

Chapter 5 Part IV  
The Centre for Islamic Legal Studies'  
Harmonised Sharia Criminal Procedure Code Annotated

What follows for the next hundred pages or so is the “Harmonised Sharia Criminal Procedure Code” produced by the Centre for Islamic Legal Studies (CILS) of Ahmadu Bello University, Zaria, annotated to show variations between it and the Criminal Procedure Code of 1960 on the one hand, and the enacted – except in the case of Borno State – Sharia Criminal Procedure Codes of seven of the Sharia States, on the other hand.

1. List of codes included in the annotations, in approximate order of their signing into law. Unfortunately even the gazetted copies of many of these laws do not give the dates of their signing into law or of their coming into operation.

CPC: Criminal Procedure Code Law, Northern Region of Nigeria No. 11 of 1960, coming into operation on 30 September 1960, as amended to 1963; as found in Chapter 30, *Laws of Northern Nigeria* 1963.

Zamfara: Sharia Criminal Procedure Code Law 2000, Law No. 18 of 2000, signed into law on 27 January 2000, coming into operation on 27 January 2000, Zamfara State Gazette Vol. 4 No. 1, 27<sup>th</sup> January 2001.

Sokoto: Sharia Criminal Procedure Code Law 2000, signed into law on 25<sup>th</sup> January 2001, coming into operation on 31<sup>st</sup> January 2001, gazetted as a separate volume given no number or date.

Jigawa: Sharia Criminal Procedure Code Law 2001, Law No. 7 of 2001, signed into law on ????, coming into operation on ????, Jigawa State Gazette Vol. 1 No. 7, 21<sup>st</sup> November 2001.

Gombe: Sharia Criminal Procedure Code Law 2001, signed into law on 23<sup>rd</sup> November 2001, coming into operation on ????, working with photocopy of signed original, no gazette information available.

Bauchi: Sharia Criminal Procedure Code, signed into law on 15<sup>th</sup> February 2002, coming into operation on ????, working with photocopy of signed original, still not gazetted as of July 2006.

Kaduna: Sharia Criminal Procedure Code Law 2002, Law No. 5 of 2002, signed into law on 21<sup>st</sup> June 2002, coming into operation on 21<sup>st</sup> June 2002, Kaduna State Gazette No. 17 Vol. 36, 4<sup>th</sup> July 2002 pp. A109-A289, a separate bound volume (with Sharia Penal Code).

Kebbi: Sharia Criminal Procedure Code Law 2002, Law No. 5 of 2002, signed into law on ????, coming into operation on ????, Kebbi State Gazette Vol. 1 No. 1, 8<sup>th</sup> August 2003, a separate bound volume.<sup>86</sup>

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<sup>86</sup> The year of enactment of this law is unclear: sometimes the gazetted version says 2001, sometimes it says 2002. The title page says “Law No. 5 The Sharia Criminal Procedure Code Law, 2002”, which we have assumed to be accurate.

Borno: Executive Bill for a Law to Provide for Sharia Criminal Procedure Code in Borno State, presented to the Borno State House of Assembly in March 2002. As of April 2006 the bill still had not been enacted; the House of Assembly was studying the Harmonised Sharia Criminal Procedure Code it had in the meantime received from CILS and considering whether and how to adapt the bill pending before it to the CILS model. It is the still-pending bill that is annotated here.

2. Not included in the annotations:

Kano: Criminal Procedure Code Cap. 37 (Amendment) Law 2000, No. 6 of 2001, signed into law on 27<sup>th</sup> November 2001, coming into operation on 27<sup>th</sup> November 2001, Kano State Gazette No. 8 Vol. 33, 27<sup>th</sup> December 2001, pp. A39-A51.

Niger: Criminal Procedure Code (Amendment) Law 2000, N.S.L.N. No. 9 of 2000, signed into law on ????, coming into operation on ????, Niger State Gazette No. 9 Vol. 25, 9<sup>th</sup> March 2000, pp. B37-B45.

Zamfara: Sharia Criminal Procedure Code Law 2005, No. 6 of 2005, signed into law on 23<sup>rd</sup> November 2005, no date of coming into operation given, no gazette information available, photocopy of signed original in possession of editor.

Kano's Criminal Procedure Code Cap. 37 (Amendment) Law 2000 adds a new Chapter XXXIII to Kano's Criminal Procedure Code, on "Trials by Sharia Courts"; it is printed in its entirety as part V of this chapter. Bauchi's Sharia Criminal Procedure Code closely tracks Kano's new Chapter XXXIII; variations between Kano and Bauchi are shown in section-by-section annotations to Kano's new chapter; thus Bauchi's code is annotated twice.

The principal purpose of Niger's Criminal Procedure Code (Amendment) Law 2000 was to raise the limits of the sentencing powers of the State's Magistrate and Area Courts; this requires no special comment. There is also an interesting provision – section 4 of the law – which says that all and only Muslims accused of criminal offences for which they are liable to separate Sharia-inspired punishment under the new section 68A of Niger's amended Penal Code (as to which see part IV of Chapter 4, *supra*), must be tried in the Area Courts; all other criminal matters, including those involving Muslims, are for trial in the Magistrate Courts, at least in towns where Magistrate Courts exist. The trouble is that the Area Courts were subsequently abolished in Niger State, apparently making this provision moot; and the law that abolished the Area Courts – the Niger State Sharia (Administration of Justice) Law 2001 – does not similarly limit trials of offences to which section 68A of the Penal Code applies to the new Sharia Courts which replaced them. The very interesting questions raised by all of this have little to do with criminal procedure per se; they will be discussed rather in the chapter of this work on "Court Reorganisation", forthcoming.

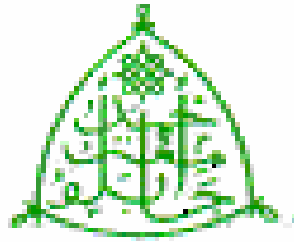
The Zamfara Sharia Criminal Procedure Code of 2005 is the CILS code published and annotated here (except for certain changes subsequently made to the CILS code which are reflected here but not in Zamfara's new code).

## CHAPTER 5: THE SHARIA CRIMINAL PROCEDURE CODES

3. Katsina and Yobe. These two States are evidently still using the Criminal Procedure Code of 1960 in their Sharia Courts. A Sharia Criminal Procedure Code bill has been under discussion in the Katsina State House of Assembly for some time, as in Borno, but we did not obtain a copy. Apparently no such bill is even being discussed in Yobe.
4. Some comments on the annotations. As with the Harmonised Sharia Penal Code Annotated, in making our annotations to the Harmonised Sharia Criminal Procedure Code we have ignored what we considered to be clearly typographical errors, unless the meaning was unclear, in which case we noted it. We have also ignored what we considered to be immaterial variations. In general the Criminal Procedure Codes presented many fewer problems of annotation than the Penal Codes.
5. Omission of section titles in the body of the code. The titles of the code sections are given at the beginning under the heading “Arrangement of Sections”. In order to save space we have not repeated the titles in the body of the code; anyone wanting to know the title of a particular section can refer to the list at the beginning.
6. The CILS Harmonised Sharia Criminal Procedure Code Annotated follows.

HARMONISED SHARIA CRIMINAL PROCEDURE CODE ANNOTATED

**HARMONISED  
SHARIA CRIMINAL PROCEDURE CODE  
BASED ON THE  
HARMONISED SHARIA PENAL CODE**



**CENTRE FOR ISLAMIC LEGAL STUDIES  
AHMADU BELLO UNIVERSITY  
ZARIA**

October, 2005

**THE SHARIA CRIMINAL PROCEDURE CODE LAW 200\_**

**Arrangement of sections:**

1. Short title.
2. Establishment of Sharia Criminal Procedure Code.
3. Saving existing appointments.
4. Trial of offences under Sharia Penal Code.
5. Delegation of powers of Attorney-General.

**SCHEDULE**

**Arrangement of sections:**

**PART 1 – PRELIMINARY**

**CHAPTER 1**

1. Interpretation.
2. Illegal omissions.
3. Words to have same meaning as in Sharia Penal Code.

**PART II – THE CONSTITUTION AND POWERS OF SHARIA CRIMINAL  
COURTS**

**CHAPTER II – THE CONSTITUTION OF SHARIA CRIMINAL COURTS**

4. Classes of the State Sharia criminal courts.
5. Power to divide the State into districts.

## CHAPTER 5: THE SHARIA CRIMINAL PROCEDURE CODES

6. Establishment and jurisdiction of Sharia Courts in each district or populated area.
7. Presiding officer not to exceed powers.
8. Appointment of Sharia Court alkali.
9. Territorial jurisdiction of alkalis.
10. Power of Upper Sharia Court alkali to direct a subordinate alkali.
11. Appointment of the justices of the peace.

### CHAPTER III – THE POWERS OF SHARIA CRIMINAL COURTS

12. Offences under the Sharia Penal Code and jurisdiction of Sharia Courts.
13. Offences under other laws.
14. Jurisdiction of Upper Sharia Court alkali.
15. Jurisdiction of Higher Sharia Court alkali.
16. Jurisdiction of Sharia Court alkali.
17. Powers of alkali to order restitution.
18. Order to pay compensation.
19. Powers of Governor to increase jurisdiction of Sharia Courts.
20. Combination of sentences.
21. Imprisonment in default of payment of fine.
22. Power to inflict fine in lieu of imprisonment.
23. Sentences in case of convictions of several offences at one trial.
24. Power to bind parties to be of good behaviour.

## PART III – ARREST AND PROCESS

### CHAPTER IV – ARREST

#### *A – Arrest*

25. When police may arrest.
26. Powers in regard to suspected persons.
27. When private person may arrest.
28. Arrest for offence committed in presence of justice of the peace.
29. Arrest by or in presence of justice of the peace or superior police officer.
30. Resisting endeavour to arrest.
31. Power to seize offensive weapons.
32. When public are bound to assist in arrest.
33. Search of place entered by person sought to be arrested.
34. Pursuit of offender into other jurisdictions.
35. Power to break out of any place for purpose of liberation.
36. No unnecessary restraint to arrested persons.
37. Notification of cause of arrest.

#### *B – Procedure after Arrest*

38. Procedure after arrest by a private person.
39. Person arrested to be taken before a court or officer in charge of police station.
40. Procedure when an offender has refused to give his name and address.
41. Person arrested without warrant not to be detained more than twenty-four hours.
42. Police to report arrest.
43. Search of arrested person.
44. Discharge of arrested person.
45. Register of arrest.

**CHAPTER V – PROCESSES TO COMPEL APPEARANCE**

*A – Summons*

46. Power to issue summons.
47. Summons by whom served.
48. Manner of serving summons.
49. Service on corporation.
50. Service on Local Government.
51. Service when person summoned cannot be found.
52. Inability of person served to sign or seal.
53. Service of summons outside local limits.
54. Proof of service.

*B – Warrant of Arrest*

55. Form of warrant of arrest.
56. Court may direct security to be taken.
57. Warrant to whom directed.
58. Re-direction of warrant.
59. Notification of substance of warrant.
60. Power to arrest without warrant.
61. Person arrested to be brought before the court without delay.
62. Where warrant may be executed.
63. Warrant forwarded for execution outside jurisdiction.
64. Procedure for arrest executed outside jurisdiction.
65. Procedure on arrest under warrant outside jurisdiction.

*C – Public Summons and Attachment*

66. Public summons for person absconding.
67. Attachment of property of person absconding.
68. Restoration of attached property.

*D – Other Rules Regarding Process*

69. Issue of warrant in lieu of or in addition to summons.
70. Power to take bond for appearance.
71. Provision of this chapter generally applicable to summons and warrant.

**CHAPTER VI – MEANS TO SECURE THE PRODUCTION OR DISCOVERY OF DOCUMENTS  
OR OTHER THINGS AND FOR THE DISCOVERY AND LIBERATION OF PERSONS  
UNLAWFULLY CONFINED**

*A – Summons*

72. Summons to produce document or other things.

*B – Searches and Orders for Production and Liberation of Persons*

73. Issue of search warrant by court or justice of the peace.
74. Application for search warrant.
75. Search for stolen property, etc.
76. Search for person wrongfully confined.
77. Search to be made in presence of witnesses.

CHAPTER 5: THE SHARIA CRIMINAL PROCEDURE CODES

78. Searching of women's quarters.
79. Occupant of place searched may attend.
80. Search of person found in place.
81. Mode of searching women.
82. Execution of search warrants outside jurisdiction.
83. Provision as to warrants of arrest to apply to search warrants.
84. Justice of the peace may direct search in his presence.
85. Impounding of document, etc.

**PART IV – THE PREVENTION OF CRIME**

**CHAPTER VII – SECURITY FOR KEEPING THE PEACE AND FOR GOOD BEHAVIOUR**

*A – Security for Keeping the Peace and for Good Behaviour on Conviction*

86. Security on conviction.

*B – Security for Keeping the Peace and for Good Behaviour in Other Cases*

87. Security in other cases.
88. Security for good behaviour from habitual offenders.
89. Warrant for arrest may issue if breach of peace likely.
90. Contents of summons or warrant under section 87, 88 or 89.
91. Inquiry as to truth of information.
92. Order to give security.
93. Discharge of person informed against.

*C – Proceedings in all Cases Subsequent to Order to Furnish Security*

94. Commencement of period for which security is required.
95. Contents of bond.
96. Imprisonment in default of security.
97. Power to reject sureties.
98. Power to release persons imprisoned for failure to give security.
99. Power to cancel bond.

**CHAPTER VIII – UNLAWFUL ASSEMBLIES AND RIOTS**

100. Assembly to disperse on command for the justice of peace, police or commissioned officer.
101. Use of civil force to disperse.
102. Protection against prosecution for act done under this chapter.

**CHAPTER IX – PUBLIC NUISANCE**

103. Conditional order for removal of nuisance.
104. Service of order.
105. Person to whom is addressed to obey or appear before court.
106. Consequences of failure to obey order or to appear.
107. Procedure where person appears.
108. Consequences of disobedience to order made absolute.
109. Order pending inquiry.
110. Prohibition of repetition of continuance of nuisances.

**CHAPTER X – PREVENTIVE ACTION BY POLICE AND PUBLIC**

111. Prevention by police and others of offences and inquiry to public property.
112. Public to assist justice of the peace, etc.

**CHAPTER XI – DUTY OF PUBLIC AND OF AREA HEADS TO GIVE INFORMATION**

- 113. Public to give information of certain offences.
- 114. Area head bound to report certain matters.
- 115. Investigation by area head on receiving information under section 114.

**PART V – INFORMATION TO THE POLICE AND THEIR POWERS TO INVESTIGATE**

**CHAPTER XII**

*A – Procedure in Cases where the Police may Arrest without a Warrant*

- 116. Information in cases where the police may arrest without a warrant.
- 117. Procedure where warrant is not required for arrest.
- 118. Manner of submitting First Information Report.
- 119. Power of court on receiving First Information Report.
- 120. Case diary to be kept by police.
- 121. Use of case diary.
- 122. Power of police to summon and examine.
- 123. No inducement to be offered.
- 124. Confession to justice of the peace.
- 125. Confession to police officer.
- 126. Medical examination of suspect.
- 127. Taking of fingerprint, etc.
- 128. Remand of person in custody.
- 129. Procedure where police consider investigation should be terminated without trial.
- 130. Procedure where police consider after investigation that accused be charged to court.
- 131. Attendance of accused and bonds for attendance of witnesses.

*B – Procedure in Cases where the Police may not Arrest without a Warrant*

- 132. Procedure where warrant is required for arrest.

**PART VI – PROCEEDINGS IN PROSECUTIONS**

**CHAPTER XIII – PLACE OF TRIAL**

- 133. Ordinary place of trial.
- 134. Place of trial when scene of offence is uncertain.
- 135. Offence committed on a journey.
- 136. The Grand Kadi to decide in case of doubt court in which trial shall take place.
- 137. Power to transfer.
- 138. Power to issue summons or warrant for offence committed beyond local jurisdiction.

**CHAPTER XIV – SANCTIONS NECESSARY FOR THE INITIATION OF CERTAIN PROCEEDINGS**

- 139. Prosecution or contempt of lawful authority of public servants.
- 140. Prosecution for breach of contract, *qadhif* and defamation.
- 141. Prosecution for *zina*.

**CHAPTER XV – INITIATION OF JUDICIAL PROCEEDINGS BEFORE A COURT**

- 142. Cognisance of offences by court.



## CHAPTER 5: THE SHARIA CRIMINAL PROCEDURE CODES

143. Power of court to give directions.
144. Power of court to advise person the subject of a complaint.
145. Examination of complaint.
146. Transfer of cases by court.
147. Power of court to order further investigation.
148. Inquiry by court of complaint by person other than police officer.
149. Court may refuse to proceed.
150. Procedure by court not competent to take cognisance of case.
151. Trial.
152. Presence of accused at trial.
153. Process to compel attendance of accused.

### CHAPTER XVI – TRIALS AND OTHER JUDICIAL PROCEEDINGS BEFORE SHARIA COURTS

154. Procedure in summary trials.
155. Substance of accusation to be stated.
156. Conviction on admission of truth of accusation.
157. Evidence for prosecution.
158. Discharge of accused.
159. Charge to be framed when offence appears to have been committed.
160. Plea.
161. Defence.
162. Process for compelling production of evidence at instance of accused.
163. Procedure after finding.
164. Absence of complainant or prosecutor.
165. Frivolous or vexatious accusation.
166. Examination of witness.
167. Making of findings.
168. Announcement of findings.
169. Sentence.
170. Court to record wishes of complainant or deceased's relatives in *qisas* cases.
171. Records in Sharia Courts.
172. Duties of justice of the peace.

### CHAPTER XVII – CHARGES

173. Form of charges.
174. Contents of charges.
175. Effect of errors.
176. Variation of charges.
177. Court may alter charge.
178. When court may proceed with trial immediately after altering, adding to or framing charges.
179. When new trial may be directed or trial suspended.
180. Recall of witness when charge revised.
181. Separate charges for distinct offences.
182. Offences of like character may be charged together.
183. Acts forming the same transaction.
184. When it is doubtful on which occasion an offence has been committed.
185. When it is doubtful what offence has been committed.

186. When person charged with one offence may be convicted of another.
187. Conviction of lesser offence where greater offence is charged.
188. Conviction for attempt not separately charged.
189. Withdrawal of remaining charges on conviction one of several charges.
190. What persons may be charged jointly.
191. Effect of material error.

#### **CHAPTER XVIII – PREVIOUS CONVICTIONS**

192. Person once convicted not to be tried for same offence.
193. Previous conviction when to be proved.

#### **CHAPTER XIX – GENERAL PROVISIONS AS TO TRIALS AND OTHER JUDICIAL PROCEEDINGS IN SHARIA COURTS**

194. Court to be open.
195. Right of appearance of legal practitioner.
196. Representation of the State, Government Departments and Local Governments.
197. General procedure in trials by Sharia Courts.
198. Oath taking.
199. Protection of witnesses.
200. Taking and recording of evidence.
201. Power to examine the accused.
202. Evidence of accused.
203. Powers to summon material witnesses or call persons present.
204. Evidence of person confined.
205. When evidence given at any judicial proceedings may be admissible.
206. Admissibility of statements by accused.
207. Language not understood by accused.
208. Interpreter bound to interpret truthfully.
209. View or visits to locus in quo.
210. Determination of age.
211. Power to take evidence from persons dangerously ill.
212. Commission to take evidence.
213. Examination of witness on commission.
214. Return of commission.
215. Evidence taken abroad by interrogatories.
216. Deposition of medical witness.
217. Report of scientific expert.
218. Report under section 216 or 217 of Sharia Criminal Procedure Code.
219. Record of evidence in absence of absconding accused.
220. Record of evidence when offender unknown.
221. Stay of proceedings by Attorney-General.
222. No influence to be used to induce disclosure.
223. Power to postpone or adjourn proceedings.
224. Procedure of court in cases it cannot dispose.
225. Procedure when court cannot pass sentence sufficiently severe.
226. Conviction on other charges pending.
227. Joint trial may be stayed and accused tried separately.
228. Reference on points of law.

## CHAPTER 5: THE SHARIA CRIMINAL PROCEDURE CODES

- 229. Procedure when accused does not understand proceedings.
- 230. Delivery of judgment when alkali, etc., unavoidably absent.
- 231. Opinion of majority to prevail.
- 232. Procedure when court evenly divided.
- 233. Every member to give opinion.
- 234. Order of taking opinions.

### CHAPTER XX – THE JUDGMENT

- 235. Definition for Chapter XX.
- 236. Language and mode of delivering judgment.
- 237. Contents of judgment.
- 238. *Hudud* and *qisas* penalties not imposed under the age of *taklif*.
- 239. Procedure when person is convicted of *hadd* or *qisas* offence committed while under the age of *taklif*.
- 240. Procedure when person is convicted of *hadd* or *qisas* offence alleged to be pregnant.
- 241. Sentence of death.
- 242. Sentence of retaliation for injuries.
- 243. Cases in which appeal lies.
- 244. Court not to alter judgment.
- 245. Copy of judgment or translation to be given to accused on application.
- 246. Original judgment to be filed.

## PART VII – PROCEEDINGS SUBSEQUENT TO JUDGMENT

### CHAPTER XXI – APPEAL AND REVIEW

- 247. Appeals from Sharia Courts.
- 248. Procedure on appeal.
- 249. Memorandum of grounds of appeal.
- 250. Grounds of appeal.
- 251. Giving security to prosecute the appeal from Sharia Courts.
- 252. Power of Grand Kadi to examine proceedings.
- 253. Accused, etc. not entitled to be heard on examination of proceeding under section 252.
- 254. Sentence to take effect pending appeal.
- 255. Appellate court not to send back judgment for technical error in procedure.
- 256. Enforcing of judgment.
- 257. Court member not to hear appeals from judgments.
- 258. Abatement of appeal.

### CHAPTER XXII – EXECUTION

- 259. Definitions for Chapter XXII.
- 260. Upper Sharia Court to report death sentence to Governor.
- 261. Affirmation of sentence of death, etc.
- 262. When death sentence to be carried into effect.
- 263. Governor to inform Upper Sharia Court or Sharia Court of Appeal.
- 264. Order for execution of death sentence.
- 265. Copy of order to be sent to the sheriff.
- 266. When woman sentenced to death is alleged to be pregnant.
- 267. Procedure for granting of pardon.

- 268. Execution of sentence of imprisonment.
- 269. Conditions attaching to detention during pleasure.
- 270. Warrant for levy of fine.
- 271. Who may issue a warrant.
- 272. Powers of court when offender sentenced to fine only.
- 273. Execution of sentence of caning.
- 274. Stay of execution of sentence of caning.
- 275. Stay of execution of sentence of caning to allow time for appeal.
- 276. Execution of sentence on escaped convict.
- 277. Sentence on offender already sentenced for another offence.
- 278. Return of warrant on execution of sentence.

### **PART VIII – SPECIAL PROCEEDINGS**

#### **CHAPTER XXIII – PROCEEDINGS IN CASE OF CERTAIN OFFENCES AFFECTING THE ADMINISTRATION OF JUSTICE**

- 279. Procedure in cases mentioned in section 139.
- 280. Procedure in certain cases of contempt.
- 281. Record of certain cases of contempt.
- 282. Discharge of offender on submission or apology.
- 283. Imprisonment or commitment to officer's custody of person refusing to answer or produce document.
- 284. Appeals from convictions in contempt cases.

#### **CHAPTER XXIV – PERSONS OF UNSOUND MIND**

- 285. Procedure when accused is suspected to be of unsound mind.
- 286. Certificate of medical officer.
- 287. Release of persons of unsound mind pending investigation or trial.
- 288. Resumption of inquiry or trial.
- 289. Resumption of proceedings.
- 290. Judgment of discharge on ground of mental disorder.
- 291. Safe custody of persons discharged.
- 292. Observation of prisoners of unsound mind.
- 293. Procedure where person of unsound mind reported fit for discharge.
- 294. Transfer from one place of custody to another.
- 295. Delivery of person of unsound mind to care of relatives.

#### **CHAPTER XXV – PROCEEDINGS RELATING TO CORPORATIONS**

- 296. Definitions for Chapter XXV.
- 297. Plea by corporations.
- 298. Committal of corporation for trial.
- 299. Powers of representative.
- 300. Matters to be read or said or explained to representative.
- 301. Non-appearance of representative.
- 302. Saving.

### **PART IX – SUPPLEMENTARY PROVISIONS**

#### **CHAPTER XXVI – THE COMPOUNDING OF OFFENCES**

- 303. Compounding offences.

**CHAPTER XXVII – BAIL**

- 304. When bail to be granted.
- 305. When bail may be taken in respect of non-bailable offence.
- 306. Power of Sharia Court to direct release on bail.
- 307. Power to arrest person released on bail.
- 308. Power of Sharia Court to order reduction of bail bond.
- 309. Bond of accused and sureties.
- 310. Discharge from custody.
- 311. Deposit instead of bond.
- 312. Bond required from a person under eighteen years.
- 313. Amount of bond not to be excessive.
- 314. Reconsideration of bail.
- 315. Discharge of sureties.
- 316. Discharge of surety's estate.
- 317. When person fails to find surety.
- 318. Procedure on forfeiture of bond.
- 319. Arrest on breach of bond for appearance.

**CHAPTER XXVIII – THE DISPOSAL OF PROPERTY**

- 320. Order for custody and disposal of property pending trial.
- 321. Order for disposal of property after trial.
- 322. Payment to the innocent purchase of money found on accused.
- 323. Destruction of defamatory and other matters.
- 324. Power to restore possession of immovable property.
- 325. Procedure upon seizure of property taken under section 43 or stolen.
- 326. Procedure where owner of property sized unknown.
- 327. Power to sell perishable property.

**CHAPTER XXIX – MISCELLANEOUS**

- 328. Expenses of complainants and witnesses.
- 329. Power of court to order payment of expenses or compensation in addition to fine.
- 330. Payments to be taken into consideration in subsequent suit.
- 331. Moneys ordered to be paid recoverable as fines.
- 332. Copies of proceedings.
- 333. Power of police to seize property suspected to be stolen.
- 334. Power of superior police officers.
- 335. Compensation to persons groundlessly given in charge.
- 336. Saving to other forms and procedure.
- 337. Power to make rules.
- 338. Case in which member of the court is personally interested.
- 339. Proceeding by or against officer of court.
- 340. Public servant concerned in sales not to purchase or bid for property.
- 341. Protection of judicial officers.

**CHAPTER XXX – IRREGULAR PROCEEDINGS**

- 342. Irregularities which do not vitiate proceedings.
- 343. Irregularities which vitiate proceedings.
- 344. Effect of omission to prepare charge.

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- 345. Finding or sentence when reversible by reason of error or omission in charge or other proceedings.
- 346. Process valid notwithstanding death or vacation of office of person issuing.
- 347. Errors and omission in orders and warrants.

**APPENDICES**

- Appendix A. Tabular statement of offences.
- Appendix B. Form of charges.
- Appendix C. Non-compoundable offences.

**SHARIA CRIMINAL PROCEDURE CODE**

**A LAW TO ESTABLISH A CODE OF SHARIA CRIMINAL PROCEDURE  
FOR ..... STATE**

1. This Law may be cited as the Sharia Criminal Procedure Code Law.
2. The provisions contained in the schedule to this Law shall be the law of the State with respect to the several matters therein dealt with and the said schedule may be cited as, and is hereinafter called, the Sharia Criminal Procedure Code.
3. Nothing in this Law shall affect the status, appointment or tenure of office of:
  - (a) any justice of the peace holding office as such within the State before the commencement of this Law, and such justice of the peace shall be deemed to have been appointed as such under this Law and thereafter to be subject to the provisions of this Law;
  - (b) any officer performing duties in connection with a court constituted under any written law before the commencement of this Law, and such officer shall be deemed to have been appointed as such under this Law and shall thereafter be subject to the provisions of this Law.
4. (1) All offences under the Sharia Penal Code shall be investigated, inquired into and otherwise dealt with according to the provisions contained in the Sharia Criminal Procedure Code.<sup>87</sup>
  - (2) All offences against any other law shall be investigated, inquired into, tried and otherwise dealt with according to the same provisions, but subject to any law for the time being in force regulating the manner or place of investigating, inquiring into, trying or otherwise dealing with such offences.<sup>88</sup>
  - (3) In any matter of a criminal nature a Sharia Court shall be bound by the provisions of this Sharia Criminal Procedure Code.<sup>89</sup>
5. The powers of the Attorney-General under this Law may be exercised by him in person or through members of his staff or any other person of the legal profession appointed by him, acting under and in accordance with his general or special instructions.<sup>90</sup>

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<sup>87</sup> Bauchi inserts a subsection after this one, as follows: "Where the Sharia Penal Code is silent on any issue or criminal matter, the presiding judge is at liberty to resort to the primary sources of Islamic law and any other work of recognised Islamic jurists and proceed accordingly." This is contained in no other SCPC.

<sup>88</sup> Bauchi: "All offences against any other law but in which Muslim are directly involved shall be investigated and inquired into in accordance to the same provision of that law but tried and death with in accordance with Islamic law."

<sup>89</sup> Bauchi omits this subsection; and see Bauchi's §42 = Kano §410 after 2001 amendments: "(1) In any matter of criminal nature the Sharia Court shall be guided in regard to practice and procedure by the provisions of this law. (2) The fact that the Sharia Court has not been so guided by the provisions of this Sharia Criminal Procedure Code shall not entitle any person to be acquitted or any order of the court to be set aside."

<sup>90</sup> Bauchi: "The State Attorney-General may delegate his powers of prosecution to any of his staff, private legal practitioners, private citizens or group as the case may be."

