
| 3. Yauri Emirate<br>Headquarters, Yauri  | The whole of Yauri town.  |
| 4. Zuru Emirate<br>Headquarters, Zuru  | The whole of Zuru town excluding Unguwan Zuru, Unguwan Mishon, Dam site area and Filin Jirgi area.  |
| 5. All other Local<br>Government<br>Headquarters in the<br>State, other than the<br>Emirate Headquarters | All the capital towns of the Local Government Area  |
| 6. All District<br>Headquarters in the<br>State  | All the capital towns of the Districts.   |

#### SCHEDULE 2: RESTRICTED AREAS

Any other area or areas in the State not included in the prohibited areas as shown in Schedule 1 shall be restricted areas.

**e. Bauchi State Liquor (Repeal) Law 2001**

A LAW TO REPEAL THE LIQUOR LAW, CAP 85, LAWS OF BAUCHI STATE 1991<sup>424</sup>

- |   |                           |
|---|---------------------------|
| 1. This Law may be cited as the Liquor (Repeal) Law and shall come into operation on ..... day of ..... 2001 [sic].   | Citation and commencement |
| 2. The Liquor Law Cap 85 Laws of Bauchi State 1991 and all subsequent amendments thereto, is hereby repealed  | Repeal of Cap 85          |
| 3. As from the commencement of this Law, any licence, permit, certificate or any similar instrument granting or conferring any right to any person to deal in alcohol or alcoholic drinks issued pursuant to any Local Government Bye-Law or Law of Bauchi State is hereby revoked. | Revocation of [sic]       |

**f. Bauchi State Penal Code (Amendment) Law 2001**

A LAW TO AMEND BAUCHI STATE PENAL CODE LAW  
CAP 108 LAWS OF BAUCHI STATE 1991<sup>425</sup>

- |  |  |
|--|--|
| 1. This Law may be cited as the Bauchi State Penal Code (Amendment) Law 2001 and shall come into operation on ..... day of ..... 2001 [sic].   | Citation and commencement  |
| 2. The Penal Code Law Cap 108 Laws of Bauchi State (hereinafter referred to as “the principal law”) is hereby amended as follows:  | Interpretation   |
| 3. There shall be substituted for section 403 <sup>426</sup> the following new section that is:  |  |
| Section 403(1) “Whoever prepares alcohol or any intoxicant by either manufacturing, pressing, extracting or tapping whether for himself or for another; or loads alcohol whether for himself or for another; or trades in alcohol by buying or selling or supplying or leasing out or providing premises for the storing or preserving or consumption or advertising or otherwise dealing in or handling in any way alcoholic drinks in predominantly Muslim towns and villages commits an offence and shall be punished with imprisonment for a term which may extend to 2 years or with fine which may extend to ten thousand naira or with both fine and imprisonment and in addition the liquor involved shall be confiscated and destroyed in public. | [Prohibition of dealings in alcohol in predominantly Muslim areas] |
| (2) Without prejudice to sub-section (1) above, the preparation, sale, storing, consumption or otherwise dealing in or handling alcoholic drinks is not punishable where it occurs in any of the following areas in  | [Exempted areas]   |

<sup>424</sup> Bauchi State of Nigeria Gazette No. 1 Vol. 26, 29<sup>th</sup> June 2001, Supplement Part B p. B1. The law was assented to by Governor Mu’azu on an unspecified date.

<sup>425</sup> Bauchi State of Nigeria Gazette No. 9 Vol. 26, 29<sup>th</sup> June 2001, Supplement Part B p. B25. The law was assented to by Governor Mu’azu on 29<sup>th</sup> June 2001.

<sup>426</sup> Section 403 formerly provided: “Whoever being of the Moslem faith drinks anything containing alcohol other than for a medicinal purpose shall be punished with imprisonment for a term which may extend to one month or with fine which may extend to five pounds or with both.” This is now provided for in the Sharia Penal Codes, Bauchi State’s among others.

the State:

- (a) Military and police barracks and mess.
- (b) National and international tourist centres.<sup>427</sup>

**g. Borno State Liquor Business (Prohibition) Law 2000<sup>428</sup>**

A LAW PROHIBITING LIQUOR BUSINESS  
AND MATTERS RELATED THEREWITH

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

- |  |  |
|--|--|
| <p>1. This Law may be cited as the Liquor Business (Prohibition) Law and shall come into effect on a date to be prescribed by the Governor.</p>  | <p>Title and commencement</p>  |
| <p>2. In this Law unless the context otherwise requires:<br/>                 “Intoxicating substance” means any drink capable of intoxicating a person.<br/>                 “Governor” means the Governor of the State;<br/>                 “Liquor business” means and includes brewing, manufacturing, storage, distribution and transportation into or out of the State any intoxicating substance.</p>  | <p>Interpretation</p>  |
| <p>3. Any licence issued in the State under any State Law for the purpose of liquor business is deemed revoked with the coming into effect of this Law.</p>  | <p>Revocation of licence</p>   |
| <p>4. (1) Whoever being a Muslim brews, sells, manufactures, stores, distributes, or transports into or out of the State intoxicating drink shall be guilty of an offence and shall be liable upon conviction to punishment with eighty (80) lashes and ₦50,000 fine.<br/><br/>                 (2) Any other person who takes alcohol, liquor or intoxicating substance in an open or public place shall be guilty of an offence and shall on conviction be liable to a fine of two thousand naira ₦2,000.00.</p> | <p>Offences</p>  |
| <p>5. Any adult Muslim, legally responsible for his action under Sharia, who wilfully and without excuse or necessity or the pleading of an error on his part as the nature of what he drank, yet he drinks any intoxicating substance even a small quantity insufficient to produce intoxication, commits an offence and shall be liable upon conviction to eighty lashes to be inflicted after he has recovered from his drunkenness.</p>  | <p>Prohibition of the consumption of liquor, alcohol or intoxicating substance</p> |
| <p>6. The Governor in consultation with the Council of Ulamas shall by regulation prescribe the period, manner and mode of the operations of this Law.</p>   | <p>Regulations</p>   |
| <p>7. The Sharia Court of Appeal, the Upper Sharia and Lower Sharia Courts shall have jurisdiction to try offences under this Law.</p>   | <p>Jurisdiction</p>  |
| <p>8. Without prejudice to the provisions of this Law and subject to the</p>   | <p>Exception</p>   |

<sup>427</sup> This exception is principally for the Yankari Game Reserve, an important tourist attraction in Bauchi State.

<sup>428</sup> Borno State of Nigeria Gazette No. 42 Vol. 26, 18<sup>th</sup> October 2001. The law was assented to by Governor Kachalla on 10<sup>th</sup> December 2000.

provision of the constitution of the Federal Republic of Nigeria, a person shall not be liable for an offence under this Law if such offence is committed within the premises of any military formation, paramilitary formation, attaché, embassy office and or foreign mission.

**h. Kano State Penal Code (Amendment) Law 2004<sup>429</sup>**

PENAL CODE (AMENDMENT) LAW 2004

Law No. 4 of 2004

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

- |  |   |
|--|---|
| <p>1. This Law may cited as the Penal Code (Amendment) Law 2004 and shall come into operation on 11<sup>th</sup> day of May, 2004.</p>   | <p>Citation and commencement</p>              |
| <p>2. Sections 401, 403 and 404 of the Penal Code hereinafter referred to as the “Principal Law” are hereby amended by deleting sections 401, 403 and 404 of the Principal Law and replacing same with new sections as follows:</p>  | <p>Amendment of sections 401, 403 and 404</p> |
| <p>401. The manufacture, distillation, distribution, disposal, haulage, consumption and possession of all brands of intoxicating liquors, trade spirits and any other intoxicating substance is hereby prohibited throughout the State.</p>  | <p>Manufacture and use of intoxicants</p>     |
| <p>403. (1) The cultivation of Indian Hemp popularly known as wee-wee and procurement of any substance that enhances the manufacture, or making of any alcoholic materials in whatever form is hereby prohibited throughout the State.</p> <p>(2) In section 401 and sub-section (1) of this section, intoxicants include pills, herbs or any substance which when inhaled, chewed, sucked, eaten, injected into human body, or rubbed on any part of the body can cause intoxication.</p> | <p>Cultivation of weeds</p>                   |
| <p>404. Whoever is convicted of an offence under section 401 shall be punished:</p> <p>(a) In case of conviction under section 401(1) with imprisonment which may extend to one year or a fine of ₦50,000 (fifty thousand naira) or both and shall also forfeit the material used for any of the purpose of that section.</p> <p>(b) In case of conviction under section 403(1)</p>  | <p>Punishment for offence</p>                 |

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<sup>429</sup> Kano State of Nigeria Gazette No. 5, Vol. 36, 27<sup>th</sup> May, 2004 Supplement Part A pp. A13-A14. The law was assented to by Governor Shekarau on 11<sup>th</sup> May 2004.

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with imprisonment which may extend to six months or a fine which may be up to ₦25,000 (twenty-five thousand naira) or both and the materials used in the commission of the offence shall in addition be destroyed.

3. Section 402 of the Principal Law is hereby deleted. Deletion of section 402
4. The Liquor Law (Cap 82) Laws of Kano State of Nigeria 1991 as hereby repealed. Repeal of Cap 82 Laws of Kano State 1991

### **i. Jibia Local Government (Katsina State) Regulation of the Sale of Liquor Bye-Law, 1999<sup>430</sup>**

In exercise of the powers conferred by Section 7(5) of the Constitution of the Federal Republic of Nigeria 1999 and all other powers enabling it in that regard, the following Bye-Law is hereby made by the Jibia Local Government Council.

1. This Bye-Law may be cited as the Jibia Local Government (Regulation of the Sale of Liquor) Bye-Law, 1999 and shall be deemed to have come into operation on the 12th day of July 1999. Citation and commencement
2. In this Bye-Law:  
    “authorised person” includes a medical officer of health, sanitary inspector or other person acting under the authority, whether general or specific, of a medical or health officer; or any other person so authorised by the Local Government;  
    “liquor” includes beer, denatured spirits, injurious spirits, intoxicating liquor, local liquor, spirits etc., and shall have the same meaning as contained in the Liquor Law Cap. 78 of Katsina State of Nigeria, 1979;  
    “Local Government” means Jibia Local Government. Definitions
3. Every beer parlour (by whatever name), club house, (by whatever name), tavern, liquor store etc., and any other premises used in the trade including manufacture, sale and consumption of liquor shall be registered annually by the proprietor, occupier, manager or owner thereof with the Local Government. Registration of beer parlours etc. and other premises
4. No premises shall be registered under this Bye-Law until they have been inspected and approved by the authorised person. Approval by authorised person
5. A certificate of registration issued under this Bye-Law expires on the 31<sup>st</sup> day of December of every year. Validity of certificate
6. (1) All premises sought to be registered under this Bye-Law shall be of permanent structure as defined in the Rent Control and Recovery of Premises Law Cap. 117 Laws of Katsina State, 1991. Provided that all premises to be used as on licence shall in addition comply with all Premises to be registered

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<sup>430</sup> Katsina State Local Government Gazette, 2<sup>nd</sup> Quarter 1999, Supplement Part B, pp. B5-B6.

conditions and terms applicable to those of a bake house or other premises as contained in sections 8-17 of the Jibia Local Government (Bake House and other Premises) Bye-Law, 1984 as adopted and applicable in Jibia Local Government.

(2) In addition to the conditions contained in sub-section (1) of this section all premises sought to be registered shall be outside of two kilometres radius the outermost dwelling house and residential area of any town, city, village, hamlet, etc.

