

Chapter 5 Part III

Report of the Committee Appointed to Prepare [Sharia] Criminal Procedure Code for Sokoto State

Submitted to His Excellency, Alh. Attahiru Dalhatu Bafarawa (Garkuwan Sokoto)
The Executive Governor of Sokoto State
October, 2000

1.0 INTRODUCTION

1.1 On the 7th September, 2000, His Excellency, the State Executive Governor, Alhaji Attahiru Dalhatu Bafarawa (Garkuwan Sokoto) approved the appointment of this committee to prepare a Criminal Procedure Code for use in the State.

1.2 MEMBERSHIP. The Committee was constituted with ten members and a Co-Secretary was co-opted later. They are:

i.	Alhaji Muh'd Aminu Ahmad	-	Chairman
ii.	Hon. Justice Bello Abbas	-	Member
iii.	Hon. Kadi Bello Muh'd Rabah	-	Member
iv.	Barrister Abdulkadir Imam Ibrahim	-	Member
v.	Malami Umar D/Daji	-	Member
vi.	Sheikh Muh'd Isa T/Mafara	-	Member
vii.	Muhammad U. Falke	-	Member
viii.	Malam Sidi A. Sidi	-	Member
ix.	Muhammad Danjuma Ali	-	Co-Secretary
x.	Nura Garba (co-opted)	-	Co-Secretary
xi.	Umar Faruk Ladan	-	Secretary

1.3 TERMS OF REFERENCE. The Committee has the following terms of reference:

- a. To draft a Criminal Procedure Code for use in the State;
- b. To advise the State Government on anything that will facilitate its successful implementation;
- c. The committee was given one month within which to finish its assignment and submit a report.

2.0 METHODOLOGY

2.1 On Friday, 8th September, 2000 the committee held its inaugural meeting during which strategies for successful conduct of the assignment were discussed extensively. It was resolved that preparation of a Criminal Procedure Code for Sharia legal system (like that of Sharia Penal Code) is an extensive legal research and drafting exercise requiring a wide range of background and supporting literature. The committee therefore recognised the importance of consultations especially with renowned and learned personalities, institutions and government agencies. It was finally resolved that the committee would visit Zamfara State to meet and discuss with the State Grand Kadi and Attorney-General/Commissioner of Justice, Faculties of Law, Usmanu Danfodio University

Sokoto, Bayero University Kano, Ahmadu Bello University and Centre for Islamic Legal Studies Congo, Zaria.

2.2 The committee also resolved to consult the following principal sources:⁸⁵

- i. Constitution of the Federal Republic of Nigeria 1999
- ii. Criminal Procedure Code for Northern Nigeria (Annotated)
- iii. Penal Code of Northern Nigeria
- iv. Sokoto State Draft Sharia Penal Code
- v. *Qawaninul Fiqhiyyah*
- vi. *Al-Tasbri'u al-Jina'i* by Abdulkadir Oudah
- vii. Zamfara State draft Sharia Criminal Procedure Code
- viii. Sokoto State Sharia Courts Law 2000
- ix. Area Courts Law
- x. *Tabsiratul Hukkami* by Ibn Farhun
- xi. *Al-Fiqhu al-Islami* by Dr. Wahabat al-Zuhayli
- xii. *Tuhfatul Hukkam (Jagorar Masu Hukkunci)*
- xiii. *Al-Isbraf ala Madhabib Abl al-Ilm* Vols. I & II
- xiv. *Al-Manrid al-Qarib* by Baalbakki

2.3 The above named and other literatures on Sharia legal system were made available to the members to enable them study same with a view to extracting relevant information in respect of the given assignment.

3.0 REPORT ON THE VISITS MADE BY THE COMMITTEE MEMBERS

3.1 Members of the committee met and discussed at length with the Zamfara State Grand Kadi on their mission. The Grand Kadi briefly traced the history of Sharia implementation in Zamfara State paying special attention to the events relevant to the committee's mission.

3.2 According to him, Zamfara State had ordered for the codification of the Sharia Criminal Procedure Code and the draft code has been passed by the State House of Assembly but was yet to be assented to by the State Governor.

3.3 On the procedure being used by the Sharia Court alkalis in Zamfara State, the Grand Kadi explained that, an accused is only punished with *hadd*, if the following procedure is followed:

- a) Confession by the accused who is certified to be sane and without any form of coercion.
- b) Testimonies of at least two witnesses in addition to fulfilling all the conditions of the case (in the case of theft it must reach the "*nisab*" and stolen from a confined place).
- c) In the case of *zina*, testimonies of at least four witnesses must be obtained before the accused can be convicted, unless he voluntarily confesses the

⁸⁵ Two of the works in this list are entered twice in the original document; these redundancies have been eliminated here. For further information on the works in Arabic, see the "Bibliography of Islamic Authorities", Part IV of Chapter 6 of this work. The short titles given here are as in the bibliography.