**SCHEDULE**

**PART 1 - PRELIMINARY**

**CHAPTER I**

1. In this Sharia Criminal Procedure Code<sup>91</sup>:

“accused person” includes an arrested person, and a person the subject of a complaint or a First Information Report or a police report,<sup>92</sup> even though any such person may not be the subject of a formal charge;

“Sharia Court” means a court established or deemed to have been established under the Sharia Courts Law;<sup>93</sup>

“area head” means a person appointed as district, village or ward head under the Local Government Law;<sup>94</sup>

“complaint” means the allegation made orally or in writing to a court with a view to its taking action under this Sharia Criminal Procedure Code that some person whether known or unknown has committed an offence but except where the context otherwise requires but does not include a police report;<sup>95</sup>

[“complainant”]<sup>96</sup>

“charge” includes any head of charge when the charge contains more heads than one;<sup>97</sup>

“court” means any court of civil or criminal jurisdiction established by any law or deemed to be so established;<sup>98</sup>

“High Court” means the High Court of Justice of the State;<sup>99</sup>

“inquiry” includes every inquiry, other than a trial,<sup>100</sup> conducted under this Sharia Criminal Procedure Code by a Sharia Court alkali;<sup>101</sup>

“investigation” includes all proceedings under this Code<sup>102</sup> for the collection of evidence by a police officer;<sup>103</sup>

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<sup>91</sup> Kebbi adds: “unless the context otherwise requires”.

<sup>92</sup> Bauchi adds: “or a Hisba report,”.

<sup>93</sup> Borno, Jigawa, Kaduna, Zamfara define “Sharia Court” or “court”, but using the same definition as here. CPC and Gombe omit this definition entirely, including only what is here the subsequent definition of ‘court’, see below.

<sup>94</sup> CPC, Bauchi, Borno, Jigawa omit this definition.

<sup>95</sup> Bauchi: “‘Complaint’ means the allegation made directly to the court by individual or group orally or in writing with a view to taking action under this Code that some person(s) whether known or unknown has/have committed an offence.”

<sup>96</sup> Bauchi also includes a definition of ‘complainant’: “includes prosecutor authorised by this Code as defined”.

<sup>97</sup> Bauchi omits the definition of ‘charge’.

<sup>98</sup> Bauchi and Kaduna omit this definition. Borno, Gombe, Jigawa, Kebbi, Sokoto and Zamfara use “established by the Sharia Courts Law” instead of “any law”.

<sup>99</sup> Bauchi, Kebbi, Sokoto omit the definition of ‘High Court’.

<sup>100</sup> Bauchi: “other than a court trial”.

<sup>101</sup> CPC: “by a justice of the peace or court”.

<sup>102</sup> CPC: “under chapter XII or section 149”.



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“local limits of the jurisdiction” of a justice of the peace or court<sup>104</sup> means the local limits of the administrative district or populated area or judicial division<sup>105</sup> in which the justice of the peace or court ordinarily exercises his or its functions,<sup>106</sup> but a Sharia Court alkali<sup>107</sup> except in so far as his powers are limited by the terms of his appointment or otherwise may exercise his powers in any part of the State<sup>108</sup> in which he happens to be;<sup>109</sup>

[“native court” and subsequently “area court”]<sup>110</sup>

“Sharia Court of Appeal” means the Sharia Court of Appeal of the State;<sup>111</sup>

“alkali” means a judge of any of the Sharia Courts;<sup>112</sup>

“kadi” means a judge of the Sharia Court of Appeal of the State;<sup>113</sup>

“State” means .....<sup>114</sup>

“*taklif*” means the age of puberty in a person;<sup>115</sup>

“*hudud*” means offences or punishments that are fixed under the Sharia and includes offences or punishments in Section 57 of Sharia Penal Code;<sup>116</sup>

“*qisas*” means punishments inflicted upon the offenders by way of retaliation for causing death of or injuries to a person;<sup>117</sup>

[“*mukallaf*”]<sup>118</sup>

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<sup>103</sup> Bauchi: “‘Investigation’ means and shall include all proceedings under chapter XII of the Criminal Procedure Code Law Cap 38 laws of the Bauchi State of Nigeria 1991 or Section 149 thereof for the collection of evidence by the police but the trial proper must be conducted in accordance with Islamic law.”

<sup>104</sup> CPC: “of a justice of the peace or court”.

<sup>105</sup> CPC: “local limits of the administrative province, division or district or judicial division or magisterial district”. Jigawa: “local limits of the judicial division”.

<sup>106</sup> Jigawa omits everything after the word ‘functions’.

<sup>107</sup> CPC: “justice of the peace”. Gombe: “judge”.

<sup>108</sup> Borno: “the locality”.

<sup>109</sup> Bauchi omits the definition of ‘local limits of the jurisdiction’.

<sup>110</sup> CPC puts here a definition of ‘native court’: “a court established or deemed to have been established under the Native Courts Law”. In 1967-68 the Native Courts were transformed into Area Courts and this and other sections of CPC dealing with Native Courts were amended accordingly.

<sup>111</sup> CPC, Bauchi omit the definition of ‘Sharia Court of Appeal’.

<sup>112</sup> CPC has no similar definition. Gombe defines ‘judge’: “means a judge of any of the Sharia Courts”. Gombe then uses the word ‘judge’ throughout its SCPC, where the other SCPCs use ‘alkali’. This will not be separately noted subsequently.

<sup>113</sup> CPC, Bauchi omit the definition of ‘kadi’.

<sup>114</sup> CPC, Bauchi, Borno omit the definition of ‘state’.

<sup>115</sup> CPC, Bauchi omit the definition of *taklif*. Kaduna defines it as “the age of attaining legal and religious responsibility.” Kebbi and Sokoto add to Kaduna’s definition: “by both age and mental soundness”.

<sup>116</sup> CPC, Bauchi omit the definition of *hudud*. Gombe: “means offences or punishments that are fixed under the Sharia as contained in the Sharia Penal Code Law.”

<sup>117</sup> CPC, Bauchi omit the definition of *qisas*. Kaduna has “reciprocal punishment” instead of “retaliation”.

<sup>118</sup> Jigawa includes a definition of *mukallaf*: “means a competent person to stand trial”.

“caning” means whipping with a light supple leather whip and does not include lashes with a whip made of hide or a club or bamboo cane;<sup>119</sup>

“officer in charge of a police station” or “officer in charge of the police station” includes, when the officer in charge of the police station is absent from the station building or unable for any reason to perform his duties, the police officer present at the station building who is next in seniority to, or who in the absence of such officer in charge performs the duty of such officer;<sup>120</sup>

“Sharia Penal Code” means the Sharia Penal Code established by the Sharia Penal Code Law of the State;

[“First Schedule of the Penal Code”]<sup>121</sup>

“police district” means a police division;<sup>122</sup>

[“police force”]<sup>123</sup>

“police officer” means any member of the Nigeria Police Force;<sup>124</sup>

“superior police officer” shall have the same meaning as in Section 2 of the Police Act;

[“sub-area head”]<sup>125</sup>

“take cognizance” with its grammatical variations means take notice in an official capacity.

2. Words which refer to acts done also extend to illegal omissions.
3. All words and expressions used herein and defined in the Sharia Penal Code shall have the meanings attributed to them by that Code.

## **PART II - THE CONSTITUTION AND POWERS OF CRIMINAL COURTS**

### **CHAPTER II – THE CONSTITUTION OF SHARIA CRIMINAL COURTS**

4. There shall be four classes of Sharia Criminal Courts in the State<sup>126</sup> namely:
  - (a) Sharia Court of Appeal
  - (b) Upper Sharia Court;
  - (c) Higher Sharia Court;

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<sup>119</sup> CPC, Bauchi omit the definition of ‘caning’.

<sup>120</sup> Bauchi, Jigawa omit the definition of ‘officer in charge of a police station’.

<sup>121</sup> Kebbi inserts here a definition of ‘First Schedule of the Penal Code’: “means the first schedule of the Penal Code (Amendment) Law, 2000.”

<sup>122</sup> CPC: “means – (a) in the case of the Nigeria Police, a police province; and (b) in the case of native authority police, the area of the jurisdiction of the native authority.” Bauchi defines ‘police division’: “includes any police station, not post within jurisdiction.” Jigawa: also defines ‘police division’: “means a police division.”

<sup>123</sup> CPC inserts here a definition of ‘police force’: “includes a police force established and constituted by a native authority under any written law or deemed to have been so constituted.”

<sup>124</sup> CPC: “means any member of a police force.”

<sup>125</sup> CPC inserts here a definition of ‘sub-area head’: means a person appointed by a native authority to be head of an administrative area”.

<sup>126</sup> Bauchi: “The classes of the criminal courts in the State under this code are:”; Gombe: “The composition of the State Sharia Courts is:”.

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- (d) Sharia Court.<sup>127</sup>
5. The Grand Kadi, with the approval of the Governor, may by warrant:<sup>128</sup>
- (a) divide the State or any portion thereof, into districts or populated areas for the purposes of establishing Sharia Courts;
  - (b) constitute any part of the State a district or populated area for the purpose of establishing a Sharia Court.
  - (c) distinguish such districts or populated areas by such names or numbers as he may think proper; and
  - (d) vary the limits of any such districts or populated areas.
6. (1) In each district or populated area there shall be and there is hereby established a court, to be called the Sharia Court.<sup>129</sup>
- (2) A Sharia Court shall have such jurisdiction as is conferred upon it by this Sharia Criminal Procedure Code or any other written law.<sup>130</sup>
7. (1) Subject to the provisions of this Sharia Criminal Procedure Code:
- (a) The Sharia Court alkali of each district or populated area shall be the presiding officer of the court of such district or populated area wherein he shall have and exercise all the jurisdiction and powers conferred upon him by his appointment; and
  - (b) No alkali, either as presiding officer or otherwise, shall exercise any jurisdiction or powers in excess of those conferred upon him by his appointment.
- (2) When the Grand Kadi<sup>131</sup> assigns two or more alkalis to any district or populated area, each alkali shall be a presiding officer and each sitting separately shall have and exercise all the jurisdiction and powers conferred upon him by his appointment.
8. (1) Sharia Court alkalis shall be styled<sup>132</sup> Upper Sharia Court alkalis, or Higher Sharia Court alkalis or Sharia Court alkalis.<sup>133</sup>

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<sup>127</sup> CPC lists High Court, courts of Chief Magistrates, courts of magistrates of the first, second and third grades, and “native courts established or deemed to have been established in Northern Nigeria under any law.” Bauchi, Borno, Gombe, Jigawa, Kaduna, Kebbi, Sokoto have only two grades of Sharia Courts below the Sharia Court of Appeal, “Upper Sharia Courts” and “Lower” or simply “Sharia Courts”. Bauchi adds to its list “State High Court”.

<sup>128</sup> CPC: “The Chief Justice [of the Northern Region] may:”; CPC then refers to “magisterial districts”, not “districts or populated areas”. Jigawa refers to “divisions” here and subsequently; this will not be noted separately again. Borno: “The Chief Judge, on the recommendation of the Grand Khadi, with the approval of the Governor, may by warrant”. Zamfara: “The Chief Judge, with the approval of the Governor, may by warrant”.

<sup>129</sup> CPC refers to magisterial districts and magisterial courts.

<sup>130</sup> CPC, in addition to referring to magistrate’s courts, adds at the end of this subsection: “subject nevertheless to the limitations imposed by the Constitution of Northern Nigeria”. Jigawa, as to the entirety of §6, says: “Repealed”.

<sup>131</sup> CPC: “When the Chief Justice”. Borno: “When the Chief Judge on the recommendation of the Grand Khadi”.

<sup>132</sup> Kebbi: “referred to”.

<sup>133</sup> CPC has four grades of magistrates; Gombe, Jigawa, Kaduna, Kebbi, Sokoto have only two grades of alkalis, see note to §4.

- (2) The State Judicial Service Commission may appoint any person to the office of Sharia Court alkali and such appointment shall be made in compliance with the provisions of the Sharia Courts Law of the State and any other legislation made in accordance therewith.<sup>134</sup>
9. Every alkali shall have jurisdiction throughout the State unless his appointment is specifically limited to the area of any district or populated area or group of districts or populated areas.<sup>135</sup>
10. Notwithstanding the provisions of Section 9, an Upper Sharia Court alkali who is assigned to a group of districts or populated areas, may direct a subordinate alkali in one district or populated area within the group to assist another subordinate alkali within the group or populated area and may direct to the best advantage the movements of any additional subordinate alkali within the group.<sup>136</sup>
11. The Grand Kadi<sup>137</sup> shall have the power to appoint persons to the office of justice of the peace and to dismiss and exercise control over such persons.<sup>138</sup>

### CHAPTER III – THE POWERS OF SHARIA CRIMINAL COURTS

12. (1) Subject to the other provisions of this Sharia Criminal Procedure Code, any offence under the Sharia Penal Code may be tried by any Sharia Court by which such offence is shown in the sixth column of Appendix A<sup>139</sup> to be triable or by any Sharia Court with greater powers.<sup>140</sup>

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<sup>134</sup> CPC: “The Public Service Commission may appoint any person to the office of magistrate”. CPC then adds a subsection (3) which requires appointments to be made “in compliance with the provisions of the Constitution of Northern Nigeria and of any legislation made in accordance therewith.” Gombe omits “made in accordance therewith.”

<sup>135</sup> Bauchi: “The territorial jurisdiction of: (a) any Sharia and Upper Sharia Court of the State is limited to the Local Government in which the Court is situate (both first instance and appellate); (b) the Sharia Court of Appeal and the High Court is the entire State provided that such High Court shall conduct the trial of the accused persons, being Muslims, in accordance with Islamic law.” Jigawa omits this section.

<sup>136</sup> Jigawa omits this section.

<sup>137</sup> Borno, Gombe, Jigawa, Kebbi, Sokoto, Zamfara: “The Attorney-General”.

<sup>138</sup> CPC: “The appointment of a justice of the peace shall be made in compliance with the provisions of the Constitution of Northern Nigeria”.

<sup>139</sup> Appendix A is omitted from this work. In separate columns it (1) lists, row by row, sections of the CILS Draft Harmonised Sharia Penal Code prescribing punishments for offences, (2) describes, row by row, the offence corresponding to each section, (3) states “whether the police may arrest [for the offence] without warrant or not” (referring to §25 of this code), (4) states “whether a warrant or a summons shall ordinarily issue in the first instance [to compel attendance of the accused at trial]” (referring to §152 of this code), (5) summarises the punishment for the offence, and (6) names the “Sharia Court with least powers by which [the offence is] triable”.

<sup>140</sup> Kaduna omits “or by any Sharia Court with greater powers”. CPC has “or by any court other than a native court with greater powers”. CPC then goes on, in its subsection (2), to deal with offences triable by native (subsequently Area) courts, referring to the 7<sup>th</sup> column of Appendix A. Several SCPCs (Borno, Gombe, Zamfara) unnecessarily include the same subsection (2) as CPC, referring however to the Sharia courts they have already dealt with in subsection (1), and referring to a 7<sup>th</sup> column of Appendix A which they do not in fact include in their Appendix As. Kebbi and Sokoto take a different approach to this whole section, providing as follows: “(1) Subject to the other provisions of this Sharia Criminal Procedure Code, the Upper Sharia Court shall have the exclusive jurisdiction to try any or all

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*Provided that* any such Sharia Court shall try such offence only if jurisdiction so to do has been conferred upon it by its court warrant.

- (2) Subject to the provisions of subsection (1) the jurisdiction of Sharia Courts shall be governed by the provisions of the Sharia Courts Law.
13. (1) Any offence under any law other than the Sharia Penal Code may be tried by any court given jurisdiction in that behalf in that law or by any court with greater powers.
- (2) When no court is so mentioned such offence may be tried by the Upper Sharia Court or any Sharia Court constituted<sup>141</sup> under this Sharia Criminal Procedure Code.<sup>142</sup>
- (3) Nothing in subsection (2) shall be deemed to confer upon any court any jurisdiction in excess of that conferred upon that court by sections 14 to 24.
14. An Upper Sharia Court alkali<sup>143</sup> may pass any sentence authorised by law.
15. A Higher Sharia Court alkali<sup>144</sup> may pass the following sentences:
- (a) imprisonment for a term not exceeding fifteen years;<sup>145</sup>
  - (b) fine not exceeding ten thousand naira;<sup>146</sup>
  - (c) all punishments under section 93 of the Sharia Penal Code except subsection 1(i), (viii), (ix) and (xviii) thereof;<sup>147</sup>
  - (d) detention under section 95 of the Sharia Penal Code.
16. A Sharia Court alkali<sup>148</sup> may pass the following sentences:
- (a) imprisonment for a term not exceeding ten years;<sup>149</sup>
  - (b) fine not exceeding seven thousand naira;<sup>150</sup>
  - (c) all punishments under section 93 of the Sharia Penal Code except subsection 1(i), (viii), (ix) and (xviii) thereof;

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the offences listed in 'Appendix A' of this code. (2) The Sharia Court shall have jurisdiction to try any or all the offences not listed in 'Appendix A' of this Sharia Criminal Procedure Code. (3) Notwithstanding the provisions of subsections (1) and (2) above, the Upper Sharia Court may have regard to all the circumstances of the case where it deems fit try any or all the offences not listed in 'Appendix A' of this code. (4) Where the Upper Sharia Court tries an offence under subsection (3) above, an appeal against its decision shall lie to the Sharia Court of Appeal."

<sup>141</sup> CPC: "by the High Court or any court constituted". Kebbi, Sokoto: "by any court constituted".

<sup>142</sup> CPC adds after this subsection a proviso with five subsections, on the limits of the powers of various magistrate and native courts to try offences.

<sup>143</sup> CPC: "the High Court".

<sup>144</sup> CPC: "A Chief Magistrate". Borno, Gombe, Kaduna, Kebbi, Sokoto: omit this section, as they divide their Sharia Courts into only two grades: Upper Sharia Courts and Sharia Courts, see note to §8(1).

<sup>145</sup> CPC: 5 years.

<sup>146</sup> CPC: 500 pounds.

<sup>147</sup> CPC: "caning".

<sup>148</sup> CPC: "A magistrate of the first grade"; and CPC goes on in two subsequent sections, which have no correlates here, to deal with magistrates of the second and third grades as well.

<sup>149</sup> Gombe: 15 years.

<sup>150</sup> Gombe: ₦10,000.

(d) detention under section 95 of the Sharia Penal Code.

17. All Sharia Court alkalis shall notwithstanding the limit of fine provided under this Code, order a complete restitution of any monies or properties criminally misappropriated, stolen, robbed, received by extortion, cheating, deceit, breach of trust, forgery, falsification of accounts or by any illegal means by a person.<sup>151</sup>

18. Notwithstanding the limitation imposed on Sharia Court alkalis in their civil jurisdictions as Sharia Court alkalis under the Sharia Courts Law or any other written law, an alkali that tries an offence shall have powers and jurisdiction to make an order of compensation whether or not the money or money's worth of property exceeds his civil jurisdiction.<sup>152</sup>

19. (1) The Governor may, on the recommendation of the Grand Kadi,<sup>153</sup> by order authorise an increased jurisdiction in criminal matters,<sup>154</sup> to be exercised by any Sharia Court to such extent as the Grand Kadi may on such recommendation specify and such order may at any time be revoked by the Governor by writing under his hand.<sup>155</sup>

(2) An order under subsection (1) may authorise such increased jurisdiction in respect of:<sup>156</sup>

- (a) offences under a named Act or Law;
- (b) offences specifically referred to under a named Act or Law; or
- (c) a particular offence for which a person is then charged or a particular offence of which a court has taken cognizance.

20. Any Sharia Court may pass any lawful sentence combining any of the types of sentences which it is authorised by Law to pass.

21. Any Sharia Court may award any term of imprisonment in default of payment of a fine which is authorised by section 98 of the Sharia Penal Code:

*Provided that* the term of imprisonment shall not be in excess of the powers of the court under sections 14 to 19 of this Code.

22. (1) Where a Sharia Court has authority under any written law to impose imprisonment for an offence and has no specific authority to impose a fine for that offence the Sharia Court may in its discretion impose a fine in lieu of imprisonment.<sup>157</sup>

(2) The amount of the fine shall not be in excess of the power of the court to impose fines under sections 14 to 19 of this Code.<sup>158</sup>

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<sup>151</sup> CPC omits this section.

<sup>152</sup> CPC omits this section. Gombe: "whether or not the money or money's worth of property exceeds his civil or criminal jurisdiction".

<sup>153</sup> CPC: "Chief Justice"; Borno: "Chief Judge"; in both cases twice in this subsection.

<sup>154</sup> Gombe ends this subsection at this point.

<sup>155</sup> Jigawa: "The Governor may, on the recommendation of the Grand Kadi, by order increase the jurisdiction in criminal matters of the Sharia Courts to such extent as the Grand Kadi may specify in such order."

<sup>156</sup> Jigawa and Kaduna omit this subsection.

<sup>157</sup> Jigawa adds here: "so however such fine shall not exceed the limits of the jurisdiction of the court to award"; this brings what is here subsection (2) into subsection (1).

<sup>158</sup> Jigawa omits this subsection, see previous note. Kaduna also omits subsection (2).

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- (3) No term of imprisonment<sup>159</sup> imposed in default of payment of such fine shall exceed the maximum fixed in relation to the amount of the fine by section 98 of the Sharia Penal Code.<sup>160</sup>
- (4) In no case shall any term of imprisonment<sup>161</sup> imposed in default of payment of such fine exceed the maximum term authorised as punishment for the offence by the written law.<sup>162</sup>
- (5) The provisions of this section shall not apply in any case where a written law provides a minimum period of imprisonment<sup>163</sup> to be imposed for the commission of an offence.<sup>164</sup>
23. (1) When a person is convicted at one trial of two or more distinct offences, the court may, subject to the provisions of section 100 of the Sharia Penal Code, sentence him for such offences to the several punishments prescribed therefore which such court is competent to inflict; such punishments, when consisting of imprisonment, to commence the one after the expiration of the other in such order as the court may direct, unless the court directs that such punishments shall run concurrently.<sup>165</sup>
- (2) In cases falling under this section, a court shall not be limited by the provisions of sections 14 to 19 but a court shall not impose consecutive sentences exceeding in the aggregate twice the amount of punishment, which it is in the exercise of its ordinary jurisdiction competent to inflict.
24. A court may, whether the accused is discharged or not, bind over the complainant or accused, or both, with or without sureties, to be of good behaviour and may order any person so bound, in default of compliance with the order, to be imprisoned for a term not exceeding three months in addition to any other punishment to which that person is liable.

## PART III – ARREST AND PROCESS

### CHAPTER IV – ARREST

#### *A – Arrest*

25. Any police officer may arrest:
- (a) any person who commits an offence in his presence notwithstanding any provision in the third column of Appendix A<sup>166</sup> that an arrest may not be made without a warrant;
- (b) any person for whose arrest a warrant has been issued or whom he is directed to arrest by a justice of the peace or superior police officer under sections 28 and 29 of this Code;

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<sup>159</sup> Kebbi and Sokoto add here: “and or caning”.

<sup>160</sup> Jigawa and Kaduna omit subsection (3).

<sup>161</sup> Kebbi and Sokoto add here: “and or caning”.

<sup>162</sup> Jigawa and Kaduna omit subsection (4).

<sup>163</sup> Kebbi and Sokoto add here: “and or caning”.

<sup>164</sup> Kaduna omits subsection (5).

<sup>165</sup> Jigawa omits everything from “which such court is competent to inflict” through “as the court may direct”.

<sup>166</sup> Kebbi, Sokoto omit “in the third column of Appendix A”.

- (c) any person who has been concerned in an offence for which, in accordance with<sup>167</sup> the provisions of the Sharia Penal Code or under any other Act or Law for the time being in force in any part of Nigeria, the police may arrest without warrant, or against whom a reasonable complaint has been made or credible information has been received or reasonable suspicion exists of his having been so concerned;
- (d) any person the order for whose discharge from prison has been cancelled by an alkali of the Upper Sharia Court or a Kadi of the Sharia Court of Appeal<sup>168</sup> under section 98 of this Code;
- (e) any person whom he reasonably suspects to be designing to commit an offence for which the police may arrest without a warrant, if it appears to him that the commission of the offence cannot be otherwise prevented;
- (f) any person required to appear by a public summons published under section 66 of this Code;
- (g) any person found taking precautions to conceal his presence in suspicious circumstances or who being found in suspicious circumstances has no ostensible means of subsistence or cannot give a satisfactory account of himself;
- (h) any person in whose possession property is found which may reasonably be suspected to be stolen property or property in respect of which an offence has been committed under section 289, 291, 292, 293, 294, 295, 296, 337 or 339 of the Sharia Penal Code, or who may reasonably be suspected of having committed an offence with reference to such property;
- (i) any person who obstructs a police officer while in the execution of his duty;
- (j) any person who has escaped or attempts to escape from lawful custody;
- (k) any person reasonably suspected of being a deserter from any military force for the time being serving in Nigeria;<sup>169</sup>
- (l) any person who in his presence has committed or been accused of committing any offence for which the police may not, according to the third column of Appendix A arrest without a warrant, if on his demand, such person refuses to give his name and address or gives a name and address which he believes to be a false one;  
[failing to obey direction of Governor]<sup>170</sup>

26. Any police officer may require any person whom he has reasonable grounds for suspecting to have committed an offence of any kind to furnish him with his name and address, and he may require any such person to accompany him to the police station.

27. Any private person may arrest:

- (a) any person for whose arrest he has a warrant or whom he is directed to arrest by a justice of the peace under section 28 or by a justice of the peace or a superior police officer under section 29;

<sup>167</sup> CPC inserts here: “the third column of Appendix A or under”.

<sup>168</sup> CPC: “by a judge of the High Court”. Jigawa, instead of the alternative of a kadi of the Sharia Court of Appeal, has the alternative of an alkali of the Higher Sharia Court.

<sup>169</sup> Kebbi and Sokoto omit subsection (k).

<sup>170</sup> CPC, Borno, Gombe, Kaduna, Zamfara add a further subsection: “any person failing to obey a direction of the Governor issued under section [as specified]”.



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- (b) any person who has escaped from his lawful custody;
  - (c) any person required to appear by a public summons published under section 66;
  - (d) any person committing in his presence an offence for which the police are authorised to arrest without a warrant.
28. (1) Any justice of the peace may arrest or direct the arrest of any person committing any offence in his presence and shall thereupon hand him over to a police officer or take security for his attendance before a court at a specified time.
- (2) Notwithstanding the provisions of subsection (1), a justice of the peace shall not direct a superior police officer under this section.
29. (1) Any justice of the peace or superior police officer may at any time arrest or direct the arrest in his presence of any person for whose arrest a warrant might lawfully be issued.
- (2) A justice of the peace making an arrest under subsection (1) shall thereupon hand over the person arrested to a police officer or take security for his attendance before a court at a specified time.
30. If a person liable to arrest resists the endeavour to arrest him or attempts to evade the arrest, the person authorised to arrest him may use all means necessary to effect the arrest.
31. The person making an arrest may take from the person arrested any offensive weapon which he has about his person and shall deliver all weapons so taken to the court or officer before whom the person arrested is required by the warrant of arrest or by this Sharia Criminal Procedure Code to be produced.
32. Every person is bound to assist a justice of the peace, police officer or other person reasonably demanding his aid in arresting or preventing the escape of any person whom such justice of the peace, police officer or other person is authorised to arrest.
33. (1) If anyone who is authorised to arrest any person has reason to believe that such person has entered into or is within any place, he may enter such place and thereby search for the person to be arrested.
- (2) The person residing in or being in charge of such place shall on demand allow free ingress thereto and afford all reasonable facilities for the search.
- (3) If on demand such ingress is refused, the person authorised to make the arrest may effect an entry by force.
- (4) The provisions of this section shall be subject to the provisions of section 81 of this Code.
34. Any person authorised to effect the arrest of any other person may for the purpose of effecting the arrest pursue him into any part of the State.
35. Any police officer or other person authorised to make an arrest may break out of any place in order to liberate himself or any other person who, having lawfully entered for the purpose of making an arrest, is detained therein.
36. An arrested person shall not be subjected to more restraint than is necessary to prevent his escape.

37. Except when the person arrested is in the actual course of committing a crime, or is pursued immediately after committing a crime or escaping from lawful custody, the person making the arrest shall inform the person arrested of the cause of arrest.

*B – Procedure After Arrest*

38. (1) Any person, except a police officer or a justice of the peace, making an arrest without a warrant or an order of a justice of the peace shall without unnecessary delay take the person arrested to the nearest police station or hand him over to a police officer or to the nearest Sharia Court.<sup>171</sup>

(2) If the arrested person appears to be one whom a police officer is authorised to arrest, the police officer shall re-arrest him; otherwise the arrested person shall be at once released.

39. A police officer making an arrest without warrant or a re-arrest under section 38(1), 40 or 41 shall without unnecessary delay take or send the person arrested before a court competent under Chapter XV of this Code to take cognizance of the case or before the officer in charge of a police station.

40. Any person arrested for refusing to give his name and address or for giving a false name or address shall:

- (a) if he is found to have given his true name and address, be released;
- (b) when his true name and address are ascertained, be released on his executing a bond, with or without sureties, to appear before a court if and when required;
- (c) should his true name and address not be ascertained within twenty-four hours from the time of arrest or should he fail to execute the bond or, if so required, to furnish sufficient sureties, be forthwith brought before the nearest Sharia Court competent under Chapter XV of this Code to take cognizance of the case.

41. No police officer shall detain in custody a person arrested without warrant for a longer period than in the circumstances of the case is reasonable, and such period shall not, in the absence of an order of a court under section 128 of this Code, exceed twenty-four hours exclusive of the time necessary for the journey from the place of arrest to the Sharia Court and of any intervening public holiday.

42. An officer in charge of a police station shall report as soon as reasonably possible to the appropriate Local Government<sup>172</sup> or superior police officer every case of arrest without warrant within his district.

43. (1) A police officer making an arrest or receiving an arrested person from a person by whom the arrest has been made may search the arrested person or cause him to be searched.

