

# Sharia Implementation in Northern Nigeria 1999-2006: A Sourcebook

Compiled and edited by Philip Ostien

## **Volume VI: Ulama Institutions**

Chapter 7: The Sharia Courts and Their Judges

### **Part II: Documentary Materials**



## MUSLIMS AND ISLAM IN AFRICA

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## Chapter 7: The Sharia Courts and Their Judges

### Part II: Documentary Materials

[Note: the pagination of this initial online edition of these documentary materials will change when the rest of Chapter 7 is completed and all is published together.]

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## 1.

**Statutory materials**

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

**a. Catalogue of court-related legislation enacted by all Sharia States**

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

**Bauchi**

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

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

Borno

- (1) *Sharia Administration of Justice Law 2000*, assented 13<sup>th</sup> August, 2000, never gazetted, copy as signed by Governor in the possession of the editor (establishing Sharia Courts; expanding Sharia Court of Appeal jurisdiction to appeals in criminal matters (only) from Upper Sharia Courts; establishing Sharia Implementation Committee with power to advise Government on various Sharia-related matters including training of personnel for Sharia Courts; establishing Council of Ulama with power, among others, to screen persons for appointment as Sharia Court judges and to make rules for sittings; repealing Repugnancy Doctrine as to Sharia Courts)
- (2) *Sharia Administration of Justice (Amendment) Law 2001*, assented to 6<sup>th</sup> November, 2001, Borno State of Nigeria Gazette No. 42 Vol. 26, 18<sup>th</sup> October 2001 [sic] p. C58 (giving State Judicial Service Commission power to convert Area Court judges to Sharia Court judges)
- (3) *Number of Qadis of Sharia Court of Appeal Law 2002*, assented to 4<sup>th</sup> April 2002, no gazetted copy available, copy as signed by Governor in possession of editor (increasing number of kadis of the Sharia Court of Appeal to "at least four and not more than nine")
- (4) [still no *Sharia Criminal Procedure Code* as of March 2008<sup>1</sup>]

Gombe<sup>2</sup>

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

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

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

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

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

#### Jigawa

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

#### Kaduna

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

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- (2) *Area Courts (Repeal) Law 2001*, assented to 2<sup>nd</sup> May 2001, Kaduna State of Nigeria Gazette No. 12, Vol. 35, 28<sup>th</sup> May 2001, pp. A63-A64
- (3) *Sharia Courts Law 2001*, assented to 2<sup>nd</sup> May 2001, Kaduna State of Nigeria Gazette No. 12, Vol. 35, 28<sup>th</sup> May 2001, pp. A65-A90 (establishing Sharia Courts; directing appeals from them in both civil and criminal matters to Sharia Court of Appeal)
- (4) *Criminal Procedure Code (Amendment) Law 2001*, assented to 1<sup>st</sup> July 2001, Kaduna State of Nigeria Gazette No. 12, Vol. 35, 28<sup>th</sup> May 2001, pp. A91-A94 (twelve amendments adapting CPC to new Sharia and Customary Courts)<sup>3</sup>
- (5) *Sharia Court of Appeal (Amendment) Law 2001*, assented to 25<sup>th</sup> July 2001, Kaduna State of Nigeria Gazette No. 12, Vol. 35, 28<sup>th</sup> May 2001, pp. A95-A98 (fourteen amendments, most notably extending Sharia Court of Appeal jurisdiction to “any decision of a Sharia Court”)
- (6) *Customary Court of Appeal Law 2001*, assented to 1<sup>st</sup> July 2001, Kaduna State of Nigeria Gazette No. 12, Vol. 35, 28<sup>th</sup> May 2001, pp. A99-A121 (establishing Customary Court of Appeal to hear appeals from Customary Courts in civil matters)
- (7) *Judicial Service Commission (Amendment) Law 2001*, assented to 25<sup>th</sup> July 2001, Kaduna State of Nigeria Gazette No. 29, Vol. 35, 29<sup>th</sup> Nov. 2001, pp. A149-A152 (seven amendments, adapting JSC to new Sharia and Customary Courts)
- (8) *Customary Courts (Amendment) Law 2001*, assented to 1<sup>st</sup> September 2001, Kaduna State of Nigeria Gazette No. 29, Vol. 35, 29<sup>th</sup> Nov. 2001, pp. A153-A155 (six miscellaneous amendments, most notably excluding Muslims from appointment as Customary Court judges and channelling appeals to Customary Court of Appeal through Upper Customary Courts)
- (9) *Sharia Courts (Amendment) Law 2001*, assented to 1 September 2001, Kaduna State of Nigeria Gazette No. 29, Vol. 35, 29<sup>th</sup> November 2001, pp. A157-A162 (twenty miscellaneous amendments, most notably channelling appeals to Sharia Court of Appeal through Upper Sharia Courts)
- (10) *Sharia Criminal Procedure Code Law 2002*, assented to 21<sup>st</sup> June 2002, Kaduna State of Nigeria Gazette No. 17, Vol. 36, 4<sup>th</sup> July 2002 pp. A109-A289 (governing criminal proceedings in Sharia Courts, documented in Chapter 5)

Kano

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

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



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

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

### Katsina

- (1) *Sharia Commission Law 2000*, assented to 20<sup>th</sup> April 2000, Katsina State of Nigeria Gazette No. 4, Vol. 11, 27<sup>th</sup> July 2000, pp. A77-A80 (creating Sharia Commission with powers, among others, respecting training and appointment of Sharia Court judges, establishment and number of Sharia Courts, and rules of practice and procedure for the courts)
- (2) *Sharia Courts Law 2000*, assented to 31<sup>st</sup> July 2000, Supplement to Katsina State of Nigeria Gazette No. 5, Vol. 11, 10<sup>th</sup> August 2000, pp. A83-A95 (establishing Sharia Courts; directing appeals in all matters civil and criminal from Upper Sharia Courts to Sharia Court of Appeal and expressly expanding Sharia Court of Appeal jurisdiction to such matters; giving Sharia Commission powers to advise Judicial Service Commission and Grand Kadi on appointment and discipline of Sharia Court judges, on rules of practice and procedure for the courts, and on their general supervision; repealing Area Courts Law)
- (3) *Sharia Court of Appeal (Amendment) Law 2002*, assented to 16<sup>th</sup> September 2002, Katsina State of Nigeria Gazette No. 21, Vol. 13, 10<sup>th</sup> October 2002, pp. A24-A25 (adapting the law to new Sharia Courts and reiterating expansion of jurisdiction of Sharia Court of Appeal to “civil and criminal matters in respect of Islamic law from any decision of an Upper Sharia Court”)
- (4) [still no *Sharia Criminal Procedure Code* as of March 2008<sup>4</sup>]

### Kebbi

- (1) *Sharia Law 2000*, evidently enacted in June 2000 (?), never gazetted, no copy obtained (per 2003 interview: this law changed the name of the Area Courts to “Sharia Courts” and transferred control of them from the Chief Judge to the Grand Kadi. But because of some problem about the status of pending cases this was subsequently reversed, see *Sharia Courts (Amendment) Law 2000*, below, pending the coming into force of the *Sharia (Administration of Justice) Law 2000* on 1<sup>st</sup> December 2000)
- (2) *Sharia (Administration of Justice) Law 2000*, assented to 1<sup>st</sup> Aug. 2000, Kebbi State of Nigeria Gazette No. 1 of 2001, Vol. 1, undated, pp. 59-68 (establishing Sharia

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<sup>4</sup> In an 11<sup>th</sup> March 2008 interview with officials in Katsina, P. Ostien was told that the Sharia Criminal Procedure Code (SCPC) is still not enacted. Recently the Sharia Commission got a letter from the Chief Judge of the High Court inviting input on the latest draft of the SCPC from the Sharia Commission, which is chaired by the Grand Kadi of the Sharia Court of Appeal. Despite the absence of an SCPC, the SPC is nevertheless being applied in the Sharia Courts, evidently they just follow the CPC.

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Courts; directing appeals in all matters civil and criminal from Upper Sharia Courts to Sharia Court of Appeal; giving Preaching Board consultative roles in appointment of Sharia Court judges and making of rules of court; repealing Area Courts Law 1968; providing that “the common law and the doctrines of equity shall not apply in the Sharia Courts”; repealing “the provisions of the following laws [Civil Liability, District Court, High Court] and any other legislation in force in the State which define customary law to include Islamic or Muslim law”)

- (3) *Sharia Courts (Amendment) Law 2000*, assented to 27<sup>th</sup> October 2000, Kebbi State of Nigeria Gazette No. 1 of 2001, Vol. 1, 20<sup>th</sup> May 2001, p. 69 (amending *Sharia Law 2000*: changed the name to “Area Courts Law 2000” and replaced all occurrences of “Sharia Court” with “Area Court”; see explanation above)
- (4) *Sharia Criminal Procedure Code Law 2002*, date assented to unclear, Kebbi State of Nigeria Gazette Vol. 1, No. 1, 8<sup>th</sup> August 2003<sup>5</sup> (governing criminal proceedings in Sharia Courts, documented in Chapter 5)

Niger

- (1) *District Courts (Amendment) Law 2000*, assented to 22<sup>nd</sup> February 2000, Niger State of Nigeria Gazette No. 5, Vol. 25, 9<sup>th</sup> March 2000, pp. B13-B15 (increasing the monetary amounts District Courts of all grades are empowered to award)
- (2) *Sharia Court of Appeal (Amendment) Law 2000*, assented to 22<sup>nd</sup> February 2000, Niger State of Nigeria Gazette No. 6, Vol. 25, 9<sup>th</sup> March 2000, pp. B17-B19 (making somewhat cryptic amendments evidently intended to expand Sharia Court of Appeal jurisdiction to all cases, civil and criminal, decided in Area Courts)
- (3) *Area Courts (Amendment) Law 2000*, assented to 22<sup>nd</sup> February 2000, Niger State of Nigeria Gazette No. 10 Vol. 25, 9<sup>th</sup> March 2000, pp. B47-B52 (transforming the Area Courts into de facto Sharia Courts by requiring judges to have qualifications in Islamic law, limiting personal jurisdiction to Muslims (except for consenting non-Muslims), and limiting subject-matter jurisdiction in civil matters to “civil proceedings in Islamic law”; in criminal matters the *Penal Code (Amendment) Law 2000*, enacting special provisions for Muslim defendants, would have applied, see Chapter 4 of this work, pp. 140-143)
- (4) *Criminal Procedure Code (Amendment) Law 2000*, date assented to unclear but apparently 22<sup>nd</sup> February 2000, Niger State of Nigeria Gazette No. 9. Vol. 25, 9<sup>th</sup> March 2000, pp. B37-B45 (primarily raising the limits of the sentencing powers of Magistrates and Area Court judges, but including a provision on place of trial of Muslims accused of crimes for which they are liable to special punishments, see Chapter 5, p. 219)
- (5) *Sharia Commission Law 2001*, assented to 10<sup>th</sup> July 2001, Niger State of Nigeria Gazette No. 9, Vol. 26, 3<sup>rd</sup> September 2001, pp. B34-B38 (creating Sharia Commission with powers, among others, respecting training and appointment of Sharia Court judges and establishment and number of Sharia Courts)
- (6) *Sharia (Administration of Justice) Law 2001*, assented to 13<sup>th</sup> November 2002, Niger State of Nigeria Gazette No. 19, Vol. 28, 5<sup>th</sup> November 2002, pp. B1-B13 (establishing Sharia Courts; directing appeals in all matters civil and criminal from

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

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Upper Sharia Courts to Sharia Court of Appeal and explicitly making the Sharia Court of Appeal “competent to exercise appellate and supervisory jurisdiction on Sharia Courts in civil or criminal proceedings involving questions of Sharia law”; giving Sharia Commission and Advisory Council of Ulama consultative roles in appointment of Sharia Court judges and making of rules of practice and procedure for the courts; providing that “the statutes of general application of the Common Law and the doctrines of equity shall not apply in the Sharia Courts”; repealing the Area Courts Law; repealing “the provisions in the following laws [Civil Liability, District Court, High Court] or any other law in force in the State which define customary law to include Islamic law or Muslim law”)

### Sokoto

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

### Yobe

- (1) [*Sharia Courts*]<sup>6</sup> *Law 2000*, assented to 18<sup>th</sup> October 2000, Yobe State of Nigeria Gazette No. 46, Vol. 10, 16<sup>th</sup> November 2000, pp. C31-49 (establishing Sharia Courts; directing appeals in all matters civil and criminal from Upper Sharia Courts to Sharia Court of Appeal and expressly expanding Sharia Court of Appeal jurisdiction to such matters; making the provisions of the Area Courts Law “inapplicable to the following persons: (1) persons professing the Islamic faith; (2) any other person who voluntarily consents to the jurisdiction of Sharia Court”)
- (2) [Still no *Sharia Criminal Procedure Code* as of March 2008]

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<sup>6</sup> The gazetted version of this law gives its title as “the Yobe State (Introduction of) Sharia Law 2000”. This is actually the title of a different law, No. 3 of 2000, Yobe State of Nigeria Gazette No. 44, Vol. 10, 2<sup>nd</sup> November 2000, pp. C27-C29, which was also signed into law on 18<sup>th</sup> October 2000 and came into force on 26<sup>th</sup> April 2001; that the two laws have the same name is evidently a typist’s error.

<sup>7</sup> In a 4<sup>th</sup> March 2008 interview with court officials in Damaturu, P. Ostien was told that although the Yobe Sharia Penal Code (SPC) was signed into law in March 2001, and printed and distributed to the alkalIs of the Sharia Courts, the alkalIs were told not to apply it, and up to March 2008 no single judge in Yobe is applying this SPC. In criminal matters they still apply the old Penal and Criminal Procedure Codes (but see next note). Part of the reason is that they still have no Sharia Criminal Procedure Code (SCPC). The SCPC before the House of Assembly for a long time, and perhaps was even enacted. But

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- (3) [*Sharia Courts (Amendment) Law 2004 (?)*]<sup>8</sup>

Zamfara

- (1) *Sharia Courts (Administration of Justice and Certain Consequential Changes) Law 1999*, assented to 8<sup>th</sup> October 1999, Zamfara State of Nigeria Gazette No. 1 Vol. 1, 15<sup>th</sup> June, 2000, pp. A1-A30 (establishing Sharia Courts; directing appeals in all matters civil and criminal from Upper Sharia Courts to Sharia Court of Appeal and expressly expanding Sharia Court of Appeal jurisdiction to such matters; establishing Council of Ulama with powers, among others, respecting appointment and discipline of Sharia Court judges and inspectors, guidelines, conditions and terms of appointment the judges, rules of practice and procedure for the courts, and power to issue opinions on questions referred by the judges)
- (2) *Sharia Court of Appeal Law Cap. 133 (Amendment) Law 1999*, assented to 8<sup>th</sup> October 1999, Zamfara State of Nigeria Gazette No. 1, Vol. 2, 15<sup>th</sup> June, 2000, pp. A1-A2 (expanding Sharia Court of Appeal jurisdiction to all civil and criminal matters decided in the Upper Sharia Courts)
- (3) *Sharia Criminal Procedure Code Law 2000*, assented to 27<sup>th</sup> January 2000, Zamfara State of Nigeria Gazette Vol. 4, No. 1, 27<sup>th</sup> January 2001 (governing criminal proceedings in Sharia Courts, documented in Chapter 5)
- (4) *Area Courts Law Cap. 1 (Repeal) Law 2000*, assented to 27<sup>th</sup> January 2000, Zamfara State of Nigeria Gazette No. 1, Vol. 2, 15<sup>th</sup> June, 2000, pp. B1-B2 (repealing Area Courts Law and all amendments thereto)
- (5) *Magistrate's Courts (Restriction of Powers) Law 2002*, assented to 9<sup>th</sup> August 2002, Zamfara State of Nigeria Gazette 9<sup>th</sup> August 2002, pp. 1-3 (depriving Magistrate's Courts of jurisdiction "to try any criminal offence where the accused or all the accused persons profess the Islamic faith")
- (6) *Council of Ulama (Establishment) Law 2003*, assented to 28<sup>th</sup> July 2003, Zamfara State of Nigeria Gazette, No. 3, Vol. 5, 10<sup>th</sup> October 2003, pp. A1-A5 (recreating Council of Ulama; reiterating its powers respecting appointment of Sharia Court judges and

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the previous Governor (Bukar Abba Ibrahim) said no hands of *talakawa* would be cut off during his regime, and for that reason he wouldn't assent to the SCPC. Finally, about two weeks before he left office Ibrahim signed the SCPC, backdated it, and sent it for printing, i.e. for gazetting. But it still has not yet been distributed. Even the Sharia Court of Appeal has not seen a copy. When the new governor (Mamman Ali) came into office (May 2007) he was advised not to distribute this new SCPC because the alkalIs would not be able to operate it. They are not learned enough. They have got to be properly trained first, both about the SPC and the SCPC. So the next thing on the agenda is to train the judges. The new Governor has promised to do it.

<sup>8</sup> In a 4<sup>th</sup> March 2008 interview with court officials and a legal practitioner in Damaturu, P. Ostien was told that perhaps in 2004 (interviewees could not agree on the date) the Yobe State House of Assembly passed a law saying that the Sharia Courts shall not apply: (1) the old Penal Code, (2) the old Criminal Procedure Code, (3) the Area Courts Law. But in the course of the interview and subsequently it proved impossible to find a copy of this law anywhere. Evidently it is an amended version of the Sharia Courts Law 2001. Has it been gazetted? Apparently so – but no one seems to have a copy. In any case the Sharia Courts have been told not to entertain any criminal matters at all. Theoretically, at the moment, all criminal matters in Yobe State must go to the Magistrate or High Courts. Nevertheless, some Sharia Courts are trying criminal cases illegally. As to these, whenever appeals come to the Sharia Court of Appeal, it just quashes the judgments.

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to issue opinions on questions referred by the judges, but not mentioning other powers respecting the courts granted in *Sharia Courts (Administration of Justice and Certain Consequential Changes) Law 1999*)

- (7) *Hisbah Commission (Establishment) Law 2003*, assented to 28<sup>th</sup> July 2003, Zamfara State of Nigeria Gazette, No. 3, Vol. 5, 10<sup>th</sup> October 2003, pp. A6-All (establishing Hisbah Commission with power, among others, to “monitor the daily proceedings of Sharia Courts in order to ensure proper compliance with Sharia Penal and Criminal Procedure Codes and report on all actions likely to tamper with the proper dispensation of justice from any court official or any litigant”)
- (8) *Sharia Criminal Procedure Code Law 2005*, assented to 23<sup>rd</sup> November 2005, apparently never gazetted, photocopy of signed original in possession of editor (enacting the Harmonised Sharia Criminal Procedure Code drafted by the Centre for Islamic Legal Studies; documented in Chapter 5; still not in use as of March 2008<sup>9</sup>)

### **b. Zamfara State Sharia Courts Law (1999) annotated<sup>10</sup>**

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

Arrangement of sections:<sup>11</sup>

Preamble

Part I – Preliminary

- 1. Citation and commencement
- 2. Interpretation

Part II – Establishment and Constitution of Sharia Courts

- 3. Establishment of Sharia Courts
- 4. Constitution

Part III – Jurisdiction of Sharia Courts

- 5. Jurisdiction
  - (i) [Subject-matter]
    - (a) Civil proceedings
    - (b) Criminal proceedings
    - (c) Substantive and procedural laws in criminal matters

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<sup>9</sup> In an interview with Ministry of Justice and court officials in Gusau on 17<sup>th</sup> March 2008, P. Ostien was told that although Zamfara State has enacted (in 2005) both the Harmonised Sharia Penal Code and the Harmonised Sharia Criminal Procedure Code prepared by CILS (as to which see Chapters 4 and 5 of this work), to replace the SPC and SCPC drafted and enacted in some haste in early 2000, neither of the new codes is being used by the Sharia Courts, which are still using the 2000 SPC and SCPC: evidently the harmonized codes have not even yet been gazetted and distributed.

<sup>10</sup> Laws included in the annotations: From the list of laws given in subsection a: the law whose text is given here in full is Zamfara (1). The laws annotated in the footnotes are Bauchi (1) as amended by (3), Borno (1) as amended by (2), Gombe (1), Jigawa (1) as amended by (3), Kaduna (3) as amended by (9), Kano (2), Katsina (2), Kebbi (2), Niger (6), Sokoto (1), Yobe (1).

<sup>11</sup> Sources of the list of sections: Zamfara’s statute often combines provisions dealing with different subjects in the same section. Evidently in recognition of this, the gazetted version, besides an official list of sections at the beginning, often gives, in the text of the statute, titles also to subsections. The following list gives both section titles as in the official list and subsection titles as in the text. Subsection titles in brackets have been supplied by the editor.

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- (ii) Persons
  - (iii) Area
  - (iv) [Subject-matter]
- 6. Sitings on appeal [sic: Inquiry by High Court as to whether person is subject to jurisdiction of Sharia Court]
- Part IV – Law, Practice and Procedure
- 7. Applicable laws and rules of procedure
  - (i) [Applicable laws and rules of procedure]
  - (ii) Practice and procedure
  - (iii) Council of choice
  - (iv) Sitting in open space
  - (v) Exclusion of the public
- Part V – Sharia Court Alkalis
- 8. Appointment and discipline
  - (i) [Appointment and discipline]
  - (ii) Qualification
  - (iii) [Alkalis as officers in public service of State]
  - (iv) [Indemnity of alkalis]
  - (v) Disqualification
  - (vi) Remuneration
- Part VI – State Council of Ulamas
- 9. Establishment of Council
  - (i) [Establishment of Council]
  - (ii) [Council to screen prospective alkalis]
  - (iii) [Council may prescribe terms of appointment of alkalis]
- 10. Membership and qualification
- 11. Meeting and quorum
- 12. Remuneration of members of council
- 13. Functions of council
- 14. Independence of council
- Part VI [sic<sup>12</sup>] – Staff of Sharia Courts
- 15. Staff of the court
- 16. Delegation of duties
- 17. Bailiffs and messengers
- 18. Indemnity [of staff of Sharia Courts]
- Part VII – Transfers by Sharia Courts
- 19. Transfer of cause or matter
- 20. Remittance of a matter
- 21. Transferred cause or matter
- Part VIII – Ancillary Powers of Sharia Courts
- 22. Detention in prison
- 23. Summoning of persons
- 24. Giving of evidence
- 25. Evidence of a person outside jurisdiction of the court
- 26. Enforcement of judgment or order
- 27. Decrees or orders of [other] courts

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<sup>12</sup> In numbering the parts, the gazetted version repeats VI twice, and then continues from there.

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28. Injunction etc. to preserve property
29. Appointment of receiver or manager
30. Inspection of property
- Part IX – Control of Sharia Courts
  31. Supervision and control of Sharia Courts
  32. Appointment of inspectors
  33. Appointment of Chief Inspector
  34. Submission of report
  35. Access by inspector to courts and records
  36. Powers of inspector
  37. Order of transfer to stay proceedings
  38. Report of case of miscarriage of justice
  39. Plea of res judicata etc.
  40. Limit of powers of inspector
- Part X – Appeals
  41. Appeals [from Sharia and Higher Sharia Courts] to Upper Sharia Courts
  42. Appeals [from Upper Sharia Courts] to Sharia Court of Appeal
  43. Power of Sharia Court of Appeal to hear appeal
  44. Appeal by prosecutor
  45. Appeal against a reported case
  46. Leave to appeal out of time
  47. Power to inspect records on appeal
- Part XI – Offences
  48. Officer failing to perform duty
  49. Exercise of judicial power without authority etc.
- Part XII – Miscellaneous
  50. Substantial justice not technicalities
  51. Saving

**PREAMBLE<sup>13</sup>**

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

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<sup>13</sup> **Preambles.** The “whereas” clauses of Zamfara’s preamble have been numbered by the editor for ease of reference in what follows. Five States have no preamble: Borno, Gombe, Kano, Katsina, Niger. Bauchi = Zamfara except inserts an additional paragraph reciting that the States are “vested with power under section 36(12) of the Constitution to make written laws for the punishment of persons convicted on criminal offences made by the law of the State.” Gombe = Zamfara except omits ¶ 6. Kaduna = Zamfara except omits ¶¶ 4 and 7 and all of ¶ 8 after the first occurrence of “jurisdiction”. Kebbi shortens the preamble to three paragraphs, including Zamfara’s 3 and 5 (stating ¶ 5 affirmatively rather than negatively) and adding that “The Muslim Ummah in Kebbi State are entitled to freedom of religion, including the freedom to manifest, practice and observe their religion in accordance with the teachings and injunctions of Islam, their religion, as guaranteed and entrenched under section 38(1) of the Constitution of the Federal Republic of Nigeria, 1999.” Sokoto shortens the preamble to four paragraphs, including Zamfara’s 1, 2, and 3 (with minor changes in wording) and adding that “almost one hundred percent (100%) of the people of Sokoto State are Muslims and are desirous of being governed by Sharia Law.” Yobe = Zamfara with minor changes in wording.

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

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

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

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

[6] AND WHEREAS by the provisions of S. 6(5)(k) of the Constitution such other courts may be established and authorized by law to exercise jurisdiction at first instance or on appeal on matters with respect to which the House of Assembly of the State may make laws;

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

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

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

**PART I -- PRELIMINARY**

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

2. [In this Law:]

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

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

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

“Chief *Mufti*” means the Chief Registrar.

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



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- “Companions” means and shall include the various categories of lieutenants of the Prophet Muhammad (SAW) who had kept his company or witnessed or had opportunity to directly hear or report on his sayings, teachings, practices and actions.
- “Country” means and shall include the Federal Republic of Nigeria.
- “Constitution” means the 1999 Constitution of the Federal Republic of Nigeria.
- “Council” means and shall include the State Council of Ulama comprising knowledgeable and experienced persons appointed by the Governor under this Law to guide on the application of Sharia law in the State.
- “Hadith” means and shall include the sayings and teachings of the Holy Prophet Muhammad (SAW).
- “*Ijma*” means and shall include consensus of opinion of renown[ed] celebrated Muslim jurists and scholars (*mujtahids*) on principles, concepts and issues of Islamic law.
- “Islamic law” means and shall include knowledge in the theory and practice of Islamic law as prescribed by the Qur’an, Hadith and Sunnah of the Prophet Muhammad (SAW), *qiyas*, *ijma* and other sources of Islamic law.
- “*Istihsan*” means and shall include any accepted act, thing or conduct that is found to be useful, relevant, equitable or beneficial to the way of life notwithstanding contrary provision by any of the other sources of Islamic law.
- “*Istishab*” means and shall include any accepted tradition or custom or any new innovation to way of life which is not specifically prohibited or allowed to be practiced.
- “Joint Aid Monitoring Group” means and shall include any member of the group appointed to monitor the application of Sharia in the State.
- “Judicial Service Commission” means the Commission established for the State under S. 197(1)(c) and empowered under paragraph 6(c) of part II to the Third Schedule of the Constitution.
- “*Masalabah-mursalah*” means any relevant and useful act or thing on which no guidance can be found in the other sources of Islamic law.
- “*Mashabul-sahab*” means and shall include the opinions of the close companions of the Prophet Muhammad (SAW).
- “Matter” means and shall include any proceedings of the Court not in a cause.
- “Other sources of Islamic law” means and shall include *masalabah-mursalah*, *istihsan*, *istishab*, *al-urf*, *mashabul-sahabi*, and *shar’u man kablana*.
- “Person” means and shall include any competent party that is before a Sharia Court whether as individual, individuals, body or authority.
- “Presiding Sharia alkali” means and shall include the head of the panel of alkalis sitting on the appellate jurisdiction of an Upper Sharia Court.
- “*Qiyas*” means and shall include analogical deductions in Islamic law.
- “Qur’an” means the divine and Holy Scripture revealed to Prophet Muhammad (SAW) by Almighty Allah and containing admonitions, injunctions, prohibitions, penalties, punishment, reward, compensation, substantive and procedural law, rights and obligations in respect of the legal, moral, spiritual, economic, political, socio-cultural and law to govern the general conduct of any believer in the religion of Islam.
- “*Shar’u man kablana*” means and shall include judicial [precedents] of earlier Prophets predating the advent of Islam which are not contrary to the other

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sources of Islamic law.

“Secretary” means and shall include the person appointed by the Governor under this Law to serve as the Secretary to the Council of Ulama.

“Sunnah” means and shall include the practice of the Holy Prophet Muhammad (SAW) as narrated by his companions.

“Sharia law” means and shall include the Islamic legal system or Islamic law as prescribed by the Holy Qur’an, Hadith and Sunnah of the Prophet (SAW), *ijma*, *qiyas* and other sources of Islamic law.

“Sharia Court” means and shall include the Courts established under this Law to administer Sharia law, and the phrase shall interchangeably refer to a Sharia Court, a Higher Sharia Court and an Upper Sharia Court as the context may permit.

“Sharia Court alkali” means and shall include a person who is qualified under the provisions of this Law to be appointed as a judge of the Sharia Court and is so appointed.<sup>14</sup>

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<sup>14</sup> Definitions. The interpretation sections of the various statutes show many variations, only some of which are noted here. (1) *Redundancies*. Only one State (Jigawa) follows Zamfara in including, apparently redundantly, definitions of both ‘Islamic law’ and ‘Sharia law’. (Kano has definitions of both terms but the definition for ‘Islamic law’ defines ‘*ijma*’ instead.) (2) *Islamic Law*. Most definitions of ‘Islamic law’ or ‘Sharia law’ follow Zamfara’s definition of the latter term, with some minor variations. Interesting exceptions: Bauchi defines ‘Islamic law’ as “the totality of Allah’s laws revealed to prophet Muhammad (SAW) regulating the conduct or affairs of the Muslims”, cf. Schacht 1964: 1. Borno, Kano, and Kaduna restrict their definitions of ‘Islamic law’ to the interpretations of the Maliki school; but Katsina elsewhere limits the law to be applied in its Sharia Courts to law and rules of procedure “as prescribed under the Maliki School of Islamic Law.” Gombe strangely restricts the term ‘Islamic law’ to Islamic personal law (“‘Islamic law’ has the same meaning as in the Sharia Court of Appeal Law governing the matters set out in paragraph A, B, C and D [of] section 11”), although the jurisdiction of Gombe’s Sharia Courts is not so restricted. (3) *Sources of Islamic Law*. Among the sources of Islamic law, only Bauchi and Katsina explicitly mention *ijtihad*; Katsina, however, defines it to mean “analogical deductions of an Islamic jurist”, i.e., *qiyas*, and does not include it among ‘other sources of Islamic law’. (4) *Lists of sources, whether exhaustive*. Whether the lists of sources of Islamic law are meant to be exhaustive could be an interesting question. Zamfara’s, above, arguably is, and similarly Kano’s: “‘Sharia law’ means *Al-kur’an*, *Sunnah*, *Ijma* and *Qiyas* in accordance with [the] Maliki School of Law.” But Kebbi’s arguably is not: “‘Sharia law’ means the Islamic Law as prescribed by the Qur’an, Hadith, *Ijma*, *Qiyas*, *Istisban*, *Istishab* and such other sources of Islamic Law as are recognised by Muslims.” (5) *Muftis*. The term *mufti* is sometimes used, as in Zamfara, to refer to the registrars of Sharia Courts (as in Jigawa, Katsina and Sokoto; Zamfara defines “Chief *Mufti*” but doesn’t use it), and sometimes to refer to persons learned in Islamic law who serve as advisers to the alkalis (Kaduna, Kano; cf. Katsina, where such persons are called ‘members’; and see further note to §4(i)). In fact the registrars have long served as de facto advisers and alkalis-in-waiting. (6) *Alkalis or judges*. Six other States, like Zamfara, call the judges of their Sharia Courts alkalis, which is the Hausa form of ‘*al qadi*’. But Bauchi, Borno, Gombe, Kebbi, and Niger call them judges. (7) *Vernacular*. Kaduna uniquely includes a definition of the term ‘vernacular’, defined to include Arabic. This refers to §4(8) of Kaduna’s law, which provides that the languages of Sharia Courts “shall be English and vernacular.” (8) *Hisbah*. Zamfara uniquely includes a definition of ‘Joint Aid Monitoring Group’. This relates to §48(iii) of the law, which authorizes members of these so-called *hisbah* groups to perform the duties of court bailiffs and messengers. Zamfara’s Hisbah Commission Law goes farther, allowing the Commission to send *hisbah* to “monitor the daily proceedings of Sharia Courts in order to ensure proper compliance with Sharia Penal and

## PART II – ESTABLISHMENT AND CONSTITUTION OF SHARIA COURTS

3. (i) There are hereby established in the State the following Sharia Courts:
- (a) Sharia Court;
  - (b) Higher Sharia Court; and
  - (c) Upper Sharia Court.<sup>15</sup>
- (ii) There may be as required such number of Sharia Courts and Higher Sharia Courts at district levels in the State.
- (iii) There may be as required such number of Upper Sharia Courts at populated areas and Local Government Headquarters of each Local Government Council in the State.
- (iv) The Grand Kadi,<sup>16</sup> by the approval of the Governor,<sup>17</sup> shall by warrant under his hand locate and prescribe the number of Sharia Courts in such Districts of the

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Criminal Procedure Codes and report on all actions likely to tamper with the proper dispensation of justice from any court official or any litigant”.

