

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

*Philip Ostien and M.J. Umaru**

Introduction

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

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

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

Corruption

1. The regulation of corruption in the Sharia.

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

* M.J. Umaru is a lecturer in law at Usmanu Danfodiyo University, Sokoto, where he also obtained his LL.B and Ph.D. degrees; his LL.M. is from the University of Jos. He is currently Acting Dean of the Faculty of Law, Usmanu Danfodiyo University.

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

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

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

¹⁵ Qur'an 14:42.

¹⁶ Qur'an 42:42.

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

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

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

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

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

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

¹⁹ Abdullahi, *On the Search for a Viable Political Culture*, 52.

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

²¹ Abdullahi, *On the Search for a Viable Political Culture*, 68-70

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

²⁷ For further discussion of the extreme legal pluralism of the colonial period and to whom the various laws applied, see Chapter 1 and the Introductions to Chapters 4 and 5 of this work, in Vols. I and IV respectively. The Criminal Code became Cap. 42 of both the 1948 and 1958 Laws of Nigeria. It continues in force today, as amended, as Federal law and as the law of the States carved out of the former Eastern and Western Regions, see Cap. 77 LFN 1990 and Cap. C38 LFN 2004.

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

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

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

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

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

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

shall be punished –

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

³⁷ Oko, “Subverting the Scourge of Corruption in Nigeria”, 431.

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

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

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

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

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

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

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

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

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

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

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

⁴⁶ Aku, *Anti-Corruption Crusade in Nigeria*, 185.

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

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

⁴⁹ *Ibid.*, 9-12.

vi. Economic and Financial Crimes Commission (EFCC). We come finally to the newest corruption-fighting agency of the Federal Government, the EFCC. We do not go here into any details about the EFCC – that would be beyond the scope of this essay. Suffice it to say that it was set up at the behest of a foreign body – the Financial Action Task Force on Money Laundering (FATF) – a creation of the G-7 group of rich nations and the European Commission.⁵⁰ FATF’s purpose is to “spearhead the effort to adopt and implement [in all countries of the world and in international law] measures designed to counter the use of the financial system by criminals” – specifically to stop “money-laundering”. Money-laundering is said to be a “threat posed to the banking system and to financial institutions”. It is also used to cover up other crimes which the FATF would like to see suppressed or eliminated entirely, such as drugs trafficking, human trafficking, fraud and financial malpractices in banks and other financial institutions, advance fee fraud, political corruption – and, since 9/11, terrorism. Nigerians have been much involved in all these sorts of crimes except terrorism – and even that has recently been making itself felt in the Niger Delta. To assist countries to know how to fight money-laundering, FATF issues a set of Forty Recommendations, updated from time to time, “which provide a comprehensive plan of action needed to fight against money laundering”. To encourage countries to implement the Recommendations FATF publishes a list of “Non-Cooperative Countries or Territories” – countries demonstrating “an unwillingness or inability” to implement the Recommendations – which are thus shamed and in some ways sanctioned. Nigeria was for many years on the list of “Non-Cooperative Countries”. This began to change when Obasanjo came into office. The FATF Annual Report for 2002/03 says that “since June 2001... [t]he Government of Nigeria has substantially improved its co-operation with the FATF and its willingness to address its anti-money laundering deficiencies”, citing new legislation on money-laundering and on banking and financial institutions – and the Economic and Financial Crimes Commission (Establishment) Act 2002, signed into law in December 2002.⁵¹ The FATF Annual report for 2003/04 records further progress:

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

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

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

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

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

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

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

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

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

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

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

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

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

⁵⁵ LFN 2004 has only the 1995 version of the Money Laundering Act. The 2004 version, which repealed the earlier ones, is available at http://www.efccnigeria.org/index.php?option=com_docman&task-cat_view&gid=75.

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

⁵⁷ “What We Investigate”, http://www.efccnigeria.org/index.php?option=com_content&task=blogcategory&id=91&Itemid=90.