(2) A police officer searching a person shall place in safe custody such articles, other than necessary wearing apparel, as he thinks fit,<sup>173</sup> and shall make a list of the same, and shall permit the arrested person to retain all articles not so placed in safe custody.

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<sup>171</sup> CPC, Borno, Jigawa omit the last alternative, ending with “police officer”.

<sup>172</sup> CPC: “to the appropriate native authority”. Jigawa: “to the appropriate authority”.

<sup>173</sup> Kebbi, Sokoto: instead of “as he thinks fit” put “having regard to religious and cultural values of the person”.

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- (3) When the arrested person is a woman, the search shall not be made except by a woman.
44. No person who has been arrested by a police officer or re-arrested under section 38(2) of the Code shall be discharged except on his own bond or on bail or under the special order of a court.
45. A register of arrests shall be kept in the prescribed form at every police station and every arrest made within the local limits of the station shall be entered therein by the officer in charge of the police station so soon as the arrested person is brought to the station.

### CHAPTER V – PROCESSES TO COMPEL APPEARANCE

#### *A – Summons*

46. (1) A summons to appear or attend before a court may be issued by any court competent to inquire into an offence or by any justice of the peace.<sup>174</sup>
- (2) Every summons so issued shall be in writing, in duplicate and signed or sealed by the court or justice of the peace.<sup>175</sup>
47. The summons shall be served by a police officer or by any officer of the court issuing it or other public servant who, under any law for the time being in force, may be authorised to serve summonses.
48. (1) The summons shall if practicable, be served personally on the person summoned by delivering or tendering to him one of the duplicates of the summons.
- (2) The person served shall, if so required by the serving officer, sign or make his mark on a receipt therefore on the back of the other duplicate.
49. Service of a summons on an incorporated company or other body corporate may be effected by service on the secretary, local manager or other principal officer of the corporation at any office of the corporation in the State.
50. Service of a summons on a Local Government shall be effected in accordance with the provisions of the Local Government Law.<sup>176</sup>
51. Where the person summoned cannot by the exercise of due diligence be found, the summons may be served by leaving one of the duplicates for him with some adult male member of his family who shall, if so required by the serving officer, sign a receipt therefore on the back of the other duplicate, or by affixing one of the duplicates of the summons to some conspicuous part of the house or homestead in which the person summoned ordinarily resides.
52. Where the person on or with whom a summons is served or left is unable to sign his name or make his mark, the summons shall be served or left in the presence of a witness.
53. A summons required to be served outside the local limits of the jurisdiction of the court or justice of the peace<sup>177</sup> issuing it shall ordinarily be sent in duplicate to a court within the local limits of whose jurisdiction the person summoned resides or is, to be there served.

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<sup>174</sup> Jigawa omits “or by any justice of the peace”.

<sup>175</sup> Jigawa omits “or justice of the peace”.

<sup>176</sup> Jigawa: “shall be effected by service on the secretary or any principal officer of the Local Government Council”.

54. An affidavit or declaration purporting to be made before a court by the serving officer or by a witness to the service that a summons has been served and a duplicate of the summons purporting to be endorsed, in manner provided by section 48 or section 51, by the person to whom it was delivered or tendered or with whom it was left shall be admissible in evidence and the statements made therein shall be deemed to be correct unless and until the contrary is proved.

*B – Warrant of Arrest*

55. (1) Every warrant of arrest issued under this Sharia Criminal Procedure Code by a court or justice of the peace shall be in writing signed or sealed by the court or the justice of the peace.

(2) Every such warrant shall remain in force until it is cancelled by the Sharia Court or justice of the peace issuing it or until it is executed.<sup>178</sup>

56. (1) A Sharia Court or justice of the peace issuing a warrant for the arrest of any person shall have discretion to direct by endorsement on the warrant that, if such person executes a bond with sufficient sureties for his attendance before the court or justice of the peace at a specified time and thereafter until otherwise directed, the person to whom the warrant is directed shall, on receiving security, release such person from custody.<sup>179</sup>

(2) The endorsement referred to in subsection (1) shall state:

(a) the number of sureties;

(b) the amount in which the sureties and the person for whose arrest the warrant is issued are to be respectively bound; and

(c) the time and place at which the person for whose arrest the warrant is issued is to attend.

(3) Whenever security is taken under this section, the person to whom the warrant is directed shall forward the bond to the appropriate Sharia Court.

57. (1) A warrant of arrest shall ordinarily be directed to one or more police officers or other public servants who may be authorised to make an arrest, but the court or justice of the peace issuing the warrant may, if its immediate execution is necessary and no police officer or other public servant so authorised is immediately available, direct it to any other person or persons.<sup>180</sup>

(2) When a warrant is directed to more persons than one, it may be executed by all or by any one or more of them.

58. A warrant of arrest directed to a police officer may also be executed by any other police officer whose name is endorsed upon the warrant by the police officer to whom it is directed or endorsed.

59. The person executing a warrant of arrest shall notify the substance thereof to the person to be arrested and, if so required, shall show him the warrant.

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<sup>177</sup> Jigawa omits “or justice of the peace”.

<sup>178</sup> Jigawa omits “or justice of the peace” in both subsections of this section.

<sup>179</sup> Jigawa omits “or justice of the peace” in this subsection.

<sup>180</sup> Jigawa omits “or justice of the peace” in this subsection.

60. A warrant of arrest may be executed notwithstanding that it is not in the possession at the time of the person executing the warrant, but the warrant shall, on the demand of the person apprehended, be shown to him as soon as practicable after his arrest.
61. The person executing a warrant of arrest shall, subject to the provisions of section 56 as to security, without unnecessary delay bring the person arrested before the court specified in the warrant.
62. A warrant of arrest may be executed at any place in the State.
63. (1) When a warrant of arrest is to be executed outside the local limits of the jurisdiction of the court or justice of the peace issuing it, such Sharia Court or justice of the peace may, instead of directing such warrant as laid down in section 57, forward it by post or otherwise to any court within the local limits of whose jurisdiction it is to be executed.<sup>181</sup>
- (2) Such court shall endorse the warrant and, if practicable cause it to be executed in manner hereinbefore provided within the local limits of its jurisdiction.
64. When a warrant of arrest is to be executed beyond the local limits of the jurisdiction of the court or justice of the peace issuing it, the person to whom it is directed shall take it for endorsement to a court within the local limits of whose jurisdiction the warrant is to be executed, where there is doubt as to the genuineness of the warrant, the court may order an enquiry.<sup>182</sup>
65. (1) When a warrant of arrest is executed outside the local limits of the jurisdiction of the court or justice of the peace issuing it the person arrested shall, unless security is taken under section 56, be taken before a court within the local limits of whose jurisdiction the arrest was made and such court shall, if the person arrested appears to be the person intended by the court or justice of the peace issuing the warrant, either:
- (a) take security for his appearance in accordance with the provisions of Chapter XXVII of the Code or as directed by any endorsement of the warrant under section 56 and forward the bond or bonds to the court or justice of the peace issuing the warrant; or
- (b) direct his removal in custody to such court or justice of the peace.
- (2) Notwithstanding the provisions of subsection (1), the arrested person may be taken directly before the court or justice of the peace issuing the warrant if this course is more convenient having regard to conditions of time, place and other circumstances.<sup>183</sup>

*C – Public Summons and Attachment*

66. (1) If an alkali of the Sharia Court<sup>184</sup> has reason to believe, whether after taking evidence or not, that a person against whom a warrant of arrest has been issued by himself or by any court or justice of peace,<sup>185</sup> has absconded or is concealing himself so that such warrant cannot be executed, such alkali may publish a public summons in

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<sup>181</sup> Jigawa omits “or justice of the peace” in this subsection.

<sup>182</sup> Neither CPC nor any SCPC has the last clause here, about doubt as to the genuineness of the warrant. Jigawa omits “or justice of the peace” in this section.

<sup>183</sup> Jigawa omits “or justice of the peace” in both subsections of this section.

<sup>184</sup> CPC: “judge of the High Court”; and throughout this subchapter CPC refers to the High Court, to the apparent exclusion of magistrates’ and native/Area courts.

<sup>185</sup> Jigawa omits “or justice of the peace”.

writing requiring that person to appear at a specified place and a specified time not less than thirty days from the date of publishing the public summons.

- (2) The public summons shall be published as follows:
- (a) it shall be publicly read in some conspicuous place in the town or village in which the person in respect of whom it is published ordinarily resides;
  - (b) it shall be affixed to some conspicuous part of the house or homestead in which such person ordinarily resides or to some conspicuous place in such town or village; and
  - (c) a copy thereof shall be affixed to some conspicuous part of the Sharia Court building.

(3) A statement in writing by the alkali of the Sharia Court to the effect that the public summons was duly published on a specified day, shall be conclusive evidence that the requirements of this section have been complied with, and that the public summons was published on such day.

67. (1) An alkali of the Sharia Court may at any time after action has been taken under section 66, order the attachment of any property, movable or immovable or both belonging to a person the subject of a public summons.

(2) An order under subsection (1) shall authorise any public servant named in it to attach any property belonging to a person the subject of a public summons within the area of jurisdiction of the alkali by seizure or in any other manner in which for the time being property may be attached by way of civil process.

(3) If a person the subject of a public summons does not appear within the time specified in the public summons, the property under attachment shall be at the disposal of the Sharia Court; but it shall not be sold until the expiration of three months from the date of the attachment, unless it is subject to speedy and natural decay, or the alkali considers that the sale would be for the benefit of the owner, in either of which cases, the alkali may cause it to be sold whenever he thinks fit.

68. If within one year from the date of the attachment, any person whose property is or has been at the disposal of the Sharia Court under section 67, appears voluntarily or being arrested is brought before the Sharia Court and proves to its satisfaction that he did not abscond or conceal himself for the purpose of avoiding execution of the warrant, and that he had not such notice of the public summons as to enable him to attend within the time specified therein, that property so far as it has not been sold, and the net proceeds of any part thereof which has been sold shall, after satisfying there out all costs incurred in consequence of the attachment, be delivered to him.

*D – Other Rules Regarding Process*

69. (1) A court or justice of the peace<sup>186</sup> empowered by this Sharia Criminal Procedure Code to issue a summons for the appearance of any person may, after recording reasons in writing, issue a warrant for his arrest in addition to or instead of the summons:

- (a) if, whether before or after the issue of such summons, the court or justice of the peace sees reason to believe that he has absconded or will not obey the summons; or

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<sup>186</sup> Jigawa omits “or justice of the peace”.

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(b) if, at the time fixed for his appearance he fails to appear and the summons is proved to have been duly served in time to admit of his appearing and no reasonable excuse is offered for his failure to appear.

(2) A court or justice of the peace<sup>187</sup> empowered by this Sharia Criminal Procedure Code to issue a warrant for the arrest of any person may issue a summons in place of a warrant if it or he thinks fit.

70. When any person for whose appearance or arrest a summons or warrant may be issued is present before a court or justice of the peace, the court or justice of the peace may require him to execute a bond, with or without sureties, for his appearance before a court.<sup>188</sup>

71. The provisions contained in this chapter relating to summonses and warrants and their issue, service and execution shall so far as may be apply to every summons and every warrant issued under this Sharia Criminal Procedure Code.

**CHAPTER VI – MEANS TO SECURE THE PRODUCTION OR DISCOVERY OF DOCUMENTS OR OTHER THINGS AND FOR THE DISCOVERY AND LIBERATION OF PERSONS UNLAWFULLY CONFINED**

*A – Summons to Produce*

72. When a court or justice of the peace considers that the production of any document or other thing is necessary or desirable for the purpose of any investigation, trial or other proceeding under this Sharia Criminal Procedure Code by or before such court or justice of the peace, the court or justice of the peace may issue a summons to any person in whose possession or power the document or thing is believed to be, requiring him to attend and produce it or to cause it to be produced at the time and place stated in the summons or order.<sup>189</sup>

*B – Searches and Orders for Production and Liberation of Persons*

73. Where for any reason it appears to a Sharia Court or justice of the peace that it is impossible or inadvisable to proceed under section 72 or that a search or inspection would further the purposes of any investigation, trial or other proceeding under this Sharia Criminal Procedure Code, the court or justice of the peace may issue a search warrant authorising the person to whom it is addressed to search or inspect the place or places mentioned in the warrant for any document or thing specified or for any purpose described in the warrant and to seize any such document or thing, and to dispose of it in accordance with the terms of warrant.<sup>190</sup>

74. Where an investigation under this Sharia Criminal Procedure Code is being made by a police officer, he may apply to any court or justice of the peace within the local limits of whose jurisdiction he is, for the issue of a search warrant under section 73.

75. (1) Where upon information and after such inquiry, if any, as it thinks necessary, a court or justice of the peace has reason to believe that any place is used for the deposit or sale of stolen property or that there is kept or deposited in any place any property in respect

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<sup>187</sup> Jigawa omits “or justice of the peace”.

<sup>188</sup> Jigawa omits “or justice of the peace” twice in this section.

<sup>189</sup> Jigawa omits “or justice of the peace” throughout in this section.

<sup>190</sup> Jigawa omits “or justice of the peace” throughout in this section, although the words are included in the section title.

of or by means of which an offence has been committed or which is intended to be used for any illegal purpose, the court or justice of the peace may issue a search warrant authorising any police officer:<sup>191</sup>

(a) to search the place in accordance with the terms of the warrant and to seize any property appearing to be of any description above-mentioned and to dispose of it in accordance with the terms of the warrant; and

(b) to arrest any person found in the place and appearing to have been or to be a party to any offence committed or intended to be committed in connection with the property.

(2) In this section and section 76 “offence” includes an offence against a law of the Federation, State or any Local Government, which would be punishable in the State if it had been committed in Nigeria.

76. (1) Where a court upon information and after such inquiry, if any, as it thinks necessary, has reason to believe that any person is confined under such circumstances that the confinement amounts to an offence, it may issue a search warrant authorising the person to whom it is addressed to search for the confined person and to bring him before the court and upon the appearance of the confined person the court shall make such order as seems proper.

(2) Upon complaint made on oath to a court of the abduction for any unlawful purpose or of the unlawful detention of any person, the court may after such inquiry, if any, as it thinks necessary, make an order for the production of that person or for the immediate restoration of that person to his liberty or if he is under eighteen years of age<sup>192</sup> for his immediate restoration to his parent, guardian or other person having lawful charge of him and may compel compliance with an order made under this subsection using such force as may be necessary and upon the production of the person who is the subject of the order, the court shall make such order as seems proper.

77. (1) Searches under Part B of this chapter shall, unless the court or justice of the peace owing to the nature of the case otherwise directs, be made whenever possible in the presence of two respectable inhabitants of the neighbourhood to be summoned by the person to whom the search warrant is addressed.

(2) A list of all things seized in the course of search and of the places in which they are found shall be drawn up by the person carrying out the search and shall be signed or sealed by the witnesses.

78. If any place to be searched is an apartment in the actual occupancy of a woman, not being the person to be arrested,<sup>193</sup> the person making the search shall, before entering the apartment, give notice to such woman that she is at liberty to withdraw and shall afford her every reasonable facility for withdrawing, and may then enter the apartment.

79. The occupant of any place searched or some person on his behalf shall be permitted to be present at the search and shall, if he so requires, receive a copy of the list of things seized therein signed or sealed by the witnesses referred to in section 77.

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<sup>191</sup> Jigawa omits “or justice of the peace” throughout in this section.

<sup>192</sup> CPC: “under fourteen years of age”. Jigawa: “under the age of puberty”.

<sup>193</sup> CPC, Borno, Gombe, Kebbi, Sokoto, Zamfara: insert here: “who, according to custom [Kebbi: “according to Sharia”], does not appear in public”. Jigawa: “who does not appear in public”.



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80. (1) Where any person in or about a place, which is being searched, is reasonably suspected of concealing about his person any article for which search should be made, such person may be searched.
- (2) A list of all things found on his person and seized shall be prepared and witnessed in manner mentioned in section 77 and a witnessed copy of the list shall be delivered to the person searched.<sup>194</sup>
81. Whenever it is necessary to cause a woman to be searched, the search shall be made by another woman, with strict regard to decency.
82. Every person executing a search warrant beyond the local limits of the jurisdiction of the court or justice of the peace<sup>195</sup> issuing it shall, before doing so apply to some court within the local limits of whose jurisdiction search is to be made and shall act under its directions.
83. The provisions of section 33(2) as to ingress and all other provisions hereinbefore contained as to warrants of arrest shall, so far as applicable, apply to search warrants.
84. Any justice of the peace may direct a search to be made in his presence of any place for the search of which he is competent to issue a search warrant.
85. Any Court may, if it thinks fit, impound any document or thing produced before it under the Sharia Criminal Procedure Code.

**PART IV – THE PREVENTION OF CRIME**

**CHAPTER VII – SECURITY FOR KEEPING THE PEACE AND FOR GOOD BEHAVIOUR**

*A – Security for Keeping the Peace and for Good Behaviour on Conviction*

86. Whenever any person is convicted by a court of any offence involving or likely to cause a disturbance of the public peace or a breach of the peace and the court is of opinion that it is expedient to require that person to execute a bond for keeping the peace and being of good behaviour, it may at the time of passing sentence on such person order him to execute a bond for a sum proportionate to his means and with or without sureties for keeping the peace and being of good behaviour for any period not exceeding three years in the case of the Upper Sharia Court and not exceeding two years in the case of any other Sharia Court.<sup>196</sup>

*B – Security for Keeping the Peace and for Good Behaviour in Other Cases*

87. (1) Whenever a court or justice of the peace is informed that any person is likely to commit a breach of the peace or to disturb the public peace or to do any illegal act which may probably cause a breach of the peace or disturb the public peace, the court or justice of the peace may issue a summons requiring that person to attend before a court to execute a bond with or without sureties for keeping the peace or refraining from illegal acts likely to disturb the public peace for any period not exceeding one year or to show cause why he should not execute such bond.<sup>197</sup>
- (2) Proceedings shall not be taken under this section unless:
- (a) the person informed against is in the State; and

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<sup>194</sup> CPC, Kebbi, Sokoto, Zamfara add: “if he so requires”.

<sup>195</sup> Jigawa omits “or justice of the peace”.

<sup>196</sup> Kebbi: 1 year/6 months.

<sup>197</sup> Kebbi: 6 months. Jigawa omits “or justice of the peace”.

(b) either:

- (i) the person informed against is within the area of jurisdiction of the court before which he is required to attend; or
- (ii) the place where the breach of the peace or disturbance is apprehended is within the area of jurisdiction of the court before which the person informed against is required to attend.

88. Whenever a court receives information that any person within the local limits of its jurisdiction:

- (a) habitually commits any offence punishable under sections 231 to 239 of the Sharia Penal Code; or
- (b) is by habit a robber, house breaker or thief; or
- (c) is by habit a receiver of stolen property knowing the same to have been stolen; or
- (d) habitually protects or harbour thieves or aids in the concealment or disposal of all stolen property; or
- (e) habitually commits mischief, extortion or cheating or the counterfeiting of coin, notes or revenue stamps or attempts so to do; or
- (f) habitually commits or attempts to commit or abets the commission of offences involving a breach of the peace; or
- (g) is so desperate and dangerous as to render his being at large without security hazardous to the community,

such court may issue a summons requiring that person to attend before the court to execute a bond with sureties for his good behaviour for any period not exceeding two years or to show cause why he should not execute such bond.

89. Whenever it appears to a justice of the peace or court acting under section 87 or section 88, as the case may be, upon the report of a police officer or upon other information that there is reason to fear the commission of a breach of the peace or disturbance of the public peace and that such breach of the peace or disturbance of the public peace cannot be prevented otherwise than by the immediate arrest of any person, such justice of the peace or court shall record the substance of the report or information and may at any time issue a warrant for the arrest of such person and for his production before a court.

90. A justice of the peace<sup>198</sup> or court when issuing a summons or warrant under section 87, 88 or 89 as the case may be, shall therein set forth the substance of the information received, the amount of the bond to be executed, the term for which it is to be in force and the number, character and class of sureties, if any, required.

91. (1) When any person has appeared or is brought before the court in compliance with a summons or warrant under section 87, 88, or 89, the court shall proceed to inquire into the truth of the information upon which action has been taken and to take such further evidence as may appear necessary.

(2) An inquiry under subsection (1) shall be made as far as practicable in the manner hereinafter laid down for conducting trials and recording evidence in summary trials by alkalis except that:

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<sup>198</sup> Jigawa omits "justice of the peace or".

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- (a) no charge need be framed nor shall any witness be recalled for cross-examination<sup>199</sup> except with the permission of the court; and
- (b) the court may refuse to release on bail any person arrested under section 88 unless he executes a bond of the nature specified in the warrant of arrest but limited in time to the conclusion of the inquiry.
- (3) For the purposes of this section, the fact that a person is a habitual offender or is so desperate and dangerous as to render his being at large without security hazardous to the community may be proved by evidence of general repute.
92. (1) If on inquiry under section 91 it is proved that it is necessary for keeping the peace or preserving the public peace, or maintaining good behaviour, as the case may be, that the person in respect of whom the inquiry is made should execute a bond with or without sureties the court shall make an order accordingly.
- (2) Notwithstanding the provisions of subsection (1):
- (a) no person shall be ordered to give security of a nature different from or of an amount larger than or for a period longer than<sup>200</sup> any specified in the summons or warrant issued under sections 87, 88 and 89.
- (b) The amount of every bond shall be fixed with due regard to the circumstances of the case and shall not be excessive;
- (c) When the person in respect of whom the inquiry is made is under eighteen years of age, the bond shall be executed only by his sureties.
93. If on inquiry under section 91 it is not proved that it is necessary for keeping the peace or preserving the public peace or maintaining good behaviour, as the case may be, that the person in respect of whom the inquiry is made should execute a bond, the court shall make an entry on the record to that effect and if such person is in custody only for the purpose of the inquiry shall release him or if he is not in custody shall discharge him.

*C – Proceedings in all Cases Subsequent to Order to Furnish Security*

94. (1) If any person in respect of whom an order requiring security is made under section 86 or section 92 is at the time the order is made subject to a sentence of imprisonment, the period for which such security is required shall commence on the expiration of such sentence.
- (2) In other cases the period for which security is required shall commence on the date of the order unless the court for sufficient reason fixes a later date.
95. The bond to be executed by any person in respect of whom an order requiring security is made under section 86 or section 92 shall bind him to keep the peace or to refrain from illegal acts likely to disturb the public peace or to be of good behaviour, as the case may be, and in the last case the commission or attempt to commit or the abetment of an offence punishable with imprisonment, wherever it may be committed, is a breach of the bond.
96. If any person ordered to give security under section 86 or section 92 does not give the security on or before the date of the commencement of the period for which the security is

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<sup>199</sup> Jigawa: “impeachment”.

<sup>200</sup> Borno, Gombe, Jigawa, Kaduna, Zamfara: “period larger than”.

to be given, he shall be committed to prison or if he is already in prison be detained in prison until such period expires or until within such period he gives the security ordered.

97. (1) The court may refuse to accept any surety offered or any surety previously accepted on the ground that the surety is an unfit person for the purpose of the bond.

(2) Before so refusing to accept or before rejecting any such surety, the court shall hold an inquiry into his fitness and the court shall, before holding the inquiry, give reasonable notice to the surety and to the person by whom the surety was offered and shall in making the inquiry record the substance of the evidence adduced before it.

(3) If the court is satisfied after considering the evidence adduced before it, that the surety is an unfit person for the purposes of the bond, it shall make an order refusing to accept or rejecting, as the case may be, such surety and record its reasons for so doing.

98. (1) Whenever an alkali of the Upper Sharia Court<sup>201</sup> is of the opinion that any person imprisoned for failing to give security under this chapter may be released without hazard to the public or to any person, he may order the person imprisoned to be discharged.

(2) Whenever any person has been imprisoned for failure to give security under this chapter, an alkali of the Upper Sharia Court may make an order reducing the amount of the security or the number of sureties or the time for which security has been required.

(3) An order under section (1) may direct the discharge of the person imprisoned either without conditions or upon any conditions which that person accepts.

(4) If any condition upon which any person imprisoned for failing to give security under this chapter is discharged is in the opinion of an alkali of the Upper Sharia Court not fulfilled, he may cancel the order of discharge and thereupon such person shall be recommitted to prison until the expiry of the period for which he was originally ordered to give security, unless before that time he gives such security.

99. An alkali of the Upper Sharia Court<sup>202</sup> may at any time cancel any bond for keeping the peace or refraining from illegal acts likely to disturb the public peace or for good behaviour executed under this chapter.

#### CHAPTER VIII – UNLAWFUL ASSEMBLIES AND RIOTS

100. Any justice of the peace or police officer of or above the rank of assistant superintendent or any commissioned officer of the armed forces of the Federation may command any unlawful assembly or any assembly of five or more persons likely to cause a disturbance of the public peace to disperse; and it shall thereupon be the duty of the members of such assembly to disperse accordingly.

101. If, upon being commanded in accordance with the provisions of section 100, any unlawful assembly or any assembly of five or more persons likely to cause a disturbance of the public peace does not disperse or if, without being so commanded, it conducts itself in such a manner as to show a determination not to disperse, or if force or violence is used by it or by any member thereof in prosecution of the common object of such assembly, any justice of the peace or police officer of or above the rank of assistant superintendent or any commissioned officer of the armed forces of the Federation may proceed to disperse such

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<sup>201</sup> Jigawa: “alkali of the Sharia Court”, here and in subsections (2) and (4).

<sup>202</sup> Jigawa: “alkali of the Sharia Court”.

## CHAPTER 5: THE SHARIA CRIMINAL PROCEDURE CODES

assembly by force and may require the assistance of any male person for the purpose of dispersing such assembly and, if necessary, arresting and confining the persons who form part of it, in order to disperse such assembly or that they may be punished according to law and any such person whose assistance is so required shall be bound to render such assistance.

102. (1) No prosecution against any person for any act purporting to be done under this chapter shall be instituted in any Sharia Court except with the sanction of the Attorney-General.
- (2) No justice of the peace, police officer or commissioned officer of the armed forces of the Federation acting under this chapter in good faith shall be deemed to have thereby committed an offence.
- (3) No act lawfully done<sup>203</sup> under this chapter shall be called in question in any civil proceedings.

## CHAPTER IX – PUBLIC NUISANCES

103. (1) Whenever a court considers on receiving a police or justice of the peace report<sup>204</sup> or other information and on taking such evidence, if any, as it thinks fit that an offence under section 360, 361, 362, 363, 364, 365 or 366 of the Sharia Penal Code is being committed, such court may make a conditional order requiring the offender within a time fixed in the order to cease committing such offence and to amend or remove the causes thereof in such manner as in the order specified or to appear before the court at a time and place to be fixed by the order and apply to have the order set aside or modified in manner hereinafter provided.
- (2) No order duly made by a court under this section shall be called in question in any civil proceedings.
104. (1) An order made under section 103 shall if practicable be served on the person against whom it is made in manner provided for the service of a summons.
- (2) If an order referred to in subsection (1) cannot be served in the manner laid down in that subsection it may be served by registered letter through the post addressed to the person against whom it is made at last known address or, if his last address is not known, then by affixing a notice thereof in some conspicuous place in the town or village in or near which the nuisance or offence is being committed.<sup>205</sup>
105. A person against whom an order under section 103 is made shall:
- (a) perform within the time and in the manner specified in the order the act directed thereby; or
- (b) appear in accordance with the order and apply to have the same set aside or modified.
106. If a person against whom an order under section 103 is made does not perform the act specified in the order or appear and apply to have the order set aside or modified he shall be liable to the penalty prescribed in that behalf in section 323 of the Sharia Penal Code, and the order shall be made absolute.

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<sup>203</sup> Kebbi, Sokoto: “no act lawfully and in good faith done”.

<sup>204</sup> CPC: omits “or justice of the peace”.

<sup>205</sup> Kebbi and Sokoto omit subsection (2).

107. (1) If a person against whom an order under section 103 is made appears and applies to have the order set aside or modified the court shall take evidence in the matter in the same manner as in a summary trial.
- (2) If the court is satisfied that the order with or without modification is reasonable and proper the court shall make it absolute with such modification, if any, as the court shall think fit.
- (3) If the court is not so satisfied it shall cancel the order.<sup>206</sup>
108. (1) If the act directed by an order under section 103 which is made absolute under section 106 or subsection (2) of section 107 is not performed within the time fixed and in the manner specified therein, the court may cause it to be performed and may recover the cost of performing it either by the sale of any building, goods or other property removed by its order or by seizure and sale of any other movable property of the person against whom the order under section 103 was made in manner hereinafter prescribed for the recovery of a fine.
- (2) No suit shall lie in respect of anything done in good faith under this section.
109. (1) If the court making an order under section 103 considers that immediate measures should be taken to prevent imminent danger or injury of a serious kind to the public, it may issue such further order to the person against whom the order was made as is required to obviate or prevent such danger or injury pending the determination of the matter.
- (2) In default of the person referred to in subsection (1) forthwith obeying the further order referred to in that subsection or if notice thereof cannot by the exercise of due diligence be served upon him immediately, the court may use or cause to be used such means as it thinks fit to obviate the danger or to prevent the injury.
- (3) No suit shall lie in respect of anything done in good faith under subsection (2).
110. Any court may in any proceedings under this chapter or in any criminal proceedings in respect of a public nuisance order any person not to repeat or continue the public nuisance.

#### **CHAPTER X – PREVENTIVE ACTION BY POLICE AND PUBLIC**

111. Every police officer, justice of the peace, area head or other public servant<sup>207</sup> charged with responsibility for maintaining law and order may intervene for the purpose of preventing and shall to the best of his ability prevent the commission of any offence, for which he is authorised to arrest without a warrant, or any damage to any public property movable or immovable.
112. Every person shall be bound to assist a justice of peace, police officer, area head or other public servant charged with responsibility for maintaining law and order reasonably demanding his aid in the suppression of a breach of the peace or in the prevention of any damage to any public property movable or immovable or to any railway, canal, water supply, telegraph, telephone or electrical installation or in the prevention of the removal of any public landmark or buoy or other mark used for navigation.<sup>208</sup>

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<sup>206</sup> Kebbi and Sokoto omit this entire section.