<sup>15</sup> Grades of Sharia Courts: Borno, Gombe, Kaduna, Katsina, Kebbi, Niger, Sokoto, and Yobe have two (Sharia Courts and Upper Sharia Courts); Zamfara, Bauchi, and Jigawa have three (interposing Higher Sharia Courts between Sharia Courts and Upper Sharia Courts); and Kano appears to have seven: Upper I, Upper II, Principal I, Principal II, Senior, Higher, and Sharia Court, all with different monetary limits on their jurisdiction in civil cases and different limits on offences triable to them and punishments imposable by them in criminal cases; this at least appears to be the sense of the schedules to Kano’s statute, although in the body of Kano’s statute itself only Sharia Courts and Upper Sharia Courts are provided for. Kaduna’s statute has similar schedules but they define the jurisdictional limits of only two grades of court, Sharia Courts and Upper Sharia Courts. Possibly other States, like Kano, also multiply grades of courts beyond two or three, but under the system of enabling warrants issued by their Grand Kadis, cf. Zamfara’s § 3(v). In all States except Sokoto, the Upper Sharia Courts have both original and appellate jurisdiction, serving, when sitting in their appellate jurisdiction, as intermediate courts of appeal for the lower grades; but in Sokoto the Upper Sharia Courts have appellate jurisdiction only.

<sup>16</sup> Chief Judge or Grand Kadi? The gazetted version of Zamfara’s law has “Chief Judge” rather than “Grand Kadi” here and throughout. This was evidently a mistake on someone’s part, which was corrected to the satisfaction of the legal establishment of Zamfara State by insertion in §4 of the enacting provisions of the Sharia Criminal Procedure Code Law of January 2000 (the Sharia Criminal Procedure Code itself is a Schedule to the enacting law) of the following definition: “‘Chief Judge’ or ‘Judge of the High Court’ shall mean the Grand Kadi or Kadi of the Sharia Court of Appeal wherever it appears in this Law.’ Although the “this law” referred to is the Sharia Criminal Procedure Code Law 2000, the definition is being read to apply also to the Sharia Courts (Administration of Justice and Certain Consequential Changes) Law 1999 presented here: so all the legal establishment say, the Grand Kadi is in fact exercising all the powers the gazetted version of the law nominally assigns to the Chief Judge, and the Chief Judge is not objecting. In the presentation of the law here, it has therefore seemed best simply to put “Grand Kadi” wherever the gazetted version has “Chief Judge”, with this explanation. Many thanks to Magistrate Musa Usman Abubakar of Zamfara State for his assistance with this puzzle. All other States have “Grand Kadi” throughout.

<sup>17</sup> Establishment of Sharia Courts: The strong say of the Governor in the establishment of Sharia Courts in Zamfara is matched in Bauchi, Jigawa, and Yobe. In Borno, Gombe, Niger, and Sokoto this is a matter for the Grand Kadi alone; in Kaduna it is for the Grand Kadi in consultation with the Judicial Service Commission (JSC); in Katsina it is for the Grand Kadi in consultation with the Sharia Commission. In Kano and Kebbi Sharia Courts are automatically established in every District and Upper Sharia Courts in every Local Government Council; more can be established by the Grand Kadi only with the approval of the Governor.

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State as may be required; and the Grand Kadi, by approval of the Governor and by warrant under his hand, shall locate and prescribe the number of Upper Sharia Courts at populated areas and headquarters of each Local Government Area in the State as may be required.

- (a) Only the Governor shall have power to approve the warrant for the establishment of a Sharia Court.
  - (v) The jurisdiction exercisable by the Sharia Courts shall be as conferred upon it by or under this law and shall be exercised within such area and to such extent as may be specified in the enabling warrant establishing the court under S. 5(iii) of this Law; and such warrants shall be operative and effective from the commencement date specified therein.
  - (vi) Such warrant referred to in subsection (iv) and (v) of section 3 to this Law may be suspended, cancelled or varied by the Governor through recommendation of the Advisory Judicial Committee to suit the requirement of the State.
4. (i) A Sharia Court shall be properly constituted if presided over by a single Sharia Court alkali.<sup>18</sup>
- (ii) An Upper Sharia Court sitting in its original jurisdiction shall be properly constituted if presided over by a single Sharia Court alkali;<sup>19</sup> and shall be properly constituted in its appellate jurisdiction if it is presided over by at least two Sharia Court alkalis to hear and determine appeals from the judgment or orders of the Sharia Courts.<sup>20</sup>

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<sup>18</sup> Constitution of lower Sharia Courts: All States agree except Kaduna and Katsina. In Kaduna, the Sharia Courts, evidently of both grades, are constituted by “an alkali sitting alone or an alkali sitting with two *muftis*”, evidently at the election of the alkali, who presides, records the proceedings, and renders the judgement; the *muftis* are only there to advise him, see §11 of the Kaduna law. In Katsina the lower Sharia Courts are “properly constituted if presided over by an alkali sitting with two members.” Katsina’s members correspond to Kaduna’s *muftis*; both correspond to what used to be called “assessors”, as in the Area Courts laws §5: “(1) An area court may sit with or without assessors. (2) Assessors for each area court shall be approved by the Chief Justice [of the State] .... (3) Assessors shall act in an advisory capacity and shall have no vote in the decision of the court.” The Sharia Courts laws of Bauchi and Zamfara mention assessors once each, see §8(i), “assessors referred to in this Law”; as assessors are nowhere else referred to this was evidently a draftsman’s error. Kano (§25) also provides for *muftis*, but in Kano they do not sit with alkalis to hear cases: as of 2008 there were only five of them, all retired judges, all living in Kano, charged under Kano’s Sharia Courts law to “(a) undertake research work with respect to all aspects of the Sharia legal system; (b) advise any alkali on certain procedures to be followed in the courts; (c) ensure that any directive of the Sharia Court of Appeal or any Upper Sharia Court sitting in its appellate capacity are complied with; (d) ensure that selected decisions of appellate courts are sent to the lower Sharia Courts for guidance.”

<sup>19</sup> Constitution of Upper Sharia Courts sitting in original jurisdiction: All States having Upper Sharia Courts with original jurisdiction agree, except Kaduna (alkali + two *muftis*) and Katsina (alkali + two members).

<sup>20</sup> Constitution of Upper Sharia Courts sitting in appellate jurisdiction: Kano and Sokoto agree with Zamfara in requiring that an Upper Sharia Court be constituted by two alkalis when it sits to hear appeals. Sokoto actually says the court is constituted by a “President and one member”, but the qualifications required of ‘members’ are the same as those of ‘Presidents’. Bauchi and Gombe only require one alkali (but in Gombe the Grand Kadi can assign two in “exceptional circumstances”); Borno and Jigawa both require three; Kebbi and Niger require two or three as determined by the Grand Kadi; Katsina requires one alkali sitting with three members; and the relevant sections are missing from the gazetted copy of the Yobe statute, which however appear to track Zamfara.

(iii) The Upper Sharia Court alkalis sitting to determine appeals shall have a presiding alkali who will be the senior of the two; and where the Upper Sharia alkalis sit in appellate jurisdiction, the most senior alkali will preside. And where the presiding alkali is unable or incapable of presiding over any sitting for whatever reason, the most senior of the alkalis shall preside.

(a) There shall be at least two Sharia Court alkalis to sit and determine appeals from the lower Sharia Courts and decisions of the court shall be by concurrence of all the alkalis, failing concurrence, an additional Upper alkali shall be appointed to sit with them and majority decision shall be the decision of the court.

### PART III – JURISDICTION OF SHARIA COURTS

5. (i) Subject to the provisions of S. 46, S. 251, S. 285, paragraphs 15(4) and 18 of Schedule 5 of the Constitution and any other provision in the Constitution vesting exclusive jurisdiction in any court or tribunal established under the Constitution, but without prejudice to the provisions of S. 272 of the Constitution and any other law vesting jurisdiction in any court that derives existence under the Constitution, and notwithstanding the provision of S. 3(1) & (2) of the Penal Code Law Cap 104 Laws of Sokoto State (as applicable in Zamfara State), the Sharia Courts shall have jurisdiction and power to hear and determine:

- (a) civil proceedings in Islamic law in which the existence or extent of a legal right, power, duty, liability, privilege, interest, obligation or claim (due to an individual or individuals or the State) is in issue, or
- (b) criminal proceedings in Islamic law involving or relating to any offence, penalty, forfeiture, punishment or other liability in respect of an offence committed by any person against the State.<sup>21</sup>

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<sup>21</sup> Subject-matter jurisdiction: (a) *In general*. Subsections (a) and (b) of §(5)(i) lay down the subject-matter jurisdiction of Zamfara's Sharia Courts: all civil and criminal proceedings "in Islamic law"; §7(i) then goes on to make it clear that only Islamic law is to be applied in these courts. Bauchi, Jigawa, Katsina, and Yobe include essentially the same provisions. Borno, Gombe, Kano, Kebbi, Niger and Sokoto rather define subject-matter jurisdiction (with slight variations in phrasing) as all "civil and criminal matters where the parties are Muslim" (plus where non-Muslims consent to jurisdiction, see notes to §5(ii)); but they then go on to make it clear that only Islamic law (with possible exceptions in several States, see below) is to be applied, see note to §7. Within this second sub-group Sokoto uniquely goes on to list a number of specific civil and criminal subjects a Sharia Court's jurisdiction includes ("marriage under Islamic law (*al-nikah*); guardianship and maintenance (*al-kafala* and *nafaqa*)", etc.; "homicide (*qatlun nafi*), robbery (*al-muharaba*)" etc.); there is no need to reproduce these lists here as they are non-exclusive, and the list of crimes is overtaken by Sokoto's Sharia Penal Code in any case. Kaduna is the only State to approach the definition of subject-matter jurisdiction differently than the two main groups. Its §22 provides that the civil and criminal jurisdiction of the Sharia Courts shall be as prescribed in the First and Second Schedules to the law, respectively. The First Schedule then lists: land matters subject to the Land Use Act, and the following, all "under Islamic law": matrimonial causes or matters, causes or matters whether or not the value of the debt, demand including dowry or damages is liquidated, guardianship and custody of children, inheritance and grant of power to administer estate, and causes or matters including laws passed by House of Assembly. The Second Schedule (as amended) refers to Kaduna's Sharia Penal Code. (b) *Limitations according to grade of court*. Upper Sharia Courts in all States (except Sokoto, where they have appellate jurisdiction only) can try all

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- (c) The State House of Assembly shall enact laws to establish offences and their punishments, and the procedure for trials in criminal matters.<sup>22</sup>
- (ii) The Sharia Courts shall, subject to the provisions of this Law, have jurisdiction and power over the following persons:
  - (a) all persons professing the Islamic faith; and
  - (b) any other person(s) who do not profess the Islamic faith but who voluntarily consents to the exercise of the jurisdiction of the Sharia Courts under this Law.<sup>23</sup>
  - (c) In exercising jurisdiction over any person pursuant to the provision of S. 5(ii)(b) of this Law, the Sharia Court alkali shall ensure that the consent so given was voluntary and the person is legally competent and responsible to give it; and shall record the consent given in the proceedings.<sup>24</sup>

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matters. Lower grades are limited, in civil matters by amount in controversy and in criminal matters by types of crimes they can try and types of punishments they can impose. The limits in civil matters are set in the courts' warrants; those in criminal matters are spelled out in schedules to the Sharia Criminal Procedure Codes, except in Kaduna and Kano where limitations are in schedules to the Sharia Courts law (Kaduna: civil only; Kano: civil and criminal). Kebbi and Niger, in their §§9(3), lay down that "All capital offences shall be heard and determined by Upper Sharia Courts." (c) *Possible exceptions to the limitation of subject-matter jurisdiction to cases arising under Islamic law*: Borno, Kano and Sokoto all explicitly contemplate that additional subject-matter jurisdiction may be conferred on their Sharia Courts by other enactments; Sokoto has this proviso: "in so far as such legislation does not conflict with the principles of Sharia". Gombe (§24) provides that "The Governor may by order confer upon all or any Sharia Courts jurisdiction to enforce in respect of State matters...all or any of the provisions of any written law specified in such order". Whether Kaduna's "causes or matters under Islamic law including laws passed by House of Assembly" is another case of this type is an open question.

<sup>22</sup> Codification of criminal law and procedure. This directive of the Zamfara House of Assembly to itself is copied only in Bauchi, Jigawa and Katsina.

<sup>23</sup> Personal jurisdiction: The Sharia Courts of all States except Sokoto have this same personal jurisdiction: over "persons professing the Islamic faith", or "Muslims", plus any non-Muslims who voluntarily consent to jurisdiction. Borno, Kebbi, and Niger all go further to state explicitly that non-Muslims who do not consent to jurisdiction shall not be subject to it. Sokoto alone appears to rigidly limit jurisdiction to Muslims only, see its §§5(1), 8, and 9.

<sup>24</sup> Consenting to personal jurisdiction: Bauchi, Gombe, Jigawa, and Yobe contain this same provision, except that Yobe requires not only that the consent of the non-Muslim be recorded, but also that it be "witnessed by two male witnesses appearing on the record of the Court." Gombe, in addition, requires that a non-Muslim's consent be in writing. Borno, Kaduna, Kano, Kebbi, and Niger, without explicitly imposing the duties of §5(ii)(c) on the alkali, simply require that a non-Muslim's consent be in writing. Katsina requires only that the non-Muslim "voluntarily submit himself to the jurisdiction." Where the consent must be in writing, must the writing form part of the record of the proceedings? –apparently not in Kaduna, whose §28 provides that "Where a Sharia Court has jurisdiction...over the parties thereto it shall not be necessary: (a) for such court to state on the face of the record...that the court has jurisdiction...; or (b) for the jurisdiction of such court...to appear on or form part of the record of its proceedings..." Curiously, Yobe, which as indicated imposes such strict evidentiary requirements as to consent, also includes in a subsequent section the same provision as Kaduna's §28; this seems clearly to create an inconsistency. Gombe and Kaduna provide, separately from the provisions already noted, that "any person who institutes or prosecutes any cause or matter in a Sharia Court...shall in that cause or matter be subject to the jurisdiction of that Sharia Court and of any other Court exercising jurisdiction in that cause or matter"; in short, commencing the action constitutes consent to jurisdiction. Yobe states that if a non-Muslim voluntarily consents to the jurisdiction of a Sharia Court, he cannot "after judgement is delivered or appealing against the said judgement retract such consent."

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- (iii) Pursuant to the provisions of S. 3(ii) and (iii) of this Law, the area and extent of the jurisdiction of any Sharia Court shall be as specified in the warrant establishing such court.
  - (iv) Without prejudice to the provisions of subsection (i) of this section or any other written law or regulation, the Sharia Courts shall each have jurisdiction at first instance to hear and determine all civil and criminal causes or matters properly brought before the courts under this Law by any person, *provided* such causes or matters shall be founded in Islamic law.
6. (i) If at any stage of the proceedings and before final judgement in any cause or matter before a Sharia Court a person disputes that he is not subject to the jurisdiction of the Sharia Court, such person shall, upon application to the High Court of the State, have the proceedings transferred to the High Court which shall inquire into and determine the correctness of the allegation.
- (a) The applicant under subsection (i) of section 6 of this Law shall give notice of his application to the High Court which notice shall serve as stay of the proceedings before the Sharia Court pending the determination by the High Court.<sup>25</sup>

#### PART IV – LAW, PRACTICE AND PROCEDURE

7. (i) The applicable laws and rules of procedure for the hearing and determination of all civil and criminal proceedings before the Sharia Courts shall be as prescribed under Islamic law. For the avoidance of doubt, Islamic law comprises the following sources:
- (a) The Holy Qur'an;
  - (b) The Hadith and Sunnah of Prophet Muhammad (SAW);
  - (c) *Ijma*;
  - (d) *Qiyas*;
  - (e) *Masalah-mursala*
  - (f) *Istisban*;
  - (g) *Istisbab*;
  - (h) *Al-urf*;
  - (i) *Mashabul-sahabi*; and
  - (j) *Shar'u man kablana*.<sup>26</sup>

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<sup>25</sup> Contesting personal jurisdiction: Bauchi, Jigawa, and Yobe have this same provision; Kaduna does also, except that in Kaduna the application must be to the Sharia Court of Appeal, which then inquires into and determines the correctness of the allegation that the person is not subject to the jurisdiction of the Sharia Court. Gombe has this curious provision: "Where there is a conflict as regards jurisdiction between a Muslim and a non-Muslim the said conflict may be resolved by: (a) appointment of trustees on both sides to settle the matter out of court; and [or?] a court of resolution to be established by the Governor on the recommendation by the Judicial Service Commission to settle such matters" – as if non-Muslims who do not consent to Sharia Court jurisdiction might after all be somehow forced to go there after all.

<sup>26</sup> Law to be applied: (1) *Definitions like Zamfara's*. Bauchi, Gombe, Jigawa, Katsina, Sokoto, and Yobe have essentially this same provision, except that instead of "as prescribed under Islamic law" Katsina has "as prescribed under the Maliki School of Islamic Law", and Bauchi and Katsina both have shorter lists of sources, in effect subsuming Zamfara's sources (e)-(j) under one: *ijtihad*. (2) *Reference books*. Sokoto adds a list of "reference books to be used by the Sharia Courts" including, in the following

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- (ii) The Grand Kadi of the State shall, in consultation with the State Council of Ulama, have power to make rules and regulations for the practice and procedure of the Sharia Courts; *provided that* the practice and procedure shall be as prescribed by and in strict compliance with Islamic law.<sup>27</sup>
- (iii) Every person who is charged with a criminal offence before a Sharia Court shall be entitled to defend himself in person or by a legal practitioner of his choice.<sup>28</sup>

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order: *Al-Risala, Mukhtasar, Tuhfah, Al-Adawi, Al-Fawakih al-Dawani, Ibn Ashir, Bidayat al-Mujtahid, Al-Mudammanah, Muwattah Malik, Mayyara, Bahjab, Jawahir-al-Iklil, Dasuki, Al-Khirsbi, Bulgatil Salik, and Mawahibul Hallaq*. For further information about these works see the "Bibliography of Islamic Authorities" given at pp. 108-121 of Chapter 6 of this work. (3) *Other definitions of law to be applied*. Other definitions along different lines: Borno: "The law applicable...shall be the laws stipulated by the Holy Qur'an, Hadith, Islamic jurisprudence and interpretations adopted by the Maliki School of thought and Sharia legislation as may be enacted from time to time by the State House of Assembly." Kaduna: "A Sharia Court shall administer Islamic law of the Maliki School." Kano has no section on the law to be applied, but in its section on Practice and Procedure lays down that "The practice and procedure to be applied in criminal and civil matters...shall be in accordance with...(b) The principles of Islamic law and procedure;" perhaps this covers the matter. Kebbi and Niger state simply that "The applicable law in both civil and criminal proceedings in the Sharia Courts shall be the Sharia Law" – as defined in the Interpretation section, see above. (4) *Possible exceptions to the limitation of subject-matter jurisdiction to cases arising under Islamic law*: see discussion in note to §5(i) above. (5) *Ouster of the common law and equity*. Kebbi and Niger, in their §30, lay down that "Notwithstanding the provision of section 3 of the Applicable Laws (Miscellaneous Provisions) Edict, 1987 [Niger says "Notwithstanding the provisions of any law"], the Common Law and the doctrines of Equity shall not apply in the Sharia Courts." Sokoto achieves the same result by repealing the provision of section 3 of its Applicable Laws (Miscellaneous Provisions) Law "which allows for the continuous application of the Common Law and doctrines of Equity". (6) *Ouster of the repugnancy doctrine*. Borno, in its §27, provides that "The doctrine of repugnancy shall not apply in the courts established under this Law."

<sup>27</sup> **Rules of practice and procedure**: All States allow the Grand Kadi to make rules of practice and procedure for their Sharia Courts. This power relates primarily to civil matters, since all States have separate Criminal Procedure or Sharia Criminal Procedure Codes that govern criminal matters. Borno, Jigawa, Kaduna, Kano, and Sokoto allow the Grand Kadi to make rules on his own. Gombe, Katsina, Kebbi, Niger and Zamfara require consultation with the Council of Ulama (Gombe, Niger, Zamfara), the Sharia Commission (Katsina), or the Preaching Board (Kebbi). In Yobe the Governor must approve any rules made. In Bauchi rules made are explicitly "subject to any law made by the House of Assembly." Sokoto, uniquely, provides further that "The law of evidence to be applied shall be the Islamic Law of evidence of the Maliki School."

<sup>28</sup> **Right to counsel**: All States except Kaduna include essentially this same provision on right to counsel in criminal matters. Borno, Kano, and Sokoto explicitly extend the right also to civil matters; in such cases Sokoto and Kano say that a person may be represented "by a legal practitioner of his own choice or by any relation or nominee." Kaduna states only that "A Sharia Court may permit the appearance of: (a) the husband, wife, guardian, servant, master or any inmate of the household of any party who shall give satisfactory proof that he or she has authority in that behalf; or (b) a relative of a person administering the estate of a deceased person who was subject to the jurisdiction of a Sharia Court." These are perhaps moot points: the 1999 Constitution guarantees the right to counsel in criminal matters (§36(6)(c)), and the courts have held that under this same provision as contained in the 1979 Constitution, "even in civil trials or appeals, no Court or tribunal in this country has the power to exclude a legal practitioner from representing any person before it." *Karimatu Yakubu v. Alb. Yakubu Tafida Paiko*, unreported, Appeal No. CA/K/80s/85 of December 11, 1985 (Court of Appeal), *quoted in* Odinkalu 1992: 89 n. 21. *Cf.* Ojiako 1991: 239: "[T]he provisions of section 33(6)(c) and (d) of the 1979 Constitution that every person who is charged with a criminal offence shall be entitled to defend



- (iv) A Sharia Court shall sit in an open place where members of the public will have access to it.
- (v) Provision may be made by rules of court under this Law for the exclusion of the public from any Sharia Court in cases:
  - (a) in which juvenile persons under Sharia law are involved; or
  - (b) where the exclusion of members of the public is necessary and will serve the interest of justice.<sup>29</sup>

#### PART V – SHARIA COURT ALKALIS

8. (i) The appointment, dismissal and disciplinary control over Sharia Court alkalies and assessors referred to in this Law shall be exercised by the State Judicial Service Commission; *provided that* nothing in this section shall preclude the State Council of Ulama from screening, advising and recommending competent, qualified, fit and proper persons both in learning and in character to be appointed and/or disciplined as the case may be.<sup>30</sup>
- (ii) Subject to and without prejudice to the provision of subsection (i) of section 8 of this Law, a person shall not be qualified to hold office as a Sharia Court alkali under this Law unless, in the opinion of the State Council of Ulama, he has attended and has obtained a recognized qualification in Islamic law from an institution approved by the Council<sup>31</sup> and has held the qualification for a period of not less than five years; and/or in the opinion of the Council of Ulama he either has:
  - (a) considerable experience in the knowledge of Islamic law, or
  - (b) he is a distinguished scholar of Islamic law.<sup>32</sup>
- (iii) All Sharia Court alkalies so appointed shall be officers in the public service of the State.
- (iv) No alkali shall be liable for any act or omission attributable to or ordered by him to be done or omitted to be done in the discharge of his judicial duty and responsibilities whether or not within the limits of his jurisdiction, *provided that* at the time of doing or omitting to do such act or omission, he in good faith believed himself to have jurisdiction to so act, omit to act or order to be done or omitted to be done the act or omission in question.
- (v) A Sharia Court alkali shall not be competent to sit in a matter either in its original

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

<sup>29</sup> Right of the public to access to court. All States except Borno, Kebbi, Niger, and Sokoto include provisions similar to Zamfara’s §7(iv) and (v). Variations: Kano states that “ ‘Interest of justice’ in this section shall include matters of security to the State.” Katsina, on the other hand, limits exclusion of the public to cases where juveniles are involved. Kaduna spells out the rule and its exceptions at a length not necessary to reproduce here. Similar provisions are usually contained in the criminal procedure codes and the rules of civil procedure.

<sup>30</sup> Appointment, discipline, and dismissal of alkalies: The provisions of the various laws on this topic are given in full in subsection c(1) below.

<sup>31</sup> Recognised qualifications from approved institutions: see Parts 5 and 6 below, on “Data on qualifications of judges of the Sharia Courts and Sharia Courts of Appeal” and “Curriculums of sample certificate, diploma and degree programmes in which Sharia Court judges are educated”.

<sup>32</sup> Minimum qualifications of alkalies: The provisions of the various laws on this topic are given in full in subsection c(2) below.

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

- (vi) The Sharia Court alkalis shall be paid such remuneration and/or allowances as may be determined by the State House of Assembly.<sup>33</sup>

#### PART VI – STATE COUNCIL OF ULAMAS

9. (i) For the purposes of this Law there shall be established a Council to be known as the State Council of Ulamas by the State Governor.<sup>34</sup>
- (ii) The State Council of Ulamas shall be responsible for the screening, recommendation and advising on the qualification, competence and fitness of any person, both in character and learning, to be appointed as a Sharia Court alkali under this law.
- (iii) The State Council of Ulamas may, subject to section 8(i) of this Law, prescribe the guidelines, conditions and terms of appointment of a Sharia Court alkali under this Law to the appointing authority or body.<sup>35</sup>
10. (i) The Council shall comprise not less than 17 members appointed by the Governor and who shall be knowledgeable in Islamic law and jurisprudence and are distinguished scholars in the study of the Qur'an, Hadith and Sunnah of the Prophet, *ijma*, *qiyas* and other sources of Islamic law, and generally have considerable experience in these fields.
- (ii) The membership and composition of the Council and the conduct of its affairs shall be carried out in such a manner as to reflect the various competing Islamic sects or schools of thought in the State.
- (iii) At least not less than ten members of the State Council of Ulama may be appointed from within the State, and not more than five members of the Council shall be appointed from other States in the Federation; *provided that* nothing in this

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<sup>33</sup> Alkali pay: Only Bauchi, Kano, Sokoto and Yobe have provisions on alkali pay; the rest are silent on the matter. Bauchi says pay shall be determined by “the relevant authority”; Kano says “by the State Government”; Sokoto and Yobe say “by the Judicial Service Commission”. For information about how much the alkalis of the Sharia Courts and kadis of the Sharia Courts of Appeal are actually paid see Part 7 below.

<sup>34</sup> Creation of Councils of Ulama or related bodies: In addition to Zamfara, Bauchi, Borno, Gombe and Kano all established ulama bodies of some sort in their Sharia Courts laws: Bauchi: Sharia Consultative Council; Borno: both Sharia Implementation Committee and Council of Ulama; Gombe: Council of Ulama; Kano: Sharia Advisory Committee. Zamfara’s Council of Ulama was subsequently given its own separate statute. Other States also established similar bodies by separate statute: Bauchi, Katsina and Niger: Sharia Commissions; Jigawa: Council of Ulama; Yobe: Religious Affairs Board (subsequently converted to Ministry of Religious Affairs); Kebbi: Preaching Board (dating from 1991). Niger also has a Advisory Council of Ulama established by fiat of the Governor, and Sokoto has a Committee on Religious Affairs similarly established. Kaduna has a Bureau for Religious Affairs under the Governor. Only some of these bodies are given roles in the management of the Sharia Court systems, see below. All of them are fully documented in Chapter 8, on “Councils of Ulama and Related Bodies”.

<sup>35</sup> Roles of Councils of Ulama and related bodies in appointment, discipline and dismissal of alkali: see note to §8(i) and subsection c(1) below. Zamfara’s Council of Ulama seems to have the strongest hand of any in the process of appointing alkalis, not only having a virtual veto over appointments, see § 8(ii), but also, uniquely, being authorized to “prescribe the guidelines, conditions and terms of appointment,” § 9(iii).

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- section shall be construed to preclude the Governor from appointing a member or members of the Council from outside the Federation of Nigeria.
- (iv) The members of the State Council of Ulama may elect the leaders of the Council from amongst themselves; *provided that* such leader shall be approved by the Governor who will subsequently appoint him for a period of time.
  - (v) The State Council of Ulama shall make rules and regulations for the conduct of the affairs of the Council.
  - (vi) The State Council of Ulama may co-opt any person to attend its meeting and whose advice or opinion is required in its deliberation over any matter before it.
11. (i) The Council shall meet at least once in every month or as the occasion may require.
- (ii) The quorum of the Council on any meeting to discuss any matter shall be two thirds of all the members of the Council, or by simple majority where the members present and voting are not less than two-thirds of all the members of the Council.
- (iii) At the conclusion of its meetings, the Council shall make and submit its decisions, recommendations, opinions or advice to the appropriate body for implementation.
- (iv) The Governor shall appoint a person learned in Islamic law to be the Secretary to the Council.
12. The members of the Council shall be entitled to payment of such remuneration and/or allowances as sitting or monthly allowances as may from time to time be determined by the Governor.
13. The Council shall have power to carry out its functions which may include:
- (i) meeting periodically to discuss, interpret, explain or give informed opinion on issues, matters or questions that may be referred to it by any person, group of persons or authority or the Sharia Courts in respect of questions or issues in Islamic law and jurisprudence generally;<sup>36</sup>
  - (ii) to monitor and assess progress in the implementation of Islamic law in the State and where necessary, give corrective advice or measures to attain maximum result;
  - (iii) to monitor and give informed opinion on Islamic law on recent or new developments as a result of technological innovations, new trends in civilization, modern trade and commerce, contemporary social vices and diseases, etc.;
  - (iv) to advise, select and recommend fit, suitable and qualified persons to be appointed as Sharia Court alkalis;
  - (v) to advise, subject to the provisions of section 8(i) of this Law, and make recommendations for the discipline, suspension, termination, interdiction or dismissal of Sharia Court alkalis or any other to the appropriate authority,

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<sup>36</sup> Referral of questions to Councils of Ulama. Zamfara is unique in explicitly authorizing its Sharia Courts to refer “questions or issues in Islamic Law and jurisprudence” to the Council of Ulama for its opinion. This appears to include questions arising in pending cases. What the procedure would be for such referrals, or what effect the Council’s opinion might have, are unclear. Borno is the only other State that perhaps would allow a similar procedure, providing in its §25(4) that its Council of Ulama may “advise any authority or person on Islamic matters referred to it.”

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- body or person responsible for such disciplinary measures;<sup>37</sup>
- (vi) to make available literature in print, audio or video form on the provisions of Sharia law (theory and practice), to enlighten and educate the people of the State on the said principles and practice of Sharia law;
  - (vii) the Council may, subject to the provisions of this Law, have power to codify all the Islamic penal laws and their corresponding punishments, and the rules of criminal procedure and evidence as prescribed by the Qur'an, Hadith and Sunnah of the Prophet (SAW), *ijma*, *qiyas* and other sources of Islamic law (to ease reference);<sup>38</sup>
  - (viii) the Council may advise on the enactment of the rules of practice and procedure and evidence in civil and criminal proceedings in Sharia Courts as prescribed under Islamic law;<sup>39</sup>
  - (ix) to perform or carry out any other function that may be necessary or incidental to the attainment of any or all of the above duties and responsibilities, and to generally do anything that will enhance the development and administration of Sharia law in the State.<sup>40</sup>
14. In the discharge of its functions and responsibilities the Council shall be independent of any person or authority and shall not be subject to the direction or control of any other person or authority.

**PART VI [sic<sup>41</sup>]- STAFF OF SHARIA COURTS<sup>42</sup>**

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<sup>37</sup> Cf. note to §9(iii). Bauchi, Gombe, and Zamfara extend the power of their ulama bodies in the matter of discipline of court staff also to other personnel, including registrars (Gombe) and inspectors (Bauchi, Gombe, Zamfara).

<sup>38</sup> The Sharia Penal and Criminal Procedure Codes were of course enacted by the State Houses of Assembly; the power given here to Zamfara's Council of Ulama was only to make drafts. As to the Sharia Penal Codes, see Chapter 4, which includes at pp. 22-32 an essay by I.N. Sada on "The Making of the Zamfara and Kano State Sharia Penal Codes"; this is also available on SSRN. As to the Sharia Criminal Procedure Codes see Chapter 5, the introduction to which discusses the relations between the codes, other enacted laws, and uncodified Islamic rules of procedure and evidence; this too is available on SSRN under the title "Nigeria's Sharia Criminal Procedure Codes" by P. Ostien.

<sup>39</sup> See note to §7(ii).

<sup>40</sup> Other court-related functions of Councils of Ulama and related bodies. Borno gives its Sharia Implementation Committee, and Kano and Katsina give their Sharia Commissions, the power to advise on suitable training for Sharia Court personnel. In Katsina the Commission also advises on the numbers of Sharia Courts needed.

<sup>41</sup> In numbering the parts, the gazetted version repeats VI twice, and then continues from there.