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commission of the offence. If any of the conditions is not fulfilled then *hadd* punishment cannot be inflicted on the accused, but a Sharia Court alkali may apply an appropriate *ta'azir* punishment on the convict as he thinks fit.

3.4 Most of those conditions are found in Islamic books, a situation which may present some difficulties to the alkalis and thus the need to conduct extensive research on the subject with a view to extracting and codifying them for easy reference.

3.5 The Grand Kadi also drew the attention of the members of the committee to another offence "defamation". This, he said has many categories: lineage, trade, personal honour each of which requires a different form of punishment. He also cautioned the committee on certain areas that are exclusive reserve of the federal government; law of evidence.

3.6 Both the visiting members of the committee and their host agreed on the need to establish a law reporting committee to be charged with the responsibilities of reporting cases tried in the Sharia Courts periodically. The Grand Kadi also disclosed his intention to the committee to compile past cases which have peculiar nature and conduct workshops for the Sharia Court alkalis on them, with a view to acquainting them with those peculiarities.

4.0 VISIT TO CENTRE FOR ISLAMIC LEGAL STUDIES, ZARIA

4.1 The Director of the Centre, Dr. Ibrahim Suleiman informed members of the committee that both Zamfara Sharia Penal Code and the Zamfara Sharia Criminal Procedure Code were drafted by the Centre in conjunction with the Faculty of Law (ABU Zaria). The procedure adopted in carrying out the work was amending the relevant sections of the Criminal Procedure Code to conform with the Islamic criminal procedure.

4.2 The Director also expressed the readiness of the Centre to assist any State wishing to implement Sharia in training all categories of judicial personnel to be used in the implementation of Sharia legal system.

4.3 He advised all the States implementing Sharia to embark on massive enlightenment programmes to educate the people at the grass root level. He advocated for the use of trained Islamic preachers in educating people in the rural areas.

4.4 It was finally agreed that, the process of Sharia implementation in Nigeria has to be gradual in order to succeed. The meeting also emphasised on the importance of education, patriotism and exemplary life on the part of the leaders.

5.0 VISIT TO KANO STATE

5.1 The committee members visited and held discussions with the Kano State Grand Kadi, Solicitor General and representative of the Dean, Faculty of Law, Bayero University Kano.

5.2 The committee had fruitful discussions with the Kano State Grand Kadi. He briefed the members of the committee on the progress so far made on Sharia implementation in Kano State. According to him, the State constituted the Sharia Implementation Committee which was subsequently divided into four subcommittees. One of those

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committees was entrusted with the task of producing Sharia Criminal Procedure Code to be used by the Sharia Courts in the State.

5.3 On the issue of payment of *diyyah* (blood money), the procedure was divided into three:

- a) If the actual offender is in the position to pay for the full *diyyah*, the Sharia Court compels him to pay it.
- b) In a situation where the offender is incapable of paying the *diyyah*, then his kith and kin are required to pay the *diyyah* on his behalf.
- c) In circumstances, when both 'a' and 'b' above proved incapable of paying for the *diyyah* within the period of time allowed by the Sharia, the State Government (as a last resort) would be approached for the settlement of the *diyyah*.

5.4 On the categories and jurisdiction of Sharia Courts in Kano State, one of the Kadis of the Sharia Court of Appeal, who is also a member of the Sharia Implementation Committee, explained that all the Area Courts in the State have been repealed and replaced with Sharia Courts.

5.5 Finally, there was emphasis on the need for the establishment of a joint committee by all the States operating Sharia legal system in order to harmonise the penal and procedural laws and make them uniform throughout the States.

5.6 The Kano State Solicitor General informed the members of the committee that the subcommittee assigned to draft a Sharia Criminal Procedure Code for Kano State Sharia Courts has almost completed the assignment. According to him, the pattern of the existing Criminal Procedure Code was adopted but amendments of relevant sections were made to conform with Sharia legal system.

5.7 The members of the Kano State Sharia Implementation Committee advised that all the States implementing Sharia legal system should take adequate care of the welfare of Sharia Court alkalis in addition to rehabilitating all court buildings to make them suitable for the new role.

5.8 At the Faculty of Law, Bayero University Kano, the committee members met with the representatives of the dean. The representatives of the dean drew the attention of the committee members to some complex areas and advised them to be cautious while dealing with such areas. They finally promised to assist the committee whenever there is need for such assistance; particularly in the areas of personnel training and reviewing of legal documents.

6.0 COMMENTS ON THE SOKOTO STATE CRIMINAL PROCEDURE CODE

6.1 Using both the written and oral literature obtained, the committee carefully drafted the Sharia Criminal Procedure Code and a report comprising advice and recommendations for presentation to Your Excellency.