7. Any proprietor, occupier, manager or owner of premises registered under this Bye-Law who contravenes any of the provisions of the Bye-Law commits an offence and shall be liable upon conviction to a fine of ₦500.00 or a term of imprisonment not exceeding 3 months or to both, and shall in addition have his registration revoked. Offence

**j. Tarauni Local Government (Kano State)  
Liquor Sales (Prohibition) Bye-Law 1999<sup>431</sup>**

In exercise of the powers conferred upon it by section 7(5) of the Constitution of the Federal Republic of Nigeria 1999, and of section 22 of the Liquor Law (Cap. 82) Laws of Kano State of Nigeria 1991, and all other powers enabling it in that behalf, the TARAUNI LOCAL GOVERNMENT COUNCIL with the approval of the State Commissioner for Local Government hereby makes the following Bye-Laws:

- |  |  |
|--|--|
| <p>1. This Bye-Laws may be cited as the Liquor Sale (Prohibition) Bye-Laws 1999.</p>   | <p>Title and commencement</p>          |
| <p>2. In these Bye-Laws unless the context otherwise requires:<br/>                     “Chairman” means the Local Government Chairman;<br/>                     “Commissioner” means State Commissioner responsible for Local Government;<br/>                     “Local Government” means the Tarauni Local Government;<br/>                     “liquor” means any intoxicating liquor.</p>  | <p>Interpretation</p>                  |
| <p>3. No person shall within the Tarauni Local Government Area sell, offer for sale, or display for sale, give or supply to any person or group of persons any intoxicating liquor.</p>  | <p>Prohibition of sale</p>             |
| <p>4. No person shall within the Local Government Area purchase or be in possession of any intoxicating liquor.</p>  | <p>Prohibition from purchase</p>       |
| <p>5. (1) Any Magistrate or Area Court Judge who is satisfied that there is reason to suspect that any premises or any part thereof within the Local Government Area are used or is used by any person for the purpose of sale of intoxicating liquor may issue a warrant under his hand authorising any police officer to enter and search the premises and to seize any liquor found in such premises.<br/>                     (2) The police officer shall also arrest the owner of such premises,</p> | <p>Power of court to issue warrant</p> |

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<sup>431</sup> No gazetted copy available; copy signed by the Local Government Chairman and dated 20<sup>th</sup> October 1999 in the possession of the editor.

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where the liquor is found.

6. (1) No person shall display any sign board, bill board, direction, or in any other means advertise the sale of any intoxicating liquor within the Local Government. Advertisement
- (2) Any person who commits an offence under subsection (1) of this section shall be liable upon conviction to a fine of ten thousand naira (₦10,000.00) or imprisonment for a term not exceeding 3 years or both.
7. (1) Any person who contravenes or fails to comply with the provisions of section 3, 4 or 5 of these Bye-Laws shall be guilty of an offence and liable on conviction: Penalty
- (a) for a first offence to a fine not exceeding five thousand naira or to imprisonment for a term not exceeding one year, or both.
- (b) for a subsequent offence, to a fine not exceeding eight thousand naira or to imprisonment for a term not exceeding three years, or both.
- (2) Where a person is convicted of an offence under these Bye-Laws, he shall in addition to any punishment which the court may deem fit to impose, forfeit to the Local Government any intoxicating liquor and its receptacles found with him.

**k. Gummi Local Government (Zamfara State) Law for the Control of the Sale, Storage, Preparation and Consumption of Liquor Within Gummi Local Government Area 2000<sup>432</sup>**

Date of commencement: Thursday 10<sup>th</sup> of August, 2000.

In the exercise of powers conferred upon Gummi Local Government Council by section 120(1) of the Local Government Law No. 9 of 1983, the following Bye-Law is hereby enacted:

1. This Bye-Law may be cited as Gummi Local Government Law control of sale, storage, possession and consumption of liquor within Gummi Local Government Area Bye-Laws, 2000 and shall apply to the entire Gummi Local Government Area.
2. (i) This Bye-Law shall come into operation on a date to be appointed by the Council Chairman.  
(ii) The sale, storage, possession and consumption of liquor is hereby prohibited throughout the villages and towns of Gummi Local Government.
3. No person shall operate a hotel, beer parlour, tavern or any other place howsoever called for the purpose of storage, sales, possession, preparation or consumption of liquor throughout the towns and villages of the Gummi Local Government Area.
4. Any person who contravenes the provisions of these Bye-Laws shall be liable to a fine of five thousand naira or to an imprisonment term of twelve months (12) or both.

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<sup>432</sup> No gazetted copy available; copy signed by the Local Government Chairman obtained from the Ministry for Local Government in Gusau.

5. All offences covered by these laws are to be tried by a Magistrate Court or a Sharia Court in whose jurisdiction the offence is committed.
6. Upon conviction of any person under these Bye-Law any liquor seized there shall be impounded and destroyed on the orders of the convicting Magistrate or Sharia Court Judge as the case may be.

**1. Talata Mafara Local Government (Zamfara State) Dealings in Alcohol and Allied Substances Prohibition Bye-Law 2001<sup>433</sup>**

Date of Commencement: 29<sup>TH</sup> May, 2001

WHEREAS the people of Talata Mafara Local Government are continuously yearning for a society that is free from ill-vices and moral pollution;

WHEREAS the people of Talata Mafara Local Government consider drunkenness as the major cause of such ill-vices and moral pollution;

WHEREAS the people of Talata Mafara Local Government voted a civilian administration to power with the hope of eradicating such ill-vices and moral pollution;

WHEREAS the Local Government Authority under section 27 of the Local Government (Basic Constitutional and Transitional Provisions) Decree No. 15 of 1999 (as amended) has been conferred with enabling powers to make laws in its domain for the common good of its society;

WHEREAS a Bye-Law which was cited as Talata Mafara Local Government (Control of Storage, Possession, Sales and Consumption of Liquor within Talata Mafara Local Government Area) Bye-Law<sup>434</sup> has earlier on been made to prevent all dealings in liquor;

AND WHEREAS the said Bye-Law requires some amendments and clarification which are now made and approved by the Talata Mafara Local Government Authority in order to give the same force of law with effect from the 29<sup>th</sup> day of May, 2001:

NOW THEREFORE, the Talata Mafara Local Government Authority hereby makes the following Bye-Law:

1. This Bye-Law may be cited as the Talata Mafara Local Government (Dealings in Alcohol and Allied Substances Prohibition) Bye-Law No. 1 of 2001 hereinafter called Bye-Law where the context so applies.
2. The provisions of Talata Mafara Local Government (Control of Storage, Possession, Sales and Consumption of Liquor within Talata Mafara Local Government Area) Bye-Law of 1999 are hereby repealed. Provided always that this repeal shall not affect cases that are now pending in court as regards the culpability or otherwise of accused person/s.
3. Whosoever operates a hotel, beer parlour, tavern or any other place whatsoever for the purposes of dealings in alcohol and/or its allied substances within Talata Mafara Local Government Area has committed an offence.

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<sup>433</sup> No gazetted copy available; copy signed by the Local Government Chairman obtained from the Ministry for Local Government in Gusau.

<sup>434</sup> Repealed and replaced by this Bye-Law, see §2.

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4. Whosoever is found in possession of alcohol and/or its allied substances, for the purpose of consumption, within Talata Mafara Local Government Area has committed an offence.
5. Whosoever is found attempting to consume or consuming or intoxicated with alcohol and/or its allied substances within Talata Mafara Local Government Area has committed an offence.
6. Whosoever is found selling or buying, for the purpose of consumption, alcohol or its allied substances within Talata Mafara Local Government Area has committed an offence.
7. Whosoever is found attempting to transport or transporting or having transported, for the purpose of consumption, alcohol or its allied substances within Talata Mafara Local Government Area has committed an offence.
8. Whosoever gives out his land, building or tavern for a tenancy with the knowledge that such tenant will use the premises for the purpose of committing any of the offences listed in sections 3-7 of this Bye-Law has committed an offence.
9. Whosoever conspires with another to commit any of the above offences has committed an offence.
10. Whosoever harbours or abets a person suspected to have committed the above offences with the aim of aiding him to escape from being punished has committed an offence.
11. Whosoever takes gratification in order to hide the commission of any of the above offences has committed an offence.
12. Whosoever gives false information in order to cover the commission of any of the above offences has committed an offence.
13. Whosoever being a public servant refuses to arrest anybody suspected to have committed any of the above offences or to search any hotel, building or tavern while he was lawfully ordered so to do has committed an offence.
14. Any building or tavern that is or has been used in furtherance of these illegal dealings in alcohol and or its allied substances within Talata Mafara Local Government Area from the 1<sup>st</sup> day of July, 1999, unless a cogent cause is shown, shall be designated as a building or tavern kept for illegal purposes and it does not matter whether or not the building or tavern belongs to the perpetrator/s of the offence/s.
15. Any means of transport, be it mechanical or otherwise and shall include all beasts of burden, wheel barrows, carts or labourers using carriers on their head or shoulders or consordrums [sic] to be pushed or pulled or rolled used in furtherance of any of the above offences within Talata Mafara Local Government Area from the 1<sup>st</sup> day of July, 1999, unless a cogent cause is shown, shall be designated as a means of transport kept for illegal purposes and it does not matter whether or not the means of transport belongs to the perpetrator/s of the offence/s.
16. Any person who committed any of the offences listed from sections 3 to 13 shall be punished with imprisonment for 2 years or with fine of ten thousand naira (₦10,000.00) or with caning or all or two of them.
17. A grant, whether actual or deemed, of any land upon which a building or tavern is constructed and then kept for illegal purposes under section 14 can be revoked by the Local

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Government Land Allocation Committee that issued the letter of grant and if such revocation is made then the occupier of the said land is entitled only to a compensation of improvements he made on the land that are affixed to the said land. Provided always that if no improvements were made or that the improvements are not affixed to the said land, the occupier is not entitled to anything.

18. Any means of transport that is designated as a means of transport kept for illegal purpose under section 15 is liable to be impounded or forfeited.

19. If a person is convicted, any alcohol and/or its allied substances found in his possession shall be destroyed as directed by the convicting court.

20. (1) The Interpretation Act shall apply for the purposes of interpretation of the provisions of this Bye-Law, unless the context states otherwise.

(2) In this Bye-Law, unless it is otherwise expressly provided or the context otherwise requires:

“Talata Mafara Local Government Area” means all that area which borders Anka Local Government Area by the South, Bukkuyum Local Government Area by the South-West, Bakura Local Government Area by the West, Maradun Local Government Area by the East-West and Maru Local Government Area by the East and it does not matter whether the area is occupied by individuals or Government (Local, State or Federal).

“alcohol” or “its allied matters” shall include any substances that intoxicate and it does not matter whether such substances are in solid, liquid or gaseous form or whether it is taken orally or through other openings of the body or is inhaled or is taken in any other way provided that it goes through the body voluntarily or whether it is a lawful commodity but is now converted by the culprit to being intoxicant when taken through any of the above forms or means or whether it was taken in small quantity in a situation where only large quantity of it can intoxicate. Provided always that a person cannot be considered to have possessed, transported, sold or bought alcohol and/or its allied substances that are primarily used for a different purposes than intoxication even if they are subsequently converted or used by another as intoxicant.

“Local Government Land Allocation Committee” has the same meaning with Local Government Land Allocation Committee in the Land Use Act of 1977.

21. All offences covered by this Bye-Law are triable by a Magistrate’s Court, a Sharia Court or a special mobile court within Talata Mafara Local Government Area.

22. The police or residents of the area in which the offence is committed or any prosecutor from the office of the Attorney-General can initiate proceedings before any court for violation of any of the provisions of this Bye-Law.

23. This Bye-Law shall come into operation on the 29<sup>th</sup> day of May, 2001.

**m. The Sharia Penal Codes on alcohol**<sup>435</sup>

*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.<sup>436</sup>

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.<sup>437</sup>

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.<sup>438</sup>

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<sup>435</sup> Copied from the Harmonised Sharia Penal Code Annotated, see Chapter 4. In the notes that follow “PC” refers to the Penal Code of 1960 and the names of states refer to their Sharia Penal Codes.

<sup>436</sup> 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 §403: “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 2<sup>nd</sup> or subsequent convictions within 6 months. PC §68(2): Muslims are also liable to *baddi* lashing for alcohol-related offences.