<sup>42</sup> Staff of Sharia Courts: All States have Parts of their statutes on this subject except Borno, which says nothing on it, and Kebbi and Niger, both of which simply state in their §§26 that "(1) There shall be such staff of the Sharia Courts as may be required for the due discharge of functions of the Sharia Courts to be appointed by the Judicial Service Commission. (2) The staff of the Sharia Courts shall be public officers in the public service of the State and shall perform such duties in the execution of the powers and authorities of the Sharia Courts as may be assigned to them by rules of Court or by any special order of the Court." Sokoto's Part on staff lists eight categories: "(a) Chief *Mufti* (Chief Registrar), (b) *Mufti* (Registrar), (c) Court Clerk (*Katib*), (d) Estate Distributor (*Qasim*), (e) Valuer (*Muqawwim*), (f) Interpreter (*Tarjuman*), (g) Messenger (*Khadim*), and (h) Bailiff (*Am*)" without spelling out the duties of any; all are "public officers of the State to be appointed by the [JSC]." The other States' Parts on staff are like Zamfara's, with the variations indicated in the following notes. Note that Zamfara says nothing about who appoints staff of Sharia Courts. Besides Kebbi and Niger only two

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15. (i) All staff of the Sharia Courts shall be public officers in the public service of the State.
- (ii) A registrar or clerk<sup>43</sup> may be appointed to every Sharia Court and such registrar or clerk shall perform such duties in the execution of the powers and authorities of the court as may be assigned to him by rules of court or by any special order of the court and in particular he shall:
  - (a) prepare for issuance of all warrants and writs;<sup>44</sup>
  - (b) assist the Sharia Court alkali in recording proceedings of the Sharia Court which are not recorded by the Sharia Court alkali or other member;<sup>45</sup>
  - (c) register all orders and judgements of the Sharia Court;<sup>46</sup> and
  - (d) enter an account of all moneys received or paid by the Sharia Court.
16. A registrar or clerk may with the consent of the Sharia alkali delegate any of the duties assigned to him to any other official of the court subordinate to him.
17. (i) Bailiffs or messengers as may be required shall be appointed to every Sharia Court under the provisions of this Law.
- (ii) It shall be the duty of any person appointed under the provision of subsection (i):
  - (a) to effect the service and execution of all writs and other processes;
  - (b) to make all necessary returns in relation to such writs and processes;
  - (c) to carry out such other duties as may be prescribed by rules made under this Law;
  - (d) at all times when he is not engaged on duties which necessitate his absence from the Sharia Court to attend the Sharia Court and obey all the lawful directions of the court.
- (iii) A Sharia Court may authorise a police officer to perform all or any of the duties mentioned in subsection (ii) in so far as they relate to any proceedings before the court including execution of the court orders and judgements.
- (iv) Subject to the provisions of subsection (iii) no person other than a duly appointed bailiff or messenger shall carry out or purport or attempt to carry out any of the

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other States do so: Gombe, where the JSC appoints registrars (subject to screening by the Council of Ulama, see next note) and the Chief Registrar of the Sharia Court of Appeal appoints all others; and Sokoto, where all court staff are appointed by the JSC.

<sup>43</sup> Registrars: Yobe: “*mufti* or clerk”. Kano: “There shall be for each court a registrar *and* a clerk...” The Kano statute spells out their duties separately; the clerk is essentially the registrar’s assistant. Only Kaduna and Gombe lay down minimum qualifications for registrars: Kaduna says they must be “Muslim, sane and possess *adalah*.” Gombe says that “Candidate[s] for court registrars shall in the opinion of the Council [of Ulama] possess not less than a Diploma from an approved institution in addition to working experience of not less than 3 years.”

<sup>44</sup> Writs: Gombe, Jigawa, Kaduna, Kano and Yobe: “prepare *and* issue all warrants and writs”.

<sup>45</sup> Recording the proceedings: Yobe is the only other State that explicitly allows the registrar or clerk (Yobe says “*mufti* or clerk”) to assist the alkali with the task of recording the proceedings. Bauchi specifically excludes the registrar or clerk from doing so, making the recording of the proceedings exclusively the responsibility of the alkali; Gombe and Kaduna do the same in separate sections of their statutes, saying affirmatively that “A Sharia Court judge without any delegation shall take record of all proceedings in the court” (Gombe) and that “The alalkali shall...record all proceedings in English or vernacular under his hand” (Kaduna). The other States do not mention this matter at all; in fact in most States the registrars do assist with recording the proceedings.

<sup>46</sup> Jigawa: “prepare all orders and judgments of Sharia Courts.”

duties mentioned in subsection (ii).

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

#### **PART VII – TRANSFERS BY SHARIA COURTS**

19. A Sharia Court may order the transfer of any cause or matter either before trial or at any stage of the proceedings before judgement to any other Sharia Court of competent jurisdiction and such other Sharia Court may take any course with regard to the cause or matter transferred to it.<sup>47</sup>
20. An Upper Sharia Court may either on its motion or upon the application of either party to a cause or matter remit the matter to a Sharia Court of competent jurisdiction for its determination.
21. (i) Where any cause or matter is transferred to a Sharia Court under the provisions of this Part such court may take any course with regard to the cause or matter which it considers just and equitable under Islamic law.  
(ii) The powers conferred by this section include the power to increase a sentence, but not the power to try a person for an offence in respect of which he has already been acquitted.

#### **PART VIII – ANCILLARY POWERS OF SHARIA COURTS<sup>48</sup>**

22. Every person sentenced or committed by a Sharia Court to imprisonment shall be detained in a place established as a prison under any written law.
23. Every Sharia Court shall have power to summon before it for the purpose of giving evidence any person within the State.<sup>49</sup>
24. Any person present at a Sharia Court, whether a party or not to any cause or matter before the court, may be required by the court to give evidence as if he had been summoned to attend and give evidence.<sup>50</sup>

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<sup>47</sup> Transfers by Sharia Courts. All States except Borno and Sokoto contain provisions on transfers by Sharia Courts. Those of Bauchi, Gombe, Jigawa, and Katsina are the same as Zamfara's. Kano's are also the same except that Kano omits Zamfara's §21(ii). Kebbi, Niger, and Yobe all add a provision allowing a litigant in a lower Sharia Court to apply to an Upper one for transfer of the case to a different court on the ground that the case is beyond the jurisdiction of the court from which transfer is sought. Kaduna allows similar applications, evidently from both Upper and lower Sharia Courts, to the Sharia Court of Appeal, on the ground that the case "can for the purpose of convenience or otherwise be more appropriately or expeditiously dealt with by" a different court. Kaduna, Kebbi, Niger, and Yobe all also add, to their equivalents of Zamfara's §21(i), "...subject nevertheless to any directions which may be given by the court by which the order of transfer is made" – giving the transferring court some continuing control over the disposition of the litigation. See also notes to §§31(ii) and 36 below.

<sup>48</sup> Ancillary Powers of Sharia Courts. Most States have provisions broadly similar to Zamfara's, except that Borno, Kebbi, Niger, and Sokoto omit them entirely. Variations in the provisions of the other eight States are noted in the following.

<sup>49</sup> Bauchi, Jigawa, Kaduna, Katsina omit the qualification "within the State".

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25. If in any cause or matter a Sharia Court considers that the interests of justice require that the evidence of a person not within the area of jurisdiction of the Sharia Court should be obtained before any other court or any office thereof, the Sharia Court may make an application to a judge of the High Court requesting that the evidence of such person may be taken before any other court or office thereof in the place in which such person is and the judge, if in his discretion he thinks fit to do so, may make such order in respect of the taking of the evidence of such person. *Provided that* the evidence shall be recorded by strictly following the Islamic procedure.<sup>51</sup>
26. Any judgement or order given or made by a Sharia Court in a civil cause or matter may be enforced by seizure and sale of the property of the person against whom the judgement is entered therein, or by such other methods of enforcing judgements and orders as may be prescribed by Sharia Procedural Rules or rules made under this Law.<sup>52</sup>
27. Sharia Courts shall carry into execution any decrees or orders of:<sup>53</sup>
- (a) the Supreme Court;
  - (b) the Court of Appeal;
  - (c) the Federal High Court;
  - (d) any High Court;
  - (e) any Magistrate's Court;
  - (f) the Sharia Court of Appeal;
  - (g) any District Court;
  - (h) any Sharia Court established under or in pursuance of this Law;
  - (i) [any] tribunal established under the Constitution;
  - (j) such other courts as may be authorised by law to exercise jurisdiction on matters with respect to which the National Assembly may make laws; and
  - (k) such other courts as may be authorised by law to exercise jurisdiction at first instance or on appeal on matters with respect to which a House of Assembly may make laws.
28. (i) In any cause or matter before a Sharia Court in which, pending final determination thereof, it shall be shown to the satisfaction of the Sharia Court that any property which is in dispute in the cause or matter is in danger of being wasted, damaged,

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<sup>50</sup> Kano limits this to a power to "request any person present in Court to corroborate the evidence of any party as to what was said before the Court by that party."

<sup>51</sup> Gombe and Kaduna require this application to be made to a Kadi of the Sharia Court of Appeal. Bauchi allows application to a judge either of the High Court or the Sharia Court of Appeal, "to obtain leave of the court to serve that person with summons outside the jurisdiction." Kano says the Sharia Court "may make an endorsement to another court outside jurisdiction requesting that the evidence of such person be taken before such court." Kaduna omits Zamfara's proviso.

<sup>52</sup> Kano omits this subsection altogether.

<sup>53</sup> Kaduna and Kano omit this subsection altogether. Katsina adds at the end this proviso: "*Provided that* the decree or order is in consonance with the principles of Islamic law." Yobe adds at the end "...which may be lawfully directed to them and shall execute all warrants and serve all process issued by any such courts for execution or service, and shall generally give such assistance to any of the aforesaid courts as may be required." Sokoto shortens the entire provision to this: "A Sharia Court shall carry out the orders and directions of any superior court of record when required so to do and properly within its jurisdiction."

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- alienated or otherwise wrongfully dealt with by any party to the cause or matter, the Sharia Court may cause an injunction to issue to such party commanding him to refrain from doing the particular act complained of, or alternatively, may take and keep such property in custody pending the determination of such cause or matter.
- (ii) The Sharia Court may order for the sale of perishable goods which are subject to litigation before it and shall keep the proceeds pending the determination of the case.<sup>54</sup>
29. (i) A Sharia Court may, whenever it shall think it necessary so to do for the preservation, proper custody, or management of any property in dispute in a cause or matter, appoint any person as a receiver or manager to receive and take charge of the property and to deal with it in such manner as shall be directed by such Sharia Court.<sup>55</sup>
- (a) Any person or persons appointed as receiver or manager under subsection (i) shall be responsible to the Sharia Court for all things done as receiver or manager, and shall account for or pay to the Sharia Court all moneys received in respect of any property referred to in subsection (i).
- (b) A Sharia Court may make such order as it shall think fit in regard to the remuneration of any person appointed as receiver or manager and shall pay to the party entitled thereto all moneys in the custody of the Sharia Court due in respect of any property referred to in subsection (i).
30. In any cause or matter it shall be lawful for a Sharia Court, on the application of either party or on its own motion:<sup>56</sup>
- (a) to make such order as the court may think fit for the inspection by the Sharia Court in company of the parties or any witness, of any immovable or movable property the inspection of which may be material to the proper determination of the question in dispute; and
- (b) to give such direction as the court may think fit respecting such inspection.

**PART IX – CONTROL OF SHARIA COURTS<sup>57</sup>**

31. (i) All Sharia Courts shall be subject to the general supervision and control of the office of the Grand Kadi.<sup>58</sup>

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<sup>54</sup> Kaduna and Kano omit subsection (ii) of this section altogether.

<sup>55</sup> Jigawa calls the receiver or manager a *waly*. Kaduna calls him a *wakili*. Kano omits this section altogether.

<sup>56</sup> Kano omits this section altogether.

<sup>57</sup> Control of Sharia Courts: All States have provisions on this subject. Those of Bauchi, Gombe, Jigawa, Kaduna, and Yobe are put in separate Parts of their statutes which are substantially similar to Zamfara's; those of the other States differ in ways noted in the following notes.

<sup>58</sup> Supervision and control by Grand Kadi: All Sharia States agree in vesting supervision and control of the Sharia Courts in the Grand Kadi or in "the office of the Grand Kadi." Kaduna adds a proviso: "Provided that no such supervision or control shall interfere with the judicial independence of the Sharia Court concerned". Kaduna and Yobe both make clear that "The powers of the Grand Kadi under this section may be exercised by the Sharia Court of Appeal on its own motion or on the application of any party to a cause or matter in a Sharia Court." Katsina says the Grand Kadi's powers of supervision and control are to be exercised "...on the advice of the State Sharia Commission." Kano, Kebbi, and Niger



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- (ii) Without prejudice to the generality of subsection (i), if it shall appear to the office of the Grand Kadi that:
    - (a) it is necessary for the purpose of securing, as far as possible, a fair and impartial trial; or
    - (b) it is expedient in the interests of justice generally, that a particular cause or matter which is within the jurisdiction of a Sharia Court should not be tried by the said Sharia Court having jurisdiction to do so, the Grand Kadi may order that such cause or matter be transferred to another Sharia Court.<sup>59</sup>
32. There may be appointed for this Law the following grades of inspectors:<sup>60</sup>
- (i) Chief Inspector; Deputy Chief Inspector; Assistant Chief Inspector; [Principal Chief Inspector Grade I]; and Principal Chief Inspector Grade II.
  - (ii) All inspectors to be appointed under subsection (i) above must be learned in Islamic law;<sup>61</sup> *provided that* nothing in this provision shall preclude the Council of Ulama from screening the persons to be appointed inspectors to the appropriate body or authority before any appointment is made; *provided also* that

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do not contain express provisions granting their Grand Kadis this power, but it is implicit in their provisions for inspectors who supervise and control the Sharia Courts and who themselves answer to the Grand Kadi.

<sup>59</sup> Grand Kadi's power of transfer: Bauchi, Gombe, Jigawa, Kaduna, Katsina, and Yobe explicitly grant this power of transfer to the Grand Kadi; the other States do not, but see note to §34 on the powers of the inspectors who are subject to the Grand Kadi's control.

<sup>60</sup> Appointment of Inspectors: All States except Katsina and Sokoto provide for the appointment of inspectors of Sharia Courts, whose function is to assist the Grand Kadi in his duties of supervision and control of these courts. Zamfara and Gombe require the appointment only of Chief Inspectors, see §33(i), leaving appointment of other grades to the discretion presumably of the JSCs; the other eight States providing for inspectors say full slates in all grades *shall* be appointed. Katsina says nothing on the subject of inspectors, evidently leaving it to the Sharia Commission to assist the Grand Kadi in the supervision and control of the Sharia Courts, see note to §31 above. Instead of inspectors, Sokoto provides for the appointment of a "*wali* of Sharia Court" who assists the Grand Kadi with this work. In addition to inspectors Kano has a small number of *muftis* who also assist the Grand Kadi with the supervision and control of the Sharia Courts, see note to §4(i). Most States having inspectors state that they shall be appointed and if necessary disciplined by the JSC, in some cases on the advice of the Council of Ulama; only Borno and Zamfara omit this provision, although they no doubt follow it in practice. Sokoto's *wali* too is appointed by the JSC, on the advice of the Committee on Religious Affairs.

<sup>61</sup> Qualifications of Inspectors: Bauchi and Yobe agree with Zamfara in requiring only that inspectors be "learned in Islamic law." Jigawa adds to this that an inspector must "possess superior qualification to the Sharia Court alkali" he is to inspect. Gombe, Kebbi, and Niger make the qualification to be an inspector the same as that to be an alkali of the grade of court to be inspected. Kano's requirements are higher than any other State's: its inspectors must be "(a) of sound moral character; (b) a holder of a law/Sharia degree from recognized university or institution or a degree in Arabic and Islamic Studies; and (c) he has considerable experience in the practice of Islamic Law." Borno: "...he is of good moral character, knowledgeable in Islamic jurisprudence or has considerable experience in the Islamic law, practice and procedure." Kaduna: "...he is a male, Moslem, sane and of impeccable character." Sokoto's *wali* of Sharia Court must either be a retired judge of an Upper Area Court or of the Sharia Court of Appeal, or qualified to be a judge of one of these courts or of an Upper Sharia Court, or "he is recommended by the State Committee on Religious Affairs, and found fit by the State Judicial Service Commission."

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nothing in this section will preclude the Council from screening the persons to the appropriate authority for any disciplinary action to be taken against an inspector.<sup>62</sup>

33. (i) A Chief Inspector for Sharia Courts shall be appointed.  
(ii) Subject to the general or special directions of the Grand Kadi, [the Chief Inspector shall be responsible for] the organization, guidance and supervision of Sharia Courts [and] such other functions as may from time to time be conferred upon him by the Grand Kadi.  
(iii) [The Chief Inspector shall have] the powers of an inspector under this Law.<sup>63</sup>
34. An inspector may require a Sharia Court to submit a report to him in any case before that court.<sup>64</sup>
35. An inspector shall at all times have access to all Sharia Courts within the State and to the records and proceedings of such courts: *provided that* no inspector of a grade less than that of Principal Inspector shall have access to an Upper Sharia Court or to the records and proceedings of such court.
36. (i) A Chief Inspector shall have power at any stage of the proceedings before final judgement, either on his own motion or on the application of any party to [the] cause or matter to transfer the matter to another Sharia Court and to report such decision to the Grand Kadi.
  - (a) If the cause or matter be one which in his opinion ought for any reason to be transferred from a Sharia Court to a Magistrate's Court or High Court, he may report the case to the Grand Kadi;  
*Provided that* the Grand Kadi may also transfer a matter from the High Court or Magistrate's Court or District Court to the Sharia Court for its determination.
- (ii) The court to which the cause or matter is transferred shall be informed in writing of the reasons for making the order of transfer and may thereafter take any course with regard to the cause or matter which it considers just and equitable under Islamic law principles.
- (iii) Where a cause or matter is reported to the Grand Kadi under the provisions of paragraph (a) of subsection (i) the Grand Kadi shall direct in what mode and in what court the cause or matter shall be heard and determined.

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<sup>62</sup> Role of Councils of Ulama and related bodies in appointment and discipline of Inspectors: Only Zamfara, Gombe and Bauchi involve other bodies in the appointment and/or discipline of inspectors (in Gombe, like Zamfara, it is the Council of Ulama; in Bauchi it is the Sharia Commission). In Borno, Kano, Kebbi, and Niger these appointments, and presumably disciplinary action, are made by the JSC subject to or on the recommendation of the Grand Kadi. Jigawa, Kaduna, and Yobe involve no body except the JSC.

<sup>63</sup> This entire section is garbled in Zamfara's statute as gazetted. It is reconstructed here according to its evident intention and the parallel provisions of the Area Courts Law and the Sharia Courts Laws of other States.

<sup>64</sup> Powers of Inspectors. The powers of inspectors laid down in §§34-39 of Zamfara's law, and the limits of §40, are the same in all States with inspectors, with minor variations which we shall not note here; except that Borno and Kano spell none of this out, leaving it to their JSCs to specify the functions of their inspectors; and Kebbi and Niger go no farther than Zamfara's §35, leaving the rest to the directives of their Grand Kadis

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

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

**PART X -- APPEALS<sup>65</sup>**

41. (i) Appeals shall lie from all the decisions or orders of the lower Sharia Courts in civil or criminal proceedings to the Upper Sharia Court sitting in its appellate jurisdiction; *provided that* both the lower Sharia Courts and the Upper Sharia Court referred to in this section shall belong to the same territorial jurisdiction.<sup>66</sup>
- (ii) The Upper Sharia Court under this Law shall, after rehearing the whole case or not, reverse, vary or confirm the decision appealed against, or quash any proceedings brought before it and in either case where it considers it desirable, order a retrial of the case before the court of first instance or before another court of competent jurisdiction.<sup>67</sup>
42. Appeals shall lie from the decisions or orders of the Upper Sharia Court sitting in its original or appellate jurisdiction in all civil or criminal proceedings to the Sharia Court

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<sup>65</sup> Appeals: In all States the Sharia Court appellate systems are the same as in Zamfara: appeals in all classes of cases go from the lower to the Upper Sharia Courts sitting in their appellate jurisdiction (here, per §41); and appeals, again in all classes of cases, go from the Upper Sharia Courts, whether sitting in their original or their appellate jurisdiction, to the Sharia Court of Appeal (here, per §42). All States except Jigawa, Kaduna, and Sokoto also have a separate section (here, §43) explicitly conferring jurisdiction on the Sharia Court of Appeal to hear appeals from the inferior Sharia Courts in all matters, civil and criminal. Kaduna (and, perhaps redundantly, some other States) has done this by a separate statute; in Jigawa and Sokoto it is left to be implied from other provisions of their Sharia Courts laws. Other variations in the provisions related to appeals are noted in what follows.

<sup>66</sup> Where there are three grades of inferior Sharia Courts: Recall that Bauchi, Jigawa, and Zamfara each have two grades of courts below their Upper Sharia Courts. In Bauchi and Zamfara appeals from both these grades go straight to the Upper Sharia Courts. In Jigawa, appeals from the lowest grade go first to the intermediate grade, and then to the Upper Sharia Courts.

<sup>67</sup> Powers of appellate courts: This section of Zamfara's statute on its face applies only to its Upper Sharia Courts. Kaduna explicitly extends the powers conferred also to its Sharia Court of Appeal. Kaduna adds that "In the exercise of its powers under this section the [appellate court] may hear such additional evidence as it considers necessary for the just disposal of the case and the court shall record its reasons for exercising its power under this subsection." Bauchi, Jigawa, Katsina, and Yobe have the same provision as Zamfara. Gombe, Kebbi, and Niger go much farther, spelling out in lengthy separate sections (which we do not explore further here) the powers of "*any* court exercising appellate jurisdiction" in civil and criminal matters. Borno, Kano and Sokoto have no provisions relating to the powers of appellate courts. All States have essentially identical Sharia Court of Appeal laws, which give the Sharia Courts of Appeal "all the powers, authority and jurisdiction of every [inferior] court of which the judgment, order or decision is the subject of an appeal to the Court, [including] all the powers conferred upon [inferior] courts exercising appellate jurisdiction...."

of Appeal of the State.

43. The Sharia Court of Appeal shall have the jurisdiction and power to hear and determine all appeals from the decisions or orders of an Upper Sharia Court sitting in its original or appellate jurisdiction in all civil or criminal proceedings as provided for in this Law.
44. For the purposes of such appeals, a party aggrieved shall include the prosecutor in a criminal cause.
45. Subject to the provisions of this Law, no appeal shall lie from a Sharia Court at the instance of any person at whose request a case has been reported to a court under this Law.
46. Leave to appeal out of time to an appellate court may be given by such court upon such terms as such court shall deem just.<sup>68</sup>
47. Where an appeal lies from an order or decision of a Sharia Court the court to which the appeal is brought shall have power to inspect the records or books of such Sharia Court relative to the appeal.

#### PART XI – OFFENCES<sup>69</sup>

48. (i) Any officer of a Sharia Court who has a duty to perform under the provisions of subsection (ii) of section 17 and who wilfully or by neglect or omission loses the opportunity of performing such duty shall be guilty of an offence and shall be liable on imprisonment for period not exceeding twelve months or to a fine of two thousand naira or both such fine and imprisonment.
- (ii) In addition or as an alternative to any penalty imposed under the provisions of subsection (i) of this section a court may, if it thinks fit, order an officer convicted of an offence under that subsection to pay the whole or a part of any damages sustained by any person as a result of such offence, and the order shall be enforced as an order directing the payment of money.
- (iii) Any person not being a duly appointed bailiff or messenger or a police officer acting under the provisions of subsection (ii) of section 17 who shall carry out or purport or attempt to carry out any of the duties specified in subsection (ii) of

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<sup>68</sup> Time for appeal: Zamfara, Gombe, Jigawa, Kaduna, Katsina, and Yobe do not specify any time within which an appeal must be taken; this is left for rules of court. Bauchi, Borno, Kano, Kebbi, Niger, and Sokoto all give thirty days. All States except Gombe, Kano, and Sokoto contain a provision like Zamfara's allowing appeals out of time on such terms as the appellate court deems just. Bauchi's statute uniquely contains the following further interesting provision: "*Provided that* whenever a husband appeals against the dissolution of his marriage his appeal shall operate as stay to any marriage to be contracted by the wife in whose favour the dissolution is effected by the lower court, pending the final determination of the appeal if the appellant serves his respondent wife with his notice of appeal before the expiration of her waiting period (*'iddah*). *Provided also* that [if] after the expiration of 45 days the appellant fails to take any step to prosecute the appeal, the order of stay is deemed discharged."

<sup>69</sup> Offences related to official duties or functions: All States except Borno, Kebbi, Niger, and Sokoto have essentially these same provisions, except that Kano omits the second, on exercise of judicial power without authority. Borno, Kebbi, Niger, and Sokoto include nothing on this subject at all. Kaduna uniquely adds (§58) that "Subject to the provisions of section 60 [on rules of court] any proceedings arising under the provisions of this Part may be brought before a Sharia Court."

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section 17 shall be guilty of an offence and shall be liable on conviction to a fine not exceeding two thousand naira or to imprisonment for a period not exceeding twelve months or to both such fine and imprisonment. *Provided that* nothing in the provision of this Law shall be construed to preclude a member of the Joint Aid Monitoring Group duly appointed from performing the duties specified in section 17(ii) of this Law.

49. (i) Any person who shall exercise or attempt to exercise judicial powers within the area of the jurisdiction of a duly constituted Sharia Court, except in accordance with the provisions of any written law, or who shall sit as member of such court without due authority, shall be liable on conviction before a High Court, or the Upper Sharia Court to a fine not exceeding two thousand naira or to imprisonment for a period not exceeding twelve months or to both such fine and imprisonment.
- (ii) Nothing contained in this section shall be deemed to prohibit any person from adjudicating as an arbitrator upon any civil matter in dispute where the parties thereto have agreed to submit the dispute to his decision.
- (iii) No prosecution under this section shall be instituted without the consent in writing of the Attorney-General.

**PART XII – MISCELLANEOUS<sup>70</sup>**

50. No proceedings in a Sharia Court and no summons, warrant, process, order or decree issued or made thereby shall be varied or declared void upon appeal or revision solely by reason of any defect in procedure or want of form but every court or authority established under this Law and exercising powers of appeal or revision under this Law shall decide all matters according to substantial justice under the principles of Islamic law.<sup>71</sup>
51. Nothing in this Law shall be deemed to affect the powers or functions of the High Courts, Magistrate's Courts, District Courts in the exercise of their criminal and civil jurisdictions or any right or power in any officer or person to institute criminal or civil proceedings in those courts.<sup>72</sup>

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<sup>70</sup> Miscellaneous provisions in other States: Instead of or in addition to the two miscellaneous provisions in Zamfara's law, discussed in the following notes, other Sharia Courts laws have the following: (a) *Repealing Area Courts Laws*: Bauchi, Jigawa, Kano, Katsina, Kebbi, Niger. (b) *Saving cases pending in Area Courts*: Bauchi, Jigawa, Kaduna, Kano, Katsina. (c) *Saving jobs of Area Court judges and other staff*: Jigawa. (d) *Repealing "the provisions of the following Laws [Area Courts, Civil Liability, District Court, High Court] and any other legislation made by the State Assembly which define customary law [sic] to include Islamic or Muslim law"*: Jigawa, Kano, Kebbi, Niger, Sokoto (these repeals are actually aimed at definitions in the enumerated laws stating that " 'native law and custom' includes Moslem law"). (e) *Making the repugnancy doctrine inapplicable in Sharia Courts*: Borno. (f) *Making common law and doctrines of equity inapplicable in Sharia Courts*: Kebbi, Niger, Sokoto. (g) *Laying down that "Islamic and Muslim laws shall be deemed to be statutory laws in all existing laws in the State"*: Kano.

<sup>71</sup> Substantial justice not technicalities: Bauchi, Gombe, Jigawa, Kaduna, Katsina, and Yobe contain this same provision (with minor variations in wording), sometimes in their Parts on appeals, sometimes, as in Zamfara, in this Part on miscellaneous provisions. The other States omit this provision entirely.

<sup>72</sup> Jurisdiction of "English" courts, and rights of Muslims and non-Muslims to use them, not affected: Bauchi, Gombe, Jigawa, Katsina, and Yobe follow Zamfara in including this same section or its

### c. Collected provisions on two subjects

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

#### (1) Appointment, discipline and dismissal of alkalīs:

Federal Constitution	<p>Art. 197: (1) There shall be established for each State of the Federation the following bodies, namely— ... (c) State Judicial Service Commission. (2) The composition and powers of each body established by subsection (1) of this section are as set out in Part II of the Third Schedule to this Constitution.</p> <p>III<sup>d</sup> Sched. Part II(C): State Judicial Service Commission</p> <p>§5: A State Judicial Service Commission shall comprise the following members—(a) the Chief Judge of the State, who shall be the Chairman; (b) the Attorney-General of the State; (c) the Grand Kadi of the Sharia Court of Appeal of the State, if any; (d) the President of the Customary Court of Appeal of the State, if any; (e) two members, who are legal practitioners, and who have been qualified to practice as legal practitioners in Nigeria for not less than ten years; and (f) two other persons, not being legal practitioners, who in the opinion of the Governor are of unquestionable integrity.</p> <p>§6: The Commission shall have power to— ... (c) appoint, dismiss and exercise disciplinary control over...magistrates, judges and members of Area Courts and Customary Courts and all other members of the staff of the judicial service of the State not otherwise specified in this Constitution.</p>
Bauchi	<p>§8: (i) The appointment, dismissal and disciplinary control over Sharia Court judges and assessors referred to in this law shall be exercised by the Judicial</p>

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

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	<p>Service Commission [assessors are not mentioned again in the law].</p> <p><i>Sharia Commission Law 2001</i>: §8: The functions of the [Sharia] Commission shall include: ... (k) screen and nominate names of judges to be appointed by the Judicial Service Commission; (l) advise and or recommend to the State Judicial Service Commission for the discipline, suspension, termination, interdiction or dismissal of a Sharia Court judge or inspector of Sharia Court; ...</p>
Borno	<p>§4: (1) Subject to the provision of section 5 [on qualifications], the Judicial Service Commission of the State shall on the recommendation of the Grand Kadi of the State appoint judges and presiding judges of the Sharia and Upper Sharia Courts. <i>Provided that</i> the persons recommended shall be screened by the State Council of Ulama.</p> <p>§25: The Council [of Ulama] established under section 22 hereto shall have the following powers and functions: (1) screening of persons for appointment as Sharia and Upper Sharia Court judges; ...</p> <p><i>Sharia Administration of Justice (Amendment) Law 2001</i>: §2: Notwithstanding any provision in the Sharia Administration of Justice Law 2000 or any other law, the State Judicial Service Commission may, with the approval of the Governor, convert any number of Area Court or Upper Area Court judges to Sharia Court or Upper Sharia Court judges as it deemed necessary or expedient. §3: In exercising its powers under section 2 hereof, the Judicial Service Commission shall have regard for Sharia learning, experience, integrity and conduct.</p> <p>[Nothing on discipline, dismissal]</p>
Gombe	<p>§5: (1) Subject to the provisions of any written law, the Judicial Service Commission may dismiss, suspend or exercise disciplinary control over Sharia judges, inspectors and the registrars: (a) who shall appear to have abused his power or to be unworthy or incapable of exercising the same justly, or (b) for other sufficient reason....</p> <p>§6: The function of the Council [of Ulama] shall be to screen, advise and recommend to the Judicial Service Commission such competent, qualified, fit and proper persons to be appointed as judges, inspectors and the registrars found worthy in character and in learning whose discipline, dismissal and or termination shall be recommended by the said Council.</p>
Jigawa	<p>§11: (1) The appointment, promotion [and] disciplinary control over alkalis referred to in this law shall be exercised by the State Judicial Service Commission.</p> <p><i>Council of Ulama (Establishment) Law 2004</i>: §5: The Council shall perform the following functions: ... (c) advising the State Judicial Service Commission on suitable persons for appointment into the office of an alkali of the Sharia Court or any other similar office; ...</p>
Kaduna	<p>§9: The Judicial Service Commission may dismiss, suspend or exercise any disciplinary control over any alkali or member of a Sharia Court who is unable to discharge the functions of his office or appointment (whether arising from</p>



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	<p>infirmity of mind or body) or for misconduct or contravention of the code of conduct.</p> <p>[Nothing on appointment]</p>
Kano	Nil.
Katsina	<p>§12: The appointment, dismissal and disciplinary control over Sharia Court alkalies and members referred to in this Law shall be exercised by the State Judicial Service Commission. <i>Provided that</i> nothing in this section shall preclude the State Sharia Commission from advising on and recommending competent, qualified, fit and proper persons both in learning and character to be appointed.</p> <p><i>Sharia Commission Law</i>: §8: The Commission shall be responsible for: ... (c) advising the Judicial Service Commission on the training and employment of relevant personnel for the courts established under the Sharia Courts Law; ...</p>
Kebbi	<p>§6: Appointment of a person to the office of a judge of the Upper Sharia Court or Sharia Court, respectively, shall be made by the Judicial Service Commission on the recommendation of the Grand Kadi after due consultation with Preaching Board members.</p>
Niger	<p>§6: [as in Kebbi, except that the last clause is changed to read: “after due consultation with the Sharia Commission and the State Advisory Council of Ulama.”]</p> <p><i>Sharia Commission Law</i>: §8: The Commission shall be responsible for: ... (c) advising the Judicial Service Commission on the training and employment of relevant personnel for the courts established under the Sharia Courts Law; ...</p>
Sokoto	<p>§3: ... (3) The appointment of a person to the post of the president and members of the Upper Sharia Court and alkali of the Lower Sharia Court shall be made by the Judicial Service Commission.</p> <p>§13. There shall be appointed by the Judicial Service Commission on the recommendation of the Grand Kadi, Wali of Sharia Court.</p> <p>§14. The functions of Wali shall include:</p> <p>(a) advising the Grand Kadi on the appointment, performance, and discipline of the president and members of the Upper Sharia Court and alkali of the Lower Sharia Court;</p>
Yobe	<p>§8: (1) The appointment, dismissal and disciplinary control over Sharia Court alkalies referred to in this Law shall be exercised by the State Judicial Service Commission.</p>
Zamfara	<p>§8: (i) The appointment, dismissal and disciplinary control over Sharia Court alkalies and assessors referred to in this Law shall be exercised by the State Judicial Service Commission [assessors are not mentioned again in the law]. <i>Provided that</i> nothing in this section shall preclude the State Council of Ulama from screening, advising and recommending competent, qualified, fit and proper persons both in learning and in character to be appointed and/or</p>

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	disciplined as the case may be.  <i>Council of Ulama (Establishment) Law 2003</i> : §4: The Council shall be responsible for the screening, recommendation and advising the qualification, competence and fitness of any person, both in character and learning to be appointed as a Sharia Court alkali under the Sharia Court Establishment Law 1999.
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(2) Minimum qualifications of alkalis:

Bauchi	Nil.
Borno	<p>§2: In this Law unless the context otherwise requires: ... “qualification” means and includes a degree in Islamic law from a recognised university, a certificate from the Mohammed Goni College of Legal and Islamic Studies or a diploma or certificate in Sharia and Civil Law from a recognised institution.</p> <p>§5: (1) A person shall be qualified to hold the office of the president or judge of the Upper Sharia Court if: (i) he is a Moslem (ii) he is not less than 40 years of age (iii) he is a retired or serving Upper Area Court judge, and (iv) he has an impeccable record of Islamic piety; or (v) he has obtained qualification in Islamic law from recognised institution and is a legal practitioner in Nigeria and has been so qualified for a period of not less than seven years. (vi) if he is an indigene of Borno State. (2) A person shall be qualified for appointment as a judge of the Sharia Court if: (i) he is a Moslem (ii) he is not less than 35 years of age (iii) he is a retired or serving Area Court judge; (iv) he has an impeccable record of Islamic piety; or (v) he has obtained qualification in Islamic law from recognised institution and is a legal practitioner in Nigeria and has been so qualified for a period of not less than five years. (vi) if he is an indigene of Borno State.</p> <p><i>Sharia Administration of Justice (Amendment) Law 2001</i>: §2: Notwithstanding any provision in the Sharia Administration of Justice Law 2000 or any other law, the State Judicial Service Commission may, with the approval of the Governor, convert any number of Area Court or Upper Area Court judges to Sharia Court or Upper Sharia Court judges as it deemed necessary or expedient. §3: In exercising its powers under section 2 hereof, the Judicial Service Commission shall have regard for Sharia learning, experience, integrity and conduct.</p>
Gombe	<p>§7: As regards judges and inspectors the Council [of Ulama] shall ascertain that: (a) a candidate has obtained qualification in Islamic law from an institution approved by the Council; (b) he has held the qualification for a period of not less than five years; (c) he has considerable experience in the knowledge of Islamic law; and (d) he is a distinguished scholar in Islamic law. (e) He shall be of Muslim faith.</p>
Jigawa	<p>§11: ... (2) A person shall not be qualified to hold the office of a judge of the Sharia Court unless: (a) he is a Moslem; (b) he is not less than 30 years of age; and (c) he is a retired or serving Upper Area Court judge with impeccable record of Islamic piety; or (d) he is a legal practitioner in Nigeria and has been so qualified for a period of not less than five (5) years and has a recognised</p>

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

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

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

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

The drafters of the Sharia Courts laws drew heavily on the Area Courts edicts promulgated in the northern States in 1967-68 (No. 2 of 1967 in each of Kwara, North-Western, North-Central, and Kano States, No. 1 of 1968 in North-Eastern State, and No. 4 of 1968 in Benue-Plateau State, all as they then were), which remain in effect in all northern States (as variously amended) except in the Sharia States where they have been repealed. The tables in this section show the relationships between the Area Courts edicts and Zamfara State's Sharia Courts Law by correlating the sections (and in some cases subsections) of the two laws.