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

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

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

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

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

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

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

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

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

The Anti-Corruption Commission (ACC), as thus initially established by administrative fiat, combined in one body the two rather different functions of “corruption-fighter” and “ombudsman”; one may read this in the first Anti-Corruption Commission (Establishment) Law that Zamfara enacted to give statutory backing to the new Commission, No. 17 of 2000.⁶² Apparently because this combination of functions was felt to be administratively inconvenient,⁶³ in 2003 the initial ACC Law was repealed and replaced by two new ones: the Zamfara State Anti-Corruption Commission Law 2003,⁶⁴

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

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

⁶¹ Musa et al., *Development of Zamfara State*, 146.

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

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

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

and the Zamfara State Public Complaints Commission Law 2003.⁶⁵ We briefly discuss these Laws and the Commissions they create in turn.

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

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

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

⁶⁶ Interview with ACC Directors, Gusau, 29th March 2007, by A. Garba.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

⁷⁰ Ibid.

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

134B. (1) Whoever is a public servant or a staff of a private sector including bank or company connives with somebody or some other people or himself and stole public funds or property under his care or somebody under his jurisdiction he shall be punished with amputation of his right hand wrist and sentence of imprisonment of not less than five years and stolen wealth shall be confiscated.

(2) If the money or properties stolen are mixed with another different wealth it will all be confiscated until all monies and other properties belonging to the public are recovered. If the confiscated amount and stolen properties are not up to the amount the whole wealth shall be confiscated and he will be left with some amount to sustain himself.

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

4. Concluding remarks.

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

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

⁷¹ See Penal Code §315; Harmonised Sharia Penal Code §167.

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

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

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

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

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

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

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

Liquor

1. The regulation of liquor in the Sharia.

Islam adopted a gradual approach to the regulation of alcohol (*khamsr*: wine, and by extension not only other alcoholic drinks but other intoxicants as well⁷⁵) among Muslims. Initially, nothing was said about it. In due course a caution was issued against its use.⁷⁶ Next the offering of prayers while under the influence was prohibited.⁷⁷ Finally, a total ban was imposed.⁷⁸ The use of even small amounts is prohibited: “If a bucketful

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

⁸⁶ *Ibid.*

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

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

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

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

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

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

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

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

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

⁸⁹ Reached at the Brussels African Conference of 1889-90.

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

⁹¹ Heap, “We Think”, 37.

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

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

a. Manufacture and sale.

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

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

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

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

⁹³ Ibid., 29-35.

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

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

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

So intoxicating liquors of all sorts could after all be (and were) legally imported into the North and sold, under licence. Furthermore they could be sold – at least as far as the Liquor Law was concerned⁹⁵ – to absolutely anybody, with one exception: spirits (but not beer or wine) were forbidden to “natives of the prohibited area”, i.e. to “any person one of whose parents was a member of any tribe indigenous to [Northern Nigeria]...and the descendants of such persons” (§2). Thus did the Liquor Law attempt to protect the North’s Muslims (and other indigenes) against strong drink, which it otherwise permitted to exist in plentiful supply all around them. For much intoxicating liquor, including spirits, came legally into the North for sale under licence,⁹⁶ and was sold not only to Europeans, and not only to employees of the Junior Service, but eventually also to the many other non-indigenes who settled in the Region. Inevitably, even in the early days of this regulatory regime when attempts were made to actually enforce it, there was “leakage of imported liquor into northern hands.”⁹⁷ In later years, certainly in the years following independence, all attempts to enforce the ban on “the sale of spirits to, and the possession of spirits by natives of the prohibited area” were abandoned.

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

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

Nevertheless by the 1930s spirits were being illegally distilled in the North and sold.⁹⁸ Spirits – often ones illegally distilled in other parts of Nigeria – were also smuggled into the North in more or less large volumes throughout the colonial period⁹⁹ and no doubt subsequently.

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

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

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

⁹⁷ Heap, “We Think”, 41.

⁹⁸ *Ibid.*, 48-49.

⁹⁹ *Ibid.*, 42-45 and 49.

years.¹⁰⁰ This obviously further increased the availability of this type of drink throughout the North.