<sup>207</sup> CPC: “Every police officer, sub-area head or other public servant”.

<sup>208</sup> Jigawa omits “or buoy or other mark used for navigation”.

**CHAPTER XI – DUTY OF PUBLIC AND OF AREA HEADS TO GIVE INFORMATION**

113. Every person:

- (a) who has reason to believe that any other person has committed suicide or has been killed by another or by an accident of any kind whatsoever or that a dead body has been found; or
- (b) who is aware of the commission of or of the intention of any other person to commit any offence punishable under section 152, 154, 186, 187, 192, 193, 199, 201, 219, 233, 237, 389, or 390 of the Sharia Penal Code,

shall in the absence of reasonable excuse, the burden of proving which shall lie upon the person making such excuse, forthwith give information to the nearest Local Government, court, police officer or justice of the peace<sup>209</sup> of such death, dead body, commission or intention.

114. Every area head<sup>210</sup> not being a person competent under Chapter XV to take cognizance of an offence shall forthwith communicate to the nearest court so competent or to the Local Government, which shall then inform the appropriate police officer, or to the nearest police officer any information which he may possess or obtain respecting:

- (a) the permanent or temporary residence of any notorious receiver or vendor of stolen property; or
- (b) the resort to or passage through his village, ward or district of any person whom he knows or reasonably suspects to be a murderer, robber, escaped convict or person required to appear by a summons published under section 66(2) of this Code; or
- (c) the occurrence within his village, ward or district of the death of any person or the disappearance from his village, ward or district of any person in circumstances which lead to a reasonable suspicion that the death or disappearance is the result of an offence committed in respect of such person; or
- (d) any matter likely to affect the maintenance of order or the prevention of crime or the safety of persons or property respecting which the Local Government has directed him to report.

115. (1) An area head to whom information has been given under paragraph (c) of section 114 or who suspects the existence of such facts as are set out in that paragraph shall after forwarding the information either to the Local Government which shall then inform the appropriate police officer, or in any other manner prescribed in that section, proceed to the place where the body of the deceased is and shall there in the presence of two or more persons whom he shall summon for the purpose, and who also shall be bound to attend, make an investigation and draw up a report of the apparent cause of death describing such wounds, fractures and other marks of injuries as may be found on the body and stating in what manner or by what weapon or instrument these marks appear to have been inflicted and such other information relating to the death as he can discover.

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<sup>209</sup> CPC: “nearest native authority, court or police officer”.

<sup>210</sup> Jigawa: “Every person”.

- (2) Notwithstanding the provisions of subsection (1) when the police officer to whom information has been given under paragraph (c) of section 114 undertakes the investigation the area head on being so notified shall cease further to investigate the same as directed by the police officer.
- (3) Where practicable the person making an investigation under subsections (1) and (2) shall be accompanied by a medical officer or dispensary attendant.
- (4) Where there is any doubt regarding the cause of death or where for any other reason the person making the investigation considers it expedient and practicable to do so or where the medical doctor or dispensary attendant attending such investigation so directs, the body shall be brought to the nearest hospital or to some other convenient place for further examination.
- (5) Except in case of necessity the burial shall not take place until leave has been obtained from a court or a justice of the peace.
- (6) The person making the investigation under this section shall have the powers and duties of a police officer under sections 122 and 123 of this Code.
- (7) On completion of the investigation the area head shall forward his report and the record if any, of his investigation to the Local Government Authority which shall then inform the appropriate police officer.
- (8) Nothing in this section shall operate to relieve any police officer from any obligation or duty conferred upon him under Chapter XII to undertake and carry out any investigation.

## **PART V – INFORMATION TO THE POLICE AND THEIR POWERS TO INVESTIGATE**

### **CHAPTER XII**

#### *A – Procedure in Cases where the Police May Arrest Without a Warrant*

116. (1) When information is given to the officer in charge of a police station concerning the commission of an offence for which according to the third column of Appendix A, the police are authorised to arrest without a warrant and which under the provisions of Chapter XIII may be tried by a court within the local limits of whose jurisdiction the police station is situated, he shall if it is given orally reduce the information or cause it to be reduced to writing in the prescribed form called the First Information Report and shall read it or cause it to be read over to the informant; and every such information whether given in writing or reduced to writing as aforesaid shall be signed or sealed by the person giving it if he is able so to do and such officer shall enter or cause to be entered the information in a book to be kept in the form prescribed by the Commissioner of Police for the State.

*Provided that* if the officer is satisfied that no public interest will be served by a prosecution he may refuse to accept the information and notify in writing the informant of his right to complain to a court under section 141 of this Code.

- (2) When on any other grounds the officer in charge of a police station has reason to suspect the commission of an offence referred to in subsection (1) he shall enter or cause to be entered the grounds of his suspicion in a First Information Report and the substance thereof in the book referred to in that subsection.



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- (3) Notwithstanding the provisions of subsection (1), the officer in charge of a police station may, if in his view the matter might more conveniently be investigated<sup>211</sup> by an officer in charge of another police station transfer the information or refer the information to such other police station.
117. (1) After complying with the provisions of section 116 the officer in charge of a police station shall act as follows:
- (a) he shall send to the appropriate court in the manner set out in section 118 the First Information Report;
  - (b) (i) he shall forthwith proceed to the spot and investigate the case and if the offender is not already in custody take such steps as may be necessary for his discovery and arrest, or he may depute a police officer subordinate to him to do so and to report to him;  
(ii) in cases involving death or serious injury to any person the officer in charge of the police station shall arrange, if possible, for a medical officer or dispensary attendant to examine the body or the person injured, and if the officer in charge of the police station or a police officer deputed by him under this subsection so directs the body or the person injured shall be brought to the nearest hospital for such further examination as he or the medical officer or dispensary attendant considers necessary and the burial shall not take place except in case of necessity until leave has been obtained from a court or justice of peace;
  - (c) if the information is given against a person by name and the alleged offence is not of a serious character, the officer in charge of a police station need not make or direct the investigation on the spot; and
  - (d) if it appears to the officer in charge of a police station that there is not sufficient ground or reason for entering upon the investigation he need not investigate the case.
- (2) In the cases mentioned in paragraph (c) and (d) of subsection (1) the officer in charge of a police station shall record in the book referred to in section 116 and in his First Information Report to the court his reasons for not entering on an investigation or for not making or directing the investigation on the spot or not investigating the case.
118. (1) Every First Information Report sent to a court shall be submitted through such officer of police, if any, as the Commissioner of Police for the State shall direct.
- (2) An officer through whom a First Information Report is submitted under the provisions of subsection (1) may give such instructions as he thinks fit to the officer submitting the report and shall after recording such instructions, if any, on the First Information Report pass the same to the court without delay.
119. (1) After receiving the First Information Report the court may:
- (a) direct that the police shall proceed with the investigation; or
  - (b) if it thinks fit proceed to deal with the case as provided in Chapter XV.

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<sup>211</sup> CPC: "more conveniently be inquired into".

- (2) In the event of the court electing to proceed in accordance with paragraph (b) of subsection (1) it shall forthwith inform the officer in charge of the police station of its intention so to do and thereupon the police shall act according to the direction of the court.
120. (1) Every officer in charge of a police station conducting an investigation under section 117, or any police officer deputed by the officer in charge of a police station to conduct such investigation, shall keep a case diary in which he shall set forth in chronological order:
- (a) the time when he began his investigation;
  - (b) any information received by him in connection with the investigation;
  - (c) the time when such information reached him;
  - (d) the places visited by him;
  - (e) any action required to be taken or directions given by a court in the course of the police investigations or inquiry by the court, and any facts ascertained as a result thereof;
  - (f) any report made by any police officer acting on his instructions;
  - (g) the statement of any witness, if reduced to writing;
  - (h) a statement of the circumstances ascertained through his investigation;
  - (i) the time when he closed the investigation.
- (2) The First Information Report or a copy thereof shall in all cases be attached to and form part of the case diary.
121. (1) Nothing in any way included in or forming part of a case diary shall be admissible in evidence in any inquiry or trial unless it is admissible under the provision of the Islamic Law<sup>212</sup> or of this Sharia Criminal Procedure Code or of rules made thereunder but:
- (a) a court may if it thinks fit order the production of the case diary for its inspection under the provisions of section 142;
  - (b) the Attorney-General may at any time order the submission of the case diary to himself;
  - (c) any relevant part of the case diary may be used by a police officer who made the same to refresh his memory if called as a witness.
- (2) Save to the extent that:
- (a) anything in any way included in or forming part of a case diary is admitted in evidence in any inquiry or trial in pursuance of the provisions of subsection (1), or
  - (b) the case diary is used for the purposes set out in paragraph (c) of subsection (1),

the accused or his agent shall not be permitted to call for or inspect such case diary or any part thereof but where for the purpose of paragraph (a) or (b) any such inspection is permitted, such inspection shall be limited to the part of the case diary referred to in paragraph (a) or (b) as the case may be.

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<sup>212</sup> CPC: “the Evidence Act”. Kebbi: “Sharia Law”.

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122. (1) A police officer making an investigation under section 117 may require the attendance before him, of any person being within the limits of his own police district, whose evidence appears likely to be of assistance in the case, and may examine such person orally.
- (2) A person referred to in subsection (1) shall be bound to attend and to answer the questions put to him except that, he shall be warned that he is not bound to answer if his answer would tend to expose him to a criminal charge or to a penalty other than a charge of failing to give information under Chapter XI of this Code.
- (3) No person giving evidence in an investigation under section 117 shall be required to take an oath.
123. (1) No police officer or person in authority shall make use of any threat or of any promise of an advantage towards any person in an investigation under this chapter in order to influence the evidence he may give.
- (2) No police officer or other person shall prevent any person from making in the course of the investigation any statement in accordance with any rules made under section 337 of this Code which of his own free will he may be disposed to make.
124. (1) If any person in the course of an investigation under section 117 or at any time after the close of the investigation but before commencement of any trial confesses to the commission of an offence in connection with the subject matter of the investigation he may be taken before a justice of the peace, when available, for his statement to be recorded by such justice of the peace and thereafter placed in the case diary.
- (2) When a justice of the peace records such confession he shall do so in detail in his own handwriting in the presence of the person making the confession and after reading over to him such record, the justice of the peace shall sign it.
- (3) No justice of the peace shall record any such confession unless after questioning the person making it he is satisfied that it is made voluntarily.
- (4) No oath shall be administered to any person making such confession.
- (5) The record of such confession in the case diary if made by a justice of the peace in accordance with this section shall be admissible as evidence against the person who made the confession and if so admitted shall be read out in court and it shall not be necessary to call as a witness the justice of the peace who recorded it:
- Provided that* the court trying the case may if it thinks fit either on the application of the accused or of its own motion call the justice of the peace who recorded the confession as a witness to the contents and to prove the circumstances in which it was recorded.
125. (1) If any person in the course of an investigation under section 117 or at any time after the close of the investigation but before the commencement of any trial confesses to the commission of an offence in connection with the subject matter of the investigation, a police officer may, instead of taking the person before a justice of the peace, record such confession in the case diary in his own handwriting in the presence of the person making the confession and after reading over to that person such record shall require him to sign or seal it and the police officer shall also sign it.
- (2) No police officer shall record any such confession unless after questioning the person making it he is satisfied that it is made voluntarily.

- (3) No oath shall be administered to any person making such confession.
- (4) Subject to the provision of Islamic Law<sup>213</sup> and of any rules made under paragraph (f) of subsection (1) of section 337 of this Code, the record of a confession in the case diary if made by a police officer in accordance with this section shall be admissible as evidence against the person who made the confession and if so admitted shall be read out in court.
126. (1) A person under arrest upon reasonable suspicion of having been concerned in an offence punishable with imprisonment may be required by any justice of the peace or police officer to submit to a medical examination by a medical officer or if no medical officer is available by a dispensary attendant.
- (2) Such a medical examination shall only be required if it is so desirable in the interests of justice.
127. (1) A court holding a trial or a police officer conducting an investigation may cause the fingerprints, photograph or measurements of any person to be taken if satisfied that it is desirable in furtherance of the purposes of the trial or investigation.
- (2) All fingerprints, photographs or records of measurements taken under this section may be kept for six months but if not already destroyed shall then be destroyed unless the person in respect of whom they were taken has been convicted of an offence.
- (3) Notwithstanding the provisions of subsection (2), when a person who has not previously been convicted of an offence is discharged by the court or acquitted upon his trial or is not charged, all fingerprints, photographs and records of measurements taken under this section shall forthwith be destroyed.
128. (1) Whenever it appears that an investigation under section 117 cannot be completed within twenty-four hours of the arrival of the accused or suspected person at the police station, the officer in charge of the police station shall release or discharge him under section 304, or send him as soon as practicable to the nearest court competent under Chapter XV to take cognizance of the offence.
- (2) The court may from time to time, on the application of the officer in charge of a police station, authorise the detention of the person under arrest in such custody as it thinks fit for a time not exceeding fifteen days, and shall record its reasons for so doing.
- (3) If the court refuses to authorise detention of the accused under arrest it shall make an order of discharge under section 44.
- (4) If the police investigation is not completed within fifteen days and the court considers it advisable that the accused should be detained in custody pending further investigation it shall remand the accused as provided in section 223 of this Code.

*Provided that* the total period for which the accused may be detained under this section shall not exceed ninety days and at the end of such period, the court may make an order of discharge.<sup>214</sup>

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<sup>213</sup> CPC: "Evidence Law". Kebbi: "Sharia Law".

<sup>214</sup> This as in Kano CPC after amendment by Edict No. 15 of 1978. Proviso not included in CPC of 1960.

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129. (1) If in the course of an investigation under section 117 it appears to the officer in charge of a police station by or under whom an investigation is being made that such investigation should be terminated without a trial, he shall after entering in the case diary a summary of the case and his reasons for terminating the investigation, close the case diary and terminate the investigation:

*Provided that* nothing in this subsection shall prevent the officer in charge of a police station from re-opening the case diary and continuing the investigation if further information is given to him concerning the commission of the offence.

- (2) When an investigation has been terminated or reopened under the provisions of this section, the officer in charge of a police station shall forthwith inform the court and the court shall thereupon endorse upon the First Information Report the fact of such termination or re-opening and the reasons therefor:

*Provided that* the court may, if it is not satisfied from the information given that the investigation has been properly terminated order that the investigation be continued and the case diary be re-opened; and if the court shall think fit may send a copy of the First Information Report endorsed as aforesaid together with the reasons stated by the officer in charge of a police station to the Attorney-General with any comments that it may think fit to make.

- (3) When any person has been taken into custody in the course of an investigation and such investigation has been terminated under the provisions of subsections (1) and (2) the officer in charge of a police station shall on such termination forthwith release him, or, if he has been remanded in custody by the court, shall cause an application to be made to the court for an order that such person be released.

- (4) Nothing in this section shall affect the power of the police to released an arrested person under section 44.

- (5) Notwithstanding the provisions of this section, an officer in charge of a police station shall not order the termination of an investigation, which has been instituted by direction of the Attorney-General.

130. Subject to section 146, if upon an investigation under this chapter, it appears to the officer in charge of a police station that there is sufficient evidence or reasonable ground or suspicion to justify sending the accused to a competent court to take cognizance of the offence he shall send the accused to such court which may where applicable, fix a day for the trial or remand the accused in custody or on bail as the case may be:

- (a) for his appearance before such court on day to be fixed and thereafter for his attendance from day to day before such court until otherwise directed; or  
(b) for his appearance before another court having jurisdiction to try the offence.<sup>215</sup>

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<sup>215</sup> This as in Kano CPC after amendment by Edict No. 15 of 1978. CPC of 1960 had: "If, upon investigation under this chapter, it appears to the officer in charge of a police station that there is sufficient evidence or reasonable ground or suspicion to justify sending the accused to a court empowered to take cognizance of the offence, he shall send the accused to such court which may fix a day for the inquiry or trial, or, if the offence is bailable and the accused is able to give security, shall take security from him for his appearance before such court on a day to be fixed, and thereafter for his attendance from day to day before such court until otherwise directed."

131. (1) If under the provisions of section 130 the court fixes a day for a trial the officer in charge of a police station shall subject to any orders or directions of the court:
- (a) require the complainant, if any, and all persons likely to be required as witnesses to execute bonds without sureties to appear before the court as thereby directed and to prosecute or give evidence, as the case may be, in the matter of the trial;
  - (b) arrange for the accused whether in custody or on bail to be before the court on the day fixed for the trial;
- (2) A copy of a bond executed under subsection (1) shall be handed to the person executing the same and the original shall be forwarded to the court for filing.
- (3) If any person required to execute a bond under this section refuses to do so, he may be sent in custody to the court which may order his detention until he executes the bond or until the hearing of the case is concluded.

*B – Procedure in Cases where the Police may not Arrest Without a Warrant*

132. (1) When an information is received by an officer in charge of a police station of facts pointing to the commission of an offence for which the police may not arrest without a warrant, he shall enter the substance of the information in a book in the form prescribed in accordance with subsection (1) of section 116 of this Code and either in a First Information Report or in such other report as may be prescribed in respect of the offence and thereupon refer the informant, if other than a public servant acting in the exercise of his public duties, to a justice of the peace and send the First Information Report or such other report to the same justice of the peace and the justice of the peace on receipt thereof shall, if the police show sufficient cause, issue a warrant.
- (2) No investigation of such an information shall be made by any police officer without the order of a justice of the peace or superior police officer unless the circumstances appear to be such that the delay which would be caused by submitting the report may seriously prejudice the interest of justice, in which case the investigation may be commenced forthwith but a report shall be sent as soon as possible to a justice of the peace or superior police officer giving the reasons for the action taken and on the receipt of the report of the justice of the peace or superior police officer may give such orders or direction as he thinks fit.
- (3) The functions conferred on a superior police officer by subsection (2) may be exercised by such other police officers as the Commissioner of Police for the State may by office appoint.<sup>216</sup>
- (4) Any investigation of such an information undertaken by a police officer either by direction of a justice of the peace or superior police officer under subsection (2) or without such direction under subsection (2) shall be conducted in such manner and with such powers as are set out in this chapter save that no arrest of a suspected person shall be made without warrant.

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<sup>216</sup> Kebbi omits this subsection.

**PART VI – PROCEEDINGS IN PROSECUTIONS**

**CHAPTER XIII – PLACE OF TRIAL**

133. Every offence shall ordinarily be tried by a court within the local limits of whose jurisdiction:

- (a) the offence was wholly or in part committed, or some act forming part of the offence was done;
- (b) some consequence of the offence has ensued;
- (c) some offence was committed by reference to which the offence is defined; or
- (d) some person against whom, or property in respect of which, the offence was committed is found, having been transported whether by the offender or by some person knowing of the offence.

Illustrations:

- (a) *A posts in Abuja a letter addressed to B in Kaduna threatening to accuse B of an offence in order to extort money from him.*
- (b) *A stabs B at Abuja and B dies ten days later at Kaduna in consequence of the wound.*
- (c) *A in Abuja abets an offence committed by B at Kaduna.*
- (d) *A abducts B at Abuja and carries him to Kaduna where he is found.*
- (e) *A steals property at Abuja and the property is taken by B who knows it to be stolen, to Kaduna where it is found.*

*In all the above cases A may be tried either at Abuja or at Kaduna.*

134. When it is uncertain in which of several districts an offence was wholly or in part committed, the offence may be tried by a court having jurisdiction over any of such districts.<sup>217</sup>

135. An offence committed by a person whilst he is in the course of performing a journey or voyage may be tried by a court through or into the local limits of whose jurisdiction he, or the person against whom, or the thing in respect of which, the offence was committed, resides, is or passed in the course of that journey or voyage.

136. Whenever a question arises as to which of two or more courts ought to try an offence it shall be decided by the Grand Kadi.<sup>218</sup>

137. (1) The Grand Kadi may,<sup>219</sup> whenever it appears to him that the transfer of a case will promote the ends of justice or will be in the interest of the public peace transfer any case from one court to another at any stage of the proceedings.

(2) Nothing in this section shall affect powers of transfer under the provisions of the Sharia Courts Law.<sup>220</sup>

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<sup>217</sup> Jigawa uses “divisions” rather than “districts”.

<sup>218</sup> Borno: “by the Chief Judge on the recommendation of the Grand Khadi”. Zamfara: “by the Chief Judge”. Sokoto makes this subsection (1) of this section, and adds a subsection (2) as follows: “(2) Where the Grand Kadi takes a decision under subsection (1) above such decision shall be final”.

<sup>219</sup> Borno: “the Chief Judge may, on the recommendation of the Grand Khadi”. Zamfara: “the Chief Judge may”.

<sup>220</sup> Kaduna omits subsection (2).

138. Subject to section 146 of this Code when a court has reason to believe that any person within the local limits of its jurisdiction has committed without such limits an offence which cannot under the provisions of section 133 of this Code or any other law for the time being in force, be tried within such local limits but is under any law for the time being in force, triable in the State, it may take cognizance of the offence as if it had been committed within the local limits of its jurisdiction and compel such person in manner hereinbefore provided to appear before it and send him to a court having jurisdiction to try the offence, or, if the offence is bailable may take a bond with or without sureties for his appearance before such a court.<sup>221</sup>

**CHAPTER XIV – SANCTIONS NECESSARY FOR THE INITIATION OF CERTAIN PROCEEDINGS**

139. (1) No court shall take cognizance:
- (a) of any offence punishable under section 307 to 323 of the Sharia Penal Code, except with the previous sanction or on the complaint of the public servant concerned or of some public servant to whom he is subordinate;
  - (b) of any offence punishable under section 326, 329, 330, 331, 332, 335, 336, 345, 346, 347, 350, 351 or 353 of the Sharia Penal Code when such offence is committed in or in relation to any proceeding in any court, except with the previous sanction or on the complaint of such court;
  - (c) of any offence described in section 252 of the Sharia Penal Code or punishable under section 255 or section 258 of the Sharia Penal Code, when such offence has been committed by a party to any proceeding in respect of a document produced or given in evidence in such proceeding, except with the previous sanction or on the complaint of such court;
  - (d) of any offence punishable under paragraph (a) of section 285 of the Sharia Penal Code where the circumstances are such as to constitute an offence under section 6 of the Public Order Act, except with the sanction of the Attorney-General;
  - (e) of any offence punishable under section 124 of the Sharia Penal Code except with the sanction of the Attorney-General.
- (2) The provisions of subsection (1) with reference to the offences named therein, apply also to the abetment of such offences and attempts to commit them.
- (3) The sanction referred to in this section may be expressed in general terms and need not name the accused person, but it shall, so far as practicable, specify the place where and the occasion on which the offence was committed.
- (4) When sanction is given in respect of any offence referred to in this section, the court taking cognizance of the case may frame a charge of any other offence so referred to which is disclosed by the facts.

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<sup>221</sup> This as in Kano CPC after amendment by Edict No. 15 of 1978. CPC of 1960 was essentially the same, except without the initial “Subject to section 145 of this code”, and using “be inquired into or tried within such local limits” rather than “be tried . . .”; “it may inquire into the offence” rather than “take cognizance . . .”; and “send him to a court having jurisdiction to inquire into the offence” rather than “jurisdiction to try the offence”.



## CHAPTER 5: THE SHARIA CRIMINAL PROCEDURE CODES

(5) Any sanction given or refused under this section may be revoked or granted by any authority to which the authority giving or refusing it is subordinate.

140. No court shall take cognizance of any offence falling under sections 270-271 or sections 138-142 of the Sharia Penal Code except upon a complaint made by some person aggrieved by such offence, but where the person so aggrieved is a woman<sup>222</sup> or where such a person is under the age of 18 or is an idiot or lunatic or is from sickness or infirmity unable to lodge a complaint, some other person may, with the leave of the court, lodge a complaint on his behalf,<sup>223</sup> [and in case of offence under sections 141-142 of the Sharia Penal Code where the party so aggrieved is other than the State Government or Local Government, a police officer may in the public interest and with the consent of the Attorney-General, make a complaint on behalf of such party.]<sup>224</sup>

141. (1) No court shall take cognizance of an offence under sections 125-126 of the Sharia Penal Code except:

(a) upon a complaint made by the husband of the woman or in his absence by some person who had care of such woman on his behalf at the time when the offence was committed; or

(b) in the case of the woman being unmarried upon a complaint made by her father or guardian or in his absence by some person who had care of such unmarried woman on his behalf at the time when the offence was committed.

(2) Where the husband, father or guardian referred to in subsection (1) is under the age of eighteen years, or is an idiot or lunatic or is from sickness or infirmity unable to make a complaint some other person may, with the leave of the court, make a complaint on his behalf.<sup>225</sup>

### CHAPTER XV – INITIATION OF JUDICIAL PROCEEDINGS BEFORE A COURT

142. Subject to the provisions of Chapters XIII and XIV of this Code, a court may take cognizance of any offence committed within the local limits of its jurisdiction:

- (a) when an arrested person is brought before it under section 39 or 40 of this Code;
- (b) upon receiving a First Information Report under section 117 of this Code or from any other court;

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<sup>222</sup> CPC, Zamfara: “is a woman who according to the customs and manners of the country ought not to be compelled to appear in public”.

<sup>223</sup> Kebbi, Sokoto: “some other person may, with the leave of the court and on production of two witnesses make a complaint on his or her behalf”.

<sup>224</sup> Bracketed part: CPC: “and in the case of an offence under section 393 of the Penal Code where the party so aggrieved is the Government or a Native Authority or a Local Government Authority the Attorney-General may make a complaint on behalf of the Government, and a member of the native authority or Local Government Authority may make a complaint on behalf of such native authority or Local Government Authority.” Jigawa, Kebbi, Sokoto, Zamfara: “and in case of an offence under sections 142 to 143 of the Sharia Penal Code where the party so aggrieved is the Government or a Local Government the Attorney-General may make a complaint on behalf of the Government, and a member of the Local Government and in the case of an offence under sections 142 to 143 of the Sharia Penal Code where the party so aggrieved is other than the Government, or Local Government, a police officer may, in the public interest and with the sanction of the Attorney-General, make a complaint on behalf of such party”.

<sup>225</sup> This section is omitted on all SCPCs.

- (c) upon receiving a complaint in writing from the Attorney-General;
- (d) upon receiving a complaint of facts which constitute the offence;
- (e) if from information received from any person other than a police officer it has reason to believe or suspect that an offence has been committed.<sup>226</sup>

143. When the accused person appears before a court taking cognizance of an offence, the court may require the police officer if any, in charge of the investigation, or any police officer acting on his behalf, to state a summary of the case and, if the court thinks fit, to produce the case diary for its inspection; and upon the application of any such police officer or of its own motion, the court may give such directions as to the matters to be proved and how they are to be proved, and what documents or other exhibits are to be produced as the court may think fit.

144. When a court has exercised its powers under section 143 it shall inform the accused person that he is not required to say anything at that stage, but that if he wishes to inform the court of the substance of his defence he can do so in order that the court may give him such advice as it may think fit.

145. (1) A court taking cognizance of an offence on complaint shall, subject to the exercise of its powers under sections 143 and 144, thereupon examine the complainant and reduce his complaint and the substance of the examination to writing, and the writing shall be signed or sealed by the complainant if he is able so to do.

(2) A court may in its discretion conduct such examination on oath.

(3) When the complaint is made in writing and signed by a public servant acting or purporting to act in the execution of his official duties, the court may, if it thinks fit, and shall when the complaint is made by a court under section 279 of this Code proceed with the trial of the case without examining the complainant under this section.

146. If an offence of which a court takes cognizance ought properly or more conveniently to be tried by another court, the said court taking cognizance shall send the case to such other court for trial.<sup>227</sup>

147. If a court taking cognizance of an offence under the provisions of section 142 of this Code is of the opinion that an investigation or further investigation should be conducted under the provisions of Chapter XII, the court shall order that such an investigation or further investigation shall be conducted in the same manner and with the same powers as are set out in Chapter XII; and at the time when such order is made or at any stage of the investigation or further investigation, the police officer in charge of the investigation, or any police officer acting on his behalf, may appear before the court and apply for directions as to

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<sup>226</sup> This as in Kano CPC after amendment by Edict No. 15 of 1978. CPC of 1960, in the prefatory language, had "Subject to the provisions of chapters XIII and XIV and to any limitation on the powers of the court, a court may take cognizance of an offence"; and in subsection (b) did not have the phrase "or from any other court".

<sup>227</sup> This as in Kano CPC after amendment by Edict No. 15 of 1978, except that a proviso relating to the case where the proper or more convenient court is the High Court is here omitted. CPC of 1960 had: If an offence of which a court takes cognizance ought properly to be inquired into or tried by another court or if in the opinion of the court taking cognizance thereof the offence might be more conveniently inquired into or tried by another court, it shall send the case to such other court."

the matters to be proved and how they are to be proved, and what documents, if any, are to be produced.