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

AC §	ZSC §	Remarks
PART I – PRELIMINARY		
1	1	title and commencement
2	2	interpretation
PART II – ESTABLISHMENT AND CONSTITUTION OF AREA COURTS		
3	3	establishment, warrants, etc
4(1)-(3)	4	constitution
4(4)	8(iii)	judges are in public service of State
5	-	assessors in ACs
6	8(i)	AC: discipline of members of ACs ZSC: appointment and discipline of alikis of SCs
7	-	sessions
8	-	revenue of ACs
9	8(iv)	indemnity of judges
PART III – STAFF OF AREA COURTS		
10	15	staff of the courts
11	16	delegation of duties
12	17	bailiffs and messengers
13	18	indemnity of staff
PART IV – JURISDICTION OF AREA COURTS		
14(1)	5(i), (iv)	subject matter jurisdiction
14(2)	-	submission to personal jurisdiction by institution of proceedings
15	5(ii)	personal jurisdiction
16	6	adjudication of disputes about personal jurisdiction
17	3(i)	grades of courts
18	5(iii)	jurisdiction as per warrant
19	-	place of trial
20	7(i)	AC: applicable law in var. classes of civil cases
21		ZSC: applicable laws and rules of procedure, all cases
22	7(i), 5(i)(c)	AC: applicable law in criminal cases ZSC: applicable laws and rules of procedure, all cases; House of Assembly to enact criminal laws
23	-	guardianship of children
24	-	jurisdiction of ACs to enforce written laws
25	-	Governor may give ACs powers and duties of other courts
PART V – PRACTICE AND PROCEDURE IN AREA COURTS		
26	7(i)	AC: practice and procedure generally ZSC: applicable laws and rules of procedure
27	5(ii)(c)	AC: jurisdiction of AC need not

AC §	ZSC §	Remarks
		be shown on record ZSC: consent of non-Muslim to jurisdiction must be recorded
28	7(iii)	AC: no legal practitioners in ACs, but other reps. may appear ZSC: criminal defendants entitled to rep. by legal practitioner
29	7(iv), (v)	proceedings to be in open court
PART VI – TRANSFERS BY AREA COURTS		
30	19	power of transfer
31	20	remission of cases to court of lower grade
32	-	power of AC of higher grade to order transfer from AC of lower grade
33	21	powers of court to which case transferred
PART VII – ANCILLARY POWERS OF AREA COURTS		
34	22	places of imprisonment
35	23	power to summon witnesses
36	24	person present may be required to give evidence
37	25	evidence of person not within jurisdiction
38	26	execution of judgments
39	27	execution of orders of other courts
40	28	power to grant interim injunction or impound property
41	29	power to appoint receiver or manager
42	30	inspection
PART VIII – CONTROL OF AREA COURTS		
43	31	general supervision of courts
44	33	AC: apptmt and functions of Commissioner for ACs ZSC: apptmt and functions of Chief Inspector for SCs
45	32	appointment of inspectors
46	34	reports of cases tried
47	35	inspector's right of access to courts
48	36	supervisory powers
49	37	effect of order of transfer
50	38	review by appeal court on report of inspector
51	39	special plea in bar not admissible on hearing
52	40	powers of inspector not exercisable where appeal instituted
PART IX – APPEALS		
53	41(i)	appeals from lower to Upper

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AC §	ZSC §	Remarks
		Area/Sharia Courts
54	42	appeals from Upper Area/Sharia Courts
55	44	definition of aggrieved party
56	45	restriction of right of appeal
57	46	appeals out of time
58	41(ii)	AC: powers of appellate courts in criminal (58) and civil (59) matters
59		ZSC: powers of Upper SCs when sitting in appellate capacity
60	47	power of appellate court to inspect records
61	50	substantial justice to be done without undue regard to technicalities
PART X [XI] -- OFFENCES		
62	49	adjudication without authority
63	48	neglect or misconduct by court

AC §	ZSC §	Remarks
		officers
64	-	jurisdiction to try offences
PART XI – RULES OF COURT		
65	7(ii)	power to make rules
PART XII -- MISCELLANEOUS		
66	-	existing Native Courts become Area Courts
67	-	savings of cases pending in Native Courts
68	-	savings of pending appeals
69	-	consequential amendments
70	-	repeal of Native Courts Law
71(1)	-	effect on subsidiary legislation under Native Courts Law
71(2)	51	effect on powers or functions of High and Magistrates' Courts
Sched. I	-	limits of civil and criminal jurisdiction by grade of court
Sched. II	-	list of laws consequentially amended

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

ZSC §	AC §	Remarks
Preamble	-	
PART I – PRELIMINARY		
1	1	title and commencement
2	2	interpretation
PART II – ESTABLISHMENT AND CONSTITUTION OF SHARIA COURTS		
3	3, 17	establishment; warrants; grades
4	4	constitution
PART III – JURISDICTION OF SHARIA COURTS		
5(i)(a), (b)	14(1)	subject matter jurisdiction
5(i)(c)	22	law to be applied in criminal cases
5(ii)	15	personal jurisdiction
5(iii)	18	jurisdiction as per warrant
5(iv)	14(1)	subject matter jurisdiction
6	16	adjudication of disputes about personal jurisdiction
PART IV – LAW, PRACTICE AND PROCEDURE		
7(i)	20-23, 26	ZSC: applicable law and rules of procedure, all cases AC: applicable law, various subjects
7(ii)	65	power to make rules
7(iii)	28	ZSC: criminal defendants entitled to rep. by legal practitioner AC: no legal practitioners in ACs, but other reps. may appear
7(iv), (v)	29	proceedings to be in open court

ZSC §	AC §	Remarks
PART V – SHARIA COURT ALKALIS		
8(i)	6	ZSC: appointment and discipline of alkalies of SCs AC: discipline of members of ACs
8(ii)	-	minimum qualifications
8(iii)	4(4)	judges are in public service of State
8(iv)	9	indemnity
8(v)	-	disqualification
8(vi)	-	remuneration
PART VI – STATE COUNCIL OF ULAMAS		
9(i)	-	establishment
9(ii), (iii)	-	role of council in appointment of alkalies
10	-	membership
11	-	meetings; quorum
12	-	remuneration
13	-	functions
14	-	independence of other authorities
PART VI – STAFF OF SHARIA COURTS		
15	10	staff of the courts
16	11	delegation of duties
17	12	bailiffs and messengers
18	13	indemnity
PART VII – TRANSFERS BY SHARIA COURTS		
19	30	power of transfer
20	31	remission of case to court of lower grade
21	33	powers of court to which case

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CHAPTER 7: THE SHARIA COURTS AND THEIR JUDGES

ZSC §	AC §	Remarks
		transferred
PART VIII – ANCILLARY POWERS OF SHARIA COURTS		
22	34	places of imprisonment
23	35	power to summon witnesses
24	36	person present may be required to give evidence
25	37	evidence of person not within jurisdiction
26	38	execution of judgments
27	39	execution of orders of other courts
28	40	power to grant interim injunction or impound property
29	41	power to appoint receiver or manager
30	42	inspection
PART IX – CONTROL OF SHARIA COURTS		
31	43	general supervision of courts
32	45	appointment of inspectors
33	44	ZSC: apptmt and functions of Chief Inspector for SCs AC: apptmt and functions of Commissioner for ACs
34	46	reports of cases tried
35	47	inspector's right of access to courts
36	48	supervisory powers
37	49	effect of order of transfer
38	50	review by appeal court on report of inspector
39	51	special plea in bar not admissible on hearing
40	52	powers of inspector not

ZSC §	AC §	Remarks
		exercisable where appeal instituted
PART X – APPEALS		
41(i)	53	appeals from lower to Upper Sharia/Area Courts
41(ii)	58, 59	ZSC: powers of Upper SCs when sitting in appellate capacity AC: powers of appellate courts in criminal (58), civil (59) matters
42	54	appeals from Upper Sharia/Area Courts
43	-	power of Sharia Court of Appeal to hear and determine appeals in civil and criminal matters
44	55	definition of aggrieved party
45	56	restriction on right of appeal
46	57	appeals out of time
47	60	power of appellate court to inspect records
PART XI – OFFENCES		
48	63	neglect or misconduct by court officers
49	62	adjudication without authority
PART XII – MISCELLANEOUS		
50	61	substantial justice to be done without undue regard to technicalities
51	71(2)	savings of powers and functions of other courts and of persons to institute actions in them

**e. Zamfara State Magistrate's Courts (Restriction of Powers) Law (2002)<sup>73</sup>**

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

- |                |  |
|----------------|--|
| Short title    | 1. This Law may be cited as the Magistrate's Courts (Restriction of Powers) Law, 2002 and shall come into operation on the 9 <sup>th</sup> day of August 2002.   |
| Interpretation | 2. In this Law unless the context otherwise requires:<br>"Courts" means Magistrate's Courts of whatever grade;<br>"Profess the Islamic faith" refers to where the accused or all the accused persons are Muslims or willingly subjects himself or themselves to the jurisdiction of Sharia law;<br>"State" means Zamfara State of Nigeria. |
| Restriction of | 3. Notwithstanding any provision [to the] contrary in the Penal Code   |

<sup>73</sup> Zamfara State of Nigeria Gazette 9<sup>th</sup> August, 2002 Law No. 7.



DOCUMENTARY MATERIALS: STATUTORY MATERIALS

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

**2.**

**Civil Procedure in the Sharia Courts**

**a. Draft rules of Islamic civil procedure for Sokoto State**

from the

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

Submitted to

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

16<sup>th</sup> December 1999

\* \* \*

**2.0 [Specific Recommendations]**

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

\* \* \*

**b. Sharia Courts (Civil Procedure ) Rules 1999**

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

\* \* \*

**Annex A**

**Sharia Courts (Civil Procedure ) Rules 1999**

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

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

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

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

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

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

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

party who refuses to take an oath and who is in possession of the subject matter in dispute (See Order 8 of these rules).

- (d) Where the judge finds that the subject matter in dispute is in the possession of both parties or that it is not in their possession [but] of someone else or that it is not in the possession of anybody, if the weight given to the parties' respective evidence in terms of credibility are on an equal basis or that none of the parties can produce any evidence, then, in these circumstance the judge will require each one of them to take an oath to support his claim. If all of them take an oath or all of them fail to take an oath the judge shall give judgment in their favour jointly and share out the subject matter in dispute between them. If, however, one of the parties declines to take an oath his right of claim is forfeited; the judge shall dismiss his claim and enter judgment in favour of the party who takes an oath.
11. If the claim brought before a judge is a suit against a deceased person's estate, or against someone who is away and his presence is impracticable, or is an infant or a lunatic, or the matter concerns an endowment right on the claimant, even if he can establish his claim by producing evidence without the judge directing the claimant to take an oath in addition to the usual practice. This is what is known as *yaminul kada'l*, the oath of payment. Once he takes an oath the judge shall give judgment in his favour. But if he declines to take this oath his claim is forfeited.
- A judgment debtor who is unable to settle his judgment debt whose poverty is proved by evidence, the judge will ask him to take an oath of *yaminul kada'l* before discharging him. The judgment debtor takes an oath that he has no means whatsoever to settle the debt and that whenever he acquires the means he will settle the judgment debt.
12. If the complaint brought before the judge is a matter concerning a claim based on strong suspicion made by the plaintiff against the defendant demanding some rights, the judge shall require the defendant to take an oath. If he takes an oath he is absolved. If he refuses to take an oath judgment shall be entered in the plaintiff's favour. The procedure of offering the oath to the plaintiff shall be exercised here. An example of such a case is where a suit is brought against a person entrusted with property like a shepherd or a businessman or a safe-keeper or storekeeper or a messenger, and the trustee reports that the entrusted property has got lost, but the owner of the property strongly suspected the trustees of negligence, mischief or misappropriation in causing loss. Such persons as are mentioned above are required to take what is called an oath of accusation before they are absolved. If such persons refuse to take oath the judge shall order them to settle the claim.
13. If a case becomes complicated or is a dispute between relatives or between important personalities which in the observation of the judge may result in disturbances of the peace or enmity the judge shall call upon the parties to submit to arbitration. If they agree to settle their matter out of court the judge will confirm such a settlement as agreed upon by the parties. None of the parties afterward can undo the settlement reached. Because it has already become a court judgment. But if

they are unable to settle the matter out of court the judge shall continue with the case between them in the normal way and in accordance with the provisions of Islamic Law.

14. If the claim brought before a judge is not a claim for money or money value; for example, a marriage suit (not relating to inheritance) or divorce or *khul'* or on cruelty to a wife or affinity (not relating to inheritance) or on manumission, in all these cases a claim cannot be substantiated unless male witnesses are produced. If the plaintiff fails to produce two male witnesses his claim cannot stand and the judge shall dismiss his claim. The defendant shall not be required to take an oath for this purpose.
15. In claims concerning matters in which males normally have no dealing or concern with, such as an allegation that a baby is born alive and that he cries after birth or an allegation that the period of menstruation has been observed or child delivery or a claim on conception or miscarriage or vaginal defect and the like, the evidence of two female witnesses are sufficient to establish the claim. And if the plaintiff produces two female witnesses who gave evidence on his behalf, judgment shall be given in his favour.

#### **Prescription (*huzi*)**

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

The rule governing prescription is detailed below:

- (2) As a general rule the period of prescription under Islamic law is ten years. However, there are exceptions to the above rule as follows:
  - (a) Parties who are related through affinity or who are in-laws through marriage or who have joint ownership over the land in dispute, the period of prescription is forty years.
  - (b) In a situation where the parties are made up of men and women, a woman's right will not be forfeited however long her male relatives have been in possession of the jointly owned land.
  - (c) Relatives who are not on good terms with one another, the limited period of prescription for each one of them is ten years. This is an exception to the rule in (1) above.

- (d) A party made up of a son and his father. The period of prescription will continue for a very long period of time up to sixty years (60).
- (3) If a party is silent over his right and does not ask for it until the period of prescription expires and later claims that the party in possession of the land is holding it on loan or for *iskani* (lodging) or for tenancy for life (*ta'amiri*) or on tenancy, his right of claim is not forfeited. The judge will investigate the claim and require proof from him by producing evidence. If he can establish his claim by adducing evidence the judge will enter judgment in his favour; but if he fails to establish the claim the judge shall require the defendant to take an oath in order to absolve himself.
- (4) If a party in possession of the land makes a counter-claim that he has bought it from the plaintiff or that he obtained it as a gift from the plaintiff the counter-claim shall be considered as proof provided that he takes an oath. The plaintiff shall not be allowed to call evidence in order to establish that the defendant has obtained possession through a loan or a tenancy once the period of prescription has expired. The expiration of the period of prescription is regarded as evidence for the party in possession of the land.
- (5) If the period of prescription has not expired as in the situations mentioned above, the plaintiff is still within time and can claim his rights. In these situations the judge will take cognisance of his claim and make an investigation accordingly. The judge shall give judgment either in favour or against the plaintiff depending on the provision of the rules of Islamic Law.
- (6) If the party in possession of the subject matter in dispute acquires it through confiscation or through the influence of any person in authority he can [sic: cannot] obtain ownership through prescription however long the period of possession. The other party is at liberty to seek his right from him at any time. If he can establish his claim with evidence the judge can give judgment in his favour. If on the other hand the other party cannot establish the claims, the party in possession shall be required to take an oath in order to absolve himself. Whoever knowingly buys a property or obtains it as a gift from someone whose property has been acquired through confiscation, the decision on his case shall be the same as that of confiscator. Likewise whoever knowing that the property in his possession, in fact belongs to the plaintiff at the time he acquires [it cannot (?)] later claim its ownership through prescription.
- (7) If a claim before the judge is in respect of animals or clothes the judge is to take into account the duration or the extent of the prescriptive period imposed by Islamic law on them. The prescriptive limitation between parties who are unrelated through blood in respect of used clothes is one year. If the clothes are unused the limitation period is two years. The limitation period is two years in respect of animals. The limitation period in respect of animals or durable goods like carpets in cases where the parties involved are related by blood shall be ten years.



- (8) If a person sells, or gives out as a present or on charity any property belonging to the claimant while the claimant is present and has the knowledge that the property is being interfered with but keeps silent, the judge will not entertain his claim should he afterwards sue on the property. The law will regard him as having slept on his right. Before if he claims for the proceeds of sale the judge shall take cognisance of his claim.
17. If a complaint brought before the judge concerns a dispute on pregnancy or child legitimacy, it is necessary for a judge to pay attention to the provision of the law about the minimum and maximum periods of pregnancy. The minimum period of gestation is six months while maximum period is five years. For the above reasons:
  - (i) If a husband divorces his wife and if she does not remarry after the completion of the *iddah* period, and then gives birth to a child within five years of the divorce and she attributes the child to her former husband who had earlier divorced her, the judge would declare the child to be that of the former husband.
  - (ii) If a husband divorces his wife and she completes her *iddah* period after which she contracts another marriage with a second husband who has co-habited with her and after which she gives birth to a child before the completion of six months from date of her second marriage, the court would declare the child to belong to the first husband. The marriage of the second husband shall be dissolved, as it would appear that it was during the pregnancy period that the second marriage was contracted. But if she delivers after six months or more, the child would be declared to be that of the second husband and the marriage valid.

### ***Li'an***

18. (1) If a person finds his wife in a state of pregnancy or finds that she has delivered a child or finds her in the act of committing adultery and intends to disown the pregnancy or the child or intends to make a case that she has committed adultery the law will allow him to dispute the ownership of the pregnancy or of the child or of defamation of adultery against his wife by taking an oath of *li'ani* and that the oath must be based on good reasons. A person can at any time be allowed to take an oath of *li'ani* in order to disown a child or pregnancy: whether the marriage is still in existence or not; whether the wife is passing her *iddah* or not, whether she is alive or dead and whether the child is alive or dead. But the law will not allow a husband to take the oath of *li'ani* in order to disown a pregnancy until he proves that after the wife's delivery he has had no sexual intercourse with her; or that after she has observed her menstruation period after which he finds her with pregnancy or a child he has had no sexual intercourse with her. However, if the second child is delivered within six months after the delivery of the first child the former shall be regarded as a twin of the latter, and the father could not disown him.
- (2) If a person marries a woman and she delivers a child within five months and twenty four days after consummation, the child could be disowned by the

husband automatically, without undergoing any *li'ani* oath. This is because the child has been born within the period of gestation.

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

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

concludes with the fifth oath saying, “Allah’s wrath be upon me if my husband is truthful”.

- (8) The husband shall be asked to take the oath first and if he declines to do so the pregnancy will conclusively be attributed to him, and he will be given eighty lashes as *hadd* punishment for imputation of adultery to his wife. If he takes the oath he will be absolved against defamation and the pregnancy of the child will not be attributed to him. The wife will then be liable for punishment for adultery if she refused to take an oath. After the husband has taken the oath the wife will be requested to take the oath. If she takes the oath she will be absolved from the allegation of committing adultery and her marriage with the husband will be declared dissolved and she will be prohibited from marrying him forever. If at the beginning the husband refuses to take the oath but later comes back and says he agrees to take it he will not in that circumstance be allowed to do so. But if it is the wife who refuses to take the oath but later agrees to take it she will be allowed to take it so as to clear herself from the allegation of committing adultery, as her first refusal is regarded as an admission made by her that she has committed adultery. This is because whoever makes a confession for committing adultery but later decides to withdraw his confession the law will allow him to do so.
19. (1) The mode of taking the oath for confirming a right or for refuting an allegation is given in the words *Billabil laʿji la ilaha illa huwa*. No matter of the faith swearer whether a Muslim, Christian, Jew or Pagan. If a civil claim amounts to a quarter of a dinar or three dirhams or an estimated value of one of them it is necessary that the person taking the oath must take it in the Juma’at Mosque and at the time of taking it he must be standing and facing *al-kibla*. If one of those conditions is missing the oath is incomplete and must be repeated[. The person] against whom the oath is to be taken can allow it to be taken outside the mosque (in court). While taking the oath Muslims hold the Holy Qur’an. Christians and Jews hold their Holy Books, Pagans hold the objects they respect as holy. Any swearer takes the oath in the place of worship which he regards as sacred. A Jew will have in addition to the above-mentioned mode of oath, the following words, “The Lord who revealed the Old Testament to the Prophet Moses ( may peace be upon him)”. The Christian will also add the following words: “The Lord who revealed the New Testament to Jesus (may peace be upon Him)”. If a civil claim does not amount to a quarter of a dinar or three dirhams, the judge can order a person to take the oath anywhere, without necessarily going to a place of worship.
- (2) If a judge orders one of the parties to take an oath, that party takes the oath in the presence of the other party against whom the oath is to be taken. If the party against whom the oath is to be taken refuses to be present at the place of taking the oath to witness its performance the judge shall appoint two male witnesses who will watch the oath taking and the witnesses will be required later to testify in open court that the oath was in fact taken. Any reason or ground forwarded by the other party to reject the oath later will not be accepted.

20. In Islamic law for the court to accept the evidence of a witness he must have the following qualifications: He must be of unquestionable integrity, Muslim, adult, sane not a slave and not one who is heretical of the accepted doctrines of Islam and he must be a conscious man.
21. If a cause of action brought before a judge is a matter regarding inheritance (distribution of estate), it is necessary for a judge to make a full inquiry [into] five matters before he starts to distribute the estate. These are:
  - (i) He must confirm the death of the deceased person whose estate is going to be distributed;
  - (ii) He must inquire into affinity of each of the legal heirs in relation to the deceased;
  - (iii) He must confirm the deceased's exclusive ownership over the estate;
  - (iv) He must inquire whether the deceased owes any debt; and
  - (v) He must inquire whether the deceased made any will.

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

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

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

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

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

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

# DOCUMENTARY MATERIALS: CIVIL PROCEDURE IN THE SHARIA COURTS

- Column 1: Area Courts: the Area Courts (Civil Procedure) Rules promulgated by the Chief Justice of the Northern Region in the early 1970s, for use in the Area Courts of all States carved out of the Region.<sup>74</sup>
- Column 2: Kano State Sharia Courts: the Sharia Courts (Civil Procedure) Rules, 2000 promulgated on 27<sup>th</sup> November 2000 by the Grand Kadi of Kano State.<sup>75</sup>
- Column 3: Zamfara State Sharia Courts: the Sharia Courts Civil Procedure Rules promulgated in 2003 by the Grand Kadi of Zamfara State.<sup>76</sup>
- Column 4: Jigawa State Sharia Courts: Jigawa State Sharia Courts Civil Procedure Rules promulgated in 2005 by the Grand Kadi of Jigawa State.<sup>77</sup>
- Column 5: Kaduna State Customary Courts: Kaduna State Customary Courts and Upper Customary Courts (Civil Procedure) Rules promulgated in 2002 by the President of the Customary Court of Appeal of Kaduna State.<sup>78</sup>

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

**Correlation Table**

1 AC §	2 KSC §	3 ZSC §	4 JSC §	5 KCC §	Section titles
ORDER 1: CITATION, APPLICATION AND INTERPRETATION					
1	1*	1*	1*	1	Title, commencement and application
2	2	2	2	2	Interpretation
ORDER 2: INSTITUTION OF CAUSES					
1	1	1	1	1	Refusal of cases where no jurisdiction
2	2	2	2	2	Commencement of a cause
3	3	3	3	3	Entries in case or cause book
4	4	4	4	4	Refusal of case which discloses no cause of action
5	5	5	5	5	Power of court to dispense with rules if all parties present
6	6	6	6	6	Issue of summons
7	7	7	7	7	Fees to be entered on summons
8	8	8	8	8	Complaint may be heard before return date of summons
9	9	9	9	9	Form of summons: Form 1
ORDER 3: SERVICE OF PROCESS					

<sup>74</sup> The rules were promulgated at different times in the different States. See e.g. Kwara State Legal Notice 3 of 1971, Benue-Plateau State Legal Notice 5 of 1972, Kano State Legal Notice 6 of 1974. In States where there still are Area Courts these rules still govern civil proceedings in them.

<sup>75</sup> Spiral-bound copy of rules signed by the Grand Kadi in the possession of the editor; it is not known whether these rules have been gazetted.

<sup>76</sup> As contained in a separate bound volume of the Zamfara State of Nigeria Gazette captioned “Law No. 25 of 2005”, undated.

<sup>77</sup> As contained in a separate bound volume of the Jigawa State of Nigeria Gazette captioned “14<sup>th</sup> February, 2006 – Rules”. The rules “shall be deemed to have come into operation on the 18<sup>th</sup> day of December, 2000”, the same day the Jigawa State Sharia Courts Law came into operation.

<sup>78</sup> As contained in a separate bound volume, captioned K.D.S.L.N. No. 5 of 2002, which also includes the Customary Court of Appeal (Appeal from Customary Courts and Upper Customary Courts) Rules, 2002.

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1 AC §	2 KSC §	3 ZSC §	4 JSC §	5 KCC §	Section titles
1	1	1	1	1	Service of process
2	2	2	2	2	Method of service
3	3	3	3	3	Service on local government authority
4	4	4	4	4	Service on government officer or corporation servant
5	5	5	5	5	Substituted service: Forms 2 and 3
6	6	6	6	6	Time of service
7	7	7	7	7	Proof of service
8	8	8	8	8	Proof of service before action proceeds
9	9	9	9	9	Record of service
10	10	10	10	10	Arrest of defendant: Form 4
ORDER 4: SERVICE AND EXECUTION OUT OF THE JURISDICTION OF AN AREA/SHARIA/CUSTOMARY COURT					
1	1	1	1	1	Process to be forwarded
2	2	2	2	2	Service of process
3	3	3	3	3	Enforcement of orders
4	4	4	4	4	Particulars to be stated in process
ORDER 5: INTERLOCUTORY APPLICATIONS					
1	1	1	1	1	Interlocutory applications
2	2	2	2	2	Form of motion
3	3	3	3	3	Notice of motion
4	4	4	4	4	Oral evidence may be heard
5	5	5	5	5	Orders not to be made if applicant absent
-	6*	-	-	-	Power of Upper Sharia Court to stay proceeding or transfer any cause or matter
6	7	6	6	6	Adjournment
ORDER 6: TRANSFERS					
1	1	1	1	1	Procedure on transfer under Area/Sharia/Customary Courts laws
2	.*	2	.*	.*	Procedure on transfer by Inspector
3	2	3	.*	2	Duty of Area/Sharia/Customary Court on transfer
4	3	4	2	3	Duty of Area/Sharia/Customary Court to which cause or matter transferred or returned
ORDER 7: CONSTITUTION OF THE COURT					
1	1	.*	1	1	Assessors
2	2*	.*	2*	2	When court is to sit with assessors
ORDER 8: POWER OF AREA/SHARIA/CUSTOMARY COURTS TO EXCLUDE MEMBERS OF THE PUBLIC					
1	1	1	1	1	Exclusion of public from court where administration of justice impracticable
2	2	2	2	2	Power of arrest and ejection
ORDER 9: NON-ATTENDANCE OF PARTIES AT HEARING OF CAUSE					
1	1	1	1	1	Non-appearance of both parties
2	2	2	2	2	Non-appearance of plaintiff
3	3	3	3	3	Non-appearance of defendant in civil cause
4	4	4	.*	4	Setting aside of judgment made in absence of party
5	5	5	5	5	Relisting of causes struck out
ORDER 10: PRESENTATION OF CASE TO DEFENDANT					
1	1	1	1	1	Reading of claim or complaint
2	2	2	2	2	Defendant's reply
ORDER 11: PROCEEDINGS AT THE HEARING SUBSEQUENT TO PRESENTATION					
Pt I	*	1	*	-	AC: heading is "Moslem cases"; rule is to continue hearing in accordance with Moslem practice and procedure Zamfara: Continuance of hearing in accordance with Islamic law of practice and procedure
Pt II		-			AC: heading is "Non-Moslem cases"
1	*	-	*	*	AC: Continuation of hearing in accordance with Part II Kaduna: unnumbered paragraph: continuation of hearing in accordance with following rules
2	*	2	*	1	Amendment of the claim
3	*	3	*	2	Plea to the jurisdiction etc.
4	*	4	*	3	Order on plea to the jurisdiction etc.