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

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

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

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

[68](2) Offenders who are of the Moslem faith may in addition to the punishments specified in subsection (1) be liable to the punishment of *Haddi* lashing as prescribed by Moslem law for the offences contrary to sections ... 403 and 404 of this Penal Code.

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

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

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

¹⁰⁰ Ibid., 49.

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

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

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

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

a. Manufacture and sale.

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

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

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

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

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

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

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

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

¹⁰³ *ThisDay*, 13th October 1999, pp. 1-2.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

¹⁰⁷ Chapter 2, 105.

¹⁰⁸ Bauchi: "whoever, being a Muslim". No SPC includes the word "knowingly". Bauchi adds: "For the purpose of this section the intake of any substance that causes a change in the physical balance of the individual shall attract the same penalty."

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

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

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

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

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

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

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

Borno prohibits drinking by non-Muslims in public:

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

4. Concluding remarks.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Sexual immoralities1. The regulation of sexual practices in the Sharia

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

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

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

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

¹¹³ Qur’an 17:32.

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

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

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

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

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

The great problem with all this part of the law – or the great saving grace – is the extremely high standard of proof required to sustain a charge of *zina*. Here there is agreement among Maliki scholars: *zina* may be proved either (i) by the eyewitness testimony of four male Muslims of good character to the very act of penetration; or (ii) by the confession of the guilty person; or, in the case of a female, (iii) by her pregnancy if she is unmarried.¹¹⁹ Even the evidentiary effect of a pregnancy out of wedlock is

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

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

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

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

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

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

387. Whoever, being a man subject to any native law or custom in which extra-marital intercourse is recognised as a criminal offence, has sexual intercourse with a person who is not and whom he knows or has reason to believe is not his wife, such sexual intercourse not amounting to the offence of rape [or, we might add, incest], is guilty of the offence of adultery and shall be punished with imprisonment for a term which may extend to two years or with fine or with both.

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

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

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

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

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

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

- (a) against her will;
- (b) without her consent;
- (c) with her consent, when her consent has been obtained by putting her in fear of death or of hurt;
- (d) with her consent, when the man knows that he is not her husband and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married;
- (e) with or without her consent, when she is under fourteen years of age or of unsound mind.

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

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

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

390. Whoever being a man has sexual intercourse with a woman who is and whom he knows or has reason to believe to be his daughter, his grand-daughter, his mother or any other of his female ascendants or descendants, his sister or the daughter of his brother or sister or his paternal or maternal aunt and whoever being a woman voluntarily permits a man who is and whom she knows or has reason to believe to be her son, her grandson, her father or any other of

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

her male ascendants or descendants, her brother or the son of her brother or sister or her paternal or maternal uncle to have sexual intercourse with her, shall be punished with imprisonment for a term which may extend to seven years and shall also be liable to fine.

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

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

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

405. In this chapter—

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

* * *

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

* * *

(2) The term "vagabond" shall include-

* * *

(d) any male person who knowingly lives wholly or in part on the earning of a prostitute or in any public place solicits or importunes for immoral purposes; and

(e) any male person who dresses or is attired in the fashion of a woman in a public place or who practises sodomy as a means of livelihood or as a profession.

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

Brothels are prohibited in the chapter on PUBLIC NUISANCES:

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

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

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

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

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

284. Whoever has carnal intercourse against the order of nature with any man, woman or animal, shall be punished with imprisonment for a term which may extend to fourteen years and shall also be liable to fine.

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

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

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

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

Provided that a consent given by a person below the age of sixteen years to such an act when done by his teacher, guardian or any person entrusted with his care or education shall not be deemed to be a consent within the meaning of this section.