148. (1) A Sharia Court taking cognizance of an alleged offence on the complaint of any person other than a police officer may, for reasons to be recorded in writing, refer the matter to any police officer for investigation.<sup>228</sup>
- (2) An investigation by a police officer under the provisions of subsection (1) shall be conducted so far as may be in the manner and with the powers in and with which an investigation under Chapter XII is conducted, and shall, if the police have already investigated the case, be deemed to be a continuation of that investigation.
149. (1) A Sharia Court taking cognizance of an alleged offence may refuse to proceed with the case if after examining the complainant, if any, and considering the result of any investigation held under Chapter XII or section 148 of this Code, there is in its opinion no sufficient ground for proceeding; and it shall thereupon briefly record its reasons for so refusing.
- (2) Where there is in the opinion of the Attorney-General, no sufficient ground for any charge to be preferred in accordance with section 159 of this Code, against the accused, the Attorney-General may subject to the provision of section 211 of the constitution of the Federal Republic of Nigeria 1999 discontinue the case.
- (3) If the accused is in custody or on bail, he shall be discharged when, under this section, the court refuses to proceed or the Attorney-General discontinues the case.
- (4) A person aggrieved by a refusal of a court to proceed with a case may apply to the appropriate appeal court with an affidavit setting out the facts for an order directing the transfer of the case to another court of competent jurisdiction to hear and determine the case or matter.<sup>229</sup>
150. (1) If a First Information Report or a complaint in writing is received by a court which is not competent to take cognizance of the offence, the court shall return the First Information Report or complaint for presentation to the proper court with an endorsement to that effect.
- (2) If a complaint not in writing is made to a court which is not competent to take cognizance of the offence the court shall direct the complaint to the proper court.
151. When a court taking cognizance of an offence is satisfied that there is sufficient ground for proceeding, it shall after causing process to issue for the attendance of the

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<sup>228</sup> This as in Kano CPC after amendment by Edict No. 13 of 1977. CPC of 1960 had: "(1) If a court taking cognizance of an alleged offence on the complaint of any person other than a police officer is not satisfied that the offence has been committed or if for any other reason the court deems it expedient to do so, it may make an inquiry into the case or direct any subordinate court to do so or refer the matter to any police officer for investigation."

<sup>229</sup> This whole section as in Kano CPC after amendment by Edict No. 15 of 1978, except that in subsection (2) the words "subject to the provision of section 211 of the constitution of the Federal Republic of Nigeria 1999" have been newly inserted here. These words are also omitted in Borno, Gombe, Jigawa, Kebbi, Sokoto and Zamfara SCPCs. CPC of 1960 did not have what is here subsection (2) at all, and its subsection (2), here subsection (3), provided only that: "If the accused is in custody or on bail he shall be discharged when the court refuses under this section to proceed."

accused person, if he is not already in custody or on bail, proceed to try it provided that it has jurisdiction to try the offence.<sup>230</sup>

152. Every accused person shall, subject to the provisions of section 153 of this Code, be present in court during the whole of his trial unless he misconducts himself by so interrupting the proceedings or otherwise as to render their continuance in his presence impracticable.

153. (1) Process to compel the attendance of the accused person shall ordinarily be a summons or a warrant according to the opinion of the court. A summons or a warrant should according to the fourth column of Appendix A issue in the first instance.<sup>231</sup>

(2) When a summons is issued the court may if it sees reason to do so dispense with the personal attendance of the accused:

*Provided that:*

- (a) he is represented by counsel; or
- (b) he authorises in writing his agent or relations to represent him;<sup>232</sup> or
- (c) he pleads guilty in writing.<sup>233</sup>

(3) Notwithstanding the provisions of subsection (2), the court shall not, without adjourning for his personal attendance sentence the accused to any term of imprisonment or to any other form of detention or order him to be subject to any disqualification.

#### **CHAPTER XVI – TRIALS AND OTHER JUDICIAL PROCEEDINGS BEFORE SHARIA COURTS<sup>234</sup>**

154. The procedure laid down in this chapter shall be observed by the Sharia Courts.<sup>235</sup>

<sup>230</sup> This as in Kano CPC after amendment by Edict No. 15 of 1978. CPC of 1960 had: “. . . proceed either to hold an inquiry into the offence or to try it provided that the court is competent to do so.”

<sup>231</sup> CPC: “Process to compel the attendance of the accused person shall ordinarily be a summons or a warrant according as in the opinion of the court a summons or a warrant should according to the fourth column of Appendix A issue in the first instance.”

<sup>232</sup> CPC does not have this subsection (b).

<sup>233</sup> Kebbi and Sokoto add: “duly signed by him”.

<sup>234</sup> In CPC, the title of Chapter XVI is SUMMARY TRIALS IN MAGISTRATES’ COURTS, comprising §§155-166 of CPC, which correspond to §§153-164 here. The remaining sections of this chapter, i.e. §§165-171, are drawn from the chapter of CPC on TRIALS BY THE HIGH COURT, omitted here, (§§167 and 168 = CPC §§196 and 198) and from the chapter of CPC on TRIALS IN NATIVE COURTS, also omitted here (§§165, 166, 169, 170 and 171 = CPC §§391, 392, 393, 395 and 396, respectively), with such variations as are indicated in notes to the separate sections.

<sup>235</sup> CPC of 1960: “Subject to the provisions of chapter XXXIII [TRIALS IN NATIVE [subsequently Area] COURTS], the procedure laid down in this chapter shall be observed by magistrates’ courts and native [area] courts.” In 1979 Kano State repealed chapter XXXIII of its CPC and made this chapter XVI – as it does here – apply unqualifiedly to trials in Area Courts, Kano No. 4 of 1979. Jigawa: “(1) In any matter of a criminal nature a Sharia Court shall be guided in regard to practice and procedure by the provision of this code. (2) Notwithstanding the provisions of subsection (1) all Sharia Courts shall be bounded by the following provisions: (a) Chapter XVI sections 151-168; (b) sections 191, 192, 196, 204, 205, 203, 214, 215, 218, 233, 234, 240, 241, 246, 254, 255, 256, 257, 258, 259, 261, 262, 263; (c) Chapter XXVII sections 298-313; and (3) The provisions of Islamic Law of practice and procedure in

155. When the accused appears or is brought before the court the particulars of the offence of which he is accused shall be stated to him and he shall be asked if he has any cause to show why he should not be convicted.<sup>236</sup>

156. If the accused admits that he has committed the offence of which he is accused his admission shall be recorded as nearly as possible in the words used by him and if he shows no sufficient cause why he should not be convicted the court may convict him accordingly.<sup>237</sup>

*Provided* where the accused appears before the court by himself and makes the admission of the commission of the offence, the court shall before convicting him satisfy itself that the accused has clearly understood the meaning of the offence in all its details and essentials, the effect of his admission, and, in addition, the court shall inform the accused of his option to retract his admission.<sup>238</sup>

157. (1) When the court decides not to convict the accused under section 156 or when an accused person states that he intends to show cause why he should not be convicted the court shall proceed to hear the complainant, if any, and take all such evidence as may be produced in support of the prosecution.

(2) The court shall ascertain from the complainant or otherwise the names of any person likely to be acquainted with the facts of the case and to be able to give evidence for the prosecution and shall summon to give evidence before the court such of them as the court thinks necessary.

(3) The accused shall be at liberty to cross-examine the witnesses for the prosecution and, if he does so, the prosecutor may re-examine them.<sup>239</sup>

158. (1) If upon taking all the evidence referred to in section 157 and making such examination, if any, of the accused as may be made in accordance with section 201 the court finds that no case against the accused has been made out which if not rebutted would warrant his conviction the court shall discharge him.

(2) The court may discharge the accused at any previous<sup>240</sup> stage of the case, if for reasons to be recorded by the court it considers the charge to be groundless.

(3) A discharge under this section shall not be a bar to further proceedings against the accused in respect of the same matter.

(4) No oath shall be administered to the accused for the purposes of an examination under this section.<sup>241</sup>

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criminal matters as contained in the recommended texts of the Sharia.” Editor’s note: it appears that Jigawa’s subsection (3) should be sub-subsection (d) of subsection (2).

<sup>236</sup> Jigawa: “shall be stated to him and he shall be asked if the information is true, if he admits same shall be asked if he has any cause to show why he should not be convicted.”

<sup>237</sup> CPC adds: “and in that case it shall not be necessary to frame a formal charge”. CPC also has two further subsections: “(2) The Governor may by order specify the maximum sentence of imprisonment or the maximum fine which any grade or class of court may impose on a conviction under this section. (3) No court shall exercise any powers under subsection (1) unless an order under subsection (2) has been made in respect of that grade or class of court.”

<sup>238</sup> CPC does not have this proviso.

<sup>239</sup> Jigawa: “The accused shall be at liberty to impeach the evidence of the witnesses for the prosecution.”

<sup>240</sup> Jigawa omits the word ‘previous’.

159. If when the evidence referred to in section 157 of this Code and the examination referred to in section 158 of this Code have been taken and made or at any previous stage of the case the court is of opinion that there is ground for presuming that the accused has committed an offence triable under this chapter, which such court is competent to try and which in the opinion of the court could be adequately punished thereby, the court shall frame a charge declaring with what offence the accused is charged and shall then proceed as hereinafter provided.<sup>242</sup>

160. (1) If the court is of the opinion that the offence is one which having regard to section 159 it should try itself, the charge shall then be read and explained to the accused and he shall be asked whether he is guilty or has any defence to make.

(2) If the accused pleads guilty, the court shall record the plea and may in its discretion convict him thereon.

(3) The court shall before convicting on a plea of guilty satisfy itself that the accused has clearly understood the meaning of the charge in all its details and essentials and also the effect of his plea.

161. (1) If the accused pleads not guilty or makes no plea or refuses to plead, he shall be required to state whether he wishes to cross-examine or further cross-examine any, and if so which, of the witnesses for the prosecution whose evidence has been taken.

(2) If the accused wishes to impeach or<sup>243</sup> cross-examine or further cross-examine under the provisions of subsection (1) the witness named by him shall be recalled and after cross-examination and re-examination, if any, they shall be discharged.

(3) The evidence of any remaining witnesses for the prosecution shall next be taken and after impeachment,<sup>244</sup> cross-examination and re-examination, if any, they also shall be discharged.

(4) The accused shall then be called upon to enter upon his defence and produce his evidence.

(5) If the accused puts in any written statement, the court shall file it with record.

(6) The complainant or prosecutor may cross-examine any witnesses produced for the defence and the accused may re-examine them.<sup>245</sup>

162. (1) The court shall call upon the accused person to inform the court of the names and whereabouts of any witnesses whom he intends to call his defence.<sup>246</sup>

(2) Thereafter, the accused may apply to the court to issue any process for compelling the attendance of any witness for the purpose of examination or the production of any document or other thing and the court shall issue such process unless for reasons to

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<sup>241</sup> Kebbi omits this subsection (4).

<sup>242</sup> This as in Kano CPC after amendment by Edict No. 13 of 1977. CPC of 1960 has two additional subsections relating to proceedings in magistrates' courts and committal for trial in the High Court.

<sup>243</sup> CPC omits the words "impeach or".

<sup>244</sup> CPC omits "impeachment".

<sup>245</sup> Jigawa omits "and the accused may re-examine them".

<sup>246</sup> This subsection drawn from §389 of CPC, in the chapter on TRIALS IN NATIVE [AREA] COURTS, on "right of accused to state case and adduce evidence". What are here subsections (2) and (3) are subsections (1) and (2) in CPC.

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be recorded by it in writing if it considers that the application is made for the purpose of vexation or delay or of defeating the ends of justice.

(3) The court may before summoning any witness on an application under subsection (1) require that reasonable expenses incurred by such witness in attending for the purposes of the trial be deposited in court.

163. (1) If in any case under this chapter in which a charge has been framed the court finds the accused not guilty, it shall record an order of discharge.<sup>247</sup>

(2) If in any case under this chapter in which a charge has been framed the court finds the accused guilty, it shall announce its finding<sup>248</sup> and shall thereafter, if the accused has not previously called any witness to character, call upon him to produce such witness if he so desires and, if he wishes, to make a statement in mitigation of punishment.

(3) The record of the accused's previous convictions, if any, if it has not already been put in evidence, shall be produced and if necessary proved by the police.<sup>249</sup>

(4) The court shall then pass sentence upon the accused according to law.

164. When the proceedings have been instituted upon complaint and upon any day fixed for the hearing of the case the complainant or prosecutor is absent, the court may in its discretion notwithstanding anything hereinbefore contained at any time before the charge has been framed discharge the accused.

165. (1) If, in any case instituted by complaint as defined in this Sharia Criminal Procedure Code or upon information given to a police officer or a court and heard under this chapter, the court discharges the accused<sup>250</sup> and is satisfied that the accusation against him was frivolous or vexatious, the court may in its discretion by its order of discharge<sup>251</sup> direct the complainant or informant to pay to the accused, or to each of the accused where there are more than one, such compensation not exceeding five hundred naira to each such accused as the court thinks fit<sup>252</sup> and may award a term of imprisonment not exceeding three months in the aggregate in default of payment, and the provisions of section 98 of the Sharia Penal Code shall apply as if such compensation were a fine.

(2) Before making any decision under subsection (1) the court shall:

(a) record and consider any objection which the complainant or informant may urge against the making of the direction; and

(b) state in writing in its order of discharge its reasons for awarding the compensation.

(3) Compensation awarded under this section may be recovered as if it were a fine.

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<sup>247</sup> CPC, Kebbi, Sokoto: "order of acquittal".

<sup>248</sup> Kebbi, Sokoto: "announce its finding and conviction".

<sup>249</sup> Kaduna: "proved by the prosecution". Jigawa: "prosecutor".

<sup>250</sup> CPC: "discharges or acquits the accused".

<sup>251</sup> CPC: "discharge or acquittal".

<sup>252</sup> Kaduna omits "not exceeding five hundred naira to each such accused". Kebbi and Sokoto omit this entire section, including subsections (2), (3) and (4) below.

- (4) Any person directed to make a payment of compensation under this section may appeal from the direction as if he had been convicted after trial by the court.<sup>253</sup>
166. (1) In taking evidence in any criminal matter a Sharia Court may test the credibility of any witness by examination.<sup>254</sup>
- (2) Notwithstanding the provisions of this Sharia Criminal Procedure Code or of any other written law, a Sharia Court may in its discretion invite any witness to attest to the credibility of the witness to testify.<sup>255</sup>
- (3) After hearing the evidence of any witness, a Sharia Court shall ask an accused person if there is any question which he wishes the court to put to the witness on his behalf and thereupon the court shall put to the witness any question which the accused person wishes the court to put on his behalf but shall not be bound to put to a witness any question which does not bear directly on facts which are material to the proper appreciation of the facts of the case.
167. A Sharia Court shall make its finding in any criminal matter upon the evidence which is before it and in making such finding nothing shall be taken into consideration which is not supported by the evidence.<sup>256</sup>
168. After the court has made its finding the court shall announce that finding.<sup>257</sup>
169. When the provisions of section 163(2) and (3) of this Code have been complied with the court may retire or adjourn to consider the sentence and the court shall, having determined the sentence, announce the same in open court.<sup>258</sup>
170. A Sharia Court having jurisdiction over *qisas* offences shall, before passing a sentence, invite the blood relatives of the deceased person, or the complainant as the case may be, to express their wishes as to whether retaliation should be carried out, or *díyah* should be paid or the accused should be forgiven and the court shall record such wishes in the record of proceedings.<sup>259</sup>

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<sup>253</sup> This subsection (4) as in Kano after amendment by KSLN of 1982; CPC of 1960 does not have it.

<sup>254</sup> This entire section drawn from §391 of CPC, in the chapter on TRIALS IN NATIVE [AREA] COURTS<sup>25</sup>.

<sup>255</sup> CPC: "(2) Notwithstanding the provisions of this Criminal Procedure Code or of any other written law, a native court [subsequently Area Court] may in its discretion invite any witness to take an oath as to the truth of his evidence or any part thereof either before he gives such evidence or at any subsequent stage of the proceedings and if such witness refuses to take any such oath the court may draw such inference from such refusal as it thinks just."

<sup>256</sup> This section = CPC §392, in the chapter on TRIALS IN NATIVE [AREA] COURTS.

<sup>257</sup> This section = CPC §196, in the chapter on TRIALS BY THE HIGH COURT.

<sup>258</sup> This section = CPC §198, in the chapter on TRIALS BY THE HIGH COURT, except that CPC says the court "shall retire or adjourn to consider and determine the sentence and shall then announce the same in open court". Kebbi adds a proviso to this section: "*Provided that* whenever any person is charged with a criminal offence he shall, unless the charge [is] withdrawn, be entitled to fair hearing within three months period by a Sharia Court, Upper Sharia Court or Sharia Court of Appeal whether on original [or] appellate jurisdiction."

<sup>259</sup> This section based on CPC §393, in the chapter on TRIALS IN NATIVE COURTS, which however reads as follows: "A native [area] court having jurisdiction over capital offences shall, before passing a sentence of death, invite the blood relatives of the deceased person, if they can be found and brought to court, to express their wishes as to whether a death sentence should be carried out and shall record such wishes in the record of the proceedings."



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171. (1) In the trial of a criminal matter a Sharia Court shall make a record of the proceedings in the prescribed form and shall record the following particulars:<sup>260</sup>

- (a) the serial number of the case;
- (b) the name, tribe or nationality, residence, occupation and age of the accused;<sup>261</sup>
- (c) the name, tribe or nationality, occupation and age of the complainant;<sup>262</sup>
- (d) the offence complained of and the offence, if any, proved and, where relevant, the value of the property in respect of which the offence has been committed;
- (e) the date and place of commission of the offence and the date of arrest;
- (f) the date of the complaint or First Information Report;
- (g) the names of the witnesses for the prosecution and defence and a record of their evidence in narrative form;
- (h) the plea of the accused and his examination;
- (i) the finding and, in the case of conviction, reasons therefore with a reference to the Sharia Penal Code or other Act or Law;
- (j) the sentence or other final order;
- (k) the date on which the proceedings terminated.

(2) The alkali or president<sup>263</sup> of the court shall sign or seal the record of proceedings.

172. Any person<sup>264</sup> appointed a justice of the peace under the provisions of this Sharia Criminal Procedure Code shall be bound to observe the provisions of this Sharia Criminal Procedure Code in the exercise of his powers as justice of peace.

**[Chapter on PRELIMINARY INQUIRY AND COMMITMENT FOR TRIAL  
TO THE HIGH COURT]<sup>265</sup>**

**[Chapter on TRIALS BY THE HIGH COURT]<sup>266</sup>**

**CHAPTER XVII – CHARGES**

173. Charges may be as in the forms set out in Appendix B<sup>267</sup> modified in such respect as may be necessary to adapt them to the circumstances of each case.

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<sup>260</sup> This section = CPC §395, in the chapter on TRIALS IN NATIVE COURTS.

<sup>261</sup> Jigawa includes “religion” after “name”.

<sup>262</sup> CPC says “complainant if any”.

<sup>263</sup> Borno, Kebbi, Sokoto omit “or president”. Kaduna: “alkali or presiding judge”.

<sup>264</sup> This section = CPC §396, in the chapter on TRIALS IN NATIVE COURTS, except that CPC has “Any president or member of a native court appointed a justice of the peace . . .”. Kaduna and Jigawa, evidently in error, refer twice in this section to “this Sharia Penal Code”.

<sup>265</sup> In CPC of 1960, Chapter XVII was entitled PRELIMINARY INQUIRY AND COMMITMENT FOR TRIAL TO THE HIGH COURT. This entire chapter was deleted in Kano by Edict No. 13 of 1977, and no sections from it are included in this code.

<sup>266</sup> In CPC of 1960, Chapter XVIII was entitled TRIALS BY THE HIGH COURT. The entire chapter is omitted here, except for two sections, namely CPC §§196 and 198 = §§167 and 168 above.

<sup>267</sup> We have omitted Appendix B from this annotated version of the code.

174. (1) Every charge under this Sharia Criminal Procedure Code shall have a statement of the offence complained of with date and place, and when material, the value of the property in respect of which the offence has been committed.
- (2) The charge shall also as much as possible define the offence so as to give the accused notice of the matter with which he is charged.<sup>268</sup>
- \*\* [Sections on “Particulars as to time, place and person”, “Charge of criminal breach of trust, etc.”, Charge of falsification of accounts”, and “When manner of committing offence must be stated”]<sup>269</sup>
175. No error in stating either the offence or the particulars required to be stated in the charge and no omission to state the offence or those particulars shall, be regarded, at any stage of the case as material, unless the accused was in fact misled by such error or omission and it has occasioned a failure of justice.<sup>270</sup>
176. (1) When any person is being tried by any Sharia Court on an imperfect or erroneous charge, the Sharia Court may permit or direct the framing of a new charge or add to or otherwise alter the original charge.<sup>271</sup>

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<sup>268</sup> CPC’s section on contents of charges has five subsections, as follows: “(1) Every charge under this Criminal Procedure Code shall state the offence with which the accused is charged. (2) If the law which creates the offence gives it any specific name, the offence may be described in the charge by that name only. (3) If the law which creates the offence does not give it any specific name, so much of the definition of the offence must be stated as to give the accused notice of the matter with which he is charged. (4) The law and section of the law against which the offence is said to have been committed shall be mentioned in the charge. (5) The fact that the charge is made is equivalent to a statement that every legal condition required by law to constitute the offence charged was fulfilled in the particular case.” Kebbi and Sokoto, alone among the SCPCs, include CPC’s subsection (3) in addition to the two subsections included in this code.

<sup>269</sup> At this point CPC has four sections omitted here, as follows: §202: “*Particulars as to time, place and person.* The charge shall contain such particulars as to the time and place of the alleged offence and the person, if any, against whom, or the thing, if any, in respect of which, it was committed as are reasonably sufficient to give the accused notice of the matter with which he is charged.” §203: “*Charge of criminal breach of trust, etc.* When the accused is charged with criminal breach of trust or criminal misappropriation of money, it shall be sufficient to specify the gross sum in respect of which the offence is alleged to have been committed and the dates between which the offence is alleged to have been committed without specifying particular items or exact dates, and the charge so framed shall be deemed to be a charge of a single offence.” §204: “*Charge of falsification of accounts.* When the accused is charged with falsification of accounts under section 371 of the Penal Code it shall be sufficient to allege a general intent to defraud without naming any particular person intended to be defrauded or specifying any particular sum of money intended to be the subject of the fraud or any particular day on which the offence was committed.” §205: “*When manner of committing offence must be stated.* When the nature of the case is such that the particulars mentioned in sections 203 and 204 do not give the accused sufficient notice of the matter with which he is charged, the charge shall also contain such particulars of the manner in which the alleged offence was committed as will be sufficient for that purpose [with three illustrations].”

<sup>270</sup> CPC four illustrations after this section, omitted in all SCPCs.

<sup>271</sup> As in Kano CPC after amendment by Edict No. 15 of 1978. CPC of 1960 had: “When any person is committed for trial without a charge or with an imperfect or erroneous charge the court may frame a charge or add to or otherwise alter the charge, as the case may be, having regard to the provisions of this Criminal Procedure Code as to the form of charges”, with two illustrations following. Gombe: “. . . the Sharia Court may permit or direct the framing of a new charge or discharge the accused person.”

CHAPTER 5: THE SHARIA CRIMINAL PROCEDURE CODES

- (2) Every such alteration or addition or new charge shall be read and explained to the accused and his plea thereto shall be taken.
177. (1) Any Sharia Court may alter or add to any charge or frame a new charge at any time before judgment is pronounced.
- (2) Every such alteration or addition or new charge shall be read and explained to the accused and his plea thereto shall be taken.<sup>272</sup>
178. If the charge as revised under section 176 or 177 is such that proceeding immediately with the trial is not likely in the opinion of the Sharia Court to prejudice the accused in his defence or the prosecutor, if any, in the conduct of the case, the Sharia Court may in its discretion forthwith proceed with the trial as if the charge so revised had been the original charge.
179. If the revised charge is such that proceeding immediately with the trial is likely in the opinion of the Sharia Court to prejudice the accused in his defence or the prosecutor, if any, in the conduct of the case, the Sharia Court may either direct a new trial or adjourn the trial for such period as may be necessary.
180. Whenever a charge is revised by the Sharia Court after the commencement of the trial, the prosecutor and the accused shall be allowed to recall or re-summon and examine with reference to such revision any witness who may have been examined and also to call any further witness whom the Sharia Court may consider to be material.
181. For every distinct offence of which any person is accused there shall be a separate charge and every such charge shall be tried separately, except in the cases mentioned in sections 182, 183, 184, 185 and 190.

Illustration:

*A is accused of theft on one occasion and of causing grievous hurt on another occasion. A must be separately charged and separately tried for the theft and for causing grievous hurt.*

182. Where a person is accused of several offences of the same or similar character he may be charged with and tried at one trial for any number of them; but if the court, before the trial or at any stage of the trial before judgment is pronounced, considers that he may be prejudiced or embarrassed in his defence by such procedure or that for any other reason it is desirable to do so, the court may order a separate trial of any one or more of such charges.
183. (1) If a series of acts so connected together as to form the same transaction is alleged, the accused may be charged with and tried at one trial for every offence which he would have committed if all of such acts or some one or more of them without the rest were proved.
- (2) In passing sentence the court shall have regard to section 99 of the Sharia Penal Code.<sup>273</sup>
184. If a series of acts is of such a nature that it appears that an offence was committed on one of several occasions but it is doubtful whether the facts which can be proved will show

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<sup>272</sup> Kebbi omits this entire section.

<sup>273</sup> CPC has two illustrations following this section, omitted in all SCPCs.

on which occasion an offence was committed, the accused may be charged with having committed an offence alternatively on one or other of such occasions.<sup>274</sup>

185. If a single act or series of acts is of such a nature that it is doubtful which of several different offences the facts which can be proved will constitute, the accused may be charged with having committed all or any one or more of such offences and any number of such charges may be tried together, or he may be charged in the alternative with having committed some or other of the said offences.

Illustration:

*A is accused of an act which may amount to theft or receiving stolen property or criminal breach of trust. He may be charged (a) with theft and receiving stolen property and criminal breach of trust; or (b) with theft or receiving stolen property or criminal breach of trust alternatively; or (c) with one or two of these offences omitting the others or any of them.*

186. If in the case mentioned in section 185 of this Code the accused is charged with one offence and it appears in evidence that he committed a different offence with which he might have been charged under the provisions of that section, he may be convicted of the offence which he is shown to have committed although he was not charged with it.<sup>275</sup>

Illustrations:

(a) *A is charged with stealing a bicycle. It is proved that he received the bicycle knowing it to have been stolen. A may be convicted of receiving stolen property although he was not charged with that offence.*

(b) *A is charged with stealing a wireless set and it is proved in evidence that he obtained the wireless set by means of a criminal breach of trust. A may be convicted of criminal breach of trust although he was not charged with that offence.*

(c) *A is charged with rape and it is proved in evidence that he committed an act of gross indecency. A may be convicted of committing an act of gross indecency although he was not charged with that offence.*

(d) *A is charged with causing grievous hurt to Z and it is proved in evidence that A in fact abetted B to cause the grievous hurt to Z. If at the time of framing the charge A could have been charged with abetting the offence, A may be convicted of abetment.<sup>276</sup>*

187. (1) When a person is charged with an offence consisting of several particulars, a combination of some only of which constitutes a complete lesser offence, and such combination is proved but the remaining particulars are not proved, he may be convicted of the lesser offence though he was not charged with it.

(2) When a person is charged with an offence and facts are proved which reduce it to a lesser offence, he may be convicted of the lesser offence although he is not charged with it.

188. When a person is charged with an offence he may be convicted of an attempt to commit such an offence although the attempt is not separately charged.

<sup>274</sup> CPC has one illustration following this section, omitted in all SCPCs.

<sup>275</sup> Jigawa: "although he was not initially charged with it".

<sup>276</sup> CPC has a fifth illustration, omitted from all SCPCs, as follows: "A, a woman, is charged with culpable homicide punishable with death; in fact it is apparent in evidence that she killed her child who was under the age of twelve months while the balance of her mind was disturbed by reason of her not having fully recovered from the effect of giving birth to the child. A may be convicted of culpable homicide not punishable with death."

CHAPTER 5: THE SHARIA CRIMINAL PROCEDURE CODES

189. (1) When more than one charge is framed against the same person, and when a conviction has been obtained on one or more of them, the complainant or the officer conducting the prosecution may, with the consent of the court, withdraw the remaining charge or charges, or the court of its accord may stay the trial of such charge or charges.<sup>277</sup>
- (2) A withdrawal under subsection (1) shall have the effect of a discharge<sup>278</sup> on the remaining charge or charges referred to in that subsection unless<sup>279</sup> the conviction be set aside on appeal or on review in which case the court, subject to any order of the court setting aside the conviction, may proceed with the trial of the charge or charges so withdrawn.<sup>280</sup>
- (3) Notwithstanding the provisions of subsections (1) and (2), the Sharia Court shall not withdraw the remaining charges if it concerns *hudud* offences.<sup>281</sup>
190. The following persons may be charged and tried together, namely:
- (a) persons accused of the same offence committed in the course of the same transaction;
  - (b) persons accused of an offence and persons accused of abetment or of an attempt to commit the same offence;
  - (c) persons accused of more than one offence of the same or similar character, committed by them jointly;
  - (d) persons accused of different offences committed in the course of the same transaction;
  - (e) persons accused of offences which include theft, extortion or criminal misappropriation and persons accused of receiving or retaining or assisting in the disposal or concealment of property, the possession of which has been transferred by offences committed by the first named persons, or of abetment of or attempting to commit any of the last named offences;
  - (f) persons accused of offences under sections 169, 170 and 171 of the Sharia Penal Code or either of those sections in respect of stolen property the possession of which has been transferred by one offence; and
  - (g) persons accused of offences committed during a fight or series of fights arising out of another fight, and persons accused of abetting any of these offences,<sup>282</sup>

and the provisions contained in the former part of this chapter shall, so far as may be, apply to all such charges.<sup>283</sup>

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<sup>277</sup> Gombe, instead of “the complainant or the officer conducting the prosecution may, with the consent of the court, withdraw the remaining charge or charges, or the court of its accord may stay”, says simply that “the court may stay the trial of such charge or charges.”

<sup>278</sup> CPC: “shall have the effect of an acquittal”.

<sup>279</sup> Gombe: “if” instead of “unless”.

<sup>280</sup> Gombe: “so stayed”.

<sup>281</sup> CPC omits subsection (3).

<sup>282</sup> Borno omits subsection (g).