## DOCUMENTARY MATERIALS: CIVIL PROCEDURE IN THE SHARIA COURTS

1 AC §	2 KSC §	3 ZSC §	4 JSC §	5 KCC §	Section titles
5	*	5	*	4	Admission of liability
6	*	6	*	5	Case for plaintiff
7	*	7	*	-	No case to answer
8	*	8	*	6	Case for defendant
9	*	-	*	7	Native law and custom to prevail
10	*	9	*	8	The order
11	*	10	*	9	Adjournment
ORDER 12: REFERENCE TO ARBITRATION					
1	1	1	1	1	Order of reference
2	2	2	2	2	Powers of court on consideration of report or award
ORDER 13: EVIDENCE AND WITNESSES					
1	1	1	1	1	Witness summons: Form 5
2	2	2	2	2	Default of appearance of witness
3	3	3	3	3	Ordering witnesses out of court
4	4	4	4	4	Evidence before courts
5	5	5	5	5	Recording of evidence
6	6	6	6	6	Exhibits
ORDER 14: ORDERS					
1	1	1	1	1	Delivery and recording of order
2	2	2	2	2	Compliance with order and instalments
3	3	3	3	3	Formal order: Form 6
ORDER 15: INJUNCTIONS AND THEIR ENFORCEMENT					
1	1	1	1	1	Injunctions
2	2*	2*	2*	2*	Enforcement of injunctions
3	.*	3	3	3	Sum recoverable as a debt
ORDER 16: COSTS					
1	1	1	1	1	Definition of costs
2	2	2	2	2	Costs at discretion of court
3	3	3	3	3	Determination of costs
4	4	4	4	4	Detailed determination of costs
ORDER 17: EXECUTION GENERALLY					
1	1	1	1	1	Application for execution
2	2	2	2	2	Time of issue
3	3	3	3	3	Execution not to issue after two years without leave
4	4	4	4	4	Death of person against whom execution issued
5	5	5	5	5	Execution against joint property
ORDER 18: EXECUTION AGAINST THE PERSON					
1	*	1	*	1	Execution against the person
2	*	2	*	2	Summons to show cause: Form 7
3	*	3	*	3	Non-appearance to the summons: Form 8
4	*	4	*	4	Subsistence of judgment debtor between arrest and hearing
5	*	5	*	5	Discovery of property and production of books and documents
6	*	6	*	6	Detention or release during investigation
7	*	7	*	7	Interim order for protection of property
8	*	8	*	8	Orders at close of investigation
9	*	9	*	9	Matters relevant to inquiry
10	*	10	*	10	Committal of judgment debtor: Form 9
11	*	11	*	11	Limitation of terms of imprisonment
12	*	12	*	12*	Release of debtor
13	*	13	*	13	Imprisonment not satisfaction of debt
14	*	14	*	14	Saving [of powers of court under Order 15/[14]]
ORDER 19: EXECUTION AGAINST PROPERTY					
1	1	1	1	1	Execution against property
2	2	2	2	2	Attachment of movable property: Form 10
3	3	3	3	3	Seizure of movable property
4	4	4	4	4	Sale of attached movable property

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1 AC §	2 KSC §	3 ZSC §	4 JSC §	5 KCC §	Section titles
5	5	5	5	5	Delivery of movable property
6	6	6	6	6	Proceeds of sale
7	7*	7	7*	7	Attachment of immovable property: Form 11
8	8	8	8	8	Method of attachment of immovable property: Form 12
9	9	9	9	9	Sale of attached immovable property
10	10	10	10	10	Setting aside sale for irregularity
11	11	11	11	11	Effect of setting aside
12	12	12	12	12	Absolute sale
13	13	13	13	13	Certificate of purchase: Form 13
14	14	14	14	14	Proceeds of sale of immovable property
15	15	15	15	15	Costs of execution
ORDER 20: GARNISHEE PROCEEDINGS					
1	1	1	1	1	Debts may be garnisheed
2	2	2	2	2	Procedure on application for a garnishee order
3	3	3	3	3	Service of garnishee order: Form 14
4	4	4	4	4	Order for attachment to bind debt
5	5	5	5	5	Payment into court by garnishee
6	6	6	6	6	Execution against garnishee: Form 15
7	7	7	7	7	Trial of liability of garnishee
8	8	8	8	8	Lien or claim of third person on debt
9	9	9	9	9	Non-appearance of third person
10	10	10	10	10	Procedure upon appearance of claimants
11	11	11	11	11	Garnishee discharged
12	12	12	12	12	Alienation of immovable property and payment of debts void during attachment
13	13	13	13	13	Venue
14	14	14	14	14	Court may refuse order
ORDER 21: INTERPLEADER PROCEEDINGS					
1	1	1	1	1	Interpleader summons: Form 16
2	2	2	2	2	Proceedings at the hearing
3	3	3	3	3	Time for making claims
4	4	4	4	4	Evidence in support of claim
5	5	5	5	5	Procedure where damages are claimed
6	6	6	6	6	Payment into court where damages are claimed
7	7	7	7	7	Costs
ORDER 22: WRIT OF POSSESSION					
1	1	1	1	1	Writ of possession: Form 17
2	2	2	2	2	Claims to possession by a third party
3	3	3	3	3	Effect of order on a claim to possession
ORDER 23: ALTERATION OF PARTIES					
1	1	1	1	1	Order to carry on proceedings
2	2*	2	2*	2	Application to discharge order
3	3	3	3	3	Misjoinder and non-joinder
ORDER 24: FORMS					
1	1	1	1	1	Completion of forms
2	2	2	2	2	Record of issue of forms
3	3	3	3	3	Forms in First Schedule
ORDER 25: FEES					
1	1*	1*	1*	1*	Scale of fees: Second Schedule
2	2	2	2	2	Multiplicity of defendants not to increase fees
3	3	3	3	3	Exhibition of list of fees
4	4	4	4	4	Fees to be paid to clerk
5	5	5	5	5	Process not to issue unless fees first paid
6	6	6	6	6	Waiver, reduction or remission of fees
7	7	-*	7	7	No fees payable by local government authority or public officers
ORDER 26: ACCOUNTS					



DOCUMENTARY MATERIALS: CIVIL PROCEDURE IN THE SHARIA COURTS

1 AC §	2 KSC §	3 ZSC §	4 JSC §	5 KCC §	Section titles
1	1	1	1	1	Cash books and receipt books
2	2	2	2	2	Judge[Registrar] responsible for all moneys
3	3	3	3	3	Entries in cash books and issue of receipts
4	4	4	4	4	Area/Sharia/Customary Court to comply with financial instructions
5	5	5	5	5	Inspection and audit of cash books and receipt books
ORDER 27: RECORDS					
1	1	1	1	1	Records to be kept by Area/Sharia/Customary Court: Form 18
2	2	2	2	2	Recording of proceedings to be in English or the vernacular [or Hausa]
3	3	3	3	3	Maintenance and authentication of records
4	4	4	4	4	Copies of records
5	5	5	5	5	Preservation of records
ORDER 28: REVOCATION					
		*	*	*	[of earlier Native/Area Court rules]
FIRST SCHEDULE: FORMS					
1	*	1	1	1	Civil summons
2	*	2	2	2	Order for substituted service
3	*	3	3	3	Service endorsement of substituted service
4	*	4	4	4	Warrant for arrest of defendant who has disobeyed summons
5	*	5	5	5	Summons to witness
6	*	6	6	6	Formal order
7	*	7	7	7	Judgment debtor summons
8	*	8	8	8	Warrant to arrest a judgment debtor
9	*	9	9	9	Warrant of imprisonment on a judgment debtor
10	*	10	10	10	Writ of attachment and sale (moveable property)
11	*	11	11	11	Writ of attachment and sale (immoveable property)
12	*	12	12	12	Attachment notice
13	*	13	13	13	Certificate of purchase
14	*	14	14	14	Garnishee order
15	*	15	15	15	Execution against a garnishee
16	*	16	16	16	Interpleader summons
17	*	17	17	17	Writ of possession
18	*	18	18	18	Area/Sharia/Customary Court Civil Cause Book
19	*	19	19	19	Certificate of divorce
SECOND SCHEDULE: FEES					
Pt I					General:
1	*	1	1	*	Issue of summons, claim for recovery of money or goods
2	*	2	2	*	Issue of summons, other claims
3	*	3	3	*	Filing petition for divorce
4	*	4	4	*	Filing or making any other application
5	*	5	5	*	Claims over 5 years old: doubling of fees
6	*	6	6	*	Service fees
7	*	7	7	*	Issue of interpleader summons
8	*	8	8	*	Issue of judgment summons
9	*	9	9	*	Issue of order to attach property
10	*	10	10	*	Issue of order to imprison judgment debtor
11	*	11	11	*	Issue of garnishee order
12	*	12	12	*	Adjournment, by party applying therefor
13	*	13	13	*	Issue of summons for witness
14	*	14	14	*	For every copy of proceedings per 100 words or part thereof
15	*	15	15	*	For inspection of court records
16	*	17	16	*	For inspection of land
17	*	16	17	*	For certificate of divorce
Pt II					Estates:
1	*	1	1	*	Estate not exceeding [specified] value
2	*	2	*	*	Estate exceeding [specified] value
3	*	3	*	*	For ascertaining address or abode of next of kin etc.

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

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

*Order 1: Citation, application and interpretation*

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

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

*Order 5: Interlocutory applications*

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

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

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

*Order 6: Transfers*

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

*Order 7: Constitution of the court*

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

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

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

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

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

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

Jigawa, probably inadvertently, omits rule 4.

*Order 11: Proceedings at the hearing subsequent to presentation*

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

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

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

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

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

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

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

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

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

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

1. After the parties have appeared in the court the judge shall ask the plaintiff to make a statement of his claim. The statement shall be a definite, clear averment, which must clearly state the subject matter of the claim. If the subject matter is land or landed interest the statement of claim shall give a full address of the land and its boundaries.

2. When the plaintiff has made the statement of his claim the judge shall ask the defendant to reply to the plaintiff's statement of claim.
3. The defendant, in his reply, may admit liability in respect of the whole claim or part of the claim made by the plaintiff, or he may totally deny liability or remain silent [Jigawa omits the last three words].
4. Where the defendant admits liability then the judge shall enter judgment in favour of the plaintiff after administering the procedure of *i'izar*.
5. Where the defendant has denied the plaintiff's claim the judge shall examine the statement of claim before him and decide as to who among the parties shall be the *mudda'i* (the plaintiff) and who shall be *mudda'a alaihi* (the respondent) [Jigawa: "... decide as to who amongst the parties the burden of proof lies"]. The judge shall then call upon the *mudda'i* [Jigawa: "such person"] to bring evidence to prove his case.
6. If the *mudda'i* [Jigawa here and elsewhere: "plaintiff"] brings witnesses then the judge shall admit them into court one by one. If a witness testifies and his testimony agrees with the statement of claim the judge shall give the *mudda'a alaihi* [Jigawa here and elsewhere: "defendant"] the opportunity to cross-examine him. Where the defendant discredits the testimony of a witness such evidence shall be rejected. But if he fails either to impeach the witness or to rebut his testimony then the evidence shall be admitted. The alkali [sic: here and in some other places the Kano rules use this name for the judge] shall apply the same procedure to all witnesses; every witness of the *mudda'i* shall be cross-examined except that witness who testifies as to the credibility of another witness shall not be cross-examined. The *mudda'i* shall be allowed to examine his own witnesses and the judge [sic] shall allow every witness to defend himself in reply to the cross-examination.
7. Where the plaintiff *mudda'i* tenders any document in evidence, the judge shall admit [it in] evidence and may require the proof of authenticity of each document [Jigawa: "... the alkali shall record it and may require the proof of its authenticity"].
8. Where the alkali is satisfied that the *mudda'i* has proved his case the alkali shall enter judgment and make the appropriate order in favour of the *mudda'i* [Jigawa: "...the alkali shall apply the *i'izar* procedure before entering judgment for the plaintiff and make the appropriate order in his favour"].
9. In any case where the evidence of at least two witnesses is required and the plaintiff only produces one witness the court shall ask the plaintiff to take an oath to complement the evidence of the only witness. To complete the require[ment] of the law [Jigawa adds: "in which oath complements the evidence"].
10. Where the *mudda'i* fails to produce any witnesses or where he tells the court of his inability to bring any witness to testify in favour of his claim, the judge shall request the defendant to swear the oath of denial to free himself from liability [Jigawa adds: "in causes and at the stages the law permits so doing"]. If he swears he shall be adjudged free from liability, and the claim shall be dismissed. If he refuses to swear then the oath shall be returned to the *mudda'i* who shall be required to swear in support of his claim. If the *mudda'i* swears, judgment shall be entered in his

favour [Jigawa omits this sentence]. If he refuses to swear then his claim fails and it shall be dismissed.

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

12. Where the parties to an action are relatives of each other, or where they are important personalities, the judge may first request them to agree to arbitration or reconciliation rather than litigation. If they refuse to accept a reconciliation or arbitration the judge shall proceed to hear the matter in accordance with Islamic law.

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

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

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

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

#### *Order 15: Injunctions and their enforcement*

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

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

months; Zamfara: indefinite period; Jigawa: not exceeding 30 days; Kaduna: indefinite period.

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

*Order 18: Execution against the person*

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

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

1. Against a person of means.

Kano: Where execution is against a person with means he shall be ordered to pay the judgment debt there and then or attach his properties e.g. movable property. He may ask for time of payment within a period of time is two weeks, or he has to produce a surety. At the expiry of two weeks, where he does not pay then his property will be attached. The surety can discharge himself by bringing the judgment before debtor to court [sic].

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

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

3. Against a person with doubtful means.

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

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

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

*Order 19: Execution against property*

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

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

*Order 23: Alteration of parties*

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

*Order 25: Fees*

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

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

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

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

*Order 28: Revocation*

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

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

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consent of the parties otherwise such causes or matters shall be transferred to the appropriate courts for determination.

*First Schedule: Forms*

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

*Second Schedule: Fees*

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



3.

### Cases on the Sharia Courts and Sharia Courts of Appeal

a. *Mai Tangaram vs. Mai Taxi* (Borno State High Court, 2002)<sup>79</sup>

[Ed. note: Question decided: whether a State House of Assembly can constitutionally extend the subject-matter jurisdiction of the State's Sharia Court of Appeal, beyond questions of Islamic personal law only, to other civil and/or criminal matters as well. Holding: It cannot.]

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

Before Their Lordships:

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

This Friday, the 28<sup>th</sup> day of June, 2002

Between:

Garba Mai Tangaram ). . . . . Appellant

VS.

Abdullahi Mai Taxi ).....Respondent

## RULING

(Delivered by Kolo, C.J.)

Effective from 1<sup>st</sup> January, 2002 the existing Area Court judges and Upper Area Court judges were respectively converted Sharia Court judges and Upper Sharia Court judges. They were accordingly sworn in on 2<sup>nd</sup> January, 2002. The Appellate Registry of the High Court at the request of the litigants or their lawyers filed notice and grounds of appeal at the High Court challenging certain decisions of the Upper Sharia Court judges. Ordinarily one would have thought that appeals challenging the decisions of the Upper Sharia Court judges lie to the Sharia Court of Appeal but the lawyers' insistence in filing certain appeals at the High Court prompted this panel to look into the issue of jurisdiction. When this appeal, where the decision of the Upper Sharia Court No. 2, Maiduguri is being challenged, came up for hearing this panel thought it wise to invite the two counsel to address the court on the issue of jurisdiction at the onset before delving into the merit or demerit of the appeal. That was on 6<sup>th</sup> June, 2002. The two counsel sought and obtained adjournment to 7<sup>th</sup> June, 2002 to enable them to prepare their submissions.

First to address the court was the counsel for the appellant Mr. M.B. Usman. He referred us to the suit No. BUAC 11/CUS/148/2001 dated 3<sup>rd</sup> October, 2001 and the

<sup>79</sup> Apparently unreported. Photocopy of certified true copy of the ruling in the possession of the editor. No case number is given.

nature of the claim which was seeking an order to set aside the sale of a house. The suit was disposed of on 6<sup>th</sup> February, 2002 and the presiding judge being Alkali Lawan Gana Musa signed the judgment as Judge Upper Sharia Court No. 2, Maiduguri. The learned counsel for the appellant referred the court to the case of *Tumfafi v. Meroson* (1993) 1 N.W.L.R. (Part 269) 378 at 383 and submitted that it is the plaintiff's claim before the trial court that determines the jurisdiction of the court. He submitted that the claim of the plaintiff did not fall under section 277 of the 1999 Constitution which is in respect of the jurisdiction of the Sharia Court of Appeal.<sup>80</sup> He referred us to section 8(1), (2) and (3) of the Borno State Sharia Administration of Justice Law 2000<sup>81</sup> and submitted that subsection 3 does not add any jurisdiction in civil matters to the Sharia Court of Appeal rather it followed the provisions of section 277 of the 1999 Constitution. He, therefore, submitted that this court has jurisdiction to hear and dispose of this appeal.

Mr. A.A. Sani, the learned counsel for the respondent, on the other hand, submitted that this court has no jurisdiction and hence urged the court to strike out the appeal. He referred the court to section 6(1) and (2)<sup>82</sup> and section 8(3) of the Borno State Sharia Administration of Justice Law 2000 and submitted that by virtue of section 8(3) appeals from Upper Sharia Courts both in criminal and civil matters lie to the Sharia Court of Appeal in addition to the jurisdiction stated under section 277 of the 1999 Constitution.

Mr. A.M. Aji of Kanem Chambers who was present when the arguments were canvassed as a Friend of the Court wrote and submitted that it is wrong in law for the Borno State House of Assembly to enact a law which is in conflict with the provisions of the 1999 Constitution of the Federal Republic of Nigeria and that if any law is inconsistent with the provisions of the Constitution, the Constitution shall prevail and that other law shall to the extent of the inconsistency be void. Mr. Aji further submitted that by the combined effect of section 272<sup>83</sup> and section 277 of the 1999 Constitution, the Sharia Court of Appeal shall only exercise jurisdiction over matters involving questions of Islamic personal law while matters not involving Islamic personal law can only be entertained by the State High Court. He cited the case of *Efunwape Okulate & 4 others vs. Gbadamosi Awosanya & 2 others* (2000) 1 SCNQR 149 at 162 to 164 and (2000) 1 SCNJ 75 at 86 to 87. He submitted, therefore, that the State High Court has jurisdiction over appeals emanating from the Upper Sharia Court if it does not involve questions of Islamic personal law.

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<sup>80</sup> §277 is quoted in full later in the judgment.

<sup>81</sup> §8: "(1) Appeals in all matters from the decision of the Sharia Courts established under this law shall be filed within 30 days of the decision of the Upper Sharia Court. (2) The time allowed may be extended upon oral application or by motion on notice. (3) In addition to the powers conferred by Section 277 of the Constitution, the Sharia Court of Appeal shall have the jurisdiction and power to hear and determine appeals in criminal matters from the decisions of the Upper Sharia Courts."

<sup>82</sup> §6: "(1) The courts established under this Law shall have, in addition to any other jurisdiction conferred by other enactment, original jurisdiction in civil and criminal matters where the parties are Moslem. (2) In any civil or criminal matter before the courts where any of the parties or one of the accused is a non-Moslem, and such party or accused consents to jurisdiction, such consent shall be given to the court in writing."

<sup>83</sup> §272 is quoted in full later in the judgment.

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

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

In conclusion the Supreme Court held as follows:

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

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

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

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

Section 277 reads as follows:

- (1) The Sharia Court of Appeal of a State shall in addition to such other jurisdiction as may be conferred upon it by the law of the State, exercise such appellate and supervisory jurisdiction in civil proceedings involving questions

of Islamic personal law which the court is competent to decide in accordance with the provisions of subsection (2) of this section.

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

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

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

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

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

While we cannot question the power of the House of Assembly to enact a law and establish or convert the existing Area Courts and Upper Area Courts to Sharia Courts as per section 6(4)(a) of the 1999 Constitution (“nothing in the foregoing provisions of this section shall be construed as precluding the National Assembly or any House of Assembly from establishing courts other than those to which this section relates with subordinate jurisdiction to that of a High Court”), we would, however, in line with the

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

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

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

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

(sgd)

K.M. Kolo  
Chief Judge  
28/6/2002

(sgd)

A.G. Kwajaffa  
Judge  
28/6/2002

**b. *Maina vs. Wakil* (Court of Appeal, 2004)<sup>84</sup>**

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

IN THE COURT OF APPEAL  
HOLDEN AT JOS ON THURSDAY, THE 15<sup>TH</sup> DAY OF APRIL, 2004

Before their lordships:

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

Appeal No. CA/J/194S/2003

Between:

Zarami Maina ). . . . .Appellant

and

1. Ya Mairam Wakil

2. Wakil Fannami ). . . . .Respondents

**JUDGMENT**

(Delivered by Dalhatu Adamu, JCA)

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

On the above claim, the Sharia Court, Gubio (hereafter called “the trial court”) heard the parties and after confirming or finding that the 1<sup>st</sup> respondent only observed a two months *iddah* period before contracting the second marriage after leaving the appellant and her refusal to subscribe to an oath that the child in dispute actually belonged to the second (or new) husband, decided in its judgment (dated 7/1/2003) that the child belonged to the appellant (i.e. the 1<sup>st</sup> or old husband) who was consequently declared and vested with the paternity of the said child. The respondents who were aggrieved by the judgment of the trial court appealed against it at the Upper Sharia Court, Gubio (hereinafter called “the intermediate appellate court”). This court heard the parties on 23/1/03 and on hearing the evidence of the new husband by name Alhaji Ligali Kyaribe, in its judgment dated 27/1/03 reversed the judgment of the trial court and declared the child in question or dispute to the new husband. The appellant who was dissatisfied with the judgment of the intermediate appellate court lodged an appeal against it at the Sharia Court of Appeal of Borno State sitting at Maiduguri (hereinafter called “the lower court”). When the appeal came up for hearing on 26/5/03, the lower

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<sup>84</sup> Apparently unreported. Copy of the judgment, signed by three judges, in the possession of the editor.

court summarily disposed of the appeal by striking it out on the ground that it had no jurisdiction to hear appeals from courts that do not exist in law (see page 10 of the record of proceedings). It held that both the trial and the intermediate Sharia Courts were not in existence by law (as they were not established) and consequently the judges who were not given any authority or warrant to preside over such courts and hear cases had no required jurisdiction to hear and determine the case as they did. The appellant who was aggrieved with the lower court's decision appealed against it in this court.

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

GROUND OF APPEAL

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

PARTICULARS OF ERROR

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

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

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

It is my humble view that it is incredible for the learned Grand Kadi under whose supervision the new Sharia Courts were placed and who played a vital and promotional

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

Apart from denying the appellant his constitutional right to fair hearing the lower court also in its decision made an error amounting to substantial or gross miscarriage of justice in its decision of 26/5/03. Such a decision should not therefore be allowed to stand by this court as an appellate court but should be reversed. Consequently and in view of my above consideration I hereby allow the appellant's appeal under his single or lone ground of appeal. The decision of the lower court dated 26/5/03 is hereby set aside. It is hereby ordered that the case should be remitted to the lower court (the Sharia Court of Appeal of Borno State) for it to rehear the appeal before it from the Upper Sharia Court on its merit. Under the circumstances of the case I make no order as to costs.

(sgd)  
Dalhatu Adamu  
Justice, Court of Appeal

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

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

(sgd)  
Muntaka-Coomassie  
Justice, Court of Appeal

[Concurring opinion by Amiru Sanusi, JCA:]

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

The learned Kadis of the lower court i.e. Sharia Court of Appeal, Borno State *suo moto* raised the issue of constitutionality of the creation of the new courts namely the



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

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

(sgd)  
Amiru Sanusi  
Justice, Court of Appeal

**c. *Kuta vs. Galadima* (Niger State High Court, 2004)**

[Ed. note: Questions decided: (1) whether the Sharia Courts of Niger State had been properly established and existed in law; (2) whether the Niger State High Court had jurisdiction to hear appeals from the Sharia Courts; and (3) whether the Niger State House of Assembly could constitutionally extend the jurisdiction of the State's Sharia Court of Appeal, beyond questions of Islamic personal law only, to other civil and/or criminal matters decided in the Sharia Courts. Holdings: (1) the Sharia Courts were duly established; (2) the High Court has jurisdiction to hear appeals from the Sharia Courts; and (3) Sharia Court of Appeal jurisdiction cannot be extended beyond Islamic personal law.

The action was for declaration of title to land first filed in August 2002 in the Upper Sharia Court in Kuta, Niger State. Judgment was delivered in June 2003, in favour of the defendant Ahmadu Galadima.

The plaintiff, Haruna Ibrahim Kuta, appealed to the High Court of Niger State. Among his grounds of appeal was the claim that the Upper Sharia Court in which he had started the case in the first place, did not after all have jurisdiction to entertain it because the whole system of Sharia Courts in Niger State had never been properly established and did not exist in law.

When the appeal came before it, the High Court of Niger State also had a question about its own jurisdiction. “The provisions [of the Niger State Sharia Courts Law] particularly sections 12 and 14 [giving the Sharia Court of Appeal of Niger State ‘appellate and supervisory jurisdiction on Sharia Courts in [all] civil or criminal proceedings involving questions of Sharia law’, and directing appeals from the Upper Sharia Courts in all such matters to the Sharia Court of Appeal] have caused dilemma within the State legal community as to the jurisdiction of even the High Court to entertain appeals from the Sharia Courts.” Could the House of Assembly oust the jurisdiction of the High Court? Could it expand Sharia Court of Appeal jurisdiction beyond questions of Islamic personal law? Evidently in view of the importance of these questions, the High Court convened an extraordinarily large panel of seven judges to hear this particular appeal, and invited the Chairman of the Minna Branch of the Nigerian Bar Association, and the Attorney-General of Niger State, in addition to the lawyers for the parties, both to address the panel on the issues before it. The result was as indicated above.

The original plaintiff, Kuta, therefore lost his bid to quash the judgment against him by quashing the Upper Sharia Court that had rendered it; and Niger State lost its bid to send all appeals from its Upper Sharia Courts to its Sharia Court of Appeal.

Kuta appealed to the federal Court of Appeal the part of the High Court judgment that ran against him. But Niger State did not appeal the part of the judgment that ran against it. In its judgment dated 15<sup>th</sup> March 2006, the Court of Appeal affirmed that part of the judgment of the High Court that held that the Sharia Courts of Niger State were duly established and do exist in law. But the Court of Appeal did not address the questions whether Niger State’s Sharia Courts Law had ousted the jurisdiction of the High Court to entertain appeals from the Upper Sharia Courts, or whether the State could constitutionally extend the jurisdiction of its Sharia Court of Appeal beyond questions of Islamic personal law. The entirety of the High Court judgment therefore still stands: the first part because it was affirmed on appeal, the second and third parts because they were not appealed. As a consequence, the Sharia Courts of Niger State are still fully functional under the State’s Sharia Courts Law. But not all appeals from the Upper Sharia Courts go to the Sharia Court of Appeal, as §§12 and 14 of the Sharia Courts Law would have it. Only appeals from the Upper Sharia Courts in cases involving Islamic personal law go to the Sharia Court of Appeal. All others go to the High Court.

The 2006 judgment of the Court of Appeal in *Kuta vs. Galadima* is available online at <http://www.courtsofappeal.gov.ng/HARUNA%20IBRAHIM%20KUTA.pdf>. Because of its ready availability, and because it adds little to the judgment of the High Court of Niger State, it is not reproduced here.

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The 2004 judgment of the High Court of Niger State has also been published, in the *Law Report of Northern Nigeria 2004*, pp. 398-417. But this is less readily available than the decision of the Court of Appeal, especially to those outside of Nigeria. The High Court judgment also deals not only with the question whether Niger State's Sharia Courts were duly established (as in the case of the judgement of the Court of Appeal), but with the important constitutional question, affecting all Sharia States, about the extension of Sharia Court of Appeal jurisdiction beyond questions of Islamic personal law, and the effect of this on the jurisdiction of the State High Courts. For these reasons the judgment of the High Court of Niger State is reproduced here, somewhat edited to eliminate repetitiveness.]

HARUNA IBRAHIM KUTA VS. AHMADU GALADIMA

HIGH COURT, MINNA, NIGER STATE

(Fati Abubakar, Abubakar Abuja, Maria Zukogi, Tanko Usman, Ahmed Bima, Aliyu Mayaki, Amina Wambai, JJ)

12<sup>th</sup> August 2004 – App. No. NSHC/MN/6A/2003

Counsel representation:

Ibrahim Isiyaku Esq for the appellant  
H.O. Shuaibu Esq for the respondent  
Umaru Kawu Esq Learned Attorney-General, Niger State  
Adamu Usman Esq Chairman, Nigerian Bar Association, Minna Branch

**Fati Abubakar, J.**

This is an appeal against the decision of the Upper Area [sic: Sharia] Court Kuta delivered on the 4<sup>th</sup> day of June 2003. One of the grounds of appeal is to the effect that the trial court lacked jurisdiction to entertain the suit with particulars that:

- (i) the court does not, in law, exist; and
- (ii) the court is not properly constituted.

The complaints above, no doubt are attributable to the Niger State Sharia (Administration of Justice) Law 2001 which came into force on the 5<sup>th</sup> of November 2002. The provisions thereof particularly sections 12 and 14 have caused dilemma with the State legal community as to the jurisdiction of even the High Court to entertain appeals from the Sharia Courts. This panel's task is to determine and resolve this issue of jurisdiction.

Learned counsel to the appellant and respondent addressed this panel. On the invitation of the panel, the Chairman of the Nigerian Bar Association, Minna Branch and the Honourable Attorney-General of Niger State also addressed the panel.

[Appellant's counsel argued that although the State House of Assembly has the power under the Constitution to establish Sharia Courts, it did not actually do so in the Sharia (Administration of Justice) Law. What it did instead, in §4(1), was to improperly delegate the function of establishing the courts to the Grand Kadi. Section 4(1) provides that "For the purpose of administration of Sharia law in the State the Grand Kadi may

establish such Sharia Courts as he shall think fit.” Since only the House of Assembly, not the Grand Kadi, can establish courts, those purportedly established by the Grand Kadi cannot in law be considered to exist.]

Malam Adamu, the Chairman, Nigeria Bar Association Minna Branch, formulated two issues for determination in his address thus:

1. Whether in line with the provisions of the Niger State Sharia (Administration of Justice) Law 2001 there is in existence, currently, the Sharia and Upper Sharia Court system.
2. Whether the provisions of section 12 [sic: 14] of the Law which came into force on 5/11/2002 and provides that appeals shall lie from the decisions of Upper Sharia Courts in civil and criminal matters, to Sharia Court of Appeal, ousts the appellate jurisdiction of the High Court of Niger State to entertain such appeals, particularly having regard to the provisions of Land Use Act, High Court Law Cap. 53, Sharia Court of Appeal Law and 1999 Constitution.

On the first issue, learned Chairman agreed with and adopted Malam Ibrahim Isiyaku’s submissions, as to the non-existence of that court system in Niger State.... [The Chairman also argued that even if the Sharia Courts exist, all actions so far commenced in them are incompetent because the Grand Kadi has not made any rules regarding payment of fees: “fees that have been collected under the old [repealed] rules are illegal, these courts therefore lack jurisdiction to entertain any matter before them.”]

With respect to the second issue, Malam Adamu submitted that the provisions of sections 12 and 14 of the Sharia Law 2001 are in conflict with the provisions of 1999 Constitution. ... He referred also to section 277(2)(a)-(e) of the 1999 Constitution which he submitted is very clear as to the extent of the jurisdiction of the Sharia Court of Appeal which did not include criminal jurisdiction. ... He submitted that jurisdiction of Sharia Court of Appeal is limited to what is conferred on it by the Constitution.

It was his further submission that the jurisdiction of the High Court is contained in section 272 of the 1999 Constitution and subject only to section 251 of the 1999 Constitution thereof [on the jurisdiction of the Federal High Court]. The provisions of sections 12 and 14, 2001 Law, which purport to oust the jurisdiction of the High Court from hearing appeals from Upper Sharia Court is in conflict with section 272 of the 1999 Constitution and thus unconstitutional. Malam Adamu referred to section 62 of the High Court Laws Cap. 53 [and] section 10 of the Sharia Court of Appeal Law Cap. 122, which he said were not repealed or amended respectively. He referred further to the Sharia Court of Appeal (Amendment) Law 2000 which he said did not amend the position in the Sharia Court of Appeal Law Cap. 122. He submitted that in the face of combined contradictions of these various laws, the High Court is competent to hear appeals from the Sharia Courts. He urged the court in the circumstances to hold that the 2001 Law is in conflict with the aforementioned legislation more particularly the 1999 Constitution and declare it null and void.

The Honourable Attorney-General of Niger State, Malam Umaru Kawu in his address submitted...it was necessary...to examine the relationship between the High Court and Sharia Court of Appeal with particular reference to section 62 of the High Court Law...which [has] set out the appellate jurisdiction of the High Court since 1963.

He submitted that the issue for consideration is whether in view of sections 12 and 14 of the 2001 Law, that position has changed. He submitted that section 12 shows that the appellate jurisdiction of the Sharia Court of Appeal in relation to appeals from Lower or Upper Sharia Courts is purely on matters of Islamic law, otherwise it goes to the High Court. Section 14, he submitted, does not contain any exclusivity. It does not intend to oust the jurisdiction of the High Court. The intendment is found in section 3 of the 2001 Law which is to expand the scope of the jurisdiction of the court on issues between Muslims. He submitted that section 3 thereof did not intend to expand the jurisdiction of the Sharia Court of Appeal to include criminal matters, in other words, the Sharia Court system, comprising the Lower and Upper Sharia Courts, allows Muslims to litigate on issues of dispute.

Issues of Islamic personal law in case of appeal go to the Sharia Court of Appeal while other issues go to the High Court. In other words, the old order remained.... Learned Attorney-General submitted that by virtue of section 277(1) of 1999 Constitution, the Sharia Court of Appeal's jurisdiction remains as it is.

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Malam Kawu in reply to counsel's submission as relating to section 4(1) of the 2001 Law submitted that the submissions were misconceived as they overlook the provisions of section 2 thereof. These courts he submitted were deemed established and the Grand Kadi has the powers to do so. Learned counsel submitted that the contention of Malam Adamu that Sharia Court rules had not been made overlooks the provision of section 11(a) of the 2001 Law ["The practice and procedure to be applied by the Sharia Courts shall be: (a) the principles and practice of Islamic law and procedure"], which gives flexibility. He urged the court, on the whole, to hold that the appellate jurisdiction of the High Court is preserved.

The issues for determination as set out by Malam Adamu Usman capture by and large the essence of the matter. We shall adopt and deal with them in like manner. With respect to the first issue, the relevant legislations we find are sections 2, 4, 5, 9, 29 and 31 of the Sharia Law 2001, sections 4, 5 and 6(4)(a) and (b) of the 1999 Constitution, section 3 of the Niger State High Court Law and sections 6 and 7 of the Criminal Procedure Code. There is common ground on the impact of sections 6(4)(a) and (b) of the 1999 Constitution [on the powers of the National Assembly and Houses of Assembly to create and abolish certain courts]. In this matter I shall therefore reproduce all these other aforementioned legislations hereunder for ease of reference.

**The Niger State Sharia (Administration of Justice) Law 2001:**

2. ... "Sharia Court" means a court established under or in pursuance of this law or deemed to have been so established and shall include an Upper Sharia Court.  
 "Sharia Court of Appeal" means the court established for the State under section 275 of the Constitution of the Federal Republic of Nigeria 1999.
4. (1) For the purpose of administration of Sharia Law in the State, the Grand Kadi may establish such Sharia Courts as he shall think fit.
- (2) Every Sharia Court shall exercise the jurisdiction conferred upon it by or under this Law within such area and to such extent as may be specified in its warrant.