<sup>437</sup> 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.

<sup>438</sup> 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 2<sup>nd</sup> or subsequent offences within 6 months.

4.

**Gambling**

**a. Gambling in the omnibus laws**

All of the omnibus laws reproduced in Part IV.1 of this chapter include provisions on gambling; the reader is referred to them for further details.

**b. The Sharia Penal Codes on gambling<sup>439</sup>**

*Vagabonds*

376. In this chapter:

(1) The term "idle person" shall include-

\* \* \*

(e) any person playing at any game of chance for money or money's worth in any public place;<sup>440</sup>

\* \* \*

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.<sup>441</sup>

\* \* \*

[Bauchi prohibition of praise singing, drumming, begging, playing cards, etc.: Bauchi inserts after what is §379 of the Harmonised Sharia Penal Code, still in the series of sections on *Vagabonds*, the following provision (Bauchi SPC §376), which no other Sharia Penal Code has:

*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*, *wasan 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.

*Lotteries and Gaming Houses*

395. In this chapter:

"Lottery" includes any game, method or device (whether in private or public)<sup>442</sup> whereby money or money's worth is distributed or allotted in any manner depending upon or to be determined by chance, or lot;

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<sup>439</sup> Copied from the Harmonised Sharia Penal Code Annotated, see Chapter 4. In the notes that follow "PC" refers to the Penal Code of 1960 and the names of states refer to their Sharia Penal Codes.

<sup>440</sup> Kano, Katsina: "in any place".

<sup>441</sup> PC: 1 year or fine or both. Kano: 4 months/25 lashes. Katsina: 4 months/20 lashes. Kaduna: *ta'azir*.

DOCUMENTARY MATERIALS: GAMBLING

"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"]<sup>443</sup>

396. Whoever keeps any house or place to which persons are admitted for the purpose of betting or gambling<sup>444</sup> 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.<sup>445</sup>

\*\* [proviso and subsection (2)]<sup>446</sup>

397. Whoever

\*\* [playing game of chance]<sup>447</sup>

(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<sup>448</sup>; 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<sup>449</sup>; or

(c) writes, prints, publishes or causes to be written, printed or published any lottery ticket or any announcement relating to a lottery<sup>450</sup>; or

(d) advances, furnishes or receives money for the purpose of a lottery<sup>451</sup>,

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<sup>442</sup> PC omits "whether in private or public".

<sup>443</sup> 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."

<sup>444</sup> PC omits "or gambling".

<sup>445</sup> 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*.

<sup>446</sup> 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."

<sup>447</sup> 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".

<sup>448</sup> PC: "public lottery".

<sup>449</sup> PC: "public lottery".

<sup>450</sup> PC: "public lottery".

<sup>451</sup> PC: "public lottery".

CHAPTER 3: SANITIZING SOCIETY

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.<sup>452</sup>

\*\* [exceptions]<sup>453</sup>

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.<sup>454</sup>

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<sup>452</sup> 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*.

<sup>453</sup> 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.”

<sup>454</sup> PC omits this section.

5.

**Sexual Immoralities**

**a. Sexual immoralities in the omnibus laws**

All of the omnibus laws reproduced in Part IV.1 of this chapter, except the first, include provisions on such matters as prostitution and the keeping of brothels; the reader is referred to them for further details.

**b. Borno State law on prostitution, homosexuality, brothels and other sexual immoralities (2000)<sup>455</sup>**

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

1. This Law may be cited as the Prostitution, Lesbianism, Homosexuality, Operation of Brothels and Other Sexual Immoralities (Prohibition) Law and shall be deemed to have come into effect on the ..... day of ..... 2000. Title and commencement
2. In this Law unless the context otherwise requires: Interpretation
  - “brothel” means place, house, vessel, tent, vehicle or other things whether of temporary or permanent nature being used to accommodate, keep, harbour, conceal, hide or screen prostitutes.
  - “homosexual” means a man who engages in sexual intercourse with another man and includes a man who dresses, behaves or acts as a woman with the aim of enticing another man to engage in homosexual intercourse or other immoral acts.
  - “lesbian” means any woman who acts or behaves with the intent of enticing any other woman into sexual relationship with her or any other woman.
  - “pimp” means any person who solicits or obtains customers for prostitute for consideration.
  - “prostitute” means any woman who solicits or offers herself for sexual intercourse for consideration and includes women of easy virtue.
  - “Governor” means the Governor of the State.
  - “other sexual immoralities” include facilitating prostitution, lesbianism, homosexual acts, pimping or other related immoral sexual activities.
  - “State” means Borno State of Nigeria.
3. Any person who engages in prostitution, lesbianism, homosexual act or pimping in the State commits an offence. Prohibition of prostitution, lesbianism and homosexual acts and pimping
4. (1) Any person who operates a brothel in the State commits an offence. Prohibition of operation of brothel  
(2) For the avoidance of doubt all brothels in the State shall upon the

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<sup>455</sup> Borno State of Nigeria Gazette No. 42 Vol. 26, 18<sup>th</sup> October 2001. The law was signed by Governor Kachalla on 10<sup>th</sup> December 2000.

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commencement of this Law be deemed closed.

5. (1) Any woman who engages in the act of prostitution shall be liable upon first conviction to a term of imprisonment for up to one year or a fine of two thousand naira (₦2,000.00). Penalties for prostitution
- (2) Any woman who is found guilty and convicted for the second or subsequent times under this section shall in addition to the term of imprisonment for one year be liable to a fine of five thousand naira (₦5,000.00).
6. (1) Any person who engages in the act of pimping shall upon first conviction be liable to imprisonment for a term of up to one year or to one thousand naira (₦1,000.00). Penalties for pimping
- (2) Any person who is found guilty for a second or subsequent offence under this section shall in addition to the term of imprisonment be given 12 strokes of the cane and liable to pay five thousand naira (₦5,000.00) fine.
7. Any person who engages in sexual intercourse with another person of the same gender shall upon conviction be punished with death. Penalties for homosexuality and lesbianism.
8. (1) Any person who operates or authorises the operation of a brothel in the State shall be guilty of an offence and upon conviction shall be liable to a fine of not less than fifty thousand naira (₦50,000.00). Penalties for operation of brothels
- (2) Any person found guilty for a second of subsequent offence under this section shall in addition to the fine mentioned under subsection (1) to this section be made to forfeit one half of the property used to the State.
9. The Upper Sharia Court or Competent Sharia Court, any Area Court or Magistrate Court with jurisdiction in the area where the offence mentioned under this Law occurs shall have jurisdiction to try the offence. Jurisdiction
10. Any person who screens, conceals, harbours or accommodates a prostitute, lesbian or homosexual person commits an offence and shall on conviction be liable to imprisonment for a term of one year or twenty-five thousand naira (₦25,000.00) fine or to both such fine and imprisonment. Screening, harbouring and concealing of prostitutes, lesbians and homosexuals.
11. Any person who facilitates the commission of other immoral sexual acts shall be guilty of an offence and liable on conviction to twenty lashes. Other immoral sexual offences.

**c. Kano State Prostitution and Other Immoral Acts (Prohibition) Law 2000<sup>456</sup>**

BE IT ENACTED by the Kano State House of Assembly:

1. This Law may cited as the Prostitution and Other Immoral Acts (Prohibition) Law 2000 and shall become into force on a date to be appointed by the Governor. Citation and commencement
2. In this Law unless the context otherwise requires: Interpretation

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<sup>456</sup> Kano State of Nigeria Gazette No. 4, Vol. 33, 22<sup>nd</sup> November 2001, pp. A15-A17. The law was signed by Governor Kwankwaso on 29<sup>th</sup> June 2000.

DOCUMENTARY MATERIALS: SEXUAL IMMORALITIES

“brothel” means a house where prostitutes are accommodated or where persons pay to have sex with a prostitute and includes tent, vessel, bus, or any other place.

“prostitute” means a person who offers himself for sexual intercourse in return for money or other considerations.

“other immoral acts” includes the action of those who facilitate prostitution, pimp and similar activities.

“pimp” means one who procures gratifications for the lust of others or who lives with and sometimes solicits for a prostitute and lives off her earnings or one who solicits for a prostitute or brothel and is paid for his services, and includes any person who acts, behaves or dresses in a manner, which imitates the behavioural attitude of women.

“Governor” means the Governor of the State.

“State” means Kano State of Nigeria.

“person of free virtue” means any person who acts indecently or conducts himself as a prostitute.

3. From the commencement of this Law, prostitution, keeping or managing a brothel and other immoral acts are hereby banned in any part of the State. Banning prostitution
4. All brothels and other places meant for harbouring prostitutes and perpetration of any other immoral acts in the State shall remain closed forthwith. Brothels
5. Any person found to be a prostitute shall be guilty of an offence and upon conviction shall be liable to a term of imprisonment for 1 year or a fine of ₦10,000 or both. Punishment for prostitution
6. Notwithstanding the provision of any law in force in the State, any person who offers his house to be used as a brothel or for other immoral act shall be guilty of an offence and: Offering of house for use as brothel
- (a) upon conviction shall be sentenced to a prison term of 1 year or a fine of ₦25,000 or both in the case of a first offender.
- (b) for subsequent offence under this section, to a term of imprisonment for 2 years and ₦50,000 fine. In addition to this, the court may order for the forfeiture of the house where the immoral act takes place.
7. Any person who solicits another person for the purpose of sexual intercourse personally or for another person shall be guilty of an offence and upon conviction he shall be sentenced to 1 year imprisonment or a fine of ₦3,000 or both. Soliciting
8. Any person of free virtue suspected to be a prostitute and found around night clubs, hotels and other places, believed to be areas where any immoral acts are being perpetrated shall be guilty of an offence and shall upon conviction be punished with imprisonment which may extend to 1 year or fine of ₦10,000 or both. Person of free virtue

9. Any person being a male gender who acts, behaves or dresses in a manner which imitate the behavioural attitude of women shall be guilty of an offence and upon conviction, be sentenced to 1 year imprisonment or a fine of ₦10,000 or both.

Imitation of  
feminine  
behaviours

10. Any Magistrate, Area Court or Sharia Court within the area where any of the offences stated in this Law being committed shall have jurisdiction to try offenders.

Jurisdiction of  
courts

**d. Gummi Local Government (Zamfara State) law on carrying female passengers on motorcycles (2000)**

This Bye-Law, which mostly has to do with reducing the expenses of weddings and naming ceremonies, is reproduced in full Part IV.7 below. It also contains the following prohibition, which is probably aimed at prostitution:

2(ii). Save in absolute necessity no motorcyclist shall commute female passenger between the hours of 10:00 p.m. – 6:00 a.m. throughout the Local Government Area.

Compare the more general bans on carrying female passengers on motorcycles reproduced in Part IV.5 below.

**e. The Sharia Penal Codes on sexual immoralities<sup>457</sup>**

*Zina (Adultery or Fornication)<sup>458</sup>*

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*.<sup>459</sup>

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;<sup>460</sup> or

(b) if married, with stoning to death (*rajm*).<sup>461</sup>

<sup>457</sup> Copied from the Harmonised Sharia Penal Code Annotated, see Chapter 4. In the notes that follow “PC” refers to the Penal Code of 1960 and the names of states refer to their Sharia Penal Codes.

<sup>458</sup> 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.”

<sup>459</sup> 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.”

<sup>460</sup> 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.

DOCUMENTARY MATERIALS: SEXUAL IMMORALITIES

Explanation:

*Mere penetration is sufficient to constitute the sexual intercourse necessary to the offence of zina.*<sup>462</sup>

*Rape*

127. (1) A man is said to commit rape who, save in the case referred in subsection (2),<sup>463</sup> 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;
  - (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.<sup>464</sup>
- (2) Sexual intercourse by a man with his own wife is not rape.<sup>465</sup>

Explanation:

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

128. Whoever commits rape, shall be punished:<sup>466</sup>
- (a) with caning of one hundred lashes if unmarried, and shall also be liable to imprisonment for a term of one year;<sup>467</sup> 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.<sup>468</sup>

[Explanation:]<sup>469</sup>

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<sup>461</sup> Kebbi: “if married and the marriage consummated”.