<sup>283</sup> Kaduna and Kebbi omit “and the provisions contained . . . may be applied to all such charges”. CPC, Kebbi and Sokoto also have three illustrations after this section, as follows: “ (a) A and B are

191. (1) If any appellate court is of opinion that any person convicted of an offence was misled in his defence by the absence of a charge, or by an error in the charge, and it has occasioned a failure of justice, it may direct that the trial be recommenced upon a charge framed in whatever manner it thinks fit.<sup>284</sup>
- (2) If the court is of opinion that the facts of the case are such that no valid charge could be preferred against the accused in respect of the facts it shall quash the conviction.<sup>285</sup>

**CHAPTER XVIII – PREVIOUS CONVICTIONS<sup>286</sup>**

192. (1) A person who has once been tried by a court of competent jurisdiction for an offence and convicted<sup>287</sup> of that offence shall, while such conviction<sup>288</sup> remains in force, not be liable to be tried again for the same offence nor on the same facts for any other offence for which a different charge from the one made against him might have been made under section 185 of which he might have been convicted under section 186.
- (2) A person convicted of any offence constituted by an act causing consequences, which together with such act constituted a different offence from that of which he was convicted, may be afterwards tried for such last mentioned offence, if the consequences had not happened or were not known to the court to have happened at the time when he was convicted.
- (3) A person convicted of any offence constituted by any acts may, notwithstanding such conviction, be subsequently charged with and tried for the same or any other offence constituted by the same acts which he may have committed, if the court by which he was first tried was not competent to try the offence with which he was charged.<sup>289</sup>
193. A previous conviction may be pleaded or proved<sup>290</sup> at any stage of any trial for the same offence or any other offence to a charge of which it is a bar, upon its being proved, the accused shall be discharged.

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accused of the same homicide, A and B may be charged and tried together for that homicide. (b) A and B are accused of housebreaking by night in the course of which A commits culpable homicide with which B has nothing to do. A and B may be tried together on a charge, charging both of them with housebreaking by night and A on a separate charge with culpable homicide. (c) A and B are both charged with theft and B is charged with two other thefts committed by him in the course of the same transaction. A and B may be tried together on a charge charging both with the one theft and B alone with the two other thefts.”

<sup>284</sup> Borno: “was misled in his defence by the absence of justice, it may direct that the trial be recommended upon a charge framed in whatever manner it thinks fit.”

<sup>285</sup> CPC: “in respect of the facts proved”. CPC also has one illustration after this section.

<sup>286</sup> CPC, Kebbi, Sokoto: chapter title is PREVIOUS ACQUITTALS AND CONVICTIONS.

<sup>287</sup> CPC, Kebbi, Sokoto: “convicted or acquitted”.

<sup>288</sup> CPC, Kebbi, Sokoto: “conviction or acquittal”.

<sup>289</sup> Jigawa, Kebbi, and Sokoto omit this subsection. As in subsection (1), CPC has “convicted or acquitted” and “conviction or acquittal” where this code has “convicted” and “conviction”. CPC also has five illustrations following this section.

<sup>290</sup> CPC, Kebbi, Sokoto: “A previous acquittal or conviction may be pleaded or proved”.

**CHAPTER XIX – GENERAL PROVISIONS AS TO TRAILS AND OTHER JUDICIAL PROCEEDINGS IN SHARIA COURTS**

194. (1) The place in which any court is held for the purpose of trying any offence shall be deemed to be an open court, to which the public generally may have access, so far as the same can conveniently contain them.
- (2) Notwithstanding the provisions of subsection (1), a court may if it thinks fit order at any stage of a trial of any particular case that the public generally or any particular person shall not have access to or be or remain in such place.

Explanation:

*Acting under subsection (2), the court may exclude any witness from the court at any stage of the proceedings or may clear the court whilst a child or young person is giving evidence.*

195. (1) A legal practitioner shall have the right to practise in the Sharia Court in accordance with the provisions of the Legal Practitioners Act, 1990.
- (2) The expression “legal practitioner” shall have the same meaning as in the Legal Practitioners Act, 1990.
196. (1) In the case of a prosecution in the Sharia Court by or on behalf of the State or by any public servant in his official capacity or by any Local Government, the State or that public servant or Local Government may be represented by a law officer, the Attorney-General, State Counsel, a police officer, or by any legal practitioner or other person duly authorised in that behalf or by or on behalf of the Attorney-General or, in revenue cases, authorised by the head of the department concerned.<sup>291</sup>
- (2) In any cause, matter or appeal, to which a Local Government is a party, the Local Government may be represented at any stage of the proceedings by any member or officer of the Local Government who shall satisfy the court that he is duly authorised in that behalf.
- (3) In any criminal case by or against a first or second class chief in either his official or personal capacity the chief may be represented in the court at any stage of the proceedings by any indigene of his chieftom who shall satisfy the court that he has the authority to represent the chief.<sup>292</sup>
- (4) Where any person other than the Attorney-General prosecutes on behalf of the State or any public servant prosecutes in his official capacity such person or public servant shall prosecute the case subject to such directions as may be given by the Attorney-General in any prosecution for an offence under a Law of the State.<sup>293</sup>

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<sup>291</sup> Jigawa omits “or, in revenue cases . . .”. Kebbi: “may be represented by the Attorney-General or any legal practitioner duly authorised by the Attorney-General.”

<sup>292</sup> Jigawa uses “Emir” instead of “first or second class chief”. Gombe, Kebbi and Sokoto omit subsection (3) entirely.

<sup>293</sup> Kebbi and Sokoto omit this subsection. Jigawa and Kaduna have it as part of subsection (3). Sokoto, omitting subsections (3) and (4) in this section, adds the following after subsections (1) and (2): “*Interpretation.* In this chapter: “Legal Officer” includes officers in the office of the Attorney-General who are holders of: (a) Degree in Law; (b) Diploma in Sharia and Civil Law; and (c) Diploma in Law.”

197. Except as otherwise provided in this Sharia Criminal Procedure Code the general order of procedure in trials before a Sharia Court, shall, so far as may be, be the same as is provided in Chapter XVI of this Code, for trials and other judicial proceedings in Sharia Courts.<sup>294</sup>

\*\* [Sections on “Oath”, “Witness not compelled to take oath or affirmation”, and “Manner of taking oath or affirmation”]<sup>295</sup>

198. No person of the Islamic faith shall be required to take an oath in any court unless:

- (a) he has been given an opportunity to complete<sup>296</sup> the ablution prescribed by the Islamic faith for persons taking oath on the Holy Qur’an; <sup>297</sup>and
- (b) the oath is administered by a person of the Islamic faith; and
- (c) the oath is taken upon a copy of the Holy Qur’an printed in the Arabic language.<sup>298</sup>

199. The court shall prevent the putting of irrelevant questions to witnesses and shall protect them from any language, remarks or gestures likely to intimidate them; and it shall prevent the putting of any question of an indecent or offensive nature unless such question bears directly on facts which are material to the proper appreciation of the facts of the case.

200. (1) Save as otherwise provided in subsection (2) of section 153, all evidence in every trial shall be taken in the presence of the accused.

(2) Save as otherwise provided in this Sharia Criminal Procedure Code, the evidence of each witness and the examination and statement, if any, of the accused shall be recorded in writing by or under the superintendence of the court.<sup>299</sup>

(3) The record may ordinarily be in the form of a narrative and not in the form of question and answer, but in the discretion of the court any particular question and answer may be taken down in full.

(4) After recording the evidence of a witness the court may also record or cause to be recorded such remarks as it thinks material respecting the demeanour of such witness whilst under examination.

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<sup>294</sup> Kebbi and Sokoto omit this section. In CPC, the section requires procedure in inquiries and trials before the magistrates’ and native [area] courts to conform so far as may be to trials in the High Court.

<sup>295</sup> At this point CPC has three sections omitted here, as follows: §229: “*Oath*. (1) Every witness giving evidence in any inquiry or trial under this Criminal Procedure Code may be called upon to take an oath or make a solemn affirmation that he will speak the truth. (2) The evidence of any person, who by reason of youth or ignorance or otherwise is in the opinion of the court unable to understand the nature of an oath, may be received without the taking of an oath or making of an affirmation if in the opinion of the court he is possessed of sufficient intelligence to justify the reception of the evidence and understands the duty of speaking the truth.” §230: “*Witness not compelled to take oath or make affirmation*. No witness, if he refuses to take an oath or make a solemn affirmation, shall be compelled to do so or asked his reason for so refusing but the court shall record in such a case the nature of the oath or affirmation proposed, and the fact of the refusal of the witness together with any reason which the witness may voluntarily give for his refusal.” §231: “*Manner of making oath or affirmation*. A witness shall take an oath or make a solemn affirmation in such a manner as the court considers binding on his conscience.”

<sup>296</sup> Gombe, Jigawa, Kebbi: “perform”.

<sup>297</sup> Kebbi, Sokoto: “Glorious Qur’an”.

<sup>298</sup> Kebbi, Sokoto: “Glorious Qur’an”. Jigawa: “printed in the Arabic text”.

<sup>299</sup> Kebbi, Sokoto: “shall be recorded in writing by the court”.



201. (1) For the purpose of enabling the accused to explain any circumstances appearing in the evidence against him the court may, if the accused so agrees, at any stage of a trial, after explaining to the accused the effect of subsections (2) and (3), put such questions to him as the court considers necessary and in such case shall for the purpose aforesaid question him generally on the case after the witnesses for the prosecution have been examined and before he is called on for his defence.
- (2) The accused shall not render himself liable to punishment by refusing to answer such questions or by giving false answers to them; but the courts may draw such inference from such refusal or answers as it thinks just.
- (3) The answers given by the accused may be taken into consideration in the trial.
- (4) The sole purpose of such examination shall be to discover the line of defence and to make clear to the accused the particular points in the case for the prosecution which he has to meet in his defence and there shall be nothing in the nature of a general cross-examination for the purpose of establishing the guilt of the accused.
- (5) No oath shall be administered to the accused for the purposes of an examination under this section.<sup>300</sup>
202. (1) An accused person shall not be a competent witness on his own behalf in any trial, whether he is accused solely or jointly with another person or persons, but he may be a competent witness in proceedings against any person or persons tried jointly with him.<sup>301</sup>
- (2) The deposition, if any, of the accused recorded under subsection (1) may be put in evidence in any other trial for any other offence which such deposition or such answers may tend to show he has committed.<sup>302</sup>

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<sup>300</sup> Kebbi and Sokoto omit this section entirely.

<sup>301</sup> This is directly contradictory to CPC §236(1), which says that “An accused person *shall* be a competent witness on his own behalf in any inquiry or trial, whether he is accused solely or jointly with another person or persons, *and* his evidence may be used in proceedings against any person or persons tried jointly with him; and the following provisions shall have effect: (a) the accused shall not be examined as a witness except at his own request; (b) before giving evidence the accused shall be warned by the court that he is not bound to give evidence, and that, if he does so, his evidence may be used at the inquiry or trial; (c) the failure of the accused to give evidence shall not be made the subject of any comment by the prosecution, but the court may draw such inference as it thinks just; (d) the accused shall not be asked in cross-examination, and if asked shall not be required to answer, any question tending to show that he has committed or been convicted of or been charged with an offence other than that wherewith he is then charged, or is of bad character, unless: (i) the proof that he has committed or been convicted of such other offence is admissible evidence to show that he is guilty of the offence wherewith he is then charged; or (ii) he has personally or by his legal practitioner asked questions of the witnesses for the prosecution with a view to establishing his own good character, or the nature or conduct of the defence is such as to involve imputations on the character of the prosecutor or the witnesses for the prosecution; (iii) he has in his evidence made statements against any other persons tried jointly with him; (e) no prosecution in respect of such evidence for the offence of giving false evidence shall be instituted against the accused except with the sanction of a judge of the High Court.” CPC then has subsection (2) as here. Kebbi and Sokoto as here but they omit from subsection (1) “but he may be a competent witness in proceedings against any person or persons tried jointly with him.”

<sup>302</sup> Borno, Jigawa, Kebbi, Sokoto omit subsection (2).

203. (1) Any Sharia Court may at any stage of any trial or other judicial proceeding under this Sharia Criminal Procedure Code summon any person as a witness or call as a witness any person in attendance though not summoned as a witness, and shall summon or call any such person:
- (a) if his evidence appears to the court to be essential to the just decision of the case; or
  - (b) on the application of the Attorney-General, and if such application is made, the accused shall have a similar right, on applying to the court, to have any person summoned or called as a witness by the court.<sup>303</sup>
- (2) The court may examine or allow the prosecutor or complainant or the accused, as the case may require, to impeach or examine any person summoned or called as a witness under this section, and shall allow the prosecutor or the accused, as the case may require, to impeach or examine any person so summoned or called under paragraph (b) of subsection (1).
- (3) Any person summoned or called as a witness under the provisions of this section may:
- (a) if impeached or examined by the prosecutor or complainant be impeached or cross-examined by the accused and then re-examined by the prosecutor or complainant;<sup>304</sup>
  - (b) if impeached or examined by the accused be impeached or cross-examined by the prosecutor or complainant and then be re-examined by the accused.<sup>305</sup>
- (4) Any person summoned or called as a witness under the provisions of this section who is examined by the court may be impeached or cross-examined by the prosecutor or complainant and by the accused.<sup>306</sup>
- (5) The powers conferred by this section may be exercised whether or not the person to be summoned or called and examined has already been examined as a witness in the proceedings.<sup>307</sup>
204. (1) In any proceedings pending before a court, the court may upon application either orally or in writing by any party, issue a warrant or order for bringing up before the court any person confined in any place under sentence or under remand or otherwise, to be examined as a witness in the proceedings.
- (2) The person mentioned in any such order shall be brought before the court under custody.

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<sup>303</sup> This entire section as in CPC after amendment by NN 12 of 1964, except as noted.

<sup>304</sup> CPC and Kebbi omit the words “impeached or” throughout this sub-subsection. Jigawa omits “and then re-examined by the prosecutor or complainant”. Borno omits both sub-subsections of subsection (3), evidently in error as it has the prefatory language.

<sup>305</sup> CPC omits the words “impeached or” throughout this sub-subsection. Kebbi omits the sub-subsection entirely. Jigawa omits “and then be re-examined by the accused”.

<sup>306</sup> CPC begins this subsection with: “Notwithstanding anything contained in section 222 of the Evidence Law, any person . . .”. CPC again omits the words “impeached or”. Borno omits the subsection entirely.

<sup>307</sup> Borno omits subsection (5).

205. (1) The evidence of a witness given and duly recorded in writing in any judicial proceeding under this Sharia Criminal Procedure Code may in the discretion of the court be read and accepted as evidence in any subsequent proceedings concerning the same cause or matter against the same accused or in a later stage of the same proceedings, if the witness is dead or cannot be found or is incapable of giving evidence or if his presence cannot be obtained without an amount of delay, expense or inconvenience which the court considers unreasonable in the circumstances of the case, *provided that* the questions in issue are substantially the same on each occasion and that if the witness is a witness for the prosecution, the accused had the right and opportunity to cross-examine the witness.

Illustration:

*Where A is tried and convicted of causing grievous hurt to B and B subsequently dies of his injuries, A may be tried again for intentional homicide.<sup>308</sup> B's evidence at the first trial may be used in the second trial, B being dead and the questions in issue at each trial substantially the same.*

- (2) If a witness is produced and examined in any judicial proceeding under this Sharia Criminal Procedure Code, his evidence given and duly recorded in writing at any like proceeding previously held against the same accused in which the questions in issue were substantially the same or in a previous stage of the same judicial proceeding may be read out after the evidence in chief has been given and he may be examined and cross-examined upon it and it may be accepted as evidence in court.<sup>309</sup>
- (3) The court may, when it thinks that a witness has told the truth at a previous stage and is lying before it, ignore the evidence given before it and rely on the evidence given previously.<sup>310</sup>
206. Where there are several accused, the statements of each made in answer to examination under section 201 or given in evidence under section 202 of this Code may be taken into consideration by the court and shall be admissible for or against himself and any of the other accused at the same or any subsequent stage of the same proceedings, but such statements made by one of the accused shall not be admitted at the trial of the other accused unless the accused person who made such statement is being tried jointly with the other accused and the statements were made in the presence of the other accused who shall have had an opportunity of impeaching or cross-examining the accused who made them.<sup>311</sup>
207. When any evidence is given in a language not understood by the accused and the accused is present in court, it shall be interpreted to him in a language understood by him.
208. (1) When the services of an interpreter are required by any court or justice of the peace for the interpretation of any evidence, statement or other proceedings, he shall be bound to state the true interpretation of the evidence, statement or other proceedings.
- (2) When the services of an interpreter are used in any proceedings by a court or justice of the peace, the record of the proceedings shall state the name of the

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<sup>308</sup> CPC, Borno, Gombe, Jigawa, Kaduna, Kebbi, Sokoto, Zamfara: "culpable homicide punishable with death".

<sup>309</sup> Kebbi and Sokoto omit subsection (2).

<sup>310</sup> Kebbi and Sokoto omit subsection (3).

<sup>311</sup> CPC: omits "impeaching or". Kebbi and Sokoto omit the whole section.

interpreter, the languages which and in which he interprets, and the fact that he has been bound in accordance with the provisions of subsection (1) to state the true interpretation of the evidence, statement or other proceedings.<sup>312</sup>

209. Whenever in the course of any judicial proceeding under this Sharia Criminal Procedure Code the court thinks it advisable to view the place where the offence is alleged to have been committed or any other place, the court may either adjourn to that place and there continue the proceedings or adjourn the case and proceed to view the place concerned accompanied by the accused and may cause any witness to be conducted thither and may take any evidence or hear any statement or explanation by the accused on the spot, and the prosecutor and the counsel for the accused, if any, shall have the right to be present at the view.

210. (1) Where the age of any person, or whether a person is under or above a specified age, is in question in any judicial proceeding under this Sharia Criminal Procedure Code, the court may determine such question by taking into account one or both of the followings, namely:

- (a) the apparent physical appearance of the person concerned;
- (b) any evidence, in relation to the age of the person concerned, received by the court in accordance with the provisions of this Sharia Criminal Procedure Code.

(2) The evidence of a witness, who is not an expert, shall be admissible for the purpose of this section.<sup>313</sup>

211. (1) Whenever it appears to a court that a person who is so dangerously ill that there is a possibility that he may not recover is able and willing to give evidence relating to any offence, the court may take in writing the statement of such person.<sup>314</sup>

(2) When a statement is taken in accordance with subsection (1) the court shall certify that the statement is a correct record of the statement made by such person.<sup>315</sup>

(3) The court shall record its reason for proceeding under this section and shall also record thereon date and place of taking the statement.

212. Whenever in the course of any judicial proceeding under this Sharia Criminal Procedure Code it appears to the court that the examination of a witness is necessary for the ends of justice and that the attendance of such witness cannot be procured without an amount of delay, expense or inconvenience which in the circumstances of the case would be unreasonable, such court may dispense with his attendance and may issue a commission to any court within the local limits of whose jurisdiction such witness resides to take his evidence.<sup>316</sup>

213. (1) The court issuing a commission under section 212 may send any interrogatories in writing submitted by the prosecution or the defence or prepared by itself which it

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<sup>312</sup> As in CPC after amendment by NN 12 of 1964.

<sup>313</sup> As in CPC after amendment by NN 12 of 1964, except that in subsection (1)(b) CPC has “the provisions of the Evidence Law or this Criminal Procedure Code”, and in subsection (2) it has “who is not an expert within the meaning of section 56 of the Evidence Law shall be admissible...”.

<sup>314</sup> CPC adds “and may invite him to take an oath as to the truth of the statement”.

<sup>315</sup> Kaduna omits subsection (2), renumbering the following subsection as (2).

<sup>316</sup> Kebbi and Sokoto omit this section.

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deems relevant to the questions at issue to the court to which the commission is directed which shall examine the witness upon such interrogatories.

(2) The prosecutor and the accused may appear in person or by counsel before the Sharia Court taking evidence on commission and examine, cross-examine or re-examine, as the case may be such witness.<sup>317</sup>

(3) A commission shall be addressed to a court and not personally to an officer of the court and, if the record or extracts from the record are not sent with the commission, sufficient information shall be given to enable the examining court to understand the point upon which the evidence of the witness is required.<sup>318</sup>

214. (1) After any commission issued under section 212 has been duly executed, it shall be returned together with the deposition of the witness examined thereunder to the court out of which it issued; and the commission, the return thereto and the deposition shall be open at all reasonable times to inspection by the prosecution or defence and subject to all just exceptions may be read in evidence in the case and shall form part of the record.

(2) Any deposition of a witness examined under a commission issued under section 212 of this Code may also be received in evidence at any subsequent stage of the same case before another court.<sup>319</sup>

215. Wherever in the course of any judicial proceedings under this Sharia Criminal Procedure Code, it appears to a court that for the purpose of ascertaining the nature, source or other attribute of identification of any article the examination of a witness who is abroad is necessary for the ends of justice and that the attendance of such witness cannot be procured without an amount of delay, expense or inconvenience which in the circumstances of the case would be unreasonable the court, after hearing the prosecutor, if any, and the accused or his counsel may dispense with his attendance and may settle such interrogatories in writing to be answered by such witness as may be necessary for the aforesaid purpose.<sup>320</sup>

216. (1) The evidence of any medical officer or registered medical practitioner taken before a Sharia Court in the presence of the accused may be read in evidence in any trial or other proceeding under the Sharia Criminal Procedure Code although he is not called as a witness.

(2) The Sharia Court may if it thinks fit summon such medical officer or registered medical practitioner to appear before it as a witness.

(3) (a) A written report by any medical officer or registered medical practitioner after he has examined any person or the body of any person may at the discretion of the court be admitted in evidence for the purpose of proving the nature of any

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<sup>317</sup> CPC has a proviso to this subsection, omitted here and in all SCPCs: "provided that where the court taking evidence on commission is a native court no counsel shall be entitled to appear."

<sup>318</sup> Kebbi and Sokoto omit this section.

<sup>319</sup> Kebbi and Sokoto omit this section.

<sup>320</sup> CPC has two further subsections: "(2) Where such interrogatories are settled by a court other than the High Court leave to serve such interrogatories shall be obtained from a judge of the High Court. (3) The interrogatories settled by the court under subsections (1) and (2) may be answered by affidavit duly sworn by the witness in question or in such other manner as a judge of the High Court may order."

injuries received by such person or, where such person has died, the nature of the injuries received by such person and, where possible, the physical cause of his death;

(b) On the admission of such report the same shall be read over to the accused and he shall be asked whether he disagrees with any statement therein and any such disagreement shall be recorded by the court; and

(c) If by reason of any such disagreement or otherwise it appears desirable for the ends of justice that such medical officer or registered medical practitioner shall attend and give evidence in person the court shall summon such medical officer or registered medical practitioner to appear as a witness.<sup>321</sup>

217. (1) Any document purporting to be a report under the hand of the Accountant General or Director of Audit or any expert in bacteriology, physiology, biology, pathology, chemistry or other branch of scientific knowledge in the service of any Government of Nigeria upon any matter or thing duly submitted to him for examination or analysis and report in the course of any proceeding under this Sharia Criminal Procedure Code may be used as evidence in any trial or other proceedings under this Sharia Criminal Procedure Code.<sup>322</sup>

(2) The court may, if it appears desirable for the ends of justice,<sup>323</sup> summon any person making a report under subsection (1) to give evidence in person.<sup>324</sup>

218. (1) The court shall, in the absence of evidence to the contrary, presume that the signature to any report or document referred to in section 216 or section 217 is genuine and that the person signing it held the office or the qualifications which he professed at the time when he signed it.

(2) Where any such report or document is intended to be produced by either party to the proceedings, a copy thereof shall be sent to the other party at least ten clear days before the day appointed for the hearing and, if it is not so sent, the court may, if it thinks fit, adjourn the hearing on such terms as it thinks proper.<sup>325</sup>

219. (1) If it is proved that an accused person has absconded and that there is no immediate prospect of arresting him, the court competent to try such person for the offence alleged may in his absence examine any witnesses produced on behalf of the prosecution and record their depositions.

(2) Any such deposition may on the arrest of such person be given in evidence at the trial for the offence with which he is charged if the deponent is dead or incapable of giving evidence or his attendance cannot be procured without an amount of delay,

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<sup>321</sup> As in Kano after amendment by NN 12 of 1964 and KS 15 of 1978.

<sup>322</sup> Kaduna adds a proviso to this subsection: “*Provided that* no such evidence shall be admissible in a trial in which the issue of paternity is sought to be established.”

<sup>323</sup> Sokoto adds here “and if the accused so request shall”.

<sup>324</sup> Kebbi has an entirely different subsection (2): “Any depositions taken under subsection (1) may be given in evidence when any person is subsequently accused of the offence if the deponent is dead or incapable of giving evidence beyond the limits of the State.” This seems to be a typographical error, see §218(2) below.

<sup>325</sup> Kebbi omits subsection (2).

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expense or inconvenience which in the circumstances of the case would be unreasonable.

220. (1) If it appears that an offence punishable with death or imprisonment for ten years<sup>326</sup> and upwards has been committed by some person or persons unknown, any Sharia Court may hold an inquiry and examine any witness who can give evidence concerning the offence.
- (2) Any depositions taken under subsection (1) may be given in evidence when any person is subsequently accused of the offence if the deponent is dead or incapable of giving evidence or beyond the limits of the State.
221. (1) At any time after the completion of an investigation under this Sharia Criminal Procedure Code into any alleged offence and before the commencement of any trial resulting therefrom, the Attorney-General may by writing under his hand exercise his power to inform the court which has taken cognizance of such offence that he does not, in respect of all or any of the alleged offences, intend to prosecute the person or any one or more of the persons accused.
- (2) At any stage in any inquiry or at any stage before the finding in any trial under this Sharia Criminal Procedure Code the Attorney-General may in writing or in person exercise his power to inform the court conducting such trial that he does not in respect of all or any of the offences alleged or charged intend to prosecute or further to prosecute the person or any one or more of the persons accused.
- (3) When the Attorney-General exercises the powers referred to in subsection (2) all proceedings in respect of the offence alleged or charged shall be stayed and the person accused shall be discharged of and from the same, but such discharge shall not operate as a bar to any subsequent proceedings against the person accused on account of the same facts.
- (4) The powers of the Attorney-General mentioned in this section do not apply to *hudud* and *qisas* offences.<sup>327</sup>
222. No influence by means of any promise or threat or otherwise shall be used to an accused person to induce him to disclose or withhold any matter within his knowledge.
223. (1) If from the absence of a witness or any other reasonable cause it becomes necessary or advisable to postpone the commencement of or adjourn any trial, the court may if it thinks fit by order in writing stating the reasons therefor from time to time postpone or adjourn the same on such terms as it thinks fit for such time as it considers reasonable and may by a warrant remand the accused if in custody.
- (2) Notwithstanding the provisions of subsection (1), no court shall remand an accused person to custody under this section for a term exceeding five<sup>328</sup> days at a time.

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<sup>326</sup> Gombe: 14 years. Kebbi: 3 years. Sokoto: 5 years.

<sup>327</sup> CPC omits subsection (4). Kebbi and Sokoto have instead: "(4) In exercising powers conferred upon him under this section, the Attorney-General of the State shall have regard to the principles, norms and tenets contained in the State Sharia Penal Code and this Sharia Criminal Procedure Code." Gombe omits this entire section.

<sup>328</sup> CPC, Jigawa, Kebbi: 15 days.

224. (1) Subject to section 146,<sup>329</sup> if in the course of a trial before a court the evidence appears to warrant a presumption that the case is one that should be tried by some other court, the court holding the trial shall stay proceedings and submit the case with a brief report explaining its nature to a court which has jurisdiction.
- (2) The court to which the case is submitted may either try the case itself or refer the case for trial to any court subordinate to it which has jurisdiction.
- (3) If the court to which the case is submitted decides that the case should be tried the trial shall begin afresh.<sup>330</sup>
225. (1) Whenever a court having jurisdiction:
- (a) finds a person guilty after hearing the evidence for the prosecution and the defence; or
- (b) accepts a plea of guilty from a person,
- and after convicting such person is of the opinion that he ought to receive a punishment different in kind from, or more severe than that, which such court is empowered to inflict, it may record such opinion and submit the proceedings and send the accused to a court having the necessary powers of punishment.<sup>331</sup>
- (2) The court to which proceedings are submitted under subsection (1) shall pass such sentence or order in the case as it thinks fit and is according to law.
- (3) When more accused than one are being tried together and the court considers it necessary to proceed under subsection (1) in regard to all the accused it shall forward all the accused who are in its opinion guilty to the appropriate court.

Explanation:

*A court may where several persons are charged before it sentence some of the accused and forward the others under this section to an appropriate court for sentence.*

226. (1) When an accused person is found guilty of an offence the court may in passing sentence take into consideration any other offence of the accused person, whether or not a court has taken cognizance of such offence, if the accused admits the other offence and desires that it be taken into consideration.<sup>332</sup>
- (2) In exercising its powers under subsection (1), a court shall not pass a greater sentence than the maximum sentence:
- (a) which it could have passed on the accused person on conviction for the offence:

<sup>329</sup> Kaduna omits "Subject to section ---".

<sup>330</sup> As in Kano CPC after amendment by Edict No. 15 of 1978, except that at the end of subsection (1) Kano adds "or to the High Court". In CPC of 1960, subsection (1) does not have the prefatory "Subject to section 145", has "should be tried or committed for trial" instead of "should be tried", and refers twice to "inquiry or trial" instead of just "trial"; subsection (2) has "try the case itself or commit the accused for trial or refer the case for trial or commitment to any court . . ."; subsection (3), omitted entirely here, states what the court to which the case is submitted or referred should do if it considers that the accused should be committed for trial; and subsection (4) is as here except that it has "submitted or referred" not just "submitted". Borno omits this entire section.

<sup>331</sup> CPC adds "or to the High Court".

<sup>332</sup> CPC adds "and if the Attorney-General consents".