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- (3) The Grand Kadi shall assign to each Sharia Court established in pursuance of this section such name as he may think fit.
- (4) All warrants shall be operative and of effect from the date specified therein.
- (5) The Grand Kadi may at any time suspend, cancel or vary the warrant establishing or specifying the area within which the powers of a Sharia Court may be exercised, provided that no warrant shall confer jurisdiction of a Sharia Court beyond the Local Government where the Sharia Court is located.
- 5. (1) The Upper Sharia Court shall, while sitting as a first instance court, be constituted by a single judge and while sitting as an appellate court be constituted by a presiding judge and one or two members who shall be judges of the Upper Sharia Court to be designated by the Grand Kadi.
- (2) The Sharia Court shall be constituted by a single judge.
- 9. (1) The Sharia Courts shall be competent to hear and determine civil and criminal causes and matters where all the parties are Muslims.
- (2) Where only one or more of the parties to a proceeding in a civil or criminal matter are Muslims, the Sharia Court or Upper Sharia Court shall not be competent to hear and determine the cause or matter unless the non-Muslim submits in writing to the jurisdiction of the Sharia Court or Upper Sharia Court, as the case may be.
  - (a) ...
  - (b) ...
  - (c) ...
- 29. The Grand Kadi may make rules for any or all of the following after due consultation with Sharia Commission and the State Advisory Council of Ulama:
  - (a) prescribing and providing for:
    - (i) the maximum fees which may be charged:
      - (a) in Sharia Courts of first instance and appeal;
      - (b) for appeals from such Sharia Courts;
    - (ii) the reduction of such maximum fees;
    - (iii) the remission in whole or in part of any maximum fees;
  - (b) the practice and procedure of the Sharia Courts in their original jurisdiction, on review and on appeal; and
  - (c) generally for the carrying into effect the provisions of this Law.
- 31. (1) The Area Court Law 1968 is hereby repealed.
- (2) The provisions in the following laws or any other law in force in the State which defines customary law to include Islamic law or Muslim law are hereby repealed:
  - (a) Civil Liability (Miscellaneous Provisions) (Cap. 23);
  - (b) District Courts Law (Cap. 37);
  - (c) High Court Law (Cap. 53).

**1999 Constitution:**

[Here are reproduced article 4(1), (2), (6) and (7) (on the legislative powers of the National Assembly and of the States Houses of Assembly) and article 5(1) and (2) (on the executive powers of the federation and of the States).]

**High Court Law (Cap. 53 Laws of Niger State of Nigeria:**

- 3. (1) There shall be established a High Court of Justice for the State.

(2) The name of such court shall be High Court of Justice Niger State.

**Criminal Procedure Code (Cap. 35):**

6. No function shall be deemed to be conferred by this Law upon any member of the Nigerian Police Force or any commissioned officer of the Armed Forces of the Federation unless and until the President shall have given his consent to the conferring of such function.
7. The powers of the Attorney-General under this Law may be exercised by him in person or through members of his staff acting under and in accordance with his general or special instruction.

The strong contention among learned counsel is to the effect that the provisions of section 4(1) of the Sharia Law 2001 is an abdication of the constitutional lawmaking powers or functions of the legislature by delegating same to the Grand Kadi which power [i.e. of delegation] it did not have. From a cursory examination of the provisions of sections 4 and 5 of the 1999 Constitution, the powers of delegation which are clearly spelt out in section 5 thereof [on executive powers] are indeed absent in section 4 thereof [on legislative powers]. Similarly, sections 6 and 7 of the Criminal Procedure Code are clear in that regard. Indeed the combined effect of section 6(4)(a) and (b) of the 1999 Constitution and section 3 High Court Law show that the power to establish courts are vested in the legislature. The common denominator in these legislations is the word “establish”.

“Establish” is defined in Black’s Law Dictionary 6<sup>th</sup> edition at page 546 thus:

This word occurs frequently in the Constitution of the United States, and it is used in different meanings:

- (1) to settle firmly, to fix unalterably, as to establish justice, which is the avowed object of the Constitution;
- (2) to make or form;
- (3) to found, to regulate...
- (4) to found, recognize, confirm or admit...to settle, make or fix firmly, place on a permanent footing; found, create, prove, convince.

Now in the Sharia Law 2001, the clear and unambiguous provision that characterised section 3 of the High Court Law...is absent. Rather, on a reading of section 4(1) of the Sharia Law, on the face of it, the powers of establishing Sharia Courts in the State would appear to have been vested in the Grand Kadi. The question that arises is whether this constitutes delegation of legislative powers of the State House of Assembly to the Grand Kadi. A better question is what is the intendment of the law in this instance. . . . The object of all interpretation of a statute is to discover the intention of parliament but such intention must be deduced from the language used... [There follows here a discussion of the rules of statutory construction.]

The case of *Matari vs. Dangaladima* [(1993) 2 SCN] page 122] dealt *inter alia* with the interpretation of the provisions of section 3(1) of the Area Courts Edict 1967 which was also applicable to Niger State. Indeed, from a cursory examination, the Sharia Law 2001 was patterned on the provisions of the Area Court Edict 1967. Section 3(1) thereof is

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similar in all material [respects] to the provisions of section 4(1) of the Sharia Law 2001. I set section 3 of the Area Court Edict down hereunder:

4. (1) By warrant under his hand, the Chief Judge may establish such Area Courts as he shall think fit.
- (2) Every Area Court shall exercise the jurisdiction conferred upon it by or under this Law within such area and to such extent as may be specified in its warrant.
- (3) The Chief Judge shall assign to each Area Court established in pursuance of this section such name as he may think fit.
- (4) All warrants shall be operative and of effect from the date specified therein.
- (5) ...
- (6) ...

After a review of the relevant provisions of the Area Courts Edict, the learned Justice Karibi-Whyte JSC as he then was said at page 136:

The Chief Judge is only empowered to establish Area Courts, section 3(1). The jurisdiction of such Area Courts is prescribed by the Edict – see section 18 and 19. The Chief Judge may only specify the area and extent of the jurisdiction – see section 3(2). It seems to me, what is intended here is jurisdiction as to territory....

Now on a close examination of the Sharia Law 2001, sections 5, 6 and 7 spell out the constitution of the Sharia Courts [and] the appointment to and qualification of persons to be appointed judges of the Sharia and Upper Sharia Courts. Section 9 thereof spells out the jurisdiction of these courts and section 29 spells out the powers of the Grand Kadi. As rightly submitted by Malam Kawu, the court is a creation of the statute which enumerates its jurisdiction. In the circumstance, from the combined effect of the aforesaid legislations and in the light of the decision in *Matari vs. Dangaladima* (supra) a reading of section 4(1) of the Sharia Law 2001 is to the effect that, although the Grand Kadi is empowered to establish such Sharia Courts as he shall think fit, such powers must be read within the context of sections 4(2), (3), (4) and (5) and 9 therein. In other words, the Grand Kadi is empowered to establish Sharia Courts – section 4(1). The jurisdiction of such Sharia Courts is prescribed by the law – section 9. The Grand Kadi thus may only specify the area and extent of the jurisdiction – section 4(2). Indeed, he cannot confer jurisdiction of a Sharia Court beyond the Local Government where the court is located – see section 4(5). It seems to us that what is intended is power conferred on Grand Kadi to set up these courts for purposes of administering Sharia law in the State. The jurisdiction envisaged in this regard relates to territory not subject matter. In the circumstance and having regard to the various definitions of the word “establish”, we find no intention by the legislature to or indeed make such delegation of its lawmaking function to the Grand Kadi in the provision of section 4(1) of the Niger State Sharia (Administration of Justice) Law 2001 and we so hold.

[Further discussion of some arguments about delegation.]

It is found elsewhere that there is no express provision contained in the Sharia Law 2001 as to the establishment of Sharia Courts.... [I]n the interpretation of statutes, the



words used in as much as they are clear and unambiguous must be given their ordinary meaning, unless this would lead to absurdity or be in conflict with other provisions in the statute.... Where this situation arises, the court has responsibility to make effort to avoid the absurdity. That is bridging the gap.... A literal interpretation of section 2 as Malam Ibrahim Isiyaku would want the court to do will certainly lead to absurdity. On the above principles and the combined effect of sections 4(1) and 9 of the Sharia Law 2001, the provisions of section 2 in relation to the Sharia Court, can have no other meaning than that they established the Sharia Courts pursuant to section 6(4)(a) of the 1999 Constitution and we so hold. The contention that there exist no Sharia Courts in Niger State is misconceived.

Malam Ibrahim Isiyaku's submission in respect of Malam Adamu's contention, that fees being collected under the repealed Area Court (Civil Procedure) Rules were illegal and the courts thereof lacked jurisdiction to entertain matters brought before them, we agree is well founded in law. We thus resolve issue 1 in the positive.

We now consider the second issue. The relevant legislations we find include sections 3, 10, 11, 12 and 14 of the Sharia Law 2001, section 62 of the High Court Law of Niger State, [and] sections 251, 272 and 277 of the 1999 Constitution. They are reproduced hereunder for ease of reference.

**The Niger State Sharia (Administration of Justice) Law 2001:**

3. As from the commencement of this Law, the Sharia Law shall continue to govern all aspects of the life of all the Muslims in the State, but shall only be applicable to non-Muslims who voluntarily and in writing consent to be governed by the said Law.
10. The applicable law in both civil and criminal proceedings in the Sharia Courts shall be the Sharia law.
11. The practice and procedure to be applied by the Sharia Courts shall be:
  - (a) the principles and practice of Islamic law and procedure; and
  - (b) such other rules of practice and procedure as may be made by the Grand Kadi.
12. The Sharia Court of Appeal of the State shall be competent to exercise appellate and supervisory jurisdiction on Sharia Courts in civil or criminal proceedings involving questions of Sharia law.
14. An appeal shall lie from the decision of the Upper Sharia Court in civil or criminal matters to the Sharia Court of Appeal.

**High Court Law Cap. 53:**

62. The High Court shall have jurisdiction to hear appeals (other than appeals in respect of matters which are subject of the jurisdiction of the Sharia Court of Appeal) from Upper Area Courts.

**1999 Constitution:**

Section – not relevant [sic: evidently the reference is to Art. 251, on the jurisdiction of the Federal High Court, which was deemed after all not relevant to the discussion.]

272. (1) Subject to the provisions of section 251 and other provisions of this Constitution, the High Court of a State shall have jurisdiction to hear

and determine any civil proceedings in which the existence or extent of a legal right, power, duty, liability, privilege, interest, obligation or claim is in issue or to hear and determine any criminal proceedings involving or relating to any penalty, forfeiture, punishment or other liability in respect of an offence committed by any person.

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

A close examination of the provisions of sections 12 and 14 clearly shows that the Sharia Court of Appeal has been conferred with appellate and supervisory jurisdiction on Sharia Courts in civil or criminal proceedings, see section 12. By section 14 thereof appeals shall lie from the decision of the Upper Sharia Court in civil or criminal matter to the Sharia Court of Appeal.... The language in sections 12 and 14 is clear and unambiguous. The appellate jurisdiction of the Sharia Court of Appeal we find has been expanded to include criminal jurisdiction.

What then is the effect of sections 12 and 14 of the Sharia Law 2001 on the jurisdiction of the High Court to hear appeals from the Sharia Court having regards to the provisions of section 62 of the High Court Law...and section 277(2) of the 1999

Constitution? Learned Attorney-General's submission is that sections 12 and 14 did not oust the jurisdiction of the High Court to hear appeals from the Sharia Courts. It rather seeks to expand the scope of jurisdiction of the court on issues between Muslims in accordance with section 3 of the Sharia Law 2001 thereof. That, however, the intendment did not expand the jurisdiction of the Sharia Court to include criminal matters. We have found this argument rather strange to say the least in the face of the wordings of these sections of the Sharia 2001 Law.

Malam Ibrahim Isiyaku's submission in this regard is that the jurisdiction of the Sharia Court of Appeal has not been restricted to Islamic personal law simpliciter because section 277(1) of the 1999 Constitution empowers the House of Assembly to give additional jurisdiction to the Sharia Court of Appeal. Section 272(1) thereof subjects itself to other provisions of the Constitution. Section 12 only confers jurisdiction on the Sharia Court of Appeal and does not oust the jurisdiction of the High Court. It was his submission that a provision that ousts the jurisdiction of the court must be strictly interpreted so that unless there is explicit expression to that effect, jurisdiction cannot be ousted. . . .

In the case of *Abdulsalami vs. Salawu* [(2002) 6 SCNJ page 388] referred to by Malam Adamu Usman, the Supreme Court dealing with interpretation of section 242(1) of the 1979 Constitution<sup>85</sup> at page 398 per Uwais JSC (as he then was) said:

The phrase "Islamic law" is not defined under the 1979 Constitution although the Constitution made reference in section 242(2) thereof to certain aspects of it, namely marriage, family relationship.... None of these subjects covers the appointment of an imam or naibi or succession to such office.

Earlier at page 396 Belgore JSC said *inter alia*:

Where however the Constitution clearly confers jurisdiction as in the case now at hand, the power of a court cannot be vitiated merely because the matter concerns parties who are Moslems or the case is of Moslem law in so far as the matter is not Islamic personal law...governing matters enumerated in section [277 of] the Constitution of 1999 and section 242 of 1979 Constitution. Therefore, what is being canvassed for the appellant is not covered by Islamic personal law. Whereas the constitutions are clear in section 236(1) of the 1979 Constitution and section 251 [sic: 272] of Constitution 1999 which re-emphasise this position as to the jurisdiction of the High Court.

In the case of *Magaji vs. Matari* [(2000) 5 SCNJ page 140], the Supreme Court interpreting the provision of section 242(2)(c) of the 1979 Constitution held that the intention of the constitutional provisions is to confine and limit the exercise the jurisdiction of the Sharia Court of Appeal to subject matter of Islamic personal law. Wali JSC (as he then was) at page 147 said:

There have been futile attempts to amend section 242(2) *supra* to enlarge the jurisdiction of the Sharia Court of Appeal, particularly by the Constitution

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<sup>85</sup> Art. 242 of the 1979 Constitution is virtually identical to Art. 277 of the 1999 Constitution, with very minor differences in the wording of paragraph (2)(c) not relevant here.

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(Suspension and Modification) (Amendment) Decree No. 26 of 1986. In considering the decree, Uthman Muhammad JCA (as he then was) in *Abuja v. Bizi* [(1989) 5 NWLR (Pt. 119) page 120, CA] commented and stated as follows, rightly too in my view:

The anomaly which the kadis wanted the government to correct [by the amending decree referred to] is to stop the division of cases determined by the Area Courts into those determined under Islamic personal law and others. Thus, all appeals from the decisions of Area Courts, where Islamic law and procedure is involved, could be made part of their [i.e. Sharia Court of Appeal] jurisdiction. The constitutional amendment, however, failed to enhance the jurisdiction of the Sharia Court of Appeal, because it left the original jurisdiction of the court under section 242 intact. Thus, even though the Constitution (Suspension and Modification) (Amendment) Decree No. 26 provided for the deletion of the word “personal” wherever it occurs after the word “Islamic” in the constitution, it left untouched the specific jurisdiction of the Sharia Court of Appeal. *In other words, the jurisdiction of the Sharia Court of Appeal remains limited to those items enumerated under S. 242(a)(b)(c) and (d) of the Constitution.* (italics mine [i.e. Judge Abubakar])

The provisions of section 242(1) and (2) of the 1979 Constitution are the same as the provisions of section 277(1) and (2) of the 1999 Constitution. The decision of *Magaji vs. Matari* is therefore applicable to it. What this means is the powers conferred on the Sharia Court of Appeal by combined effect of section 277(1) and (2) of the 1999 Constitution is to exercise such appellate and supervisory jurisdiction in civil proceedings involving questions of Islamic [personal] law in accordance with items listed in subsection 2 thereof. The jurisdiction that can be conferred on it by the law of the State must in the circumstance be within the confines of those powers conferred on it by the 1999 Constitution.

What in the circumstance is the status of sections 12 and 14 of the Sharia Law 2001? With respect to section 12...there is nothing in the provision that seeks to oust the jurisdiction of the High Court. With respect to section 14, the provision makes it mandatory for appeals to lie from decision of the Upper Sharia Court in civil or criminal matters to the Sharia Court of Appeal. Can that constitute an ouster of the High Court's jurisdiction? In the case of *Abdulsalami vs. Salawu* (supra) Ayoola JSC at pages 402-5 said:

I am of the view that the limit to the otherwise unlimited jurisdiction vested in the High Court can only be as may be expressly provided by the Constitution. Merely vesting jurisdiction not described as exclusive in another court and which may be exercised concurrently with the High Court of a State would not in my view limit the jurisdiction of such High Court. Only express words in the Constitution vesting exclusive jurisdiction [in another court can limit the jurisdiction] of the High Court of a State. That was done for example by section 251 of the 1999 Constitution whereby exclusive jurisdiction in specified matters was vested in the Federal High Court.

DOCUMENTARY MATERIALS: CASES ON THE SHARIA COURTS

... The provision of section 14 of the Sharia Law 2001 in the circumstance cannot be construed to oust the jurisdiction of the High Court to hear appeals from Sharia Courts and we so hold.

By the provisions of sections 12 and 14, the Sharia Court of Appeal is conferred with powers to exercise appellate and supervisory jurisdiction on Sharia Courts in civil or criminal proceedings involving questions of Sharia law. It is found elsewhere by the provisions of section 277 of the 1999 Constitution the powers of the Sharia Court of Appeal is limited to civil proceedings in matters of Islamic personal law. Clearly, the powers so conferred by sections 12 and 14 of Sharia Law 2001 go beyond the scope set out in section 277 of the 1999 Constitution.

It is in this regard, Malam Adamu's contention that they are in conflict with the provisions of the Constitution has merit. Sections 12 and 14 of the Sharia Law 2001 we find are unconstitutional and therefore invalid and should be declared null and void and so we do. However, the declaring of the sections 12 and 14 of [the law] as invalid does not affect the validity of the law itself. It remains valid the exclusion of sections 12 and 14 notwithstanding....

In the result and in view of our findings, we find and declare that the Niger State High Court has jurisdiction to hear appeals from Sharia Courts.

**d. *Mohammed vs. Commissioner of Police (Niger State High Court, 2007)***<sup>86</sup>

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

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

Before their lordships:

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

Appeal No. NSHC/KG/9CA/2004

Between:

Musa Mohammed ). .....Appellant

vs.

Commissioner of Police ).....Respondent

(Delivered by Honourable Justice Aliyu M. Mayaki)

**JUDGMENT**

This is an appeal against the decision of the Sharia Court, Mariga delivered on 20<sup>th</sup> September, 2004. One ground of appeal was filed on 2/12/2004 and with the leave of

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<sup>86</sup> Apparently unreported. Photocopy of certified true copy of the judgment in the possession of the editor.

the court following two applications filed by the appellant on 21/7/2006 and 20/3/2007 respectively five additional grounds were filed. In arguing the appeal, learned counsel to the appellant, Ahmed S.T., formulated three issues for determination. These are:

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

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

\* \* \*

Adamu Panti (DDCL)<sup>87</sup> made an unambiguous submission on the first issue. He contended that there is no law precluding the Sharia Courts from applying the Penal Code. Consequently, the appellant in his view was properly arraigned before the trial court, convicted and sentenced under the Penal Code, the provisions of the Sharia (Administration of Justice) Law 2001 notwithstanding. \* \* \*

\* \* \*

We have carefully examined all the grounds of appeal filed by the appellant and found that from the arguments canvassed by the appellant's counsel ground two, which is the first ground of the additional grounds filed on 21/7/2006, is concerned with whether or not the whole trial conducted by the trial Sharia Court judges was a nullity. This is a very important ground because if the appeal succeeds on this ground it may not be necessary to consider all the other grounds. It is for this reason of its fundamental and jurisdictional nature that we will take the first issue first which is based on this ground. Although the issue was formulated by the appellant's counsel as whether or not the trial judge was right to have convicted and sentenced the appellant based on the Penal Code, he made a broad submission that the Sharia Court was supposed to conduct the trial under Islamic law principles and that where this was not done, the whole trial would be a nullity. The law the learned counsel relies on is the Niger State Sharia (Administration of Justice) Law 2001 (hereinafter referred to as the Sharia Law 2001) which came into force on the 5<sup>th</sup> day of November 2002. The appellant was arraigned before the trial court sometime in September 2004, so it is safe to assume that the Sharia Law 2001 had come into force nearly two years earlier. It has not been contended that both the complainant whose property was stolen and the appellant are not Muslims. It is

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<sup>87</sup> DDCL: Deputy Director, Civil Litigation, in the Niger State Attorney-General's office.

therefore safe to assume that they are Muslims. In the definition section of this law (section 2) “Sharia Court” is said to mean “a court established under or in pursuance of this law or deemed to have been so established.” By virtue of the aforesaid Sharia Law 2001 all Sharia Courts in Niger State can be said to have been established by the Grand Kadi or deemed to have been established in pursuance of the law. See *Haruna Ibrahim Kuta vs. Ahmadu Galadima*, Appeal No. NSHC/MN/6A/2003 (unreported). Again, by virtue of §9(1) the Sharia Courts are competent to hear and determine civil and criminal causes and matters where the parties involved are all Muslims, like in the present case. Because of the importance and relevance of sections 10 and 11 of the Sharia Law 2001 they are reproduced as follows:

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

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

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

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

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

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

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Going back to the questions posed earlier on, the answers are simple and straightforward. Although it cannot be denied that certain provisions of the Penal Code have some elements of Islamic law, the provisions are not generally and strictly Islamic law in terms of the ingredients of the offences, procedure and proof as well as punishments as are known and prevalent under Islamic law. In particular, the offences of joint act, house trespass and theft contrary to sections 79, 349 and 288 of the Penal Code for which the appellant was arraigned respectively cannot be tried under the Penal Code by the Sharia Court, Mariga or any other Sharia Court as the Penal Code cannot by any stretch of imagination be said to be the Sharia law the Sharia Courts are by law empowered and restricted to apply. What we have said about the non-applicability of the Penal Code in Sharia Courts also applies to the Criminal Procedure Code and the Evidence Act. Under the Sharia law there are ways and means of proof in both civil and criminal matters which may not necessarily be the same as under the CPC and the Evidence Act. This is a grave error into which both trial judges and counsel often fall. Having found that the Sharia Court cannot apply the Penal Code and the Criminal Procedure Code, both of which were applicable in the then Area Courts, it automatically follows that the trial Sharia Court judge fell into a fundamental error when he tried the appellant under a law other than Islamic law contrary to the law under which the court itself was established, with the effect that the trial must be held to be null and void *ab initio*, since as far as the Sharia Courts and the appellant are concerned the Penal Code, Criminal Procedure Code and common law principles bear no relevance to the proceedings. The error thus committed by the trial court is incurable. This ground of appeal should be allowed. The trial judge lacked jurisdiction to apply the two laws.

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

(SGD)

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

Ahmad Sanusi Tijjani Esq. for the Appellant.  
Adamu Panti Esq. (DDCL) for the Respondent.

(SGD)

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



## 4.

## Data on numbers of judges of the courts of the Sharia States

1992

State	1991 population <sup>88</sup>	1992 numbers of judges per type of court <sup>89</sup>				
		Area Courts		Sharia Court of Appeal	High Court	Magistrate/ District Courts
		ACs	UACs			
Bauchi/Gombe	4,351,007	129	24	6	8	13
Borno	2,536,003	48	12	5	11	17
Jigawa	2,875,525	34	4	2	4	6
Kaduna	3,935,618	92	5	5	10	23
Kano	5,810,470	58	11	6	12	33
Katsina	3,753,133	69	9	6	6	21
Kebbi	2,068,490	44	8	4	3	15
Niger	2,333,726	51	12	6	13	14
Sokoto/Zamfara	2,338,487	56	10	3	6	15
Yobe	1,399,689	18	7	1	4	6

2008

State	2006 population <sup>90</sup>	2008 numbers of judges per type of court <sup>91</sup>				
		Sharia Courts		Sharia Court of Appeal	High Court	Magistrate/ District Courts
		SCs	USCs			
Bauchi	4,676,465	100	20			
Borno	4,151,193			6		
Gombe	2,353,879					
Jigawa	4,348,649	70	12	9	9	12
Kaduna	6,066,562	77	13	6	19	35
Kano	9,383,682	69	16	9	17	40
Katsina	5,792,578	86			10	18
Kebbi	3,238,628	50	15	10	10	40
Niger	3,950,249	49	27			40
Sokoto	3,696,999	38	16 <sup>92</sup>	5	9	10
Yobe	2,321,591	24	17	3		
Zamfara	3,259,846	57	13	7	7	13

<sup>88</sup> Source: <http://www.onlinenigeria.com/Population/>, Table 1.3.3, Distribution of the 1991 population by states in Nigeria.

<sup>89</sup> Source: Chief Gani Fawehinmi, *Courts' System in Nigeria: A Guide (1992)*, Lagos: Nigerian Law Publications Ltd., 1992, chapters on the judiciaries of the various States. In some cases vacancies in some approved judgements are reported.

<sup>90</sup> Source: [http://en.wikipedia.org/wiki/Demographics\\_of\\_Nigeria](http://en.wikipedia.org/wiki/Demographics_of_Nigeria), citing the preliminary results of the 2006 Nigerian census.

<sup>91</sup> Source: Interviews conducted in the various states in February and March 2008. In some cases vacancies in some approved judgements were reported. In some cases the numbers, though given by persons closely associated with the courts, were nevertheless prefaced with the word "about".

<sup>92</sup> In Sokoto there are eight Upper Sharia Courts; the alqas sit in panels of two.

5.

**Courses for alkalis**

**a. LL.B. (Sharia) courses in the universities**

In Nigeria, Ahmadu Bello University (Zaria), Bayero University (Kano), Usmanu Dan Fodiyo University (Sokoto), and the Universities of Maiduguri and Ilorin, all offer LL.B. degrees in Sharia or Sharia and Civil Law. No other Nigerian universities do so. The syllabi for the then four-year programmes leading to these LL.B.s at ABU, Bayero, Maiduguri and Sokoto as of 1987/88 are given in Appendix X, pp. 285-88 of Khalid Rashid, ed., *Islamic Law in Nigeria: Application and Teaching* (Lagos, Kaduna, Kano, Ilorin: Islamic Publications Bureau, 1988). The syllabus for the second through fifth years of the by-then five year LL.B. programmes at “Nigerian Universities (Dept. of Islamic Law)” is given at pp. 25-28 of Abdul-Qadir Zubair, *Shari‘ah in Our Citadels of Learning* (Ilorin: Library and Publications Committee, University of Ilorin 2003). Rashid’s work, pp. 283-84, also gives the syllabus for the LL.B. (Sharia) programme at the Islamic University, Medina as of 1962-78 and 1978-88. Zubair’s work, at pp. 25-28, also gives the syllabi for the LL.B. (Sharia) programmes at the Islamic University of Madinah, Al-Azhar University (Cairo), Al-Qurawiyyin University (Fas), and Omdurman Islamic University.

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

[Ed. note: on a visit to the Hassan Usman Katsina Polytechnic in 2003, photocopies of the pages of the Polytechnic’s syllabus relating to the Department of Sharia and Civil Law – in English, Hausa, and Arabic – were kindly provided. The syllabus dates from the 1997/98 academic session, i.e. before Sharia implementation began in 1999/2000. Nevertheless, the pages in English are reproduced here, as they give information about the history of the Department and shed light on the education of Area Court judges in the 1980s and ’90s, most of whom, in the Sharia States, became Sharia Court judges in the early 2000s.]

(a) Historical background:

In the year 1980 the Sharia Court of Appeal of the then Kaduna State<sup>93</sup> felt that there was great need to appoint Area Court judges who are well-versed in Islamic law, hence the need to establish a training institution for that purpose. A bill was then proposed to the defunct Kaduna State House of Assembly in the same year.<sup>94</sup>

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

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<sup>93</sup> Katsina State was carved out of Kaduna State in 1987.

<sup>94</sup> Nigeria was returned to civilian rule in 1979, so the bill in question was considered by the Kaduna State House of Assembly elected in the July 1979 elections and taking office on 1 October 1979. The military took over again on 31<sup>st</sup> December 1983, after which all elected assemblies became defunct.

#### DOCUMENTARY MATERIALS: COURSES FOR ALKALIS AND KADIS

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

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

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

(b) Staff:

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

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

#### **Diploma in Sharia Law**

i. Aims and objectives:

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

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

- (a) HIS/SIS certificate with at least pass in all subjects.
- (b) Grade II certificate from any Arabic Teachers College with credit in Arabic Language and pass in all subjects.

iii. Duration: The programme is run for six semesters (three academic sessions).

iv. Course units:

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

Third Semester	Fourth Semester
Crime and Torts	Crime and Torts
Mu'amalat	Mu'amalat

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

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

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

**Advanced Judicial Certificate Course**

i. Aims and objectives:

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

ii. Admission requirements:

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

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

iv. Course units:

#### DOCUMENTARY MATERIALS: COURSES FOR ALKALIS AND KADIS

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

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

#### (c) Library:

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

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

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

- the Student Handbook, including summaries of the curriculums for the nine programmes offered by the College as at September 2006;
- a digital copy of the College's comprehensive syllabus, comprising over 280 pages, showing curriculums and detailed course contents for all courses; and
- syllabuses for two new Advanced Diplomas, one in Law and one in Sharia.

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

#### **Brief History of the College<sup>95</sup>**

The College was established in 1981 via Edict No. 12 of 1<sup>st</sup> June 1981 [sic: this was more likely a law enacted by the House of Assembly of Sokoto State] and since then the College was placed under academic supervision of Haliru Binji College of Arts and Science<sup>96</sup> through the academic supervisory committee. The College became fully autonomous in 1998.

The aims and objectives of the College are:

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<sup>95</sup> From the Student Handbook, 7.

<sup>96</sup> Formerly the Sokoto State College of Arts and Science.

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

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

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

**Curriculums for Certificate and Diploma Programmes<sup>97</sup>**

**Pre-Diploma Certificate in Law**

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

**Diploma in Civil Law**

**Part One**

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

**Part Two**

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

**Diploma in Sharia and Civil Law**

**Part One**

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<sup>97</sup> From the comprehensive syllabus supplied digitally.

DOCUMENTARY MATERIALS: COURSES FOR ALKALIS AND KADIS

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

Part Two

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

**Certificate in Sharia Arabic Medium**

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

**Diploma in Sharia Arabic Medium**

Part One

First Semester	Second Semester
Islamic Jurisprudence	Islamic Jurisprudence
Islamic Personal Status	Islamic Personal Status
Mu'amalat'	Mu'amalat
Islamic Criminal law	Islamic Criminal law
General Principles of law	General Principles of law
Shari'ah Penal Code	Shari'ah Penal Code
Arabic language	Arabic language
English language	English language
Tajweed	Tajweed
Hausa autography	Hausa language

Part Two

First Semester	Second Semester
Qur'anic Science	Science of Hadith
Islamic Jurisprudence	Islamic Jurisprudence

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Islamic law of succession	Islamic law of succession
Islamic law of evidence	Murafa'at
Islamic criminal procedure	Islamic criminal procedure
English language	English language
Arabic language	Arabic language
Research methodology	Research Project
Shari'ah penal code	Shari'ah penal code

**Certificate in Islamic Studies Arabic Medium**

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

**Diploma in Islamic Studies Arabic Medium**

**Part One**

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

**Part Two**

First Semester	Second Semester
Islamic Law	Al-Fiqh
Hadith Studies	Textual Studies of Hadith
Islamic Movement	Islamic Movement II
Hausa Language	Hausa Language
Tafsir I	Tafsir II
English language	English language
Arabic language	Arabic language
Research methodology	Research Project



**Certificate in Arabic Language**

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

**Diploma in Arabic Language****Part One**

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

**Part Two**

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

**Advanced Diploma in Law and Advanced Diploma in Sharia<sup>98</sup>**

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

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

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

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<sup>98</sup> From the syllabus for these two programmes.

**Entry requirements**

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

**Advanced Diploma in Law: Courses to be Offered**

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

**Advanced Diploma in Sharia: Courses to be Offered**

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

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

**d. Centre for Islamic Legal Studies: course outline for Diploma in Sharia, 2008<sup>99</sup>**

**First Year – First Semester**

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

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<sup>99</sup> This is an updated course outline kindly provided in 2008 by CILS.

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called as witnesses, statements made in special circumstances, proof, competence and compellability of witness.

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

The course introduces students to the following areas of study:

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

**First Year – Second Semester**

1. Constitutional Law
  - (a) Meaning of “constitution”
  - (b) Historical development of Nigerian constitution
  - (c) Types of constitution: rigid and flexible
  - (d) Systems of government; parliamentary and presidential
  - (e) Supremacy of the constitution and the rule of law

- (f) Federalism, unitary and confederation
- (g) Fundamental Human Rights
- (h) The role of courts, etc.
- 2. *Daman* (Islamic Law of Torts)
  - (a) Historical background, general principles of tortious liability, negligence, defamation, conversion, detainee, nuisance, trespass, assault etc.
  - (b) Defences
- 3. Criminal Law II
 

General defences to criminal liability: insanity, infancy, intoxication, provocation, mistake of facts, necessity, accident, right of private defence, etc.
- 4. Law of Evidence II
  - (a) Character evidence
  - (b) Opinion evidence
  - (c) Hearsay evidence
  - (d) Estoppel; competence and compellability
  - (e) Corroboration
  - (f) Burden of proof
  - (g) Documentary evidence
- 5. Islamic Law Relating to Land
  - (a) Division of land into *mamluka* (owned land), *mawat* (dead land), *amiriyyah* (land within the vicinity of the town), *matruka* (abandoned land), *waqaf* (non disposable land), *harim* (space surrounding land).
  - (b) Disputes as to ownership of water and watering, types of water ownership. The owned watering system which is on one's own piece of land, the owned watering system on land which does not belong to anyone, ownership as to cattle ranch, disputes on cattle tracts, etc.
  - (c) Gratuitous assistance rendered to neighbours, disputes as to ownership of wall, joint ownership of walls, duty to maintain fence or wall to farms/farmlands.
  - (d) *Darar* (nuisance), types of nuisance, proceedings on nuisance.
  - (e) Transfer or delivery of land includes all that is on it, exception
  - (f) Usurpation (trespass to land), *ta'addi*, legal remedies, procedural aspects, etc.
  - (g) Different interests on land: ownership, hire, life-tenant, loan, pledge, etc.
- 6. Islamic Jurisprudence II
 

Legal theories: *hukum shar* (law of value of Sharia), *hukum taklifi*, types into *wajib*, *haram*, *mandub*, *makruh* and *mubah*. Declaratory law (*hukum al-wad'i*), *azima*, *ruk'isa*. Pillars of *hukum*. Lawgiver (*hakim*), subject matter of *hukum* (*mahkum fihi*), legal capacity (*ahliyyah*), conflicts of evidence (*ta'arud*), *ijtihad* (personal reasoning), etc.
- 7. Arabic II
  - (a) Language drill

- (b) Simple Arabic composition, and
  - (c) Simple introduction to Arabic grammar
8. Sharia in Contemporary Nigeria

**Second Year – First Semester**

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

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

### **Second Year – Second Semester**

1. Islamic Family Law II (Dissolution of Marriage)
- (a) Termination of marriage: Their categorization into (i) *faskh* with or without *talaq*, its legal consequences (ii) *talaq* (iii) *khul* (iv) *zihar* (v) *ila*, etc; ambiguous and non-ambiguous words in communication of termination (expressed or implied).
  - (b) *Iddah* (waiting period): by three *quru* (menstruation), by three months and ten days, by one year, by delivery, where *iddah* does not apply, etc.
  - (c) Consequences of termination: maintenance, custody, guardianship of the child.