<sup>462</sup> Gombe omits the explanation.

<sup>463</sup> Kano and Katsina omit this excepting clause in subsection (1), but nevertheless include the exception as subsection (2).

<sup>464</sup> PC: “when she is under fourteen years”. Bauchi: “under the age of maturity”. Kaduna: “under the age of *taklij*”.

<sup>465</sup> PC adds: “if she has attained to puberty”.

<sup>466</sup> PC omits subsections (a)-(c), punishing rape “with imprisonment for life or for any less term and shall also be liable to fine.”

<sup>467</sup> 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”.

<sup>468</sup> Only Kaduna includes, as here, “and other damages to be determined by the court”.

<sup>469</sup> 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

*Sodomy (Liwat)*<sup>470</sup>

129. Whoever has anal coitus with any man is said to commit the offence of sodomy.<sup>471</sup>
130. (1) Subject to the provisions of subsection (2), whoever commits the offence of sodomy shall be punished with stoning to death (*rajm*).<sup>472</sup>
- (2) Whoever has anal coitus with his wife shall be punished with caning which may extend to fifty lashes.<sup>473</sup>

Explanation:

*Mere penetration is sufficient to constitute anal coitus necessary to the offence of sodomy.*<sup>474</sup>

*Incest*<sup>475</sup>

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

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.”

<sup>470</sup> 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.”

<sup>471</sup> 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.”

<sup>472</sup> 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.”

<sup>473</sup> Only Kaduna and Yobe vary the punishment in the case of sodomy with the wife, as here. Yobe: punishment as here. Kaduna: *ta’azir*.

<sup>474</sup> Gombe and Kaduna omit this explanation.

<sup>475</sup> Kano and Katsina omit the offence of incest.

DOCUMENTARY MATERIALS: SEXUAL IMMORALITIES

paternal or maternal uncle to have sexual intercourse with her, has committed the offence of incest.<sup>476</sup>

132. Whoever commits incest shall be punished:<sup>477</sup>

(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;<sup>478</sup> or

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

*Lesbianism (Sibhaq)*<sup>479</sup>

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.<sup>480</sup>

[Explanation:]<sup>481</sup>

*Bestiality (Wat al-Babimah)*<sup>482</sup>

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.<sup>483</sup>

Explanation:<sup>484</sup>

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

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<sup>476</sup> 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."

<sup>477</sup> 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."

<sup>478</sup> 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."

<sup>479</sup> PC omits the separate offence of lesbianism, presumably including it under "Unnatural offences": see note to *Sodomy (Linat)* above.

<sup>480</sup> Bauchi: "imprisonment which may extend to up to five years." Kano and Katsina: stoning to death. Kaduna: *ta'azir*.

<sup>481</sup> 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."

<sup>482</sup> PC omits the separate offence of bestiality, presumably including it under "Unnatural offences": see note to *Sodomy (Linat)* above.

<sup>483</sup> 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*.

<sup>484</sup> 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.

*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.<sup>485</sup>

*Kidnapping, Abduction and Forced Labour*

\* \* \*

234. Whoever, by any means whatsoever, induces any girl or woman<sup>486</sup> 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<sup>487</sup> 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.<sup>488</sup>

235. Whoever imports into the State from any place outside the State any girl or woman<sup>489</sup> 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<sup>490</sup> 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.<sup>491</sup>

\* \* \*

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,<sup>492</sup> 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.<sup>493</sup>

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<sup>485</sup> 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 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.”

<sup>486</sup> PC: “any girl under the age of eighteen years”.

<sup>487</sup> PC: “intercourse with another person”.

<sup>488</sup> PC: 2 years/fine. Bauchi: 5 years/40 lashes. Kaduna: *ta’azir*.

<sup>489</sup> PC: “any girl under the age of twenty-one years”.

<sup>490</sup> PC: “intercourse with another person”.

<sup>491</sup> PC: 10 years/fine. Bauchi: 5 years/40 lashes. Kaduna: *ta’azir*.

<sup>492</sup> 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”.

<sup>493</sup> 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*.

DOCUMENTARY MATERIALS: SEXUAL IMMORALITIES

\* \* \*

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.<sup>494</sup>

*Public Nuisance*

\* \* \*

372. Whoever to the annoyance of others<sup>495</sup> does any obscene or indecent act in a private or public place,<sup>496</sup> 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.<sup>497</sup>

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,<sup>498</sup> 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.<sup>499</sup>

*Vagabonds*

376. In this chapter:

(1) The term "idle person" shall include-

\* \* \*

(d) any prostitute<sup>500</sup> behaving in a disorderly or indecent manner in a public place or persistently importuning or soliciting persons for the purpose of prostitution;

\* \* \*

(2) The term "vagabond" shall include-

\* \* \*

(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.<sup>501</sup>

\*\* [women dressing as men]<sup>502</sup>

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<sup>494</sup> PC: 7 years/fine. Bauchi: 5 years/40 lashes. Kaduna: *ta'azir*.

<sup>495</sup> Katsina omits "to the annoyance of others".

<sup>496</sup> PC: "in a public place"; PC then omits all the subsequent language up to the punishment provision.

<sup>497</sup> PC: up to 2 years/fine/both. Kaduna: *ta'azir*.

<sup>498</sup> PC: "Whoever keeps or manages a brothel shall be punished . . .".

<sup>499</sup> PC: 1 year or fine or both. Bauchi: 5 years/40 lashes. Kaduna: *ta'azir*. Kano and Katsina omit this section entirely.

<sup>500</sup> PC and all SPCs except Kano and Katsina: "common prostitute".

<sup>501</sup> Kano, Katsina omit "or who practises sodomy as a means of livelihood or as a profession."

<sup>502</sup> 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."

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.<sup>503</sup>

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.<sup>504</sup>

*Offences Relating to Ordeal, Witchcraft and Jujū*

412. Whoever knowingly has in his possession any fetish<sup>505</sup> or charm which is pretended or reputed to possess power to protect a person<sup>506</sup> 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.<sup>507</sup>

[Kano and Katsina (only) add a second subsection: “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.”]

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<sup>503</sup> PC: 1 year or fine or both. Kano: 4 months/25 lashes. Katsina: 4 months/20 lashes. Kaduna: *ta'azīr*.

<sup>504</sup> PC: 1 year or fine or both. Kano: 8 months/35 lashes. Kaduna: *ta'azīr*.

<sup>505</sup> Kano, Katsina: “fetish object”.

<sup>506</sup> Kano, Katsina: “to protect or give illegal benefit to any person”.

<sup>507</sup> 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.

## 6.

**Other matters related to women****a. Other matters related to women in the omnibus laws**

Both the Yobe State law on un-Islamic practices (1.b) and the Gusau Local Government law on prostitution, gambling, and other social vices (1.e) include prohibitions of hawking by young girls. The Kaura Namoda Local Government law on liquor, prostitution, etc. (1.f), also includes a ban on members of the opposite sex bathing naked together in rivers, ponds, etc. The Fika Local Government law on market practices and certain other matters (8.d) makes it an offence “for any Muslim female above the age of ten to move round within the Local Government Area at any time without wearing a *hijab* adequate to cover her head down to her toes.”

**b. Kebbi State law on female hawking (2000)**<sup>508</sup>A LAW TO PROHIBIT FEMALE HAWKING IN THE STATE  
AND OTHERS CONNECTED THEREWITH

- |  |                              |
|--|------------------------------|
| 1. This Law may be cited as the Hawking (Prohibition) Law 2000 and shall be deemed to have come into effect on the 1 <sup>st</sup> day of June 2000.   | Short title and commencement |
| 2. In this Law, unless the context otherwise requires: -   | Interpretation               |
| “Committee” means the Local Monitoring Committee established under section 5 of this Law;  |                              |
| “Gazette” means Kebbi State Gazette;   |                              |
| “goods” includes merchandise, supplies, raw materials, agricultural produce, food items, raw or cooked or finished goods;  |                              |
| “Governor” means the State Governor;   |                              |
| “hawking” means offering goods for sale on the road by outcry or by attracting the attention of persons or by exposing goods in a public place or by placards, labels or signals;  |                              |
| “shops” include market.  |                              |
| 3. (1) A female child below the age of 10 years old is henceforth prohibited from hawking any goods.   | Prohibition of hawking       |
| (2) Females between the ages 11 and above are allowed to sell goods but shall stay within their household or shops, but are not allowed to litter with these goods on the road.  |                              |
| (3) Females allowed under this Law shall hawk between the hours of 6 a.m. – 11.00 p.m. and shall dress decently.   |                              |
| 4. (1) Any parent or guardian who contravenes the provision of sub-section (1) of section 3 of this Law commits an offence and shall be liable on conviction to one month imprisonment and 10 <i>baddi</i> lashes in an open market. | Offence and penalty          |

<sup>508</sup> Kebbi State of Nigeria Gazette No. 1 of 2000, Vol. I, pp. 3-5. The law was signed by Governor Aliero on 15<sup>th</sup> May 2000.

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- (2) Any person who contravenes the provision of subsection (2) of section 3 of this Law commits an offence and shall be liable on conviction to 2 months imprisonment and 15 *haddi* lashes in an open market
- (3) Any person who contravenes the provision of subsection (3) of section 3 of this Law commits an offence and shall be liable on conviction to 2 months imprisonment and 15 *haddi* lashes in an open market.
5. (1) There shall be established in each Local Government Area of the State, a Local Monitoring Committee for the purpose of enforcing the provisions of this Law. Establishment of Local Monitoring Committee
- (2) Each Local Monitoring Committee shall comprise of not more than seven members, including the Chairman, to be appointed by the Governor on the recommendation of the Local Government Chairman concerned.
  - (3) Each Local Government Council shall establish a sub-committee at the District level.
  - (4) A member of the Committee other than an ex-officio member shall vacate his seat on the expiration of two-year term from the date of his appointment and may be eligible for re-appointment for one further term of two years.
  - (5) The Governor, subject to the approval of the House of Assembly, shall prescribe the remuneration or allowances of members of the committee.
6. Each committee shall be responsible for the arrest of any person suspected to have contravened the provisions of section 3 of this Law and charge such person to court forthwith. Responsibilities of each committee
7. (1) A court may order to be impounded any goods abandoned by a hawker for the purpose of evading arrest under this Law. Seizure of goods by court
- (2) Any goods seized under subsection (1) of this section may be claimed by the owner, provided that all such goods shall be presumed to have been abandoned while committing an offence under section 3 of this Law and the burden of proving the contrary shall lie upon the claimant.
- (3) Where the claimant succeeds in proving his goods to be released to him but without prejudice to any penalty which the court may deem fit to impose on the claimant for the offences committed by him under section 3 of this Law immediately before the abandonment of the goods.
8. An offence under this Law shall be tried summarily in an Area Court. Court with power to try the offences
9. In addition to the powers conferred by section 6 of this Law any police officer, aid group or vigilante group members can arrest any person who contravenes the provision of this Law and hand over to the committee for prosecution. Power to arrest