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- (i) in respect of which he has been found guilty; or
  - (ii) which he has admitted, and
  - (b) which it has jurisdiction to pass.
- (3) Where the accused person expresses a desire<sup>333</sup> under subsection (1) the court shall enter or cause an entry to that effect to be made on the record and upon sentence being pronounced the accused shall not, unless the conviction is set aside, be liable to be charged or tried in respect of any such offence so taken into consideration.<sup>334</sup>
227. (1) The court at any stage of the trial where there are several accused may by order in writing stating the reasons therefor stay the proceedings of the joint trial and may continue the proceeding against each or any of the accused separately.
- (2) Where it appears that the evidence of one of the accused is required for the prosecution of another accused, the accused whose evidence is required shall be acquitted or convicted<sup>335</sup> before his evidence is taken.
228. (1) Any Sharia Court may, and when so required by the Attorney-General shall, refer for the opinion of the Sharia Court of Appeal, any question of law which arises in the hearing of any case pending before it or may give judgment in any such case subject to the Sharia Court of Appeal's decision, and pending such opinion or decision, as the case may be, may either commit the accused to prison or release him on bail to appear when called on.
- (2) A reference to the Sharia Court of Appeal by a Sharia Court under subsection (1) shall set out:
- (a) the charge or complaint;
  - (b) the facts found to be admitted or proved;
  - (c) any submission of law made by or on behalf of the complainant or the accused;
  - (d) any question of law which the court desires to be submitted for the opinion of the Sharia Court of Appeal; and
  - (e) any question of law which the Attorney-General requires to be submitted for the opinion of the Sharia Court of Appeal.
- (3) Upon the Sharia Court of Appeal notifying its opinion or decision the case shall be dealt with in accordance with such opinion or decision.<sup>336</sup>
229. If the accused though not insane cannot be made to understand the proceedings the court shall proceed to try the issue of his fitness to plead and if it is established that he is not fit to plead he shall be treated in like manner as a person incapable of making his defence by reason of unsoundness of mind.<sup>337</sup>

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<sup>333</sup> CPC inserts here "and the Attorney-General gives consent".

<sup>334</sup> Kebbi and Sokoto add a subsection (4): "This section does not apply to *hudud* and *qisas* offences".

<sup>335</sup> Gombe omits "or convicted".

<sup>336</sup> Throughout this section CPC refers to the High Court rather than the Sharia Court of Appeal; Jigawa refers to the Upper Sharia Court. Kaduna adds a subsection (4): "In this section 'Sharia Court' includes Upper Sharia Court".

<sup>337</sup> CPC adds: "as provided in Chapter XXVI" = chapter XXIV here, PERSONS OF UNSOUND MIND.

230. Where an alkali of a Sharia Court having tried a case is prevented by illness or other unavoidable cause from delivering the judgment or sentence of the court, such judgment and the sentence, if the same has been reduced into writing and signed by the alkali may be delivered and pronounced in open court in the presence of the accused by any other alkali of the Sharia Court as may be appropriate.
231. In all cases where the opinions of the members of the court differ, the opinion of the majority shall prevail.
232. Where a court is constituted of an even number of alkalis and such court is evenly divided on any matter for decision the matter shall be referred for hearing before a court constituted of an uneven number of alkalis not less than three.
233. Every member of a court shall give his opinion on every question which the court has to decide and he shall give his opinion as to the sentence even though he was in favour of discharge.<sup>338</sup>
234. The opinions of the members of the court shall be taken in succession beginning with the junior in rank.

#### CHAPTER XX – THE JUDGMENT

235. In this chapter:
- “Commissioner” means such State Commissioner as the Governor may from time to time designate in that behalf.
236. (1) The judgment in every trial in a court shall be in writing and shall be pronounced, and the substance of it explained in a language understood by the accused in open court either on the day on which the hearing terminates or at some subsequent time of which due notice shall be given.
- (2) If the accused is in custody he shall be brought up to hear judgment delivered; if he is not in custody he shall be required to attend to hear judgment delivered unless his presence is dispensed with by the court.
- (3) No judgment delivered by any court shall be deemed to be invalid by reason only of the absence of any party or his counsel on the day or from the place notified for the delivery thereof, or of any omission to serve or defect in service on the parties or their counsel or any of them of the notice of such day and place.
237. (1) Every judgment shall contain the point or points for determination, the decision thereon and the reasons for the decision and shall be dated and signed or sealed by the court in open court at the time of pronouncing it.
- (2) If the judgment is a judgment of conviction, it shall specify the offence of which and the section of the Sharia Penal Code or other law under which the accused is convicted and the punishment to which he is sentenced.
- (3) If the judgment is a judgment of discharge,<sup>339</sup> it shall state the offence of which the accused is discharged and direct that he be set at liberty.

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<sup>338</sup> CPC has “acquittal” instead of “discharge”.

<sup>339</sup> CPC: “of acquittal”. Kebbi: “discharge or acquittal”.

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238. No sentence of *budud* or *qisas* shall be imposed on a person who is under the age of *taklif*.
239. (1) Where a person is convicted of a *hadd* or *qisas* offence<sup>340</sup> and it appears to the court by which he is convicted that he was under the age of *taklif* when he committed the offence<sup>341</sup> the court shall, without prejudice to the right of *diyab* in appropriate cases, deal with him in accordance with section 11 of the Children and Young Persons Law and section 95 of the Sharia Penal Code.<sup>342</sup>
- (2) The court shall report to the Commissioner in every case in which an order has been made under the provisions of subsection (1).<sup>343</sup>
240. (1) Where a woman convicted of an offence punishable with death, *qisas* or *hadd*<sup>344</sup> alleges that she is pregnant, or where the court by which a woman is convicted thinks fit so to do, the court shall, before sentence is pronounced upon her, determine the question whether or not she is pregnant.
- (2) The question whether the woman is pregnant or not shall be determined by the court on such evidence as may be given or put before it on the part of the woman or on the part of the prosecution, and the court shall find that the woman is not pregnant unless it is proved affirmatively to the satisfaction of the court that she is pregnant.<sup>345</sup>
241. When a person is sentenced to death the sentence shall direct that:
- he be beheaded;
  - in case of *qisas*, he be caused to die in the like manner he caused the death of his victim except such manner that is contrary to Sharia;<sup>346</sup>
  - in case of *zina*, he be stoned to death; and
  - in case of *hirabah*, he be caused to die by crucifixion.<sup>347</sup>

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<sup>340</sup> CPC: “of an offence punishable with death”.

<sup>341</sup> CPC: “under the age of seventeen”.

<sup>342</sup> CPC: “the court shall order that he be detained during the Governor’s pleasure, and if the court so orders, he shall be detained in accordance with the provisions of section 303, notwithstanding anything to the contrary in any written law.”

<sup>343</sup> Kebbi omits subsection (2).

<sup>344</sup> CPC: “punishable with death”.

<sup>345</sup> CPC has three more subsection to this section: “(3) Where under the provisions of subsection (2) it is proved affirmatively to the satisfaction of the court that the woman is pregnant, the court shall find accordingly and shall pass upon her a sentence of imprisonment for life. (4) Where under the provisions of subsection (2) it is not proved affirmatively to the satisfaction of the court that the woman is pregnant, the court shall find accordingly and pronounce sentence of death upon her. *Provided that* an appeal shall lie against the finding of the court to the Federal Court of Appeal, and, if the finding is reversed on appeal, the sentence of death shall be quashed and a sentence of imprisonment for life shall be substituted therefor. (5) The court of trial shall report to the Commissioner any case in which a sentence of imprisonment for life is passed or is substituted for a sentence of death under the preceding provisions of this section.”

<sup>346</sup> Kaduna has an illustration to this subsection: “Illustration. A kills B by way of juju or sodomy: A will not be executed in the like manner he caused the death of B because to do so is contrary to Sharia.”

<sup>347</sup> CPC has only one provision in this section: “When a person is sentenced to death, the sentence shall direct that he be hanged by the neck till he is dead.”

242. When a person is sentenced to suffer *qisas* for injuries the sentence shall direct that the *qisas* be carried out in the like manner the offender inflicted such injury on the victim.<sup>348</sup>

243. When a judgment of conviction is one from which an appeal lies, the court shall inform the convicted person that he has a right to appeal and of the period within which if he desires to appeal his appeal is to be presented.<sup>349</sup>

244. No court when it has signed its judgment shall alter or review the same, except as provided in section 274 or section 282 or to correct a clerical error.<sup>350</sup>

245. On the application of the accused a copy of the judgment, or when he so desires a translation in his own language if practicable, shall be given to him without delay and such copy shall be given free of cost.<sup>351</sup>

246. The original judgment shall be filed with the record of the proceedings.<sup>352</sup>

## PART VII – PROCEEDINGS SUBSEQUENT TO JUDGMENT

### CHAPTER XXI – APPEAL AND REVIEW

247. (1) Appeals from Sharia Courts in criminal matters shall be in accordance with the Sharia Courts Law or the Sharia Court of Appeal Law or this Sharia Criminal Procedure Code or any rules made under any of such laws.

(2) (a) Whoever is dissatisfied with the order, decision or judgment made by a Sharia Court or a Higher Sharia Court may appeal to the Upper Sharia Court sitting in its appellate jurisdiction;<sup>353</sup>

(b) Appeals from the Upper Sharia Court in criminal matters shall lie to the Sharia Court of Appeal.<sup>354</sup>

\*\* [Appeals from magistrates' courts]<sup>355</sup>

248. (1) An appeal in accordance with the provisions of this chapter shall be commenced by the appellant giving to the registrar of the court from which the appeal is brought or to the registrar of the court to which the appeal is brought notice of such appeal which may be verbal or in writing, and if verbal, shall be forthwith reduced to writing by the registrar and signed by the appellant, or by a legal practitioner if a legal practitioner is representing him.

(2) The notice of appeal shall be given in every case before the expiration of the thirtieth day or, where the appeal is against a sentence of caning, before the expiration

<sup>348</sup> CPC omits this section. Kaduna adds a proviso: “*Provided that* where, in the opinion of the Court, the reciprocal punishment shall be in excess of the injury suffered by the victim the Court shall direct that the reciprocal punishment be substituted with the payment of *diyab* as prescribed under Schedule B of the Sharia Penal Code.”

<sup>349</sup> This section omitted from all SCPCs.

<sup>350</sup> This section omitted from all SCPCs except Borno.

<sup>351</sup> This section omitted from all SCPCs except Borno.

<sup>352</sup> This section omitted from all SCPCs except Borno.

<sup>353</sup> Kebbi, Sokoto omit “or a Higher Sharia Court”.

<sup>354</sup> CPC omits subsection (2). Jigawa omits sub-subsection (b) of subsection (2).

<sup>355</sup> CPC has here a section on appeals from magistrates' courts.

of the seventh day<sup>356</sup> after the day on which the court has made the decision appealed against.

(3) Where an appellant gives verbal notice of appeal at the time of the pronouncement of the decision and before the opposite party or the legal practitioner representing him has left the court, such verbal notice of appeal shall be recorded by the court with a note of the presence of the respondent or the legal practitioner representing him and written notice of appeal shall not thereafter be necessary.

(4) If the appellant is in prison he may present his notice of appeal and the memorandum of the grounds of appeal required by section 249 of this Code to the officer in charge of the prison who shall thereupon forward such notice and memorandum to the registrar of the court from which the appeal is brought.

(5) An appellant shall file as many copies of this notice of appeal as there are parties to be served, in addition to the copies for the court and the Attorney-General.

249. (1) An appellant in an appeal brought in accordance with the provisions of this chapter shall within thirty days or, if the appeal is against a sentence of caning, within seven days<sup>357</sup> of the day of the pronouncing of the decision appealed against file with the registrar of the court from which the appeal is brought a memorandum setting forth the ground of his appeal which shall be signed by the appellant or the legal practitioner representing him.

(2) An appellant shall file as many copies of his memorandum or grounds of appeal, as there are parties to be served, in addition to the copies for the court and the Attorney-General.

250. (1) In his memorandum of grounds of appeal the appellant shall set forth in a separate ground of appeal each error, omission, irregularity or other matter on which he relies or of which he complains with particulars sufficient to give the respondent due notice thereof;

*Provided that* the non-inclusion of grounds of appeal or the particulars thereof shall not defeat the competence of the appeal.<sup>358</sup>

(2) Without prejudice to the generality of subsection (1), the memorandum of grounds of appeal may set forth all or any of the following grounds, that is to say:

- (a) that the lower court had no jurisdiction in the case; or
- (b) that the lower court has exceeded its jurisdiction in the case; or
- (c) that the decision has been obtained by fraud; or
- (d) that the appellant has been tried and convicted or the appellant forms the subject of a hearing or trial pending before a competent court;<sup>359</sup> or
- (e) that admissible evidence has been rejected, or inadmissible evidence has been admitted, by the lower court, and that in the latter case there is not sufficient

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<sup>356</sup> CPC: "fifteenth day". Kebbi and Sokoto omit the whole separate provision here on sentences of caning.

<sup>357</sup> CPC: "fifteen days". Kebbi and Sokoto omit the whole separate provision here on sentences of caning.

<sup>358</sup> CPC omits the proviso.

<sup>359</sup> CPC: "that the case has already been heard or tried and decided by or forms the subject of a hearing or trial pending before a competent court".

admissible evidence to sustain the decision after rejecting such inadmissible evidence;<sup>360</sup> or

(f) that the decision is unreasonable or cannot be supported having regard to the evidence; or

(g) that the decision is erroneous in point of law; or

(h) that some other specific illegality, not hereinbefore mentioned and substantially affecting the merits of the case, has been committed in the course of the proceedings in the case; or

(i) that the sentence passed on conviction is excessive or inadequate, unless the sentence is one fixed by law.

(3) Where the appellant relies upon the grounds of appeal mentioned in paragraph (d) of subsection (2) the name of the court shall be stated and, if it is alleged that a decision has been made, the date of such decision.

(4) Where the appellant relies upon the ground of appeal mentioned in paragraph (g) of subsection (2) the nature of the error shall be stated and, where he relies upon the ground of appeal mentioned in paragraph (h) of that subsection the illegality complained of shall be clearly specified.

251. (1) Within thirty days or in the case of an appeal against a sentence of caning, within seven days<sup>361</sup> after the pronouncing of the decision of the Sharia Court the appellant shall enter into a bond with or without a surety as the alkali may require, in such sum as the alkali may specify, or, in lieu of furnishing a surety or sureties, as the case may be, he may deposit with the alkali the sum required.

(2) The condition of the bond shall be for the due prosecution of the appeal and for abiding the result thereof, including all costs of the appeal.

(3) If there shall be any breach of the bond the deposit, if any, shall be forfeited and shall be applied to discharging the condition of the bond.

(4) If the appellant is in custody he may at the discretion and on the order of a Sharia Court alkali be released on bail on complying with the provisions of this section as to security for prosecuting the appeal and abiding the results thereof.

(5) If the appellant who is in custody is not within the district or populated area<sup>362</sup> of the alkali from whose decision the appeal is made, any alkali of the district or populated area in which such appellant may be shall have the powers and functions given and assigned to the alkali by this section.

\*\* [appeals from High Court/Upper Sharia Court]<sup>363</sup>

<sup>360</sup> Kebbi omits this subsection.

<sup>361</sup> CPC: 15 days. Kebbi and Sokoto omit the whole separate provision here on sentences of caning.

<sup>362</sup> CPC: “not within the district”. Jigawa: “not within the jurisdiction”, in both cases twice in this subsection.

<sup>363</sup> CPC has here a section on appeals from the High Court, which we need not consider further. All SCPCs except Jigawa have made this into a section providing for appeals from Upper Sharia Courts to the Sharia Court of Appeal – redundantly in view of §247(2)(b) above. Jigawa: “Appeals from the Sharia Courts in criminal matters shall lie to the Upper Sharia Court and the decision of the Upper Sharia Court shall be final.”

252. (1) The Grand Kadi<sup>364</sup> may on his own motion call for and examine the record of any proceedings in any criminal cause or matter before any court for the purpose of satisfying himself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed and as to the regularity of the proceedings of the court.
- (2) After the exercise of his powers under subsection (1) the Grand Kadi may refer the record of the proceedings to the court to which an appeal from a decision of the court referred to in subsection (1) would lie and such appellate court shall treat such reference as if it were an appeal before it from the court referred to in subsection (1) at the instance of such party or person as the Grand Kadi shall designate whether or not an appeal lies at the instance of such party or person.
- (3) The powers conferred upon the Grand Kadi by this section shall not be exercised in respect of any proceedings where a party has instituted any appeal proceedings in respect thereof or any proceedings for a review have been instituted under the provisions of the Sharia Courts Law.<sup>365</sup>
253. When the record of any proceedings in a criminal court is before the Grand Kadi for examination, neither the accused nor the complainant or prosecutor shall be entitled to be heard either in person or by agent, or legal practitioner.<sup>366</sup>
254. A sentence other than a sentence of death, *hudud* or *qisas*<sup>367</sup> shall take effect notwithstanding an appeal unless:
- (a) a warrant has been issued under section 270 when no sale of property shall take place until the sentence has been confirmed or the appeal decided, or
- (b) an order for release on bail pending any further proceedings has been made by a competent court when the time during which the convicted person had been so released shall be excluded in computing the period of any sentence which he has ultimately to undergo.<sup>368</sup>
255. A court exercising appellate jurisdiction shall not in the exercise of such jurisdiction interfere with the finding or sentence or other order of the lower court on the ground only that evidence has been wrongly admitted or that there has been a technical irregularity in procedure, unless it is satisfied that a failure of justice has been occasioned by such admission or irregularity.<sup>369</sup>

<sup>364</sup> CPC, Borno, Zamfara: “Chief Judge”, throughout this section.

<sup>365</sup> This as in Kano CPC after amendments by NN 12 of 1964 and KSLN 22 of 1983, except that there are two additional subsections in CPC: “(3) No reference shall be made under this section in respect of any finding of not guilty unless the record of the proceedings was called for within six months of the date of the delivery of the judgment. (4) Whenever the record of a case comes before the Chief Judge under this section he may by an order in writing direct that a person in confinement be released on bail or on his own bond pending any further proceedings or order.”

<sup>366</sup> Only Kaduna includes “or legal practitioner; CPC and all other SCPCs omit this.

<sup>367</sup> CPC does not mention sentences of *hudud* or *qisas* here. Gombe omits *hudud* but includes *qisas*.

<sup>368</sup> Bauchi §6: “(1) No payment of *diyah* or amputation of limb or stoning to death under the Sharia Penal Code shall be carried out until after time for appeal lapses and the convict fails to appeal. (2) For the purposes of subsection (1) of this section appeal includes an application for leave to appeal out of time.”

<sup>369</sup> All SCPCs omit “that evidence has been wrongly admitted or that”. At the end of this section, Borno has “omitted” instead of “admitted”.

256. After the pronouncement of the judgment of an appeal court, the court from which the appeal came shall have the same jurisdiction and power to enforce, and shall enforce any decision which may have been affirmed, modified, amended or substituted by the appeal court, or any judgment which may have been pronounced by the appeal court in the same manner in all respects as if such decision or judgment had been pronounced by itself.<sup>370</sup>

257. No alkali of a Sharia Court shall sit as a member of an appeal court when such appeal court is hearing an appeal from a finding, sentence or order passed by him or by a court of which he is a member.

258. Every criminal appeal, other than an appeal from a sentence of fine or *diyab*<sup>371</sup> shall finally abate on the death of the appellant.

#### CHAPTER XXII – EXECUTION

259. In this chapter:

“Convicted person” means a person convicted of an offence punishable under the Sharia Penal Code or any other written Law.<sup>372</sup>

\*\* [Section on “Sections not applicable to native [subsequently area] courts”]<sup>373</sup>

260. After a sentence of death, amputation or *qisas* of the limbs<sup>374</sup> has been pronounced in the Upper Sharia Court the presiding alkali shall, as soon as may be convenient, forward to the Governor<sup>375</sup> a copy of the trial proceedings including the judgment and sentence together with a report in writing containing any recommendation or observations on the case which he thinks fit to make.

261. (1) When any convicted person:

(a) has been sentenced to death or *qisas* of the limbs<sup>376</sup> or amputation by the Upper Sharia Court; and

(b) (i) has not appealed within the time prescribed by law; or

(ii) has unsuccessfully appealed against the conviction; or

(iii) having filed a notice of appeal has failed to prosecute such appeal,

the Governor, after consultation with the Executive Council and the body of Islamic jurists of the State<sup>377</sup> may<sup>378</sup> affirm the sentence.

<sup>370</sup> Borno, Gombe, Jigawa, Zamfara omit the words “court in the same manner in all respects as if such decision or judgment”; this is evidently a typographical error.

<sup>371</sup> CPC omits “or *diyab*”.

<sup>372</sup> CPC: “means a person convicted of an offence punishable with death”.

<sup>373</sup> At this point CPC has a section omitted here, as follows: “§293: *Sections not applicable to native courts.* Nothing in sections 294-301 inclusive [= SCPC §§256-263] shall affect the procedure prescribed in section 394 [omitted in SCPC] to be followed by a native court having jurisdiction over capital offences.” In Kano this section was repealed by KSLN 22 of 1983, conforming this part of the Kano CPC to the earlier repeal of Chapter XXXIII on TRIALS IN NATIVE COURTS.

<sup>374</sup> CPC, Borno, Gombe, Jigawa, Zamfara omit “amputation or *qisas* of the limbs”. Kaduna: “death, amputation or *qisas*”.

<sup>375</sup> Kebbi and Sokoto insert here: “through the Attorney-General”.

<sup>376</sup> Kaduna omits “of the limbs”.



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- (2) The Governor, in the public interest, may in consultation with the Executive Council pardon any convicted person of an offence punishable with death other than *hudud* or *qisas*.<sup>379</sup>
262. If the Governor affirms the sentence in section 261 the said sentence shall be carried into effect in accordance with the provisions of this chapter.<sup>380</sup>
263. The Governor shall communicate the decision referred to in section 262 to the Upper Sharia Court or Sharia Court of Appeal.<sup>381</sup>
264. (1) When the Governor has communicated his decision in accordance with the provisions of section 263 he shall by order either:
- (a) direct that the sentence of death, amputation or *qisas* shall be executed and the order shall state the date, time and place for the sentence to be carried out and give directions as to the place of burial of the body or disposal of the dismembered body part and treatment of the wound; or
  - (b) direct that the execution shall take place at such date, time and place as shall be specified by some officer specified in the order and that the body or dismembered body part of the person executed shall be buried at such place as shall be specified by such officer and shall also give directions on the treatment of the wound.
- (2) When the date, time and place of carrying out the sentence of death, amputation or *qisas* and the place of burial is not stated in the Governor's order the officer specified in the order shall endorse thereon the date, time and place of carrying out the sentence of death, amputation or *qisas* and the place of burial or treatment.
- (3) The Governor may make rules prescribing the form of any order, direction or specification mentioned in this section.<sup>382</sup>

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<sup>377</sup> CPC: "after consultation with the advisory council of the State on the prerogative of mercy, shall decide whether or not he should exercise any power conferred on him by section 192 of the Constitution". Borno, Gombe, Jigawa, Zamfara: "after consultation with the Executive Council and the State Council of Ulamas". Kaduna: "the body of Islamic jurists of the State". Sokoto: "the Executive Council and the State Advisory Council on Religious Affairs". Kebbi does not require consultation with anybody, but makes affirmation of the sentence subject to sub-section (2), see below. Bauchi also does not require the Governor to consult with anyone.

<sup>378</sup> Jigawa, Kaduna, Kebbi say "may affirm the sentence". Borno, Gombe, Sokoto, Zamfara say "shall affirm the sentence". Bauchi says "shall" as to certain cases, but the section (§40) is obviously confused.

<sup>379</sup> CPC and Gombe omit subsection (2). Kaduna: "The Governor may, in the public interest, and in consultation with the body of Islamic jurists, pardon any convicted person in accordance with section 212 of the Constitution of the Federal Republic of Nigeria, 1999." Kebbi: "The Governor, may, with the approval of the relation of the deceased, pardon any convicted person of the offence punishable with death other than *hudud* or *qisas*."

<sup>380</sup> CPC: "If the Governor decides that he should not exercise a power referred to in [the previous section] in respect of a convicted person the sentence of death pronounced upon the convicted person shall be carried into effect in accordance with the provisions of this chapter."

<sup>381</sup> CPC: "to the High Court".

<sup>382</sup> In this section, CPC refers only to sentences of death, and does not mention disposal of dismembered body parts or treatment of wounds; otherwise the provisions are the same.

265. (1) A copy of the Governor's order shall be sent to the sheriff and the sheriff shall cause effect to be given thereto.<sup>383</sup>
- (2) If for any reason a copy of the Governor's order is not received by the sheriff before the date fixed therein or endorsed thereon<sup>384</sup> for execution, the sheriff shall nevertheless direct that the order shall be carried into effect upon the earliest convenient day after the receipt thereof.
- (3) The said copy of the Governor's order or the directions issued by the sheriff under subsection (2) shall be sufficient authority to all persons to carry the sentence into effect in accordance with the terms thereof.<sup>385</sup>
266. (1) If a woman sentenced to death, amputation or *qisas*<sup>386</sup> is subsequently alleged to be pregnant the superintendent or other officer in charge of the prison in which she is detained shall report such allegation to the Governor who shall thereupon order the sentence of death, amputation or *qisas* to be postponed until a medical officer to be appointed in writing by the Governor has determined whether or not the woman is pregnant, and make a report in writing of this finding to the Governor.
- (2) Where the pregnancy is proved the sentence shall be postponed until after delivery and weaning of the child.<sup>387</sup>
267. (1) When the Governor exercises a power referred to in section 261(2) he shall issue an order, directing that the execution not be proceeded with, and, as the case may be, that the convicted person be released, or that he be imprisoned for such a term as may be specified in the order, or that he be otherwise dealt with as may be specified in the order subject to any condition as may be specified therein.
- (2) The Governor shall send to the superintendent or other officer in charge of the prison in which the convicted person is confined a copy of any order issued by the Governor in accordance with the provisions of this section.
- (3) The superintendent or other officer in charge of the prison in which the convicted person is confined shall comply with and give effect to every such order sent to him under the provisions of this section.<sup>388</sup>
268. (1) When an accused person is sentenced to imprisonment, the court passing the sentence shall forthwith issue a warrant committing him to prison and shall send the warrant and prisoner to the prison in which he is to be confined.
- (2) Every warrant referred to in subsection (1) shall be directed to the officer in charge of the prison or other place in which the prisoner is to be confined and shall be lodged with the official in charge of such prison or other place.
269. (1) When any person is ordered to be detained during the Governor's pleasure he shall notwithstanding anything in this Sharia Criminal Procedure Code or in any other

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<sup>383</sup> Kebbi has in this section and the next two, "Grand Kadi" in place of "sheriff", and Sokoto has "sheriff or Chief Mufti".

<sup>384</sup> All SCPCs omit the words "endorsed thereon".

<sup>385</sup> Borno omits subsection (3).

<sup>386</sup> CPC: deals with sentences of death only in this section, not mentioning amputation or *qisas*.

<sup>387</sup> CPC omits this subsection.

<sup>388</sup> Gombe omits this entire section.

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written law be liable to be detained in such place and under such conditions as the Governor may direct and whilst so detained shall be deemed to be in legal custody.

(2) A person detained during the Governor's pleasure may at any time be discharged by the Governor on licence.

(3) A licence may be in such form and may contain such conditions as the Governor may direct.

(4) A licence may at any time be revoked or varied by the Governor and where a licence has been revoked the person to whom the licence relates shall proceed to such place as the Governor may direct and if he fails to do so, may be arrested without warrant and taken to such place.<sup>389</sup>

270. (1) When an offender is sentenced to pay a fine the court passing the sentence may, in its discretion although the sentence directs that in default of payment of the fine the offender shall be imprisoned, issue a warrant for the levy of the amount:

(a) by the seizure and sale of any movable property belonging to the offender; or

(b) by the attachment of any debts due to the offender; or

(c) subject to the provisions of the Land Use Act 1978<sup>390</sup> by the attachment and sale of any immovable property of the offender situated within the jurisdiction of the court.

(2) A warrant for seizure and sale of the movable property of an offender shall be addressed to the court within the local limits of whose jurisdiction it is to be executed.

(3) When execution of a warrant is to be enforced by attachment of debts or by sale of immovable property, the warrant shall be sent for execution to any court competent to execute decrees for the payment of money in civil suits and such court shall follow the procedure for the time being in force for the execution of such decrees.

271. Except in the case of a sentence of death or *qisas* of the limbs or amputation<sup>391</sup> a warrant for the execution of any sentence or other order of a criminal court shall be issued by the court which passed such sentence or order.

272. (1) When an offender has been sentenced to a fine only with or without a sentence of imprisonment in default of payment of the fine, the court authorised by section 271 to issue a warrant may exercise all or any of the powers following, that is to say:

(a) allow time for payment of the fine;

(b) direct that the fine be paid by instalments;

(c) postpone the issue of a warrant under section 270;

(d) without postponing the issue of a warrant under section 270 postpone the sale of any property seized under such warrant;

(e) postpone the execution of the sentence of imprisonment in default of payment of the fine.

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<sup>389</sup> Kebbi and Sokoto omit this entire section.

<sup>390</sup> Kaduna omits this "subject to" clause.

<sup>391</sup> CPC, Borno, Gombe, Jigawa, Zamfara omit "or *qisas* of the limbs or amputation". Kaduna omits "of the limbs".

(2) Any order made in the exercise of the powers referred to in subsection (1) may be subject to the offender giving such security as the authority making the order thinks fit by means of a bond with or without sureties, and such bond may be conditioned either for the payment of the fine in accordance with the order or for the appearance of the offender as required in the bond or both.

(3) In like manner the court or any person authorised as aforesaid may order that the execution of the sentence of imprisonment upon an offender who has been committed to prison in default of payment of a fine be suspended and that he be released but only subject to the offender giving security as set forth in subsection (2).