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

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

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

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

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

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

The Sharia Penal Codes

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

e. Criminal charms. All the Sharia Penal Codes have essentially the same provision (derived from the Penal Code of 1960) on “criminal charms”, prohibiting possession of “any fetish or charm which is pretended or reputed to possess power to protect a person in the committing of any offence.” Kano and Katsina have this section but give it a new twist by prohibiting, more broadly, possession of “any fetish object or charm which is pretended or reputed to possess power to protect *or give illegal benefit to* any person in the committing of any offence”, and adding a second subsection, as follows:

Whoever engages in unlawful sexual behaviours under the guise of offering medical treatment, invocation [sic: ?] under the guise of curing an illness or causing a favour to a person shall be imprisoned for five years or sentenced to a

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

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

¹²⁸ *Daily Independent*, 13th August 2007, 1.

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

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

Other changes in the law relating to sexual practices

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

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

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

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

¹²⁹ §§388 and 394 of the Kano and Katsina Sharia Penal Codes, respectively.

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

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

4. Concluding remarks.

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

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

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

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

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

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

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

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

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

And in Niger State, according to one official:

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

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

¹³³ Governor Ahmadu Mu'azu of Bauchi State, address delivered at the National Conference on Leadership, State & Society under the Sharia in Nigeria: The Dividends, organised by the Institute for Contemporary Research, Kano, held at the Shehu Yar'adua Centre, Abuja, 10th-12th July 2006 (copy in the possession of the authors).

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

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

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

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

* * *

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

Gambling

1. The regulation of gambling in the Sharia.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Pool Betting and Casino Gaming Prohibition Decree, No. 19 of 1979, which became Cap. 360 LFN 1990. This law still seems to be in force, but it has not been included in LFN 2004.¹³⁹

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

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

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

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

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

- The Sharia Penal Codes all add that on conviction of any of these offences, “the court may in addition to any other penalty, make an order for the forfeiture of all equipment, instruments, money or money’s worth and proceeds obtained and used in furtherance of the offences.”

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

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

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

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

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

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

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

¹⁴⁰ *New Nigerian*, 29th July 2005, 25.

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

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

Unedifying media

1. The regulation of media in the Sharia

A principle laid down in the *fiqh* is that

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

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

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

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

a. Radio and television.

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

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

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

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

¹⁴² Al Qaradawi, *The Lawful and the Prohibited in Islam*, 28.

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

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

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

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

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

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

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

- The Northern Region’s Radio Law. The Northern Nigeria Radio Law was enacted in 1960.¹⁴⁵ This became Cap. 114 of LNN 1963. It has been superseded by the following State laws which to a large extent perpetuate its provisions.

¹⁴⁵N.R. 40 of 1960 effective from 15th January, 1961.

CHANGES IN THE LAW AIMED AT SUPPRESSING SOCIAL VICES

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

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

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

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

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

b. Films, videos, etc.

i. Federal legislation.

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

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

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

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

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

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

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

iii. Regional and State legislation.

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

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

CHANGES IN THE LAW AIMED AT SUPPRESSING SOCIAL VICES

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

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

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

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

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

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

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

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

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

* * *

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

CHAPTER 3: SANITIZING SOCIETY

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

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

c. Print media and other matters.

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

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

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

202. Whoever sells or distributes, imports or prints or makes for sale or hire or wilfully exhibits to public view any obscene book, pamphlet, paper, gramophone record or similar article, drawing, painting, representation, or figure or attempts to or offers so to do or has in his possession any such obscene book or other thing for the purpose of sale, distribution or public exhibition, shall be punished with imprisonment for a term which may extend to two years or with fine or with both.

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

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

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

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

b. Films, videos, etc..

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

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

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

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

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

¹⁴⁷ *Nigerian Tribune*, 26th January 2000, 1.

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

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

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

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

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

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

[374.] (2) Whoever deals in materials contrary to public morality or manages an exhibition or theatre or entertainment club or show house or any other similar place and presents or displays therein materials which are obscene, or contrary to public policy shall be punished with imprisonment for a term which may extend to one year and with caning which may extend to twenty lashes.

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

4. Concluding remarks.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

¹⁵³ Per M.J. Umar, who lives in Sokoto and practises law there.

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

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

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

Conclusion

We make just a few observations in conclusion.

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

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

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

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

¹⁵⁶ *Weekly Trust*, 12th - 18th November 2005, 36.

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

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

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

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

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

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

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

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

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