**c. Yobe State law on un-Islamic dressing (2001)<sup>509</sup>**

**A LAW TO PROVIDE FOR THE PROHIBITION OF UN-ISLAMIC DRESSING IN THE STATE AND TO MAKE PROVISION FOR PROPER DRESSING TO BE USED BY FEMALE MUSLIMS THROUGHOUT YOBE STATE**

|  |                                    |
|--|------------------------------------|
| Enacted by the Yobe State House of Assembly as follows:  | Enactment                          |
| 1. This Law may be cited as Prohibition of un-Islamic Dressing Law 2000, and shall come into force on the 25 <sup>th</sup> day of April, 2001.   | Citation and commencement          |
| 2. "State" means Yobe State of Nigeria.  | Interpretation                     |
| " <i>hijab</i> " means that cloth which covers the entire body of a woman except her face and palms up to the wrist and which does not show the shape, or the body of a women and includes <i>lifaya</i> . |                                    |
| "un-Islamic dressing" means any dressing which does not conform to the definition of Jihad of proper dressing as provided under section 5 of this Law.   |                                    |
| "school" includes Primary Islamiyya (Primary, Secondary) and Tertiary institutions operating in the State.   |                                    |
| "school authority" means any person or body charged with the managing or execution of policies of a school.  |                                    |
| "appropriate punishment" means any punishment which is within the powers of the school authority to carry out against any student for misconduct or violation of the schools rules and regulation.         |                                    |
| 3. (1) This Law shall apply to all female Muslims of ten years and above throughout the State.   | Application                        |
| (2) This Law shall not apply to such female Muslims when they are within their homes or when exclusively among females away from the view of men.  |                                    |
| 4. As from the commencement of this Law, un-Islamic dressing is prohibited in the State.   | Prohibition of un-Islamic dressing |
| 5. The proper dressing shall be that which covers the entire body of the women except her face and palms up to the wrist or <i>hijab</i> or <i>lifaya</i> .  | Proper dressing                    |
| 6. (1) Any person who contravenes the provision of this Law shall be guilty of an offence and liable on conviction to a fine of one thousand naira or one month imprisonment.                              | Penalty                            |
| (2) Where the convict is a minor his parent or guardian shall be liable for the penalty provided by this section.  |                                    |
| 7. (1) As from the commencement of this Law all authorities in charge of schools in the State shall ensure that the school uniform substantially conforms with the provisions of this Law.                 | Schools                            |
| (2) Students who fail to comply with the decision of the school authority in respect of this Law shall be given appropriate punishment   |                                    |

<sup>509</sup> Yobe State of Nigeria Gazette No. 11, Vol. 11 of 15<sup>th</sup> March 2001, Supplement Part C pp. C49-C51. The law was signed by Governor Bukar Abba Ibrahim on 9<sup>th</sup> March 2001.

|  |                                     |
|--|-------------------------------------|
| by the school authority  |                                     |
| 8. Trial of offenders under this Law shall be carried out by Area or Upper Area Court.   | Jurisdiction provision              |
| 9. Any Sharia or Upper Sharia Court can try offences under this Law when these courts come into being as a result of implementation of Sharia. | Transitional                        |
| 10. Prosecution is at the instance of the Attorney-General and the police.   | Prosecution                         |
| 11. (1) For purposes of decency, it is required that non-Muslims should dress decently.  | Provision in respect of non-Muslims |
| (2) Non-Muslims shall not be liable for punishment under this Law.   | No penalty against non-Muslims      |

**d. Gusau Local Government (Zamfara State) law on carrying persons of the opposite sex on commercial motorcycles (2000)<sup>510</sup>**

**A BYE-LAW TO CURB, CONTROL AND ERADICATE ANTI-SOCIAL BEHAVIOURS, MORAL DECADENCE AND OTHER VICIES IN THE SOCIETY**

WHEREAS the Local Government Council is vested with powers and responsibilities to ensure good governance and the socio-economic well-being of the people in the area;

AND WHEREAS the adoption of the Sharia Legal System in the State calls for the cultivation and protection of good moral standards of the people and to control rampant anti-social behaviours;

NOW THEREFORE the Council of the Gusau Local Government hereby enacts the following Bye-Law:

1. This Bye-Law may be cited as the Commercial Motor-cycle Operators (Control) Bye-Law, 2000.
2. The commencement date for this Bye-Law shall be..... day of .....2000.
3. The words used in this Bye-Law shall have the natural meanings ascribed to them unless otherwise prescribed in this section:
  - i. “commercial motor-cycle operator” refers to a person who engages in operating motor-cycle to generate money or otherwise and popularly called “*kabu-kabu*” operators.
  - ii. “Local Government Council” means the Gusau Local Government Council.
  - iii. “State” means Zamfara State.
  - iv. “conveying” or “convey” means to transport or carry another person of the opposite sex on a motor-cycle.
  - v. “Motor-cycle” a mechanically driven cycle on two wheels.
  - vi. “*Kabu-kabu*” means a commercial motor-cycle used to generate money or otherwise.
4. The conveying of any person of the opposite sex for the purpose of transporting same to any destination by a “*kabu-kabu*” operator is hereby prohibited. This prohibition does not

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<sup>510</sup> Bye-Law No. 2 of 2000, signed by the Local Government Council Chairman on 4<sup>th</sup> July 2000. No gazetted copy available; copy signed by the Chairman obtained from the Ministry for Local Government in Gusau.

apply to any person who conveys his or her relation of the opposite sex for the purpose of transporting same to any destination.

5. The prohibition stated in article 4 of this Bye-Law shall only apply against any person who professes the Islamic faith.
6. From the commencement date of this Bye-Law all previous licences issued to “*kabu-kabu*” operators stand cancelled. New licences and uniforms shall henceforth be issued by the Local Government.
7. Whoever violates the provisions of article 4 of this Bye-Law shall be guilty of an offence and liable to 20 lashes of the cane and shall have the motor-cycle detained for a period of two weeks in addition to the cancellation of the licence to operate the motor-cycle as “*kabu-kabu*” for a period not exceeding three months.
8. The offence covered by this Bye-Law may be tried by a Magistrate Court or a Sharia Court in whose jurisdiction the offence is committed.

**e. Kano State Law on carrying women in or on commercial vehicles, including motorcycles (2005)<sup>511</sup>**

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

1. This Law may be cited as the Kano State Road Traffic (Amendment) Law 2005 and shall come into operation on the 12<sup>th</sup> day of May 2005 (5<sup>th</sup> day of R/Akhir 1426 A.H.).

2. Section 2 of the Road Traffic Law (hereinafter referred to as the “Principal Law”) is hereby amended by inserting the following words immediately after the word “trailer”:

“motorcyclist” means a person who uses a motorcycle in uniform for the conveying of persons for which money is paid.

“Governor” means Governor of the State.

“uniform” means dress specifically designed for motorcyclist.

\* \* [sections 3 and 4 amend sections 23 and 24 of the principal law and are irrelevant here.]

4. The Principal Law is hereby amended by inserting immediately after section 43 thereof the following new sections 44, 45 and 46 respectively:

“44. (1) All commercial vehicles shall reserve a reasonable number of seats at the back in the vehicle for female passengers only.

(2) Any motor vehicle driver who carries male and female passengers mixed together in a manner which is offensive to the Sharia shall on conviction pay a fine of not less than ₦5,000.00 or be barred from driving any vehicle for a period which may extend to six months or ten strokes of the cane.

“45. (1) Any motorcyclist who:

- (a) carries any female as a paying passenger;
- (b) carries more than one person;
- (c) overtakes any vehicle on the right hand side;
- (d) uses a motor vehicle horn on his motorcycle; or

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<sup>511</sup> Kano State of Nigeria Gazette No. 2, Vol. 37, 2<sup>nd</sup> June 2005, Supplement Part A pp. A7-A10. The law was signed by Governor Shekarau on 12<sup>th</sup> May 2005.

(e) does anything that hampers the smooth flow of traffic on any public way, shall be guilty of an offence and upon conviction be liable to a fine of not less than ₦5,000.00 or be barred from driving any vehicle for a period which may extend to six months.

(2) Any tricyclist who chooses to carry male passengers shall not carry any female as a passenger, and where he chooses to carry female passengers shall also not carry any male passengers.

(3) Nothing in subsection (2) of this section shall preclude any person from being accompanied by a minor of 12 years of age and below and/or a *mubarrami*.

(4) In this section *mubarrami* means a person related to another in which the Sharia does not allow marriage between them.

(5) No tricycle rider shall provide any extra seat by his side for carrying any passenger(s).

(6) Whoever contravenes the provisions of subsections (2) and (5) of this section shall be liable upon conviction to a fine of ₦5,000.00 and shall be barred from driving any vehicle for a period which may extend to six months or ten strokes of the cane or both.”

\* \* [new section 46 is on posting bills on roundabouts, pavements, public buildings and/or streetlights.]

#### **f. The Sharia Penal Codes on other matters related to women**<sup>512</sup>

##### *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.<sup>513</sup>

#### 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*.<sup>514</sup>

208. Whoever with intent to cause miscarriage of a woman whether with child or not<sup>515</sup> does any act which causes the death of such woman, shall be punished:

(a) with the payment of *diyyah*,<sup>516</sup> or

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<sup>512</sup> Copied from the Harmonised Sharia Penal Code Annotated, see Chapter 4. In the notes that follow “PC” refers to the Penal Code of 1960 and the names of states refer to their Sharia Penal Codes.

<sup>513</sup> PC: 14 years or fine or both. Sokoto has “*ghorrah* (one twentieth of *diyyah*)”. Kano and Katsina: “(*ghurrah*) compensation”. Kaduna punishment: *ghurrah/ta’azir*.

<sup>514</sup> 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”.

<sup>515</sup> Kano, Katsina: “with intent to cause miscarriage of a pregnant woman”.

- (b) if the act is done without the consent of the woman, with *qisas*.<sup>517</sup>
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
  - (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*.<sup>518</sup>
210. Whoever does any act in such circumstances that, if he thereby caused death he would be guilty of intentional homicide,<sup>519</sup> 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.<sup>520</sup>
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.<sup>521</sup>
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:<sup>522</sup> -
- (a) with imprisonment for a term which may extend to one year or with fine or with both;<sup>523</sup> and

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<sup>516</sup> PC: up to 14 years and fine.

<sup>517</sup> PC: up to life and fine. Jigawa: “(a) with *qisas*; or (b) if without intention with payment of *diyab*”. PC also has an explanation after this section omitted in all SPCs.

<sup>518</sup> 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 *diyab*.”

<sup>519</sup> PC: “culpable homicide”.

<sup>520</sup> 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.

<sup>521</sup> 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.

<sup>522</sup> Bauchi: “under the age of maturity”. Kano, Katsina: “puberty”. Only Kaduna includes “or denies him access to education”.

<sup>523</sup> PC: 2 years/fine/both. Bauchi: 3 years/fine/both. Kano, Katsina: 1 year/fine of ₦10,000/both. Kaduna: *ta’azir*.

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(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 *diyyah*.<sup>524</sup>

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.<sup>525</sup>

*Outraging or insulting the modesty of a woman*

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.<sup>526</sup>

\* \* \*

242. (1) [on criminal intimidation by an anonymous communication]

(2) Whoever intending to insult<sup>527</sup> 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.<sup>528</sup>

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<sup>524</sup> 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: *diyyah*.

<sup>525</sup> PC: 2 years/fine/both. Bauchi: 5 years/40 lashes. Kebbi: 1 year/30 lashes. Kaduna: *ta'azir*.

<sup>526</sup> PC: 3 years/fine/both. Bauchi: 3 years/40 lashes. Kaduna: *ta'azir*.

<sup>527</sup> Kano, Katsina: "Whoever insults".

<sup>528</sup> 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*.

7.

**Unedifying media**

**a. Unedifying media in the omnibus laws**

Three of the omnibus laws reproduced in Part IV.1 of this chapter include provisions on unedifying media. Yobe State's law on un-Islamic practices (IV.1.b) bans obscene books and publications, and the bye-laws of Gusau and Kaura Namoda Local Governments of Zamfara State (IV.1.e and f) both include bans on commercial displays of films, videos, etc. The reader is referred to those texts for further details.

