

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

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**Introduction**

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

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

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

**Corruption**

1. The regulation of corruption in the Sharia.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

shall be punished –

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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









































































