6.2 The Sharia Criminal Procedure Code has been arranged in nine parts made up of 31 chapters in all. The nine parts include:

- Preliminary
- The constitution and powers of Sharia criminal courts

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- Arrest and process
- The prevention of crime
- Information to the police and their powers to investigate
- Proceedings in prosecutions
- Proceedings subsequent to judgment
- Special proceedings
- Supplementary provisions.

6.3 For the purpose of clarity, a lot of explanations and illustrations have been incorporated in the code, whenever the sections appear to be ambiguous. Some of them were not only adopted but localised to further make the sections plain for its application by our *alkalis* and *kadis* in the State.

7.0 GENERAL OBSERVATIONS AND RECOMMENDATIONS

7.1 To ensure efficiency in the dispensation of justice in the State, there is need to reactivate and equip the Inspectorate Division of the State Judiciary/Sharia Court of Appeal with all the facilities necessary for effective supervision of the Sharia Courts, particularly means of transportation.

7.2 The welfare of the Sharia Court personnel and prosecutors need to be adequately taken care of particularly in the areas of provision of accommodation, means of transportation, remuneration and allowances.

7.3 There is need to translate both the Sharia Penal and the Sharia Criminal Procedure Codes for the benefit of both the judicial personnel and the general public. The translated codes also need to be produced in large quantity to be distributed to all the Sharia Courts in the State.

7.4 The State Government through the State judiciary need to organise induction courses, seminars and workshops for the Sharia Court *alkalis* and other court personnel.

7.5 There is need for the establishment of an advisory council by whatever name called, on religious affairs and back it up with a legislation in which its establishment, composition, functions and powers would be clearly spelt out.

7.6 The State Government is also advised to as a matter of urgency, produce white paper on all the reports submitted to it by the previous committees appointed in respect of the implementation of Sharia in the State.

7.7 The committee in consideration of the heavy responsibilities to be shouldered by the State Ministry of Justice (particularly in the areas of training of legal personnel to be used as prosecutors in our Sharia Courts, organising workshops, seminars and induction courses on Sharia legal system) recommends for the resuscitation of the Ministry to enable it carry out the additional responsibilities effectively.

7.8 In view of the great importance attached to publicity there is need for the State to make use of the NTA, Sokoto, Rima Radio and the PATH in publicising activities on Sharia implementation in the State.

7.9 The committee also recommends for the amendment of the Sharia Courts Law 2000 in the following sections:

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- a. The term “Lower Sharia Court” used in the “Law to Establish Sharia Courts to apply Sharia Law in Sokoto State”, Law No. 2 of 2000, needs to be re-framed to “Sharia Court” simpliciter.
- b. The Upper Sharia Court and Sharia Court of Appeal shall have appellate and supervisory jurisdiction over the Sharia Courts.
- c. The Upper Sharia Court shall have original jurisdiction to try any or all the offences listed in Appendix ‘A’ to the Sharia Criminal Procedure Code.
- d. This law shall only apply to persons of Muslim faith or persons who voluntarily subject themselves in writing to the jurisdiction of the Sharia Courts.

8.0 ACKNOWLEDGEMENT AND CONCLUSION

8.1 The committee is grateful to Almighty Allah for giving His Excellency, Alh. Attahiru Dalhatu Bafarawa (Garkuwan Sokoto) the wisdom and courage to initiate and make possible all arrangements for the implementation of Sharia in Sokoto State. The committee wishes to register its gratitude to His Excellency, the Executive Governor and the people of Sokoto State for giving it the opportunity and support to serve in this noble assignment. The contributions of the various committees appointed by the State Government on the implementation of Sharia in the State are all worth noting. The committee would like to extend its deep appreciation to those who contributed in one way or the other to the successful implementation of this assignment.

May the Almighty Allah (SWA) continue to guide, help and protect us all, Amin.

Dated this.....day of September, 2000.

1. Alhaji Muh’d Aminu Ahmad	-	Chairman	[sgd]_____
2. Hon. Justice Bello Abbas	-	Member	[sgd]_____
3. Hon. Kadi Bello Muh’d Rabah	-	Member	[sgd]_____
4. Malami Umar D/Daji	-	Member	_____
5. Barrister Abdulkadir Imam Ibrahim	-	Member	_____
6. Sheikh Muh’d Isa T/Mafara	-	Member	[sgd]_____
7. Muhammad U. Falke	-	Member	[sgd]_____
8. Malam Sidi A. Sidi	-	Member	[sgd]_____
9. Barrister Muh’d Danjuma Ali	-	Co-Secretary I	[sgd]_____
10. Nura Garba (co-opted)	-	Co-Secretary II	[sgd]_____
11. Umar Faruk Ladan	-	Secretary	[sgd]_____