**b. Gummi Local Government (Zamfara State) law on cinema houses and video and film viewing centres (2000)<sup>529</sup>**

A LAW FOR THE PROHIBITION OF CINEMA HOUSES, VIDEO VIEWING CENTRES, AND FILM SHOWING CENTRES WITHIN GUMMI LOCAL GOVERNMENT AREA

In the exercise of power conferred upon Gummi Local Government Council by section 120(1) of the Local Government Law No. 9 of 1983, the following Bye-Law is hereby enacted:

1. This Bye-Law may be cited as Gummi Local Government Law for the Prohibition of Cinema Houses, Video Viewing and Film Showing Centres Within Gummi Local Government Area Bye-Laws 2000 and shall apply throughout the Local Government Area.
2. (i) This Bye-Law shall come into operation on a date to be appointed by the Chairman.  
(ii) Cinema houses, video viewing and film showing centres are hereby prohibited throughout Gummi Local Government Area.
3. No person shall operate cinema house, video viewing and film showing centres or any other place/centre howsoever called for commercial or any other purpose throughout the Local Government Area.
4. Any person who contravenes the provision of this Bye-Law shall be liable to a fine of three thousand naira or six months imprisonment or both.
5. All offences covered by this Bye-Law are to be tried by a Magistrate or Sharia Court Judge in whose jurisdiction the offence is committed.
6. Upon conviction of any person under this Bye-Law any gadgets or equipment seized thereof shall be impounded and auctioned on the orders of convicting Magistrate or Sharia Court as the case may be and proceeds thereof shall be remitted to the Local Government.

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<sup>529</sup> Bye-Law No. 3 of 2000, signed by the Local Government Chairman on 10<sup>th</sup> August 2000. No gazetted copy available; copy signed by the Chairman obtained from the Ministry for Local Government in Gusau.

**c. Kano State's State Censorship Film Board Law 2001 Annotated<sup>530</sup>**

Arrangement of sections:

PART I -- PRELIMINARY

1. Short title and commencement.
2. Interpretation.

PART II – ESTABLISHMENT AND FUNCTIONS OF THE BOARD

3. Establishment of the Board.
4. Composition of the Board.
5. Tenure of office of members.
6. Remuneration of members.
7. Removal of members.
8. Functions of the Board.
9. Powers of the Board.

PART III – CINEMATOGRAPHY LICENSING

10. Licensed exhibition of film.
11. Grant and revocation of licence for premises.
12. Grant and revocation of licence on projection apparatus.
13. Period of licence.
14. Exemption in case of certain mobile cinemas.
15. Supervision and enforcement of fire safety standards.

PART IV – CENSORSHIP OF FILMS

16. Prohibition of exhibition of films without approval and exemptions.
17. Power of Commissioner of Information to cancel approval of exhibition.
18. Power of entry and searching in premises for exhibiting of films.

PART V – STAFF OF THE BOARD

19. Appointment of Executive Director and his functions.
20. Other staff.
21. Pension and other benefits.

PART VI – MISCELLANEOUS PROVISIONS

22. Proceedings.
23. Funds of the Board.
24. Accounts and audit.

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<sup>530</sup> The annotations mainly show variations between this law and its two immediate predecessors in Kano State: Cap. 23 of the 1991 Laws of Kano State, on Cinematograph (Censorship), and Cap. 24 on Cinematograph (Licensing). Both those older laws are repealed by this one, see §28, and the work of licensing and censorship is all given to the new Board established by this law. Part I of this law tracks the definition sections of the two earlier laws quite closely; Part III borrows heavily from the Cinematograph (Licensing) law; and Part IV borrows from the Cinematograph (Censorship) law, all as indicated in the notes to those parts. The other parts of this law, relating primarily to the new Board itself, are not in the earlier statutes. The earlier statutes are referred to in the following notes as Cap. 23 and Cap. 24, respectively.

DOCUMENTARY MATERIALS: UNEDIFYING MEDIA

25. Annual report.
26. Offences and penalties.
27. Regulation.

PART VII – TRANSITIONAL PROVISIONS AND SAVINGS

28. Savings and repeal.

SCHEDULE – PROCEEDINGS OF THE BOARD

1. Standing orders.
2. Quorum.
3. Validity of proceeding.
4. Co-option of member.

KANO STATE CENSORSHIP FILM BOARD LAW 2001<sup>531</sup>

A LAW TO ESTABLISH THE BOARD FOR THE REGULATION OF LICENSING AND CENSORSHIP OF CINEMATOGRAPHY FILM AND FOR THE SAFETY OF THE PUBLIC EXHIBITIONS AND FOR PURPOSES CONNECTED THEREWITH<sup>532</sup>

BE IT ENACTED by the House of Assembly as follows:

PART I -- PRELIMINARY

1. This Law may be cited as the State Censorship [Film] Board Law 2001<sup>533</sup> and shall come into operation on 1<sup>st</sup> day of February, 2001.
2. In this Law, unless the context otherwise requires:
  - “exhibition” means any exhibition of pictures or other optical effects produced by means of a cinematograph<sup>534</sup> or other similar apparatus;
  - “State” means Kano State of Nigeria;
  - “Commissioner” means the State Commissioner charged with responsibility for Information, Internal Affairs, Youth, Sports and Culture;<sup>535</sup>
  - “mobile cinema” means any cinematograph or other similar projection apparatus which is operated in, on or from a vehicle or which is carried from place to place for the purpose of being used for occasional exhibitions;
  - “Governor” means the Governor of Kano State of Nigeria;

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<sup>531</sup> No gazetted copy available; this text reproduces a spiral-bound copy of the law obtained from the Censorship Board itself.

<sup>532</sup> Of the two main functions given to the Board – cinematography licensing and censorship of “films” (which per §2 include “pornography books and publications as may be prescribed by regulations”) – the first was formerly handled by the State Commissioner responsible for social welfare, under Cap. 24, the second by a Board of Film Censors appointed by the same Commissioner, under Cap. 23.

<sup>533</sup> The statute seems to be of two minds about the name of the board it establishes: “State Censorship Film Board” is used in the title and in several sections; “State Censorship Board” is also used in several sections. We have inserted ‘Film’ in brackets in the latter sections.

<sup>534</sup> The statute consistently uses ‘cinematography’ where it means ‘cinematograph’ – i.e. the projection apparatus. We have corrected this throughout.

<sup>535</sup> Caps. 23 and 24: State Commissioner responsible for social welfare.

### CHAPTER 3: SANITIZING SOCIETY

“Board” means the State Censorship Film Board;

“celluloid” includes substances containing nitrate solutions or other nitrate products;<sup>536</sup>

“cinematograph” includes any apparatus for the projection of enlarged images by any means on a screen or elsewhere;<sup>537</sup>

“film” means a film designed for use with a cinematograph (not being a film of eight millimetres or less in width) and includes film containing celluloid or other materials of an inflammable or dangerous nature and includes pornography books and publications as may be prescribed by regulations under this Law;<sup>538</sup>

“House of Assembly” means Kano State House of Assembly;

“occupier” with reference to premises includes any manager or any person who receives the rent of premises.<sup>539</sup>

#### PART II – ESTABLISHMENT AND FUNCTIONS OF THE BOARD

3. (1) There shall be established a Board to be known as “State Censorship [Film] Board” which shall be charged with the general management and control of films, pornography books, publications and materials.<sup>540</sup>
- (2) The board shall be a body corporate with a common seal, and with power to sue and be sued in its corporate name.
4. The Board shall consist of the following members:
  - a. a part time chairman to be appointed by the Governor;
  - b. a representative of the Ministry of Information;
  - c. a representative of Ministry of Women Affairs and Social Welfare;
  - d. a representative of Ministry of Justice;
  - e. a representative of Emirate Council;
  - f. six other members to be appointed by Governor and at least two of which shall be Islamic scholars of high repute;
  - g. one representative each of Film Producers and Marketers Association;
  - h. the Managing Director of the State Television Authority; and
  - i. the Executive Director of the Board.
5. A member of the Board shall hold office for a term of four years and may be eligible for re-appointment for a further term of four years.
6. The members shall be paid such remuneration and other allowances as may from time to time be determined by the Governor.

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<sup>536</sup> This term not defined in Caps. 23 or 24.

<sup>537</sup> This term not defined in Caps. 23 or 24.

<sup>538</sup> Caps. 23 and 24: “‘film’ means a film exceeding eight millimetres (8 mm.) in width designed for use with a cinematograph or other similar projection apparatus.”

<sup>539</sup> This term defined in § 4(4)(c) of Cap. 23. §§2 of Caps. 23 and 24 both also define ‘premises’ to include buildings, lands, and (in Cap. 23) a mobile cinema.

<sup>540</sup> Cap. 23: “The Commissioner may appoint a board of film censors to be called the Kano State Board of Film Censors in accordance with regulations made under section 7.” Cap. 23 then omits all of what is here contained in §§3(2) through 9, except as otherwise noted.

DOCUMENTARY MATERIALS: UNEDIFYING MEDIA

7. Without prejudice to section 31 of the Interpretation Law Cap. 65 (which *inter alia* provides for the removal of an appointee by the person who appoints him) a member of the Board shall cease to hold office if:
- a. he resigns his appointment by notice in writing signed by him addressed to the Governor;
  - b. he is removed from office by notice in writing served on him for any of the following reasons:
    - i. if he is absent from three consecutive meetings of the Board without reasonable cause;
    - ii. if he is convicted for an offence involving or necessarily implying dishonesty and has undergone sentence of imprisonment therefor;
    - iii. if he is incapacitated by reason of physical or mental illness from performing his functions as member;
    - iv. if he is found to be guilty of such misbehaviour or is otherwise unfit or unable to discharge his function.
8. The Board shall have power to:
- a. screen, censor any film, obscene books and literature before releasing to the general public for exhibition;
  - b. register the State film industry operators and other related persons;
  - c. issue licence, permit or provisional licence or permit;
  - d. charge and collect fees for applications and for other incidental services;
  - e. impose guidelines, regulations or conditions applicable on persons or bodies in the business of producing, sale, distributing of any film, pornography books or publications in the State;
9. (1) The Board may approve with or without conditions any application, or refuse approval for the production, distribution, sale or exhibition of any film, pornographic books or publication in the State.<sup>541</sup>
- (2) The Board may, by order, ban, suspend or prohibit the productions, distributions, sales or exhibitions of any film, pornographic books or publications in the State, where in the opinion of the Board it is offensive to public morality and decency.

PART III – CINEMATOGRAPHY LICENSING<sup>542</sup>

10. An exhibition for the purposes of which film is used shall be:
- a. on premises or in or from a mobile cinema, vehicle or vessel licensed in accordance with this Law; and
  - b. by means of a cinematograph or other similar projection apparatus licensed in accordance with this Law.

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<sup>541</sup> Compare Cap. 23 §4(2): “The Board may approve, or refuse to approve, the exhibition of any film and, when granting such approval, the Board may impose such conditions as it thinks fit upon the exhibition of the film in the State.”

<sup>542</sup> §§10-15 reproduce §§3-8 of Cap. 24 almost word for word, except that the word ‘Board’ replaces the word ‘Commissioner’.

CHAPTER 3: SANITIZING SOCIETY

11. (1) The Board may grant licences in respect of premises, a mobile cinema, a vehicle or a vessel under paragraph (a) of section 10 to such persons as it thinks fit on such terms and conditions and under such restrictions as, subject to regulations made hereunder, the Board may specify in the licence.
- (2) The Board may:
- a. refuse to grant licence; or
  - b. at any time modify or vary the terms and conditions of or revoke any licence already granted;
- (3) A licence shall not be granted in respect of any premises or mobile cinema, vehicle or vessel unless the Board is satisfied that such premises, mobile cinema, vehicle or vessel is safe and otherwise suitable for the proposed exhibition.
12. (1) The Board may grant licences in respect of cinematographs or other similar projection apparatus under paragraph (b) of section 10 to such persons as it thinks fit on such terms and conditions and under such restrictions as, subject to regulations made hereunder, the Board may specify in the licence.
- (2) The Board may:
- a. refuse to grant licence; or
  - b. at any time modify or vary the terms, conditions and restrictions of or revoke any licence already granted on such similar projection apparatus.
13. Every licence shall be in force for a period of one year or for such a shorter period as the Board on the grant of the licence may determine, unless the licence is previously revoked.
14. The provisions of sections 10, 11 and 12 shall not apply to a mobile cinema which operates under the control of the Government of the State or of a Local Government Council or of any statutory corporation or board.
15. (1) Where the Board has granted a licence upon the condition that the exhibition shall be conducted under the superintendence of an officer of the Government of the State, it shall in such case be lawful for such an officer at any time to order such exhibition to cease, or to give any other direction which he may think necessary for the purpose of ensuring the safety from fire of the premises or vehicle or vessel in which the exhibition takes place or safety of the people attending the exhibition, and the enforcement of fire safety standards shall be as provided by Fire Service Law 1991.<sup>543</sup>
- (2) Any person who in any way hinders or obstructs any such officer to perform his official duty shall be guilty of an offence and shall be liable to a fine of five thousand naira or to imprisonment for six months or both.