2. Islamic Criminal Law II (*Qisas* and *Ta'azir* Offences)
  - (a) What constitutes intentional and unintentional killing in Islamic Law, categorization of killings into intentional, unintentional and semi-intentional.
  - (b) Proofs of killings: (i) judicial confession, extra-judicial confession, qualified confessions, confession incriminating others; (ii) proof by: *lauth*, *lathu* and *qasama*, and (iii) dying declaration, retracted confession and the legal consequences thereof.
  - (c) Punishment of *qisas*: (i) execution of an offender when the offence is proved (ii) pardoning accompanied by *diyyah* and pardoning without *diyyah*.
  - (d) *Diyyah*: What it means, who are responsible and when. Social and economic problems associated with *diyyah*, what is a way out of the problems, etc.
  - (e) *Ta'azir*: definition and scope.
3. Murafa'ah II
  - 1) Testimony - *shahada*
    - (a) Authority
    - (b) Limitation of *shahada*
    - (c) Condition of *shahada*
    - (d) Number of witnesses
    - (e) Classes of witnesses
    - (f) Disqualification of evidence
    - (g) Retraction of evidence
    - (h) Clash of evidence
  - 2) Oath (*al-yamin*)
  - 3) Documentary evidence (*al-kitaba*)
  - 4) Hearsay evidence (*shahadat al-simac*)
  - 5) Conclusive presumption (*al-qarina al-qati'a*).
4. Mu'amalat II (Gratuitous Contract)
  - (a) Pledge (*rahan*): meaning and scope, elements and conditions, multiplicity of the contract in one agreement, pledge of loaned chattel, pledge of fruits or farm produce, under what circumstances can it be used by the pledger, sale of pledged goods, procedure not allowed, dispute between the parties, etc.
  - (b) Islamic law relating to gifts (*waqaf*), elements and conditions, its operation, vitiation, disputes between the parties, termination of the agreement.
  - (c) Islamic law relating to loan: what constitutes loan, elements and conditions, when does it terminate, etc.
5. Uloom al-Hadith II
6. Islamic and Statutory Criminal Procedure Codes:

Search and seizure: search with warrant; search for a specific document or thing; search by police officer for stolen property; search for a person wrongfully confined; search without warrant; statutory rules relating to search. Legal effect of unlawful search and seizure. Search and seizure conducted under a warrant



wrongfully obtained; search without warrant; search made under valid warrant but in unlawful manner; remedies available against search and seizure.

7. Ulum al-Qur'an II - H
8. Principles of Government in Islam II

**e. Centre for Islamic Legal Studies: short courses for Sharia Court alkalís<sup>100</sup>**

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

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

The content of the training courses covers:

1. Sources of Islamic law
  - a) The Qur'an
  - b) The Sunnah
  - c) *Ijma*
  - d) *Qiyas*
  - e) Other supplementary and subsidiary sources
2. The Islamic criminal justice system
  - a) *Hudud*
  - b) *Qisas*
  - c) *Ta'azir*
3. Marriage and divorce under the Sharia
  - a) Contract of marriage
  - b) Legal effects of marriage
  - c) Termination of marriage contract

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<sup>100</sup> From "A Brief on the role of the Centre for Islamic Legal Studies, Ahmadu Bello University, Zaria" by Dr. I.N. Sada, the Director of CILS from 2002-2006. A copy of the paper, which is apparently unpublished, is in the possession of the editor.

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- i) Modes of termination
- ii) Consequences of termination
  - 1) *Iddah*
  - 2) Custody of children
  - 3) Maintenance during *iddah* etc.
- 4. Guardianship of person with incomplete legal capacity
  - a) Categories of persons under interdiction (*hajar*)
  - b) Types of guardians and the scope of their powers
- 5. Inheritance (*mirath*) and bequest (*wasyyah*)
  - a) Pre-requisite of inheritance and bequest
  - b) *al-Qismah* (distribution)
- 6. *Daman* – tortious liability
  - a) *Gasb* and *ta'addi*
  - b) Negligence - professionals and others
- 7. Commercial transactions
  - a) *al-Buyu'* (sale)
  - b) *al-Kira* (rent)
  - c) *al-Ijarah* (hire)
  - d) *al-Rahn* (pledge/mortgage)
  - e) *al-Ju'ala* (service reward)
  - f) *ad-Duyun* (debts) and related matters
- 8. Property law
  - a) Land acquisition and disposal
  - b) The right of *shuf'ah*
  - c) Land Use Act and the Sharia
- 9. Evidence and *mu'rafa'at*
  - a) Proof (means)
  - b) Confession and admission
  - c) Witnesses
  - d) Oaths
  - e) Others
- 10. Nigerian legal system
  - a) Sources of Nigerian law
  - b) Nigerian court system
  - c) Sharia court system
  - d) Control, inspection and supervision of Sharia courts
- 11. Code of Conduct and Professional Ethics for Judges and Other Judicial Officers

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

**f. National Judicial Institute: Programmes for Judges 2006-2008**

Ed. note: The information that follows is drawn from documents that were generously supplied by staff of the National Judicial Institute, Abuja when the editor visited there on

26 February 2008. Special thanks go to Hadiza Santali Saeed, who coordinated collection of the documents and answered many questions about them.

### **Profile of the National Judicial Institute<sup>101</sup>**

The National Judicial Institute (NJI) was established by Decree No. 28 of 1991 as amended by Decree No. 15 of 1999. It is managed by a Board of Governors, which is composed of the Chief Justice of Nigeria as Chairman, Attorney-General of the Federation and Minister of Justice, the Most Senior Justice of the Supreme Court, President of the Court of Appeal, Chief Judge of the Federal High Court, Chief Judges of all the 36 States and the Federal Capital Territory, and two Grand Kadis of Sharia Courts of Appeal and two Presidents of Customary Courts of Appeal, respectively, among other members.

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

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

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

- i. Biennial All Nigeria Judges' Conference for the superior court judges, i.e. justices of the Supreme Court of Nigeria, justices of the Court of Appeal, judges

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<sup>101</sup> From the Directory of Conference Proceedings for 2007 All Nigeria Judges' Conference, held at Abuja, 5<sup>th</sup>-9<sup>th</sup> November, 2007, pp. 41-44.

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- of the Federal, FCT and State High Courts, kadis of the Sharia Courts of Appeal, judges of the Customary Courts of Appeal.
- ii. Biennial Conference of All Nigeria Judges of the Lower Courts, i.e. Magistrates, Area and Customary Court judges and Sharia Court judges.
  - iii. Annual Induction Courses for Newly Appointed Judges and Kadis.
  - iv. Refresher Course for High Court judges, kadis of the Sharia Courts of Appeal and judges of the Customary Courts of Appeal, nationwide.
  - v. Workshop for Judicial Librarians.
  - vi. Workshop for Court Registrars.
  - vii. Judicial Administration Workshop for Chief Registrars, Secretaries of Judicial Service Commissions, Deputy Chief Registrars, Directors, Accountants, etc.
  - viii. National Workshop for Magistrates of 1-5 years post-appointment.
  - ix. Workshop for Area and Customary Court Judges and Directors and Inspectors of Area and Customary Courts.
  - x. Workshop for Sharia Court Judges and Directors and Inspectors of Sharia Courts.
  - xi. Workshop for Information Technology for Confidential Secretaries and Typists in the Judiciary.
  - xii. Workshop for Junior Staff of the Judiciary.

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

1. Zonal Inter-State Workshops for Lower Court Judges on Human Rights and Administration of Justice, which was organized in collaboration with the Civil Liberties Organization, National Human Rights Commission, and the Danish Center for Human Rights, Denmark (1998-2001).
2. Annual Oil and Gas Seminar for Judges, which was organized in conjunction with the Shell Petroleum Development Company PLC (1998-2002)
3. Maritime Seminar for Judges, which is organized in collaboration with the Nigerian Shippers' Council.
4. Zonal Workshop on Alternative Dispute Resolution (ADR) for Judges, in conjunction with the Nigerian Institute of Advanced Legal Studies (2001-2003).
5. With effect from 2001, the National Judicial Institute commenced collaboration with the Chartered Institute of Bankers of Nigeria in organizing and conducting the annual Seminar on Banking and Allied Matters for Judges (2001 till date).
6. Training Workshop on Legal Issues in Telecommunications for Judges, which since 2003 is organized in collaboration with the Nigerian Communications Commission and USAID.
7. Training Workshop on Jurisprudence of Equality Project (JEP), which since 2003 was organized in collaboration with the United Nations Development Fund for Women and the National Association of Women Judges, Nigeria.
8. Investment Seminar for Judges in Nigeria, organized jointly with the Investment Banking and Trust Company Limited (IBTC) (2005-2006).
9. Juridical Training Workshop on Environmental Law in Nigeria, held in collaboration with UNEP (2006-2007).

10. Training Workshops on ADR, Ethics for Judicial Officers/Court Employees and Assessment of the Nigerian Courts in Ten Pilot States is currently being organized in collaboration with the United Nations Office on Drugs and Crime (UNODC).
11. African ADR Summit, organized in collaboration with Negotiation and Conflict Management Group (NCMG) (2006 to date).
12. Workshop on the theme “The Administration of Justice in the Nigerian Capital Market”, organized in collaboration with the Investments and Securities Tribunal, Abuja, with effect from October 2007.

**2006 Induction Course for Newly Appointed Judges & Kadis: 5<sup>th</sup>-9<sup>th</sup> June 2006**

Topics covered:<sup>102</sup>

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

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<sup>102</sup> From a “List of Topics” supplied by the NJI, with the names of presenters or tentative presenters as given here.

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Attendees:<sup>103</sup>

Kadis of the Sharia Courts of Appeal of Zamfara (4) and Sokoto (3) States.  
Judges of the High Courts of Bayelsa (3), Kogi (6), Oyo (4), Kwara (1), Osun (3), Plateau (2), Delta (2), Cross River (2), and Katsina (1) States.

**2007 Refresher Course for Judges and Kadis: 12<sup>th</sup>-16<sup>th</sup> March, 2007**

Topics covered:<sup>104</sup>

1. Judicial Ethics, Code of Conduct and Courtroom Decorum for Judicial Officers: Hon. Justice Niki Tobi, JSC
2. Evaluation of the Performance of Judges of the Superior Courts of Record: The Role of the National Judicial Council: Hon. Justice B.O. Babalakin, JSC.
3. Election Petitions and the Challenge of Speedy Dispensation of Justice in Nigeria: Ademola O. Popoola, Faculty of Law, Obafemi Awolowo University
4. High Job Demand, Low Job Control, and Job Dissatisfaction: Are They Risk Factors to Work-Related Musculoskeletal Disorders Among Judicial Officers? Ms. Uzoamaka Umeh, Consultant Physiotherapist
5. Recording of Evidence & Judgment-Writing: Law and Practice: Hon Justice G.O. Olateru-Olagbegi, Chief Judge, Ondo State
6. Relationship Between Judges and Lawyers as Ministers in the Temple of Justice: Awa U. Kalu, Esq.
7. The National Industrial Court: Current Dispensation in Labour Disputes Resolution: Hon. Justice B.B. Kayinp, NIC
8. The Rights of Men, Women & Children in Marriage and Divorce Under Customary Laws in Nigeria: Hon. Justice A.E. Ubiri, Customary Court of Appeal, Delta State
9. ADR and Restorative Justice: Panacea for Delay in Dispensation of Justice: Mr. Kevin Nwosu, Deputy Director (Academics), Nigerian Law School, Kano campus
10. Computer Literacy for Judicial Officers: Mr. Joseph Boko, Computer Consultant
11. Practical Session on Computer: Mr. Joseph Boko, Computer Consultant

[No list of attendees available.]

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

Topics covered:<sup>105</sup>

1. Judicial Ethics, Decorum and Code of Conduct for Sharia Court Judges and Directors/Inspectors of Sharia Courts: Hon. Justice Shehu Ibrahim Ahmad, Sharia Court of Appeal, Kaduna State

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<sup>103</sup> From a list supplied by the NJI.

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

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

DOCUMENTARY MATERIALS: COURSES FOR ALKALIS AND KADIS

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

[No list of attendees available.]

**2007 Induction Course for Newly Appointed Judges and Kadis: 4<sup>th</sup>-15<sup>th</sup> June 2007**

Topics covered:<sup>106</sup>

1. Judicial Ethics, Code of Conduct for Judicial Officers, Courtroom Decorum and Comportment: Hon. Justice Niki Tobi, JSC
2. Judicial Integrity & Independence: Removing Corruption in the Wheel of Administration of Justice: Hon. Justice E.O. Ayoola, JSC (Rtd.), Chairman, ICPC
3. Organization of the Registry/Chambers and Case Flow Management: The Role of the Judge: Hon. Justice H.A.L. Balogun, High Court, Kaduna State
4. Remembering My Oaths of Office: Hon. Justice C.O.C. Izima, High Court, Abia State
5. Hints on Stress Management & Total Wellbeing: Dr. Jacob Nwachukwu, MBBS
6. The Constitution and the Role of the Judge in Civil Society: Hon. Justice A.U. Kalu, High Court, Abia State

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

SHARIA IMPLEMENTATION IN NORTHERN NIGERIA 1999-2006: A SOURCEBOOK  
CHAPTER 7: THE SHARIA COURTS AND THEIR JUDGES

7. An Examination of Islamic Law of Evidence and Matters of Procedure in Civil and Criminal Cases: Hon. Kadi Abdullahi Maikano Usman, Sharia Court of Appeal, Gombe State
8. Computer Literacy for Judicial Officers and Its Impact on Administration of Justice: Mr. Joseph Boko, Computer Consultant
9. Planning for Financial Security Now and In Retirement: Options for Judicial Officers: Mrs. Ify Umunnakwe, Asset Manager
10. High Job Demand, Low Job Control, and Job Dissatisfaction: Are They Risk Factors to Work-Related Musculoskeletal Disorders Among Judicial Officers? Ms. Uzoamaka Umeh, Consultant Physiotherapist

[No list of attendees available.]

**2007 All Nigeria Judges' Conference: 5<sup>th</sup>-9<sup>th</sup> November 2007**

Topics covered:<sup>107</sup>

1. Towards Strengthening Judicial Integrity: The Nigerian Experience: Hon. Justice Dahiru Musdapher, JSC
2. An Overview of the UNODC/NJI NGA/SO8 Project on Strengthening Judicial Integrity and Capacity in Ten Pilot States in Nigeria: Mr. Oliver Stople, UNODC
3. The Fight Against Corruption in the Judiciary in Nigeria: The Journey So Far: Hon. Justice E.O. Ayoola, JSC (Rtd), Chairman, ICPC
4. Obedience to Court Orders and Judgments: A Panacea for Sustainable Democracy: Hon. Justice Niki Tobi, JSC
5. Performance Evaluation of Judicial Officers and the Role of the National Judicial Council: The Journey So Far: Hon. Justice Bola Babalakin, JSC (Rtd), Chairman, Committee of the NJC on Performance Evaluation of Judges of the Superior Courts of Record
6. Sentencing: Guiding Principles and Current Trends: Hon. Justice M.A. Owoade, JCA
7. The Role of the Judiciary in Industrial Harmony: Prof. E.E. Uvieghare, Lagos
8. The Challenges and Prospects of the Application of Sharia by the Courts: Hon. Justice I.T. Muhammad, JSC
9. Jurisdictional Issues in the Application of Customary Law in Nigeria: Hon. Justice S.H. Makeri, President, Customary Court of Appeal, Kaduna State
10. Information Technology and the Law: Dr. Francesco Contini, Research Institute on Judicial Systems, Italy and Mr. Alain Nkoyock, IT Expert, UNODC
11. Stress Management and Peak Performance in the Judiciary: Dr. A. Aderibigbe, Consultant Physician, Ilorin Teaching Hospital
12. Concept Paper on Family Courts and Family Courts Practice Directions 2007: Discussants: Prof. A. Adeyimi, Univ. of Lagos and Mrs. K.F. Anjoni, Executive Secretary, National Human Rights Commission

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<sup>107</sup> From the Directory of Conference Proceedings



Attendees:<sup>108</sup>

Fifteen justices of the Supreme Court.

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

Fifteen judges of the Federal High Court.

Five judges of the National Industrial Court.

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

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

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

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<sup>108</sup> Summarized from *ibid.*

6.

**Data on actual qualifications of alkalīs and kadīs**

**a. Data found elsewhere in this work**

(1) Results of screening in Kebbi State:

The “Report of the Committee for the Implementation of Sharia in Kebbi State”, at pp. 207-209 of Chapter 2, describes the criteria the Committee used in screening applicants for positions as Sharia Court alkalīs. The results of the screening exercise are summarised on pp. 208-09, and then at pp. 224-28 the results are given in detail in tabular form, showing how many interviewees, among existing Area Court judges and new applicants separately, had what qualifications or scored how high on the various scales. A summary of the qualifications of the alkalīs actually serving in Kebbi State in early 2008 is given in the table in subsection c below.

(2) Results of screening in Bauchi State.

Volume V of the “Report of the Bauchi State Task Force on Sharia Implementation” detailing the major activities of the Task Force, is published as “Supplementary Material” to Volume II of this work, at <http://www.sharia-in-africa.net/pages/publications/sharia-implementation-in-northern-nigeria.php>. Pp. 6-11 describe the Task Force’s work on the appointment of Sharia Court judges and inspectors. At pp. 13 and 14 are tables showing how many interviewees for judgeships, among existing Area Court judges and new applicants separately, had what qualifications. At pp. 23-24 the qualifications of a number of people found suitable to be appointed as inspectors are described. At p. 25 a table summarises the qualifications of all applicants for inspectorships. Pp. 26-30 discuss the appointment of registrars of Sharia Courts and summarise the qualifications of applicants. Unfortunately no data on the qualifications of the alkalīs actually serving in Bauchi State in early 2008, for the table in subsection (3) below, was obtained.

(3) Brief biographies of eleven judges.

Chapter 6 of this work, entitled “Two Famous Cases”, documents various aspects of the *ḥina* cases of Safiyatu Hussaini and Amina Lawal. Part VI of the chapter, at pp. 125-28, is entitled “Brief Biographies of the Judges Who Ruled on the Cases”. It summarises the careers of eleven Sharia Court and Sharia Court of Appeal judges from Sokoto and Katsina States, including the schools they attended, the formal qualifications they attained to, and their work experience.

**b. Two additional brief biographies**

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

## DOCUMENTARY MATERIALS: QUALIFICATIONS OF ALKALIS AND KADIS

in the Area Court; became an Area Court judge in 1984. Rose through the ranks. In 2000 was appointed a Kadi of the Sharia Court of Appeal, and in 2004 became Grand Kadi.

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

**c. Data on qualifications of alkalıs and kadıs: February/March 2008<sup>109</sup>**

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

<sup>109</sup> The (unfortunately only partial) information in the table was gathered on a tour of the Sharia States undertaken by the editor in February and March 2008. Many thanks to all the court officials who provided the information.

7.

**Data on remuneration of alkalis and kadis**

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

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

In 1911 the effect of the payment of the native judges deserves special notice. The improved position and growing efficiency of the native judiciary, noted in previous reports [of the colonial administration] had now been established by the institution of native treasuries and the payment of regular salaries to the native judges. Formerly the judges (Alkalai) had no fixed stipends and depended for their livelihood on the generosity of the reigning Emir or on the fees collected through orders from their own courts. In such circumstances it could hardly be expected that the courts would be efficient, or free from bribery and corruption. It was now generally conceded that the former weakness of the native courts was caused rather by a radically bad system [i.e. of paying the alkalis] than by any real lack of men who could, if properly supported, efficiently administer justice.<sup>110</sup>

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

In the Northern Law a Provincial Commissioner in establishing a [native] court must satisfy himself that adequate provision will be made by the Native Authority to pay the members of the court and its officers and to provide fitting accommodation for its work.... But there is no statutory power vested in the Minister to prescribe salaries and terms of service for members or officers....<sup>111</sup>

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

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

- the Brooke Commission Report, i.e. the *Report of the Native Courts (Northern Provinces) Commission of Inquiry*,<sup>112</sup> which gives patchy information about the pay of some alkalis in some Provinces in 1950; and

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<sup>110</sup> Brooke North, 12.

<sup>111</sup> E.A. Keay and S.S. Richardson, *The Native and Customary Courts of Nigeria* (London: Sweet & Maxwell, Lagos: African Universities Press, 1966), 203 (footnotes omitted).

<sup>112</sup> Lagos: Government Printer, 1951; the main report must be read together with the *Native Courts Commissions of Inquiry 1949 to 1952: Appendix and Summary of Conclusions and Recommendations* (Lagos: Government Printer, 1953). Information on remuneration of Native Court alkalis is given at p. 54 of the main report and p. 30 of the appendix.

DOCUMENTARY MATERIALS: REMUNERATION OF ALKALIS AND KADIS

- a “Memorandum of Increases in Salary Granted to Alkalai, Native Court Presidents and Other Members of the Native Courts Judiciary” submitted to the Panel of Jurists on their second visit to Northern Nigeria in May and June 1962,<sup>113</sup> which gives more detailed but still incomplete information about the pay of alkalais and other court officers in some Provinces in 1958/59 and 1962/63.

In order to provide a basis for comparison with the remuneration of alkalais of the present-day Sharia Courts, the data from these two sources is given here, in three tables. The basic data in all the tables are the annual salaries, in British/Nigerian pounds,<sup>114</sup> of various categories of Native Court alkalais from various Provinces of the Northern Region, for 1950, 1958/59, and 1962/63. The tables also give the equivalents, in 2007 US dollars and 2007 Nigerian naira, of the historical salaries in pounds. Historical pounds have been converted to 2007 dollars using the average CPI/RPI values given on 7<sup>th</sup> September 2008 in Lawrence H. Officer and Samuel H. Williamson, "Computing 'Real Value' Over Time With a Conversion Between U.K. Pounds and U.S. Dollars, 1830 - 2007", <http://www.measuringworth.com/exchange/>, namely 1:34.53 for 1950, 1:24.39 for 1958, and 1:22.61 for 1962. 2007 dollars have been converted to 2007 naira at an assumed average exchange rate for the year of 1:125.

(a) *Remuneration of some Native Court alkalais in 1950, per the Brooke Commission Report*

Category of alkali	Annual salary in 1950 £	Equivalent in 2007 US\$	Equivalent in 2007 ₦
Bornu Province			
Chief Alkali	480	16,574	2,071,800
Other alkalai			
high	170	5,870	733,763
low	50	1,727	215,813
Kano Province			
Chief Alkali	864	29,834	3,729,240
Grade A alkalai	350	12,086	1,510,688
Grade B alkalai	230	7,942	992,738
Grade D alkalai	170	5,870	733,763
Grade E alkalai	108	3,729	466,155
Katsina Province			
Chief Alkali	432	14,917	1,864,620
Sokoto Province			
Chief Alkali	650	22,445	2,805,563
Junior alkalai elsewhere			
high	168	5,801	725,130
low	84	2,901	362,565

<sup>113</sup> The memorandum, prepared by the Northern Region's Ministry for Local Government, is reproduced in Chapter 1 of this work at pp. 101-103.

<sup>114</sup> The Nigerian pound was introduced in 1959, at par with the British pound, as part of the country's preparation for independence the next year. The Nigerian pound was replaced by the naira on 1<sup>st</sup> January 1973.

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*(b) Remuneration of some Native Court alkalis in 1958/59,  
per the Ministry for Local Government of the Northern Region*

Category of alkali	Annual salary in 1958 £	Equivalent in 2007 US\$	Equivalent in 2007 ₦
Borno			
Chief Alkali	720	17,561	2,195,100
Alkali	400	9,756	1,219,500
Alkali	360	8,780	1,097,550
Kano			
Chief Alkali	1,248	30,439	3,804,840
Alkali	588	14,341	1,792,665
Registrar	564	13,756	1,719,495
Katsina			
Chief Alkali	716	17,463	2,182,905
Alkali	323	7,878	984,746
Insp. of Cts.	282	6,878	859,748
Ilorin			
Chief Alkali	345	8,415	1,051,819
Snr. Alkali	282	6,878	859,748
Registrar	270	6,585	823,163
Idoma			
Court President	200	4,878	609,750
Registrar	162	3,951	493,898
President	48	1,171	146,340
Borgu			
Alkali	180	4,390	548,775
Alkali	162	3,951	493,898
Gumel			
Alkali	252	6,146	768,285
Alkali	132	3,219	402,435
Asst. Alkali	132	3,219	402,435
Tiv			
Alkali	216	5,268	658,530
Registrar	180	4,390	548,775
President	150	3,659	457,313
Lafia			
Alkali	120	2,927	365,850
Alkali	66	1,610	201,218
Mufti	66	1,610	201,218

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*(c) Remuneration of some Native Court alkalies in 1962/63,  
per the Ministry for Local Government of the Northern Region*

Category of alkali	Annual salary in 1962 £	Equivalent in 2007 US\$	Equivalent in 2007 ₦
Borno			
Chief Alkali	1,278	28,896	3,611,948
Alkali	780	17,636	2,204,475
Alkali	766	17,319	2,164,908
Kano			
Chief Alkali	1,519	34,345	4,293,074
Alkali	1,176	26,589	3,323,670
Insp. of Cts.	1,282	28,986	3,623,253
Katsina			
Chief Alkali	1,285	29,054	3,631,731
Alkali	854	19,309	2,413,618
Insp. of Cts.	564	12,752	1,594,005
Ilorin			
Chief Alkali	660	14,923	1,865,325
Snr. Alkali	540	12,209	1,526,175
Registrar	510	11,531	1,441,388
Idoma			
Court President	250	5,653	706,563
Registrar	225	5,087	635,906
President	250	5,653	706,563
Borgu			
Alkali	264	5,969	746,130
Alkali	Position abolished		
Gumel			
Alkali	552	12,481	1,560,090
Alkali	290	6,557	819,613
Asst. Alkali	290	6,557	819,613
Tiv			
Alkali	240	5,426	678,300
Registrar	180	4,070	508,725
President	500	11,305	1,413,125
Lafia			
Alkali	366	8,275	1,034,408
Alkali	216	4,884	610,470
Mufti	138	3,120	390,023

**b. Remuneration of alkalies of the Sharia Courts: 2004 and 2008**

In May 1967 Nigeria's four Regions were subdivided into twelve States, six of them in the North; and in late 1967 and early 1968 the Military Governors of the six Northern States issued edicts reconstituting the Native Courts as Area Courts, and putting them under the centralised control of the State Governments.<sup>115</sup> Since then the remuneration

<sup>115</sup> For further details see Chapter 7 on "Court Reorganisation".

of the judges of these courts, including, now, the alkalís of the Sharia Courts in the Sharia States, has been the responsibility of the State Governments.

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

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

Tables (a)-(c) give data on the remuneration of “highest level”, “mid-level”, and “entry-level” alkalís, defined as:

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

Table (d) gives the annual remunerations of alkalís at the various levels as recommended by the Committee of Chief Judges, Grand Kadís and Presidents of Customary Courts. For purposes of this table highest-, mid- and entry-level alkalís would be at GL 16, 14 and 10, respectively.

Table (e) summarises the data presented in tables (1)-(4), and also converts the 2004 figures given in naira, into 2007 figures given in US dollars. For this purpose 2004 naira were first changed to 2004 dollars at an assumed average exchange rate for 2004 of 1:135, and then 2004 dollars were inflated to 2007 dollars by multiplying by the factor of 1.10 given on 7<sup>th</sup> September 2008 by the U.S. Bureau of Labor Statistics at [http://www.bls.gov/data/inflation\\_calculator.htm](http://www.bls.gov/data/inflation_calculator.htm).



DOCUMENTARY MATERIALS: REMUNERATION

(a) *Annual remuneration of highest-level Sharia Court alkalis by State: April/May 2004 (naira)*

State	Basic salary	Housing allow.	Transport allow.	Meal allow.	Utility allow.	Entertainment allow.	Domest. staff allow.	Leave grant	Responsibility allow.	Inducement allow.	Robing allow.	Fringe benefit	Other	Total
Bauchi	301,452	60,290	12,000	2,160	3,240	3,000	0	30,145	0	0	0	0	0	412,287
Borno	290,076	58,015	12,000	2,160	3,240	4,200	132,000	0	0	0	0	0	0	501,691 <sup>116</sup>
Gombe <sup>117</sup>	301,452	63,420	11,280	4,800	4,680	4,680	0	39,030	70,836 <sup>118</sup>	0	0	0	0	500,178
Jigawa	301,452	60,290	21,840	9,720	8,040	7,560	21,600 <sup>119</sup>	0	0	0	30,000	100,596	0	561,098 <sup>120</sup>
Kaduna	399,823	14,400	6,000	4,500	4,200	4,200	0 <sup>121</sup>	0	0	0	0	0	0	423,823
Kano	301,452	45,218	9,600	6,000	4,200	4,200	87,396	0	0	0	0	60,290	0	518,356
Katsina	... No data ...													
Kebbi	269,580	53,916	10,200	1,920	2,640	0	0	26,958	0	0	0	0	0	365,214
Niger	419,916	83,983	12,000	2,160	3,240	3,000	108,000	41,992	0	0	15,000	0	0	689,291
Sokoto	405,108	81,024	20,400	9,600	7,800	3,240	0	40,510	0	0	0	0	0	567,682
Yobe	301,452	30,144	13,800	0	0	0	0	0	0	0	80,000	0	12,600 <sup>122</sup>	437,996
Zamfara	535,260	107,052	21,840	9,720	8,040	0	0	0	180,000	301,428	0	0	0	1,163,340

<sup>116</sup> In Borno, alkalis who are lawyers (LL.B. and B.L.) receive an additional 50% of existing allowances for their grade levels: here = N105,808 additional per annum.

<sup>117</sup> In Gombe: Area Court judges, not Sharia Court alkalis.

<sup>118</sup> “Lower Judicial Officer’s Allowance”

<sup>119</sup> Guard allowance.

<sup>120</sup> In Jigawa, alkalis who are lawyers (LL.B. and B.L.) receive additional allowances as follows: domestic servants allowance (N156,000), judicial officer’s allowance (N105,240), research allowance (N28,092), and furniture allowance (N50,000), for a total of N339,332 additional per annum.

<sup>121</sup> In Kaduna, alkalis who are lawyers (LL.B. and B.L.) receive a domestic staff allowance of N138,264 additional per annum. Their basic salaries are also somewhat higher at all grade levels.

<sup>122</sup> “Miscellaneous allowance”.

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*(b) Annual remuneration of mid-level Sharia Court alkalis by state: April/May 2004 (naira)*

State	Basic salary	Housing allow.	Transport allow.	Meal allow.	Utility allow.	Entertainment allow.	Domest. staff allow.	Leave grant	Responsibility allow.	Inducement allow.	Robbing allow.	Fringe benefit	Other	Total
Bauchi	218,004	43,601	10,200	1,920	2,640	0	0	21,800	0	0	0	0	0	298,165
Borno	198,420	39,677	10,200	1,920	2,640	0	132,000	0	0	0	0	0	0	384,857 <sup>123</sup>
Gombe <sup>124</sup>	285,456	46,392	8,280	4,200	2,880	0	0	0	0	0	0	0	0	347,208
Jigawa	218,004	43,596	18,540	8,640	6,540	0	21,600 <sup>125</sup>	0	0	0	0	37,092	0	354,012 <sup>126</sup>
Kaduna	278,978	10,200	4,200	4,200	3,000	0	0 <sup>127</sup>	0	0	0	0	0	0	300,578
Kano	218,004	32,701	9,000	5,400	3,600	0	87,403	0	0	0	0	43,601	0	399,709
Katsina	... No data ...													
Kebbi	[Kebbi only gives data for "Judges of Upper Sharia Court" and "Judges of Lower Sharia Court". These are entered on tables for highest-level and entry-level alkalis.]													
Niger	314,364	62,873	10,200	1,920	2,640	0	0	31,436	0	0	15,000	0	0	438,433
Sokoto	285,456	57,096	20,400	9,600	7,800	0	0	28,545	0	0	0	0	0	408,897
Yobe	218,004	21,800	10,200	0	0	0	0	0	0	0	50,000	0	5,880 <sup>128</sup>	305,884
Zamfara	389,652	77,928	18,540	8,640	6,540	0	0	0	180,000	21,996	0	0	0	703,296

<sup>123</sup> In Borno, alkalis who are lawyers (LL.B. and B.L.) receive an additional 50% of existing allowances for their grade levels: here = N93,219 additional per annum.

<sup>124</sup> In Gombe: Area Court judges, not Sharia Court alkalis.

<sup>125</sup> Guard allowance.

<sup>126</sup> In Jigawa, alkalis who are lawyers (LL.B. and B.L.) receive additional allowances as follows: domestic servants allowance (N156,000), judicial officer's allowance (N105,240), research allowance (N28,092), and furniture allowance (N50,000), for a total of N339,332 additional per annum.

<sup>127</sup> In Kaduna, alkalis who are lawyers (LL.B. and B.L.) receive a domestic staff allowance of N138,264 additional per annum. Their basic salaries are also somewhat higher at all grade levels.

<sup>128</sup> "Miscellaneous allowance".

## DOCUMENTARY MATERIALS: REMUNERATION

*(c) Annual remuneration of entry-level Sharia Court alkalIs by state: April/May 2004 (naira)*

State	Basic salary	Housing allow.	Transport allow.	Meal allow.	Utility allow.	Entertainment allow.	Domest. staff allow.	Leave grant	Responsibility allow.	Inducement allow.	Robing allow.	Fringe benefit	Other	Total
Bauchi	133,632	31,502	8,400	1,680	2,040	0	0	13,363	0	0	0	0	0	190,617
Borno	110,088	23,448	8,400	1,680	2,040	0	132,000	0	0	0	0	0	0	277,656 <sup>129</sup>
Gombe <sup>130</sup>	175,512	28,524	8,280	4,200	2,880	0	0	0	0	0	0	0	0	219,396
Jigawa	133,632	26,724	15,840	7,560	5,040	0	21,600 <sup>131</sup>	0	0	0	0	31,500	0	241,896 <sup>132</sup>
Kaduna	118,646	10,200	4,200	4,200	3,000	0	0 <sup>133</sup>	0	0	0	0	0	0	140,246
Kano	133,620	20,040	8,400	4,800	3,000	0	87,396	0	0	0	0	26,724	0	283,980
Katsina	... No data ...													
Kebbi	218,084	43,596	10,200	1,920	2,640	0	0	21,808	0	0	0	0	0	298,248
Niger	270,780	54,156	8,400	1,680	2,040	0	0	27,078	0	0	15,000	0	0	379,134
Sokoto	196,320	39,264	8,400	1,680	2,040	0	0	19,632	0	0	0	0	0	267,336
Yobe	133,632	13,363	10,200	0	0	0	0	0	0	0	20,000	0	5,880 <sup>134</sup>	183,075
Zamfara	299,472	59,892	18,540	8,640	6,540	0	0	0	180,000	0	0	0	0	573,084

<sup>129</sup> In Borno, alkalIs who are lawyers (LL.B. and B.L.) receive an additional 50% of existing allowances for their grade levels: here = N83,784 additional per annum.

<sup>130</sup> In Gombe: Area Court judges, not Sharia Court alkalIs.

<sup>131</sup> Guard allowance.

<sup>132</sup> In Jigawa, alkalIs who are lawyers (LL.B. and B.L.) receive additional allowances as follows: domestic servants allowance (N156,000), judicial officer's allowance (N105,240), research allowance (N28,092), and furniture allowance (N50,000), for a total of N339,332 additional per annum.

<sup>133</sup> In Kaduna, alkalIs who are lawyers (LL.B. and B.L.) receive a domestic staff allowance of N138,264 additional per annum. Their basic salaries are also somewhat higher at all grade levels.

<sup>134</sup> "Miscellaneous allowance".

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*(d) Annual remunerations of highest-, mid- and entry-level Sharia Court alkalís  
as recommended in October 2004 by the Committee of Chief Judges, Grand Kadis and Presidents of Customary Courts (naira)*

1. Highest-level alkalís, on GL 16

Basic salary	Housing allowance	Transport allowance	Meal allowance	Utility allowance	Entertain-ment allowance	Domestic staff	Leave grant	Respons-ibility allowance	Induce-ment allowance	Robing or outfit allowance	Fringe benefit	Other	Total
532,862	159,858	159,858	12,000	18,000	12,000	198,000 <sup>135</sup>	As the states deem fit		53,286	As the states deem fit			1,145,864

2. Mid-level alkalís, on GL 14

Basic salary	Housing allowance	Transport allowance	Meal allowance	Utility allowance	Entertain-ment allowance	Domestic staff	Leave grant	Respons-ibility allowance	Induce-ment allowance	Robing or outfit allowance	Fringe benefit	Other	Total
379,260	113,778	113,778	12,000	18,000	12,000	132,000 <sup>136</sup>	As the states deem fit		37,926	As the states deem fit			818,742

3. Entry-level alkalís, on GL 10

Basic salary	Housing allowance	Transport allowance	Meal allowance	Utility allowance	Entertain-ment allowance	Domestic staff	Leave grant	Respons-ibility allowance	Induce-ment allowance	Robing or outfit allowance	Fringe benefit	Other	Total
240,000	72,000	72,000	12,000	18,000	12,000	66,000 <sup>137</sup>	As the states deem fit		24,000	As the states deem fit			516,000

<sup>135</sup> The recommendation is for three domestic servants to be provided by the state. Assuming these persons would earn an average of ₦5,500 a month, the value in money would be ₦198,000 annually.

<sup>136</sup> The recommendation is for two domestic servants to be provided by the state. Assuming these persons would earn an average of ₦5,500 a month, the value in money would be ₦132,000 annually.

## DOCUMENTARY MATERIALS: REMUNERATION

*(e) Annual remuneration of Sharia Court alkalis in early 2004: summary*

State	Highest-level alkalis		Mid-level alkalis		Entry-level alkalis	
	2004 ₦	2007 \$	2004 ₦	2007 \$	2004 ₦	2007 \$
Bauchi	412,287	3,359	298,165	2,429	190,617	1,553
Borno	501,691	4,088	384,857	3,136	277,656	2,262
Gombe	500,178	4,076	347,208	2,829	219,396	1,788
Jigawa	561,098	4,572	354,012	2,885	241,896	1,971
Kaduna	423,823	3,453	300,578	2,449	140,246	1,143
Kano	518,356	4,224	399,709	3,257	283,980	2,314
Katsina	... No data ...		... No data ...		... No data ...	
Kebbi	365,214	2,976	... No data ...		298,248	2,430
Niger	689,291	5,616	438,433	3,572	379,134	3,089
Sokoto	567,682	4,626	408,897	3,332	267,336	2,178
Yobe	437,996	3,569	305,884	2,492	183,075	1,492
Zamfara	1,163,340	9,479	703,296	5,731	573,084	4,670
Averages	558,269	4,549	394,104	3,211	277,697	2,263
Committee recommend'n	1,145,864	9,337	818,742	6,671	516,000	4,204

<sup>137</sup> The recommendation is for one domestic servant to be provided by the state. Assuming these persons would earn an average of ₦5,500 a month, the value in money would be ₦66,000 annually.

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

The four tables that follow in this subsection give data on the remuneration of Sharia Court alkalis in early 2008, which was kindly provided by Sharia Court officials during visits to their States in February and March 2008.

Tables (a)-(c) give data on the remuneration of “highest level”, “mid-level”, and “entry-level” alkalis, defined as those occupying the following grades and steps:

- highest-level: Gombe: 15/9; Jigawa: 15; Kaduna: 16; Kano: 15/9; Kebbi: 15; Niger: 15/7; Sokoto: 15/8; Yobe: 16/4; Zamfara: 16;
- mid-level: Gombe: 12/8; Jigawa: 12; Kaduna: 12; Kano: 12/9; Kebbi: no data; Niger: 12/7; Sokoto: 13-14/8; Yobe: 12/2; Zamfara: 14;
- entry-level: Gombe: 8/11; Jigawa: 8; Kaduna: 8; Kano: 8/9; Kebbi: “Judges of Lower Sharia Court”; Niger: 10/7; Sokoto: 9/8; Yobe: 10; Zamfara: 12.

Table (d) summarises the data presented in tables (a)-(c), and also converts the early 2008 figures given in naira, which are assumed to represent 2007 remuneration also, into 2007 figures given in US dollars; this provides a consistent basis for comparison with the data given in sections **a** and **b(1)**. Naira were changed to dollars at an assumed average exchange rate for 2007 of 1:125.

DOCUMENTARY MATERIALS: REMUNERATION OF ALKALIS AND KADIS

(a) *Annual remuneration of highest-level Sharia Court alkalIs by State: February/March 2008 (naira)*

State	Basic salary	Housing allow.	Transport allow.	Meal allow.	Utility allow.	Entertainment allow.	Domest. staff allow.	Leave grant	Responsibility allow.	Robing allow.	Fringe benefit	Other	Total
Bauchi													
Borno	... No data ...												
Gombe <sup>138</sup>	489,120	79,488	13,140	5,592	5,448	3,492	197,100	48,912	0	0	0	70,836	913,128
Jigawa	301,452	60,290	21,840	9,720	8,040	7,560	84,000 <sup>139</sup>	0	0	30,000	100,596	90,000 <sup>140</sup>	713,498 <sup>141</sup>
Kaduna	383,436	57,516	47,928	9,600	7,200	4,200	167,040	38,344	0	95,859	0	0	811,123
Kano	502,219	100,444	21,840	9,720	8,040	0	87,403	50,222	0	30,000	100,444	12,000 <sup>142</sup>	922,332
Katsina	... No data ...												
Kebbi <sup>143</sup>	310,017	62,003	11,730	2,208	3,036	0	0	31,002	0	0	0	0	419,996
Niger	468,362	93,672	14,160	7,560	6,420	6,000	113,134	46,836	0	0	0	0	756,144
Sokoto	517,296	103,464	12,000	2,160	3,240	4,200	0	51,730	0	0	0	0	694,090
Yobe	402,280	80,460	13,800	0	8,400	4,200	132,000	40,228	0	70,000	0	372,000 <sup>144</sup>	1,123,368
Zamfara	569,508	113,904	21,840	9,720	8,040	29,436	0	56,950	180,000	25,000 <sup>145</sup>	0	0	1,014,398

<sup>138</sup> In Gombe: Area Court judges, not Sharia Court alkalIs.

<sup>139</sup> Guard allowance.

<sup>140</sup> Furniture allowance of N30,000 + fuel allowance of N60,000.

<sup>141</sup> In Jigawa, alkalIs who are lawyers (LL.B. and B.L.) receive additional allowances as follows: domestic servants allowance (N156,000), judicial officer's allowance (N105,240), research allowance (N28,092), and furniture allowance of N50,000 instead of N30,000, for a total of N309,332 additional per annum. In March 2008 there were 9 such alkalIs, all serving on Upper Sharia Courts.

<sup>142</sup> Law report allowance.

<sup>143</sup> In Kebbi we were informed that the only change in alkali remuneration from 2004 was a 15% across-the-board increase given in early 2008. The figures entered here are calculated from the corresponding 2004 table accordingly.

<sup>144</sup> Hazard and research allowances of N120,000 each; watchmen allowance of N132,000.

<sup>145</sup> An outfit allowance of N100,000 is paid once every four years.

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*(b) Annual remuneration of mid-level Sharia Court alkalIs by State: February/March 2008 (naira)*

State	Basic salary	Housing allow.	Transport allow.	Meal allow.	Utility allow.	Entertainment allow.	Domest. staff allow.	Leave grant	Responsibility allow.	Robing allow.	Fringe benefit	Other	Total
Bauchi													
Borno	... No data ...												
Gombe <sup>146</sup>	344,688	56,016	10,188	5,172	3,540	0	197,100	34,464	0	0	0	52,152	703,320
Jigawa	218,004	43,596	18,540	8,640	6,540	0	84,000 <sup>147</sup>	0	0	0	37,092	80,000 <sup>148</sup>	496,412
Kaduna	250,704	37,608	31,344	6,300	4,500	0	0	25,070	0	62,676	0	0	418,202
Kano	379,594	75,919	18,540	8,640	6,540	0	55,841	37,959	0	30,000	48,504	12,000 <sup>149</sup>	673,537
Katsina	... No data ...												
Kebbi	No 2004 Kebbi data on mid-level alkalIs, therefore 2008 figures for them could not be calculated. <sup>150</sup>												
Niger	336,501	67,300	12,120	6,720	5,220	0	113,134	33,650	0	0	0	0	574,645
Sokoto	448,476	89,700	10,200	1,920	2,640	0	0	44,848	0	0	0	0	597,784
Yobe	239,028	47,808	10,200	1,800	4,080	0	132,000	22,764	0	60,000	0	312,000 <sup>151</sup>	829,680
Zamfara	462,288	92,460	18,540	8,640	6,540	0	0	46,228	180,000	25,000 <sup>152</sup>	0	0	839,696

<sup>146</sup> In Gombe: Area Court judges, not Sharia Court alkalIs.

<sup>147</sup> Guard allowance.

<sup>148</sup> Furniture allowance of N20,000 + fuel allowance of N60,000.

<sup>149</sup> Law report allowance.

<sup>150</sup> In Kebbi we were informed that the only change in alkali remuneration from 2004 was a 15% across-the-board increase given in early 2008; our 2008 figures for highest- and entry-level Kebbi alkalIs are calculated from 2004 figures accordingly. As we have no 2004 figures for mid-level Kebbi alkalIs, we have no basis for the corresponding calculation for this page.

<sup>151</sup> Hazard allowance of N120,000; research allowance of N60,000; watchmen allowance of N132,000.

<sup>152</sup> An outfit allowance of N100,000 is paid once every four years.



DOCUMENTARY MATERIALS: REMUNERATION OF ALKALIS AND KADIS

(c) *Annual remuneration of entry-level Sharia Court alkalIs by State: February/March 2008 (naira)*

State	Basic salary	Housing allow.	Transport allow.	Meal allow.	Utility allow.	Entertainment allow.	Domest. staff allow.	Leave grant	Responsibility allow.	Robing allow.	Fringe benefit	Other	Total
Bauchi													
Borno	... No data ...												
Gombe <sup>153</sup>	221,724	36,024	9,996	5,076	3,480	0	0	22,176	0	0	0	0	298,476
Jigawa	133,632	26,724	15,840	7,560	5,040	0	84,000 <sup>154</sup>	0	0	0	31,500	80,000 <sup>155</sup>	384,296
Kaduna	153,684	23,052	19,212	6,300	4,500	0	0	15,368	0	38,421	0	0	260,537
Kano	240,236	48,047	15,840	7,560	5,040	0	0	24,024	0	30,000	0	12,000 <sup>156</sup>	382,747
Katsina	... No data ...												
Kebbi <sup>157</sup>	250,797	50,135	11,730	2,208	3,036	0	0	25,079	0	0	0	0	342,985
Niger	273,069	54,614	10,320	5,880	4,020	0	113,134	27,307	0	0	0	0	488,344
Sokoto	264,072	51,792	8,400	1,680	2,040	0	0	26,487	0	0	0	0	354,471
Yobe	204,936	40,992	10,200	1,800	4,080	0	132,000	20,494	0	60,000	0	312,000 <sup>158</sup>	786,502
Zamfara	394,236	78,852	18,540	8,640	6,540	0	0	39,423	180,000	25,000 <sup>159</sup>	0	0	751,231

<sup>153</sup> In Gombe: Area Court judges, not Sharia Court alkalIs.

<sup>154</sup> Guard allowance.

<sup>155</sup> Furniture allowance of N20,000 + fuel allowance of N60,000.

<sup>156</sup> Law report allowance.

<sup>157</sup> In Kebbi we were informed that the only change in alkali remuneration from 2004 was a 15% across-the-board increase given in early 2008. The figures entered here are calculated from the corresponding 2004 table accordingly.

<sup>158</sup> Hazard allowance of N120,000; research allowance of N60,000; watchmen allowance of N132,000.

<sup>159</sup> An outfit allowance of N100,000 is paid once every four years

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*(d) Annual remuneration of Sharia Court alkalis in early 2008: summary*

State	Highest-level alkalis			Mid-level alkalis			Entry-level alkalis	
	2008 ₦	2007 \$		2008 ₦	2007 \$		2008 ₦	2007 \$
Bauchi	... No data ...			... No data ...			... No data ...	
Borno	... No data ...			... No data ...			... No data ...	
Gombe	913,128	7,305		703,320	5,627		298,476	2,388
Jigawa	713,498	5,708		496,412	3,971		384,296	3,074
Kaduna	811,123	6,489		418,202	3,346		260,537	2,084
Kano	922,332	7,379		673,537	5,388		382,747	3,062
Katsina	... No data ...			... No data ...			... No data ...	
Kebbi	419,996	3,360		... No data ...			342,985	2,744
Niger	756,144	6,049		574,645	4,597		488,344	3,907
Sokoto	694,090	5,553		597,784	4,782		354,471	2,836
Yobe	1,123,368	8,987		829,680	6,637		786,502	6,292
Zamfara	1,014,398	8,115		839,696	6,718		751,231	6,010
Averages	818,675	6,549		641,660	5,133		449,954	3,600

**c. Remuneration of Grand Kadis and Kadis of the Sharia Courts of Appeal:  
2003-2007 and 2008**

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

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

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

- a large house, furnished all the way down to the silverware, usually in the nicest part of town, usually with separate servants' quarters on the compound;
- four or five domestic servants;
- free utilities, and since the electrical supply was (and still is) unreliable, often a stand-by generator as well;
- free telephone service;
- a car, maintained at government expense, with a driver and plenty of fuel;
- free health care for themselves and their families, which could (and still can) sometimes mean treatment in hospitals in Europe or the United States;
- two or three daily newspapers of their choice.<sup>160</sup>

This long list held true right up to 1998, "except that at some time between 1983 and 1988, payment of domestic staff *allowances* was substituted [at least in some States for some superior court judges] for provision of domestic staff themselves – giving the judges the option to spend the allowances on other things."<sup>161</sup> This was the beginning of what is called "monetisation" – the conversion of in-kind remuneration to cash allowances – which was adopted as a policy under the Obasanjo administration (1999-2007) and is still in progress, sometimes haltingly, up to the present.

In 2002, the National Assembly enacted a new law governing the remuneration, salaries and allowances of judges of the superior courts (among State and Federal officials), which took effect in January 2003 and remained in effect through 2007, when a new law was enacted that took effect in early 2008. Unfortunately copies of these laws

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<sup>160</sup> P. Ostien, "A Study of the Compensation of Nigerian Judges Since Independence", *Current Issues in Development* 2/2 (July-December 1998), 1-21, 6-7, available online at <http://www.sharia-in-africa.net/pages/publications/sharia-implementation-in-northern-nigeria.php>, Vol. VI, Supplementary Materials, item I.

<sup>161</sup> *Ibid.*, p. 7 n. 9.

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have not been obtained, but only evidence of their effects on the remuneration, salaries and allowances of the Grand Kadis and Kadis of the Sharia Courts of Appeal obtained from those courts in several of the States.

By 2003-07, monetisation appears to have gone quite far as to the Kadis of the Sharia Courts of Appeal, but less far as to the Grand Kadis, as the following table of salaries and allowances suggests:

*(a) Annual salaries and allowances of Grand Kadis and Kadis  
of the Sharia Courts of Appeal: 2003-07 (naira)<sup>162</sup>*

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

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

By 2008 monetisation had gone much farther, as the following table indicates. Total salaries and allowances had also gone way up.

<sup>162</sup> This table is based primarily on two pages evidently prepared by the National Judicial Council and distributed to the various courts, obtained in September 2006 from the Sharia Court of Appeal in Jos, one captioned "States Judiciary Consolidated Salary For Chief Judges, Grand Khadi, Sharia Court of Appeal (SCA) and President Customary of Appeal (CCA) Vide 2002 Act" [sic], the other captioned "States Judiciary Consolidated Salary for Judges, Khadis, Sharia Court of Appeal, and Judges Customary of Appeal (CCA), Vide 2002 Act" [sic]. The second page does not show the optional accommodation allowance but this was confirmed by information supplied in 2003 and 2005-06 by officials of the Sharia Courts of Appeal of several other States which otherwise agreed with the two pages from Plateau; the information in the paragraph following the table is also based on those interviews.

## DOCUMENTARY MATERIALS: REMUNERATION OF ALKALIS AND KADIS

*(b) Annual salaries and allowances of Grand Kadis and Kadis of the Sharia Courts of Appeal: 2008 (naira)<sup>163</sup>*

	Grand Kadis	Kadis
Basic salary	1,804,740	1,669,385
Allowances (% of basic salary)		
Utilities (30%)	541,422	500,816
Domestic staff (75%)	1,353,555	1,252,039
Entertainment (45%)	812,133	751,223
Personal assistant (25%)	451,185	417,346
Motor vehicle maint. & fuelling (75%)	1,353,555	1,252,039
Hardship (50%)	902,370	834,693
Newspaper (15%)	270,711	250,408
Outfit (25%)	451,185	417,346
Leave (10%)	180,474	166,939
[Accommodation (100%)]	[1,804,740]	[1,669,385]

The reader will note that even accommodation (along with much else) has now been monetised for the Grand Kadis as well as the Kadis, at least to the extent that the States are now given the option of paying the allowance (as some are doing) instead of providing the accommodation (as others are doing). Newspapers and outfits are now also brought into the list of monetised allowances paid to all judges. The allowances for utilities, entertainment and motor vehicle maintenance and fuelling have gone up. The States also continued to supply other items not on this list, notably cars for all the judges (i.e. new ones every few years) and health care for the judges and their families.

The 2008 information is firm and consistent enough from State to State to allow a reasonable estimate, stated in money, of the total remuneration received in 2008 by the Grand Kadis and Kadis of the Sharia Courts of Appeal. The following table simply reproduces the preceding one, except that: (1) the brackets are removed from the accommodation allowance, on the assumption that even where accommodation is supplied in kind the amount of the allowance represents its fair annual rental value; (2) an amount is included as the fair annual rental value of the cars provided to the judges, assumed to be ₦600,000 for the Grand Kadis and ₦500,000 for the Kadis; and (3) an amount is also included as the estimated cost of an insurance policy that would cover the health care provided to the judges and their families, assumed to be ₦600,000 for all judges; this was in fact the amount paid by Plateau State to its Grand Kadi and Kadis in 2006 as a health care allowance in lieu of provision of health care in kind; (4) columns are added to the table, converting naira to US dollars at an assumed rate for 2008 of 120:1; and (5) the columns are totalled. Here is the result:

<sup>163</sup> This table is based on two pages evidently prepared by the National Judicial Council and distributed to the various courts, one captioned “States captioned “Details of Salary and Allowances Grand Khadi Sharia Court of Appeal, State” and “Details of Salary and Allowances Khadi Sharia Court of Appeal, State”, which were obtained in identical form in February and March 2008 from the Sharia Courts of Appeal of several Sharia States and confirmed in interviews with Sharia Court of Appeal officials in the other Sharia States. The information in the paragraph following the table is also based on those interviews.

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*(c) Total remuneration of Grand Kadis and Kadis  
of the Sharia Courts of Appeal: 2008*

	Grand Kadis		Kadis	
	₦	\$	₦	\$
Basic salary	1,804,740	15,040	1,669,385	13,912
Allowances (% of basic salary)				
Utilities (30%)	541,422	4,512	500,816	4,173
Domestic staff (75%)	1,353,555	11,280	1,252,039	10,434
Entertainment (45%)	812,133	6,768	751,223	6,260
Personal assistant (25%)	451,185	3,760	417,346	3,478
Motor vehicle maint. & fuelling (75%)	1,353,555	11,280	1,252,039	10,434
Hardship (50%)	902,370	7,520	834,693	6,956
Newspaper (15%)	270,711	2,256	250,408	2,087
Outfit (25%)	451,185	3,760	417,346	3,478
Leave (10%)	180,474	1,504	166,939	1,391
Accommodation (100%)	1,804,740	15,040	1,669,385	13,912
Cars provided: est. fair rental value	600,000	5,000	500,000	4,167
Health care provided: est. cost of coverage	600,000	5,000	600,000	5,000
<b>Totals</b>	<b>₦11,126,070</b>	<b>\$92,717</b>	<b>₦10,281,619</b>	<b>\$85,680</b>

**d. Comparative studies of the remuneration of the judges**

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

The previous study mentioned above, “A Study of the Compensation of Nigerian Judges Since Independence”, gives figures, stated both in nominal or contemporary naira and in constant 1998 US dollars, for the total remuneration of various categories of Nigerian judges for the years 1959, 1963, 1978, 1983, 1988, 1993, and 1998<sup>164</sup> – with numbers for 1968 and 1973 impossible to obtain and therefore missing from the series. The categories of judges covered in the study include the judges of the Regional/State High Courts. Since the creation of the Sharia Court of Appeal of the Northern Region in 1960, its kadis, and subsequently those of the Sharia Courts of Appeal of the States, have been compensated at par with the judges of the High Courts. The numbers for total remuneration given in the previous study, for ordinary judges of the High Courts, and therefore for ordinary kadis of the Sharia Courts of Appeal, from 1963 onward, are as follows:

*(a) Total remuneration of kadis of the Sharia Courts of Appeal, 1963-1998  
in contemporary naira and constant 1998 US dollars*

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

<sup>164</sup> Ostien, “A Study of the Compensation of Nigerian Judges”, op. cit., Appendix B.

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The 1998 dollar figures given in the previous study translate into 2008 US dollars as follows, using the inflation factor, 1998 to 2008, of 1.35, given on 7<sup>th</sup> September 2008 by the U.S. Bureau of Labor Statistics at [http://www.bls.gov.data/inflation\\_calculator.htm](http://www.bls.gov.data/inflation_calculator.htm): this yields table (b):

(b) *Total remuneration of kadis of the Sharia Courts of Appeal, 1963-1998 in contemporary naira and constant 2008 US dollars*

	Contemporary ₦	2008 \$			Contemporary ₦	2008 \$
1963	11,448	113,890		1983	33,017	100,965
1968	?	?		1988	84,166	34,810
1973	?	?		1993	266,329	18,568
1978	26,845	142,680		1998	903,915	14,033

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

(c) *Total remuneration of kadis of the Sharia Courts of Appeal, 1963-1998 in contemporary naira and constant 2008 US dollars (1968 and 1973 interpolated)*

	Contemporary ₦	2008 \$			Contemporary ₦	2008 \$
1963	11,448	113,890		1983	33,017	100,965
1968	16,580	123,487		1988	84,166	34,810
1973	21,712	133,084		1993	266,329	18,568
1978	26,845	142,680		1998	903,915	14,033

Adding the numbers for 2008 arrived at in section c above, we get:

(d) *Total remuneration of kadis of the Sharia Courts of Appeal, 1963-2008 in contemporary naira and constant 2008 US dollars*

	Contemporary ₦	2008 \$			Contemporary ₦	2008 \$
1963	11,448	113,890		1988	84,166	34,810
1968	16,580	123,487		1993	266,329	18,568
1973	21,712	133,084		1998	903,915	14,033
1978	26,845	142,680		2003	?	?
1983	33,017	100,965		2008	10,281,619	85,680

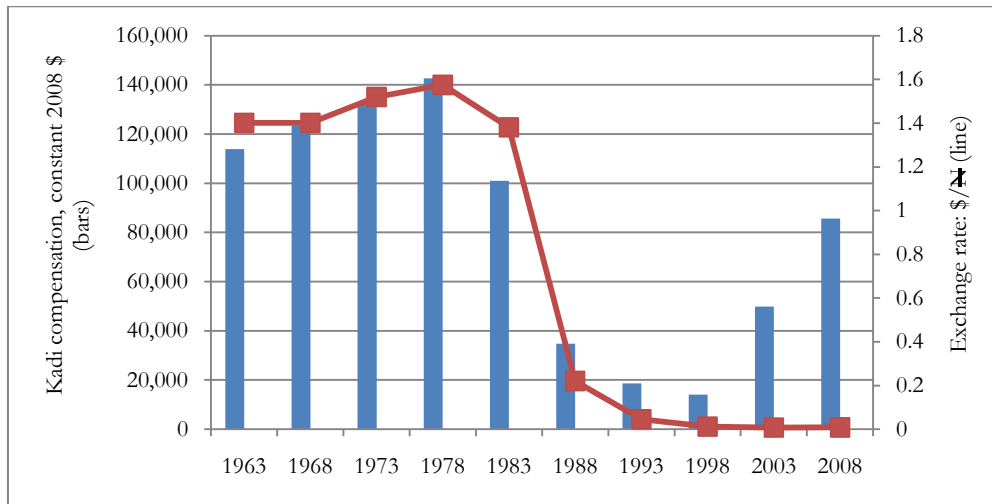
Finally, interpolating numbers for 2003, again assuming straight-line growth, we have:

(e) *Total remuneration of kadis of the Sharia Courts of Appeal, 1963-2008 in contemporary naira and constant 2008 US dollars (2003 interpolated)*

	Contemporary ₦	2008 \$			Contemporary ₦	2008 \$
1963	11,448	113,890		1988	84,166	34,810
1968	16,580	123,487		1993	266,329	18,568
1973	21,712	133,084		1998	903,915	14,033
1978	26,845	142,680		2003	5,592,767	49,857
1983	33,017	100,965		2008	10,281,619	85,680

Table (e) shows constant growth in the nominal remuneration of the kadis, as stated in contemporary naira, but a steep drop in their “real” remuneration, as stated in constant 2008 dollars, beginning in 1983 and continuing to 1998, the last year of the rule of the military, after which things began to improve. The drop in real remuneration is easily explained: it resulted from the collapse of the naira after 1978. In that year one naira was worth \$1.5748. This fell to \$0.0115 in 1998, impoverishing the kadis (and other judges) in real terms, as the following chart indicates:

(f) *Kadi remuneration in constant 2008 dollars  
plotted against the exchange rate, \$/₦, 1963-2008*



The recovery of kadi remuneration in real terms beginning in 2003 was not due to any improvement in the value of the naira relative to the dollar: the naira fell even lower in 2003, to \$0.0074, recovering only slightly in 2008 to \$0.0083. Rather, the recovery has been due to a determined and laudable effort on the part of the Nigerian government to improve the conditions of service of the judges of the superior courts.

## (2) Remuneration of the alkalis of the Sharia Courts over time:

There is much less data available for studies of how the remuneration of the alkalis of the Native/Area/Sharia Courts has varied over time. Collection of data on this subject is difficult because there have been so many different jurisdictions (different Native Authorities, and subsequently different States) all compensating their alkalis differently, so that data from one jurisdiction for a given year does not generalise to other jurisdictions even for that same year. Even where data from several jurisdictions is available for a given year, as in the tables presented in sections **a** and **b**, one often does not know how it matches up from jurisdiction to jurisdiction or from year to year. Thus, do the Chief Alkalis of Borno, Kano, Katsina and Sokoto Provinces, as they were in 1950, 1958 and 1962, have any correlates among the alkalis, even the “highest-level” alkalis, who were at work in the Sharia States in 2004 and 2008? Probably not. Modern-day highest-level alkalis, on GL 15 or 16, probably correspond to the “Grade A alkali” shown in the Kano data from 1950; but then how do these 1950 Grade A Kano alkalis



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match up with the 1950 alkalis from other provinces, or the 1958 or 1962 alkalis even from Kano, none of whom are identified by grade? The best can do is guess; but the results are instructive enough:

(a) *Remuneration of highest level alkalis (excepting Chief Alkalis)*  
1950, 1958, 1962, 2004 and 2007, in constant 2007 \$

	1950 <sup>165</sup>	1958 <sup>166</sup>	1962 <sup>167</sup>	2004 <sup>168</sup>	2007 <sup>169</sup>
Borno	5,870	9,756	17,636	4,088	?
Kano	12,086	14,341	26,589	4,224	7,379

This shows the gradual improvement in the “real” remuneration of the alkalis that was occurring during the late colonial and early independence periods, its steep decline, no doubt in the 1980s and 1990s as the value of the naira crashed, resulting in the lowest figures (for the dates available here) in 2004, and the improvements that are now again being attempted.

The improvements in the remuneration of the alkalis from 2004 to 2007 is shown more generally in the next table:

(b) *Alkali remuneration in the Sharia States, 2004 and 2007, in constant 2007 \$*

	Highest-level alkalis		Mid-level alkalis		Entry-level alkalis	
	2004	2007	2004	2007	2004	2007
Bauchi	3,359		2,429		1,553	
Borno	4,088		3,136		2,262	
Gombe	4,076	7,305	2,829	5,627	1,788	2,388
Jigawa	4,572	5,708	2,885	3,971	1,971	3,074
Kaduna	3,453	6,489	2,449	3,346	1,143	2,084
Kano	4,224	7,379	3,257	5,388	2,314	3,062
Katsina						
Kebbi	2,976	3,360			2,430	2,744
Niger	5,616	6,049	3,572	4,597	3,089	3,907
Sokoto	4,626	5,553	3,332	4,782	2,178	2,836
Yobe	3,569	8,987	2,492	6,637	1,492	6,292
Zamfara	9,479	8,115	5,731	6,718	4,670	6,010

This shows improvement in the real remuneration of the alkalis in every state in every category, except for the highest-level alkalis in Zamfara State, who appear to have suffered a decline between 2004 and 2007; this appearance is not likely to be correct but it is not known where the error lies. Yobe State has made the most serious effort to improve the conditions of service of its alkalis, going from positions low down in the league tables in all categories in 2004, to number one in two categories and number two in the third in 2007.

<sup>165</sup> From section **a** table (a).

<sup>166</sup> From section **a** table (b).

<sup>167</sup> From section **a** table (c).

<sup>168</sup> From section **b.(1)** table (e).

<sup>169</sup> From section **b.(2)** table (d).