PART IV – CENSORSHIP OF FILMS

16. (1) Subject to the provisions of this Law, a person shall not exhibit or cause or allow to be exhibited any film in the State without the approval for exhibition given by the Censorship [Film] Board;<sup>544</sup>

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<sup>543</sup> The last clause, on enforcement of fire safety standards, not in Cap. 24.

<sup>544</sup> Compare Cap. 23 §4(1): “Subject to the provisions of subsection (3) [here, the proviso to this subsection], no person shall exhibit or cause or allow to be exhibited any film, approved for

Except that nothing in this section shall apply:

- a. to any exhibition given in premises to which the public is not admitted;<sup>545</sup>
- b. to any film exempted by the Board under this Law and imported, produced or issued by or by the direction of:
  - i. the State Government;<sup>546</sup>
  - ii. the diplomatic representative of any Commonwealth or foreign country;
  - iii. the United Nations Organisation or any organ of the organisation;
  - iv. any educational, scientific or cultural body or society including any broadcasting and television organisation.<sup>547</sup>

(2) Any person who:

- a. exhibits or causes or allows to be exhibited any film contrary to the provisions of this section; or  
[infringement of a condition]<sup>548</sup>
- b. being the owner of a cinematograph or occupier of premises uses or allows the cinematograph or premises to be used in contravention of this section,<sup>549</sup>

commits an offence and is liable on conviction to imprisonment of not less than one year or a fine of ten thousand naira or both, and where the offence is a continuing one shall be liable to [an additional penalty of] six months imprisonment or a fine of one thousand naira or both.<sup>550</sup>

17.<sup>551</sup> (1) Where the Commissioner after consultation with the Governor is satisfied that it is in the public interest of the State so to do, and notwithstanding:

- a. that a film has already been approved for exhibition under any enactment or law, or
- b. that an aggrieved party has appealed against such film approval,

he may by such means (including media broadcast) as he thinks fit, give public notice of the cancellation of the approval; and the cancellation shall have immediate effect.

(2) If public notice has been given of the cancellation otherwise than by publication in the Gazette, notice of such cancellation shall forthwith thereafter be published in the

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exhibition in Nigeria by the Federal Board of Film Censors under the provisions of the Cinematograph Act 7 of 1963 unless the exhibition of such film in the state has also been approved by the Board.”

<sup>545</sup> Not in Cap. 23, but in Cap. 24.

<sup>546</sup> Cap. 23: “the Federal Government or any State Government”.

<sup>547</sup> Not in Cap. 23.

<sup>548</sup> Cap. 23 has here an additional subsection which provides: “or infringes or fails to comply with any condition imposed under the provisions of subsection (2)”. For the equivalent of the subsection (2) referred to, see §9(1) of this law.

<sup>549</sup> Cap. 23 adds: “or of any condition imposed under the provisions of subsection (2)”.

<sup>550</sup> Cap. 23: not more than 1 year or ₦400 or both, “and where the offence is a continuing one shall for each day during which the offence continues be liable to a further fine of forty naira or to two months imprisonment or to both such fine and imprisonment for every such day.”

<sup>551</sup> This section not in Cap. 23 or 24.

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State Gazette aforesaid and the Commissioner shall as soon as possible inform the State Executive Council of the reasons for his action.

(3) The failure to comply with the requirement of the Commissioner under this section shall be an offence punishable on conviction with imprisonment of not less than one year or fine of not less than ten thousand naira and if the offence is a continuing one by an additional penalty of not less than six months imprisonment or a fine of one thousand naira.

18.<sup>552</sup> (1) Where a police officer or any person authorised in that behalf by the Board in writing has reasonable cause to believe that an exhibition is or is about to commence, he may on production of his pass or other proper authority enter the premises for the purposes of ensuring compliance with the provisions of this Law or of any regulations made thereunder.

(2) The search to be conducted under this section shall comply with the provisions of the Criminal Procedure Code Law 1991.

(3) Any person who obstructs or otherwise prevents the entry by any person authorised under this section to enter on premises shall be guilty of an offence and liable on conviction to a fine of one thousand naira.

PART V – STAFF OF THE BOARD<sup>553</sup>

19. (1) The Executive Director shall be appointed by the Governor and shall be the accounting officer of the Board.

(2) The Executive Director shall:

- a. be responsible for the day-to-day administration of the Board;
- b. take charge of all correspondence with the Board;
- c. perform such other duties as may from time to time be assigned to him by the Board;
- d. be responsible to the Chairman in the day-to-day performance of his functions.

20. (1) The Governor may appoint such number of other staff as he may think necessary from time to time including secondment or transfer from the State civil service.

(2) The Governor shall determine the remuneration and tenure of office of employees of the Board.

21. (1) Persons employed by the Board shall in respect of their service in the Board be entitled to pensions, gratuities and other retirement benefits in the same way as other civil servants in the State.

(2) Nothing in this section shall prevent the appointment of a person to any office in the Board on terms and conditions which preclude the grant of pension or gratuity in respect of service in that office.

[PART VI omitted; for contents see list of sections above.]

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<sup>552</sup> This section is substantially equivalent to Cap. 23 §6.

<sup>553</sup> None of the provisions of this Part are in Cap. 23 or 24.

PART VII – TRANSITIONAL PROVISIONS AND SAVINGS

28. (1) All existing applications on cinematography licence pending before the Commissioner shall cease and abate with effect to the coming into operation of this Law.
- (2) The applicants in subsection (1) shall comply with provisions of this Law.
- (3) Nothing shall affect any proceedings or action pending in court and such proceedings or action may be continued as if it has been commenced under this Law.
- (4) The following laws are hereby repealed:
- a. Cinematography (Licensing) [Cap. 24 Laws of Kano State] 1991;
  - b. Cinematography (Censorship) [Cap. 23 Laws of Kano State] 1991.

[SCHEDULE omitted: for contents see list of sections above.]

**d. Kano State's Cinematography (Licensing) (Censorship) Regulations 2001**

Along with its new State Censorship Film Board Law 2001, Kano State has issued lengthy new regulations covering the same territory as the Cinematograph (Licensing) Regulations 1963, and adding new material on, among other things, censorship and regulation of the latter-day phenomena of “cinema houses”, video/cable satellite viewing centres, and film production. We give here only the main headings of the table of contents of these regulations, with details about some few sections.

Arrangement of sections:

PART I -- PRELIMINARY (§§1-2)

PART II -- SAFETY (§§3-20, relating to theatres showing films)

PART III – LIGHTING AND ELECTRICAL INSTALLATION (§§21-28, relating again to theatres showing films)

PART IV – ENCLOSED THEATRES (§§29-33)

PART V – OCCASIONAL THEATRES (§§34-39)

PART VI – PORTABLE PROJECTION APPARATUS (§§40-44)

PART VII – CINEMATOGRAPHY LICENSING (§§ 45-56)

PART VIII – CINEMA HOUSES, VIDEO/CABLE SATELLITE VIEWING CENTRES (§§57-58, requiring registration and licensing)

PART IX – CLEARANCE FOR REGISTRATION OF CINEMA HOUSES (§§59-66, requiring, among other things, clearances from the Local Government Council and the Divisional Police Officer, and providing in §64 that “The District Head’s Office as representative of the Emirate Council shall ensure that an applicant complies with the tradition and culture of the people of the State before giving clearance.”)

PART X – CONDITIONS FOR ADMISSION INTO CINEMA HOUSES (§§67-72)

67. A film shall be censored by the Board before exhibition and a certificate of suitability shall be issued by the Board to the cinema proprietors.

68. The under-aged children are prohibited for admission into cinema houses for exhibition of films except where such children are accompanied by their parents or guardians.

### CHAPTER 3: SANITIZING SOCIETY

69. (1) The admission of females [and] males in a cinema auditorium is prohibited except where the auditorium for film exhibition is partitioned for males and females respectively.

(2) A partition in this regulation means a *hijab* or separation of the auditorium for males and females.

70. The sale, advertisement of alcohol or any form of narcotics and their exhibitions are prohibited in cinema houses.

71. The exhibition of films in cinema house per week shall be 40% of local films in the State.

72. The exhibition in the State shall comply with the moral standards of Islam and the professional ethics of film industry generally.

PART XI – CINEMA MONITORING COMMITTEE (§§73-75. The committee is composed of representatives of the Office of the Adviser on Religious Affairs, the Ministry of Information, the History and Culture Bureau, the Police, the Ministry of Environment, the Special Service & Council Affairs Directorate, the Islamic Education & Social Affairs Board, and the Kano State Community Re-Orienting Committee, and is charged with ensuring strict compliance with the rules on cinema houses “as well as to re-orient the society in accordance with Islamic injunctions.”)

PART XII – VIDEO/CABLE SATELLITE VIEWING CENTRES (§§76-80. Requiring licensing etc., and providing that:

78. The exhibition of films by cable satellite centres, private televisions or radio or any media communication outfit in the State shall comply with moral standards of Islam and professional ethics of film industry as provided by the Board.

79. The Local Government Councils in the State shall provide community viewing centres for the entertainment, education and public enlightenment of the civic responsibilities of the citizens of the area.

PART XIII – CONDITIONS FOR THE REGISTRATION OF LOCAL FILM PRODUCTION COMPANIES IN THE STATE (§§81-84)

PART XIV – CONDITIONS FOR SHOOTING, SALES AND EXHIBITION LICENCE FOR FILM PRODUCTION COMPANIES OUTSIDE THE STATE (§§85-89, requiring in §86 that a company shall present two copies of its film script for censoring two weeks in advance of shooting.)

PART XV – THE REGISTRATION OF AUDIO-VIDEO CASSETTE VENDORS FOR PERMIT (§§90-94, prohibiting, in §94, the sale and exhibition of pornographic cassettes, posters, advertisements and films.)

PART XVI – CENSORSHIP OF BOOKS AND OTHER LITERARY WORKS (§§95-97)

95. (1) Any person who produces a book, literary or dramatic work in the State and intends to publish such literary material such person shall apply for censorship licence from the Board.

(2) Every application for censorship licence in sub-regulation (1) of this regulation shall be accompanied with a copy of such book or literary material to be published and a prescribed fee by the Board.

97. [Is a long regulation dealing with “blasphemous, pornographic or obscene writings, drawings, prints, paintings, printed matter, pictures, posters, emblems, photographs, cinematograph films, or any other obscene objects, or any other object tending to corrupt public morals”.]

PART XVII – MISCELLANEOUS PROVISIONS (§§98-112, including the following section captioned “Censorship criteria”)

102. (1) The Board in reaching a decision on a film, video-work or publication shall ensure that:
- (a) Such a film, video-work or publication has an educational or entertainment value, apart from promoting the State culture, unity and interest; and
  - (b) That such a film, video-work or publication is not likely:
    - (i) to undermine national security; or
    - (ii) to induce or reinforce the corruption of private or public morality; or
    - (iii) to encourage or glorify the use of violence; or
    - (iv) to expose the people of African heritage to ridicule or contempt; or
    - (v) to encourage illegal or criminal acts; or
    - (vi) to encourage racial, religious or ethnic discrimination or conflict; or
    - (vii) by its contents to be blasphemous or obscene.
- (2) The Board shall not approve a film, video-work or publication which in its opinion depicts any matter which is:
- (a) indecent, obscene or likely to be injurious to morality;
  - (b) likely to incite or encourage public disorder or crime; or
  - (c) undesirable in the public interest.

TRANSITIONAL PROVISIONS (revoking the 1963 regulations and all cinematography licences issued thereunder)

SCHEDULES (one on electrical wiring, and another with forms for use of applicants, etc.)

**e. The Sharia Penal Codes on unedifying media**<sup>554</sup>

*Public Nuisance*

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.<sup>555</sup>
- (2)<sup>556</sup> 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

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<sup>554</sup> Copied from the Harmonised Sharia Penal Code Annotated, see Chapter 4. In the notes that follow “PC” refers to the Penal Code of 1960 and the names of states refer to their Sharia Penal Codes.

<sup>555</sup> 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*.

<sup>556</sup> PC does not have subsection (2).

### CHAPTER 3: SANITIZING SOCIETY

punished with imprisonment for a term which may extend to one year and with caning which may extend to twenty lashes.<sup>557</sup>

375. Whoever to the annoyance of others sings, recites, utters or reproduces by any mechanical or electronic means<sup>558</sup> any obscene song or words in or near any place,<sup>559</sup> 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.<sup>560</sup>

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<sup>557</sup> 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 all after the closure of the theatre.” Katsina: up to 2 years or up to 45 lashes. PC omits subsection (2) entirely.

<sup>558</sup> Only Kaduna includes the words “or electronic”.

<sup>559</sup> PC and Sokoto have “in or near any public place”.

<sup>560</sup> 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.

8.

**Other social vices**

**a. Other social vices in the omnibus laws**

The Kaura Namoda Local Government omnibus bye-law (Part IV.1.f) includes a provision on extravagance in marriage and naming ceremonies similar to that of Gummi Local Government, see next.

**b. Gummi Local Government (Zamfara State) law on processions, musical concerts, other expenses during naming and wedding ceremonies, etc. (2000)**<sup>561</sup>

In the exercise of powers conferred upon Gummi Local Government Council by section 120 of the Local Government Law No. 9 of 1983, the following Bye-Law is hereby made by the Gummi Local Government Council:

1. This Bye-Law may be cited as Gummi Local Government Law for the prohibition of processions, commuting female passengers by motorcyclist, musical concerts and any other expenses during naming and wedding festivities.
2. This Bye-Law shall come into operation on a day to be appointed by the Council Chairman.
  - (i) All forms of procession during wedding and naming festivities are hereby prohibited as set-out in the schedule hereto.
  - (ii) Save in absolute necessity no motorcyclist shall commute female passenger between the hours of 10:00 p.m. – 6.00 a.m. throughout the Local Government Area.
  - (iii) All types of musical concerts during naming and wedding festivities as set out in the schedule are hereby prohibited throughout the Local Government.
  - (iv) Any other expenses during naming and wedding ceremonies as set out in the schedule hereto.
3. Any person who contravenes any provision of this Bye-Law shall be liable to a fine of three thousand naira (₦3,000.00) or six months imprisonment or both.
4. Residents of the Area/Ward and Village concerned or member(s) of the Islamic Joint Aid Group may report either to the police or the Local Government or lay a complaint before the court of law.
5. All offences covered by this Bye-Law are triable by a Magistrate Court or Sharia Court in whose jurisdiction the offence is committed as the case may be.

THE SCHEDULE

1. "Procession" includes rallies with vehicles, motorcycles, bicycles, donkeys, horses, camels, etc.
2. "Festivities" includes circumcision.
3. "Motorcyclist" includes commercial and non-commercial motorcyclist.

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<sup>561</sup> Bye-Law No. 1 of 2000, signed by the Local Government Chairman on 10<sup>th</sup> August 2000. No gazetted copy available; copy signed by the Chairman obtained from the Ministry for Local Government in Gusau.

4. “Musical concerts” means, drumming, praise singing and dancing in whatever form and howsoever called.
5. “Any other expenses” means banquet, refection, local snacks (*gara*) and also includes *yinin biki*.
6. “Court” means – Magistrate Court and Sharia Court.

**c. Bauchi State’s law on praise singing, begging, playing cards, etc. (2001)**

376A.<sup>562</sup> 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 wuta*, *wasan wuka*, *wasan bori*, etc.<sup>563</sup> 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 caning to twenty lashes.

**d. Fika Local Government (Yobe State) law on certain market practices, slaughtering of certain animals, parties, duping, and the wearing of the *hijab* (2002)<sup>564</sup>**

A BYE-LAW TO MAKE PROVISION FOR THE PROHIBITION OF CERTAIN UN-ISLAMIC PRACTICES SUCH AS NON-MAINTENANCE OF STANDARD GRAINS MEASURE, MIDDLEMANSHIP AND OTHER MATTERS RELATED THERETO

1. This Bye-Law may be cited as Fika Local Government Prohibition of Certain un-Islamic Practices Bye-Law 2002 and shall come into force on the .....2002. Citation and commencement
2. In this Bye-Law, unless the context otherwise requires: Interpretation
  - “Chairman” means the Chairman of Fika Local Government Council;
  - “Local Government Area” means the Fika Local Government Area;
  - “alkali” means Area Court judge;
  - “premises” include a building, land, house, store and mobile cinema.
  - “premises” in relation to section (6) include any room or space where *ajo*, *koroso* etc. is being performed;

<sup>562</sup> This provision was enacted by §4 of Bauchi State’s Sharia Penal Code (Amendment) Law 2001, signed by Governor Mu’azu on 29<sup>th</sup> June 2001, see Bauchi State of Nigeria Gazette No. 7 Vol. 26, 29<sup>th</sup> June 2001, Supplement Part B p. B23, and inserted into Bauchi State’s Sharia Penal Code as §376A.

<sup>563</sup> *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 operate. *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.

<sup>564</sup> An unsigned and undated copy of this bye-law was obtained from the Yobe State Religious Affairs Board, but with the indication of the Board that the law had been duly enacted.

DOCUMENTARY MATERIALS: OTHER SOCIAL VICES

“State” means Yobe State of Nigeria;

“standard grains measure” means the officially approved measures of three different sizes bearing the official insignia of Fika Local Government Council;

“middlemanship (*yan na kama*)” means the act of being a third party between the original seller and the original buyer whereupon there is no exchange of money between the original seller and the middleman for the commodity traded;

“*hisbah*” means a highly responsible Muslim who is registered, recognised for good character and appointed by the Committee on Sharia Implementation in Fika Local Government Area for the purpose of monitoring Sharia implementation;

3. (1) It shall be an offence for any person or group of persons to engage in or practise middlemanship activities in any kind of trade within the Local Government Area.<sup>565</sup> Prohibition of middlemanship (“*yan na kama*”) in all kinds of trade
- (2) Any person who commits an offence under sub-section (1) of this section shall be liable on conviction to 3 months imprisonment or a fine of ₦5,000.00.
4. (1) It shall be an offence for any person to sell grains and its like with any size of measure other than the size approved by the Local Government and such measure must not be so worn out or deformed as to reduce the quantity required by the approved size. Provision for the maintenance of standard grains measure
- (2) Any person found guilty of committing an offence under sub-section (1) of this section shall be liable on conviction to 3 months imprisonment or a fine of ₦5,000.00.
5. (1) It shall be an offence for a person or group of persons to encourage or engage in *ajo*, *koroso* and other forms of public entertainment in which men and women intermingle in an indecent and un-Islamic manner be it in the form of dancing, drumming, singing, music, beauty contest, fashion parade and the like. Prohibition of picnic, party, bachelors eve, *ajo*, *koroso*, etc.
- (2) Whoever, being a Muslim encourages or engages in *ajo*, *koroso* and other forms of public entertainment prohibited in sub-section (1) above shall be punished with 1 months imprisonment or ₦2,000.00 fine.
6. (1) It shall be an offence for any person to engage in or practise any act of slaughtering and selling of meats of donkeys, horses, pigs, dogs and other categories of prohibited animals to the public within the Local Government Area. Prohibition for slaughtering and selling of meats of donkeys, horses, dogs and pigs
- (2) Any person found guilty of committing an offence under sub-section (1) of this section shall be liable on conviction to 6 months imprisonment of ₦4,000.00 fine or both.
7. (1) Any police officer or a member of *hisbah* so authorised by alkali may Power of entry

<sup>565</sup> The practice prohibited here is discussed at some length in Vol. II, 88-92, the memorandum sent to the Bauchi State Sharia Implementation Committee by the Imam of the cow market in Bauchi.

CHAPTER 3: SANITIZING SOCIETY

- at any time enter any premises in which there is reason to believe that the provisions of this Law are being or are about to be violated by any person or group of persons.
- (2) Any person who prevents or obstructs the entry of any person referred to in sub-section (1) of this section is liable on conviction to 2 weeks imprisonment or ₦1,000.00 fine or both.
8. Any alkali or person authorised by him (i.e. *hisbah*) and any police may:
- (a) Enter any premises at any time for the purpose of detecting or preventing any breach of the provisions of this Bye-Law within the Local Government Area.
  - (b) All laws that protect the police in the cause of his duty shall also be applicable to *hisbah* for the purpose of enforcing this Sharia Bye-Law within the Local Government Area.
9. (1) Any alkali may issue a search warrant to any police officer or *hisbah* (appointed members) to enter at any time and if need be by force, any premises or place whether a building or not situated within the specified area in the warrant where the officer reasonably suspects that an offence against this Bye-Law is being committed, examine and search the said premises or place and seize or remove any item as exhibits.
- (2) If any items or exhibits are removed from any premises or place in accordance with sub-section (1) of this section, the occupier of the premises or place may be there-upon apprehended and thereafter dealt with in accordance with the provision of this Bye-Law.
- (3) No search warrant shall be granted unless the officer granting the same is satisfied by information on oath:
- (a) That the offence against the provision of this Bye-Law are prevalent in the area for which the warrant is being required.
  - (b) That owing to difficulties in communication or otherwise the cause of justice might be defeated or delayed if it were necessary for a search warrant to be obtained as and when sufficient information was obtained in respect of each individual premises or place aforesaid;
  - (c) A warrant granted in accordance with the provisions of this Bye-Law shall remain in force for three months from the date thereof unless a shorter period is specified in the warrant.
10. The following things may be liable for forfeiture on the order of the alkali: meats of donkeys, horses, pigs, dog and carrion as well as other categories of prohibited animals used in contravention of this Bye-Law
11. It shall be an offence for any Muslim female above the age of ten to move round within the Local Government Area at any time without wearing a *hijab* adequate to cover her head down to her toes.
12. (1) It shall be an offence for any person or group of persons to organise and engage in any form of duping activities whether through preaching, sale of traditional medicine or otherwise as circumstances

Power of alkali,  
police and *hisbah*

Special search  
warrant

Things liable for  
forfeiture and  
destruction

Provision of  
wearing of *hijab*  
by Muslim  
females

Prohibition of  
duping through  
preaching or  
sales of  
traditional

DOCUMENTARY MATERIALS: OTHER SOCIAL VICES

may warrant.

medicine

(2) Any person found guilty of committing an offence under subsection (1) of this section shall be liable on conviction to 3 months imprisonment or ₦3,000.00 fine.

13. (1) For now, the Criminal Procedure Code shall be the procedural and applicable law for the purpose of trial and prosecution under this Bye-Law.

(2) Whenever, the Sharia Criminal Procedure Code comes into force it shall be the applicable law in respect of Muslims.<sup>566</sup>

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<sup>566</sup> As of mid-2007, when this note was made, Yobe State had still not enacted a Sharia Criminal Procedure Code. See further Chapter 5, in Vol. IV.