(4) In the event of the fine or any instalment thereof not being paid in accordance with an order under this section the authority making the order may enforce payment of the fine or of the balance outstanding by any means authorised in this chapter and may cause the offender to be arrested and may commit or recommit him to prison under the sentence of imprisonment in the default of payment of the fine.

273. (1) When the accused is sentenced to caning the sentence shall be executed at such time as the court may direct in the presence of an official of the court and the sentence shall be inflicted by such instrument and in such manner and at such place as shall be prescribed by order of the court.<sup>392</sup>

(2) The caning shall be inflicted in the presence of the registrar<sup>393</sup> of the court, and where it relates to a *hadd* punishment, in the presence of the public.<sup>394</sup>

(3) No sentence of caning shall be executed by instalments.

(4) Whenever a sentence of caning is to be executed the court shall ensure that the caning be carried out in the following manner:

- (a) the whip to be used shall be a light, supple leather whip which is one-tailed;
- (b) the convict shall be made to sit up;<sup>395</sup>
- (c) the male convict shall be bared except for his underpants;<sup>396</sup>
- (d) the female convict shall be relieved only of heavy outer garments that in the opinion of the court may negate the effect of lashes;
- (e) the convict shall not be bound unless it becomes clear that the punishment cannot otherwise be carried out;
- (f) the executioner shall be of moderate physique;
- (g) the lashes shall be of moderate force so as not to cause lacerations to the skin of the convict;

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<sup>392</sup> This is substantially §307(1) of CPC, except that CPC refers to “Haddi lashing” rather than “caning”, and makes it the responsibility of the Governor, not the court, to specify the instrument, the manner, and the place of execution of the sentence. CPC §307 then has a subsection (2) as follows: “Nothing herein contained shall be deemed to authorise the infliction of a Haddi lashing upon any person other than a Moslem and in accordance with the provisions of subsection (2) of section 68 of the Penal Code.” In §308, CPC goes on to deal separately with sentences of “caning”.

<sup>393</sup> Kebbi: “registrar or court clerk”. Sokoto: “registrar or mufti”.

<sup>394</sup> Cf. CPC §308(2): “The caning shall be inflicted in the presence of the registrar of the court.”

<sup>395</sup> Kebbi: “the male convict shall be made to lie down while the female convict shall be made to sit up”.

<sup>396</sup> Kebbi and Sokoto: “trousers” not “underpants”.

- (h) the executioner shall hold the whip with the last three fingers; the first finger and the thumb are to be held loosely and the whip emerges between the middle finger and the first finger;
- (i) the executioner shall strike only the back and the shoulders of the convict and where the convict is a female recourse shall be made to strict modesty and decency.<sup>397</sup>
274. (1) If before the execution of sentence of caning it appears to the registrar<sup>398</sup> of the court referred to in subsection (2) of section 273 that the offender is not in a fit state of health to undergo the sentence, he shall stay the execution, and the court which passed the sentence may either:
- (a) after taking a medical opinion again order the execution of the sentence; or
  - (b) substitute for it any other sentence which it could have passed at the trial except in cases of *budud*,<sup>399</sup>
  - (c) where the convict is a pregnant woman, the sentence shall be postponed until after delivery of the child and the woman is cleansed of her postnatal discharge.<sup>400</sup>
- (2) If during the execution of caning it appears to the registrar of the court that the offender is not in a fit state of health to undergo the remainder of the sentence, the caning shall immediately be stopped and the remainder of the sentence be remitted except in cases of *budud*.
- (3) In either case referred to in subsection (1) and (2), the stay of execution shall be by prior consent of the Court.<sup>401</sup>
275. (1) When the accused is sentenced to caning, the court shall forthwith ask him whether he intends to appeal and if he expresses such an intention the canning shall not be inflicted until seven days<sup>402</sup> after the date of sentence or, if an appeal is made within that time, unless and until the appellate court confirms the sentence.
- (2) When the accused is sentenced to caning only and states to the court his intention to appeal in accordance with the provisions of subsection (1), the court shall release him pending the expiry of the period of seven days or, if an appeal is made within that time, the disposal of the appeal by the appellate court on his furnishing bail to the satisfaction of the court for his appearance at such time and place as the court may direct for the execution of the sentence if such sentence is to be carried out.
- (3) When the accused is sentenced to caning only and furnishes bail to the satisfaction of the court for his appearance at such time or place as the court may direct for the execution of the sentence, the court shall release him pending such appearance.

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<sup>397</sup> Compare CPC §308(4) and (5): “(4) No sentence of caning shall be inflicted on: (a) females; (b) males sentenced to death; or (c) males whom the court considers to be more than forty-five years of age. (5) The sentence shall be inflicted with a light rattan cane.”

<sup>398</sup> Kebbi: “registrar or court clerk”. Sokoto: “registrar or mufti”, here and throughout this section.

<sup>399</sup> CPC omits “except in cases of *budud*” here and in subsection (2).

<sup>400</sup> CPC omits sub-subsection (c). Borno omits everything after the word “delivery”. Kebbi, Sokoto add: “and certified by a medical officer to be fit”.

<sup>401</sup> CPC, Borno, Gombe, Jigawa, Kebbi, Sokoto, Zamfara: “In either case the court shall be informed of the stay of execution”. Kaduna as here, except has “by prior consent and orders of the court”.

<sup>402</sup> CPC: 15 days. Kebbi, Sokoto: 30 days.

276. When sentence of imprisonment is passed on an escaped convict, such sentence shall take effect after he has suffered imprisonment for a further period equal to that which at the time of his escape remained unexpired of his former sentence.<sup>403</sup>

277. Subject to the provisions of section 23 of this Code, when a person is sentenced to imprisonment, such imprisonment shall not commence before the expiration of any imprisonment to which he has been previously sentenced, unless the court directs that the imprisonment shall run concurrently with any such previous imprisonment.

278. When a sentence has been fully executed, the officer executing it shall return the warrant to the court in which the trial took place with an endorsement under his hand certifying the manner in which the sentence has been executed.

### **PART VIII – SPECIAL PROCEEDINGS**

#### **CHAPTER XXIII – PROCEEDINGS IN CASE OF CERTAIN OFFENCES AFFECTING THE ADMINISTRATION OF JUSTICE**

279. (1) When any court is of the opinion that an offence referred to in section 139 of this Code is committed before it or brought to its notice in the course of any judicial proceeding should be inquired into or tried, such court, after making any preliminary inquiry which it thinks fit, may send the case for trial to the nearest court of competent jurisdiction, and may send the accused in custody or take sufficient security for his appearance before such court of competent jurisdiction<sup>404</sup> and may bind over any person to appear and give evidence at such trial.

(2) The Sharia Court of competent jurisdiction shall thereupon proceed according to law and as if upon complaint made and recorded under section 145 of this Code.

(3) Where it is brought to the notice of a Sharia Court of competent jurisdiction to which the case may have been transferred under this section that an appeal is pending against the decision arrived at in the judicial proceedings out of which the matter has arisen, it may if it thinks fit adjourn the hearing of the case until such appeal is decided.

280. (1) When any such offence is as described in Sections 309, 313, 314 and 326 of the Sharia Penal Code is committed in the view or presence of any Sharia Court, the court may instead of proceeding under section 279 of this Code cause the offender to be detained in custody; and at any time before the rising of the court on the same day may if it thinks fit take cognizance of the offence and sentence the offender to a fine not exceeding one thousand naira and in default of payment to imprisonment for a term which may extend to one month or caning which may extend to 15 lashes.<sup>405</sup>

(2) No criminal court shall impose a sentence under this section which it is not competent to impose under the provisions of Chapter III of this Code.

281. (1) When any court takes cognizance under section 280 of an offence it shall record the facts constituting the offence with the statement, if any, made by the offender as well as the finding and sentence.

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<sup>403</sup> Borno omits this section.

<sup>404</sup> All SCPCs leave out the clause beginning “and may send the accused . . .” and ending at this note.

<sup>405</sup> CPC: fine not exceeding ₦10. CPC, Borno, Gombe, Kaduna, Kebbi, Sokoto, Zamfara: in default of payment of fine, imprisonment of up to 1 month “unless such fine be sooner paid”, with provision for lashes omitted except in Kaduna.

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(2) If the offence is under section 326 of the Sharia Penal Code the record shall show the nature and stage of the judicial proceedings in which the court interrupted or insulted was sitting and the nature of the interruption or insult.

282. When any court has under section 280 of this Code sentenced an offender to punishment for refusing or omitting to do anything which he was lawfully required to do or for any intentional insult or interruption, the court may in its discretion discharge the offender or remit the punishment on his submission to the order or requisition of the court or an apology being made to its satisfaction.

283. If any witness or any person called to produce a document or thing before a Sharia Court unlawfully refuses to answer such questions as are put to him or to produce any document or thing in his possession or power which the court requires him to produce and does not offer any reasonable excuse for such refusal, the Sharia Court may, for reasons to be recorded in writing, sentence him to imprisonment or by warrant of the court commit him to the custody of an officer of the court for any term not exceeding seven days unless in the meantime he consents to be examined and to answer or to produce the document or thing and in the event of his persisting in his refusal, he may be dealt with according to the provisions of section 279 or section 280 of this Code.

284. (1) Any person sentenced by any court under section 280 or section 283 of this Code may, notwithstanding anything hereinbefore contained, appeal to the court to which judgments or orders made in the trial court are appealable.

(2) Any person sentenced by any court under section 280 or section 283 may, notwithstanding anything hereinbefore contained, ask for a review by the reviewing authority, if any, which ordinarily has a power of review over such courts.

### CHAPTER XXIV – PERSONS OF UNSOUND MIND

285. (1) When a Sharia Court holding a trial has reason to suspect that the accused is of unsound mind and consequently incapable of making his defence the court shall in the first instance investigate the fact of such unsoundness of mind.

(2) An investigation under subsection (1) may be held in the absence of the accused person if the court is satisfied that owing to the state of the accused's mind it would be in the interests of the accused or of other persons or in the interests of public decency that he should be absent.

(3) If the Sharia Court is not satisfied that the accused is capable of making his defence, the court shall adjourn the trial or inquiry and shall remand such person for a period not exceeding one month to be detained for observation in some suitable place.

(4) A person detained in accordance with subsection (3) shall be kept under observation by a medical officer during the period of his remand and before the expiry of that period the medical officer shall give to the court his opinion in writing as to the state of mind of this person, and if he is unable within the period to form any definite opinion shall so certify to the court and shall ask for a further remand and such further remand may extend to a period of two months.

(5) Any Sharia Court before which a person suspected to be of unsound mind is accused of any offence may, on the application of the Attorney-General made at any stage of the proceedings prior to the trial, order that such person be sent to some suitable place for observation.

286. (1) If a medical officer reports under section 285 of this Code that such person is of sound mind and capable of making his defence, the court shall, unless satisfied that the accused person is of unsound mind, proceed with the trial.
- (2) If the medical officer shall report under section 285 that such person is of unsound mind and incapable of making his defence, the court shall if satisfied of the fact, find accordingly, and thereupon the trial shall be adjourned.
287. (1) Whenever an accused person is found to be of unsound mind and incapable of making his defence the court, if the offence charged is not punishable with death, amputation or *qisas* of the limbs<sup>406</sup> may in its discretion release him on sufficient security being given by his guardians that he shall be properly taken care of and shall be prevented from doing injury to himself or to any other person, and for his appearance when required before the court or such officer as the court appoints in that behalf.
- (2) If the offence charged is one punishable with death, amputation or *qisas* of the limbs,<sup>407</sup> or if a court has refused to take security under subsection (1), or if no application is made for bail or if an application for bail is refused, the court shall report the case to the Governor<sup>408</sup> who offer consideration of the report may, in his discretion, order the accused to be confined in a suitable place of safe custody.
- (3) Pending the order of the Governor the accused may be committed to a suitable place of safe custody.
288. Whenever a trial is adjourned under section 285 of this Code or section 286 of this Code the court may at any time re-open or commence the trial and require the accused to appear or be brought before such court.
289. When the accused has been released under section 287 of this Code the court may at any time require the accused to appear or be brought before it and may again proceed under section 285 of this Code.
- \*\* [Section on “When accused appears to have been of unsound mind”]<sup>409</sup>
290. Whenever any person is discharged<sup>410</sup> upon the ground that at the time at which he is alleged to have committed an offence he was by reason of unsoundness of mind incapable of knowing the nature of the act alleged as constituting the offence or that it was wrong or

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<sup>406</sup> CPC and SCPCs have “not punishable with death” only.

<sup>407</sup> CPC: “punishable with death”. Borno, Gombe, Jigawa, Kebbi, Zamfara: “punishable with death, a *hadd* or *qisas* offence or amputation”. Kaduna: “punishable with death, *hadd* or *qisas*”.

<sup>408</sup> Kebbi, Sokoto: “report the case to the Governor through the Attorney-General”.

<sup>409</sup> At this point CPC of 1960 has a section omitted here, as follows: “§325: *When accused appears to have been of unsound mind.* When the accused appears to be of sound mind at the time of any preliminary inquiry before a court and the court is satisfied from the evidence given before it that there is reason to believe that the accused committed an act which if he had been of sound mind would have been an offence and that he was at the time when the act was committed by reason of unsoundness of mind incapable of knowing the nature of the act or that it was wrong or contrary to law, the court shall proceed with the case and, if the accused ought otherwise to be committed to the High Court, send him for trial.” This section was deleted from the Kano CPC by Edict No. 15 of 1978, as part of the abolishment of preliminary inquiries.

<sup>410</sup> CPC: “acquitted”. Kebbi, Sokoto: “discharged or acquitted”.



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contrary to Sharia law,<sup>411</sup> the finding shall state specifically whether he committed the act or not.

291. (1) Whenever the finding states that the accused person committed the act alleged, the Sharia Court before which the trial has been held shall, if such act would but for incapacity found to have constituted an offence, order such person to be kept in safe custody in such place and manner as the court thinks fit and shall report the case for the order of the Governor.

(2) The Governor may order such person to be confined in a suitable place of safe custody during the Governor's pleasure.

292. When any person is confined under section 287 of this Code or section 291 of this Code, a responsible medical officer shall keep him under observation in order to ascertain his state of mind and such medical officer shall make a special report as to the state of mind of such person for the information of the Governor at such time or times as the Governor shall require.

293. If the responsible medical officer referred to in section 292 of this Code certifies that in his opinion a person confined under section 287 of this Code or section 291 of this Code may be discharged without danger to himself or to any other person, the Governor may thereupon order him to be discharged or to be detained in custody and he may appoint two medical officers to report on the state of mind of such person and on receipt of such report the Governor may order his discharge or detention as he thinks fit.

294. Where a person is confined in any place the Governor may direct his transfer from one place to another as often as may be necessary.

295. Whenever any relative or friend of any person confined under section 287 of this Code or section 291 of this Code applies to the Governor that such person shall be delivered over to his care and custody, the Governor may in his discretion order such person to be delivered to such relative or friend upon the relative or friend giving sufficient security that:

(a) the person delivered shall be properly taken care of and shall be prevented from doing injury to himself or to any other person;

(b) if at any time it shall appear that the person delivered is capable of making his defence the relative or friend shall produce such person for trial; and

(c) the person delivered shall be produced for the inspection of such officer and at such times as the Governor directs.

### CHAPTER XXV – PROCEEDINGS RELATING TO CORPORATIONS

296. (1) In this chapter:

“corporation” means any body corporate, incorporated in Nigeria or elsewhere;

“representative” in relation to a corporation means a person duly appointed by the corporation to represent it for the purpose of doing any act or thing which the representative of a corporation is by this chapter authorised to do, but a person so appointed shall not by virtue only of being so appointed be qualified to act on behalf of the corporation before any Sharia Court for any other purpose.

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<sup>411</sup> CPC: “contrary to law”. Kaduna: “contrary to Sharia”.

(2) A representative for the purposes of this chapter need not be appointed under the seal of the corporation, and a statement in writing purporting to be signed by a managing director of the corporation or by any person having, or being one of the persons having the management of the affairs of the corporation, to the effect that the person named in the statement has been appointed as the representative of the corporation for the purposes of this section shall be admissible without further proof as evidence that the person has been so appointed.

297. Where a corporation is called upon to plead to any charge it may enter in writing by its representative a plea of guilty or not guilty or any plea which may be entered under the provisions of section 193 of this Code, and if either the corporation does not appear by a representative or, though it does so appear, fails to enter as aforesaid any plea, the court shall order a plea of not guilty to be entered and the trial shall proceed as though the corporation had duly entered a plea of not guilty.

298. A Sharia Court alkali may commit a corporation for trial to the High Court.<sup>412</sup>

299. A representative may on behalf of a corporation:

- (a) make a statement before a Sharia Court alkali holding a preliminary inquiry; or
- (b) state whether the corporation is ready to be tried on a charge or altered charge to which the corporation has been called on to plead under the provisions of section 177 of this Code.

300. Where a representative appears, any requirement of this Sharia Criminal Procedure Code that anything shall be done in the presence of the accused, or shall be read or explained to the accused, shall be construed as a requirement that that thing shall be done in the presence of the representative or read or said or explained to the representative.

301. Where a representative does not appear, any such requirement as is referred to in section 300 of this Code shall not apply.

302. Subject to the provisions of this chapter, the provisions of this Sharia Criminal Procedure Code relating to the trial of offences shall apply to a corporation as they apply to a natural person *sui juris*<sup>413</sup> and of full age.

## PART IX – SUPPLEMENTARY PROVISIONS

### CHAPTER XXVI – THE COMPOUNDING OF OFFENCES

303. Subject to the provisions of the Sharia Penal Code, other provisions of this Sharia Criminal Procedure Code, or any other written law, the offences punishable by *qisas* or *ta'azir* under the Sharia Penal Code may be compounded by the blood relations of the deceased victim or in any case by the person affected by the offence *provided that* the compounding must be before the court trying the offence, and upon the application of the person affected if the court sees reason to allow the offence to be compounded and thereafter discharge the accused person.<sup>414</sup>

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<sup>412</sup> Kebbi and Sokoto omit this section.

<sup>413</sup> Jigawa: “to a natural person *mukallaf* and of full age”.

<sup>414</sup> Borno: “may be compounded and thereafter discharge the accused person”. Borno, Gombe, Jigawa, Kaduna, Kebbi, Sokoto, Zamfara all add a subsection (2): “Except the offence of *qadhif* [Kaduna: homicide and *qadhif*] under section [number varies] of the Sharia Penal Code, no *hadd* offence shall be

**CHAPTER XXVII – BAIL**

304. (1) When any person accused of an offence punishable with imprisonment whether with or without fine for a term not exceeding three years or with fine only<sup>415</sup> is arrested or detained without warrant by an officer in charge of a police station or appears or is brought before a Sharia Court and is prepared at any time while in the custody of that officer or before that court to give such security as may seem sufficient to the officer or court, such person shall be released on bail unless the officer or court, for reasons to be recorded in writing, considers that by reason of the granting of bail the proper investigation of the offence would be prejudiced or a serious risk of the accused escaping from justice be occasioned.
- (2) The officer or the Sharia Court referred to in subsection (1) if he or it thinks fit may instead of accepting security from such person discharge him on his executing a bond without sureties for his appearance as provided in section 309 of this Code and 310 of this Code.
305. (1) Persons accused of an offence punishable with death shall not be released on bail.
- (2) Persons accused of an offence punishable with imprisonment for a term exceeding three years shall not ordinarily be released on bail; nevertheless the Upper Sharia Court or the Sharia Court of Appeal<sup>416</sup> may upon application release on bail a person accused as aforesaid if it considers:
- (a) that by reason of the granting of bail the proper investigation of the offence would not be prejudiced; and
  - (b) that no serious risk of the accused escaping from justice would be occasioned; and
  - (c) that no grounds exist for believing that the accused, if released, would commit an offence.<sup>417</sup>
- (3) Notwithstanding anything contained in subsections (1) and (2), if it appears to the Upper Sharia Court or the Sharia Court of Appeal<sup>418</sup> that there are no reasonable grounds for believing that a person accused has committed the offence, but that there are sufficient grounds for further inquiry, such person may, pending such inquiry, be released on bail.
306. (1) Where any person is accused of an offence a single alkali of the Upper Sharia Court or a Kadi of the Sharia Court of Appeal<sup>419</sup> may, subject to the provisions of section 305 of this Code, direct that such person be admitted to bail.

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compounded.” The HSCPC specifies offences which may not be compounded in Appendix C. CPC has a very long section on compounding of offences (§339), comprising nine subsections, which we do not reproduce here, plus, in its Appendix C, a list of offences which may be compounded showing by whom they may be compounded.

<sup>415</sup> Kebbi, Sokoto: “When any person accused of an offence punishable with imprisonment for a term not exceeding three years whether with or without fine or caning or with fine only”.

<sup>416</sup> CPC and Bauchi: “nevertheless the court may . . .”.

<sup>417</sup> Kaduna omits the text of sub-subsection (c), making what is here subsection (3) into sub-subsection (c) instead.

<sup>418</sup> CPC: “if it appears to the court that . . .” Bauchi omits subsection (3).

<sup>419</sup> CPC: “a single judge of the High Court may”. Borno: “a single judge may”. Jigawa: “a single alkali of the Upper Sharia Court may”. Borno, Kebbi, Sokoto: “a single alkali of the Upper Sharia Court or the Sharia Court of Appeal may”.

(2) When any person is convicted of an offence in a Sharia Court and appeals from such court to the Upper Sharia Court or Sharia Court of Appeal, the Upper Sharia Court or the Sharia Court of Appeal or a single alkali or kadi thereof may, subject to the provision of section 305, direct that such person be admitted to bail.<sup>420</sup>

307. Any Sharia Court may at any subsequent stage of proceeding under this Sharia Procedure Code cause any person who has been released under sections 304, 305, or 306 to be arrested and may commit him to custody.

308. An alkali of the Sharia Court may in any case direct that the bail bond required by an officer in charge of a police station or any court be reduced.

309. Before any person is released on bail under sections 304, 305, or 306 of this Code he shall execute a bond for such sum of money as the officer in charge of the police station or the court thinks sufficient on condition that such person shall attend at the time and place mentioned in the bond and shall continue so to attend until otherwise directed by the Sharia Court and if he is released on bail the sureties shall execute the same or another bond or other bonds containing conditions to the same effect.

310. (1) As soon as a bond referred to in section 309 has been executed, the person for whose appearance it has been executed shall be released; and if he is in prison, the court admitting him to bail shall issue a written order of release to the official in charge of the prison and such official on receipt of the order shall release him.

(2) Nothing in this section, section 304 or section 305 of this Code shall be deemed to require the release of any person liable to be detained for some matter other than that in respect of which the bond was executed.

311. When any person is required by any Sharia Court or officer in charge of a police station to execute a bond with or without sureties, the court or officer may, except in the case of bonds to be executed under Chapter VII permit him to deposit a sum of money to such amount as the court or officer may think fit in lieu of executing such bond.

312. When a person required to execute a bond is under eighteen years of age, a bond executed by a surety or sureties only may be accepted.

313. (1) The amount of every bond shall be fixed with due regard to the circumstances of the case and shall not be excessive.

(2) If, through mistake, fraud or otherwise, insufficient sureties have been accepted or if the sureties afterwards become insufficient the court may issue a warrant for the arrest of the person on whose behalf the sureties executed the bond and, when that person appears, the court may order him to find sufficient sureties and on his failing to do so may make such order as in the circumstances is just and proper.

314. Where a person has been admitted to bail and circumstances arise which in the opinion of the Attorney-General would justify the court in cancelling the bail or requiring bail of greater amount, a Sharia Court may, on application being made by the Attorney-

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<sup>420</sup> CPC deals with appeals to the High Court: "the High Court or a single judge thereof may". Jigawa: "When any person is convicted of an offence in a Sharia Court and appeals from such court to the Higher Sharia Court or the Upper Sharia Court a single alkali thereof may". Kebbi and Sokoto as here except omit "or a single alkali or kadi thereof". Bauchi: "and appeals from such court to the Upper Sharia Court or Sharia Court of Appeal or any other court a single judge thereof may".

General, issue a warrant for the arrest of the person and, after giving him an opportunity of being heard, may either commit him to prison to await trial, or admit him to bail for the same or an increased amount.

315. (1) All or any sureties to a bond may at any time apply to the court which caused the bond to be taken to discharge the bond either wholly or so far as relates to the applicants.

(2) On an application under subsection (1) the court shall issue a warrant for the arrest of the person on whose behalf the bond was executed and upon his appearance shall discharge the bond either wholly or so far as relates to the applicants and shall require such person to find other sufficient sureties and, if he fails to do so, may make such order as in the circumstances is just and proper.

316. When a surety to a bond dies before his bond is forfeited, his estate shall be discharged from all liability under the bond, but the person on whose behalf such surety executed the bond may be required to find a new surety; and in such case the court may issue a warrant for the arrest of such person and upon his appearance may require him to find a new surety and, if he fails to do so, may make such order as in the circumstances is just and proper.

317. If a person required by a court to find sufficient sureties under section 313, 315 or 316 of this Code, fails to do so the court, unless it is just and proper in the circumstances to make some other order, shall make:

(a) in the case of a person ordered to give security for good behaviour under section 86 of this Code or section 87 of this Code, an order committing him to prison for the remainder of the period for which he was originally ordered to give surety or until he finds sufficient sureties; or

(b) in the case of a person accused of an offence and released on bail under section 304 an order committing him to prison until he is brought to trial or discharged.

318. (1) Whenever it is proved to the satisfaction of the court by which a bond has been taken or, when the bond is for appearance before a court to the satisfaction of such court, that a bond has been forfeited, the Sharia Court shall record the grounds of such proof and may call upon any person bound by the bond to pay the penalty thereof or to show cause why it should not be paid.

(2) If sufficient cause is not shown and the penalty is not paid, the Sharia Court may proceed to recover the same from any person bound or from his estate if he is dead in the manner laid down in section 270 of this Code for the recovery of fines.

(3) A surety's estate shall only be liable under this section if the surety dies after the bond is forfeited.

(4) If the penalty is not paid and cannot be recovered in manner aforesaid, the person bound shall be liable by order of the Sharia Court which issued the warrant under section 270 of this Code to imprisonment for a term which may extend to six months.<sup>421</sup>

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<sup>421</sup> Bauchi: 2 months.

(5) The Sharia Court may at its discretion remit any portion of the penalty and enforce payment in part only.

319. When a person who is bound by any bond to appear before a Sharia Court does not so appear, the Sharia Court may issue a warrant for his arrest.

#### **CHAPTER XXVIII – THE DISPOSAL OF PROPERTY**

320. When any property regarding which any offence appears to have been committed or which appears to have been used for the commission of any offence is produced before any Sharia Court during any trial, the court may make such order as it thinks fit for the proper custody of that property pending the conclusion of the trial and, if the property is subject to speedy or natural decay, may, after recording such evidence as it thinks necessary, order it to be sold or otherwise disposed of.

321. (1) When a trial in any criminal case is concluded, the Sharia Court may make such order as it thinks fit for the disposal by destruction, confiscation or delivery to any person appearing to be entitled to the possession thereof or otherwise of any movable property or document produced before it or in its custody or regarding which any offence appears to have been committed or which has been used for the commission of any offence.

(2) When an order is made in a case in which any appeal lies, such order shall not, except when the property is livestock or is subject to speedy and natural decay, be carried out until the period allowed for presenting such appeal has passed or, when such appeal is presented within such period, until such appeal has been disposed of.

(3) Notwithstanding the provisions of subsection (2), the Sharia Court may in any case make an order under the provisions of subsection (1) for the delivery of any property to any person appearing to be entitled to the possession thereof on his executing a bond with or without sureties to the satisfaction of the court engaging to restore such property to the court, if the order made under this section is modified or set aside by the appellate court.

322. When any person is convicted of any offence which includes or amounts to theft or receiving stolen property and it is proved that any other person has bought the stolen property from him without knowing or having reason to believe that the same was stolen and that any money has on his arrest been taken out of the possession of the convicted person, the court may, on the application of the purchaser and on the restitution of the stolen property to the person entitled to the possession thereof, order that out of such money a sum not exceeding the price paid by the purchaser be delivered to him.

323. (1) On a conviction under section 374 or 141 of the Sharia Penal Code the court may order the confiscation or destruction of all the copies of the thing in respect of which the conviction was had and which are in the custody of the court or remain in the possession or power of the person convicted.

(2) The court may, in like manner, on a conviction under section 355, 356, 357, 358 or 359, 360 and 361 of the Sharia Penal Code order the food, drink, drug or medical preparation in respect of which the conviction was obtained to be destroyed.

324. (1) Whenever a person is convicted of an offence attended by criminal force or show of force or criminal intimidation and it appears to the court that thereby any person

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has been dispossessed of any immovable property, the court may if it thinks fit order that property to be restored to the possession of the same.

(2) No order under subsection (1) shall prejudice any right or interest to or in such immovable property which any person may be able to establish in a civil suit.

325. (1) The seizure by the police of property taken under section 43 of this Code or alleged or suspected to have been stolen or found in circumstances which create a suspicion of the commission of an offence shall be forthwith reported to a court which shall make such order as it thinks fit respecting the disposal of the property or its delivery to the person entitled to the possession thereof on such conditions as the court thinks fit, or, if such person cannot be ascertained, respecting the custody and production of such property.

(2) If the person entitled to the possession of property referred to in subsection (1) is unknown, the court may detain it and shall in such case issue a public notice in such form as it thinks fit specifying the articles of which the property consists and requiring any person who may have a claim thereto to appear before the court and establish his claim within six months from the date of the notice.

326. (1) If no person within the period referred to in section 325 establishes his claim to property referred to in that section and if the person in whose possession such property was found is unable to show that it was lawfully acquired by him, such property shall be at the disposal of the court and may be sold in accordance with the orders of the court.

(2) At any time within two years from the date of the property coming into the possession of the police the court may direct the property or the proceeds of the sale of the property to be delivered to any person proving his title thereto on payment by him of any expenses incurred by the court in the matter.

327. If the person entitled to the possession of property referred to in section 325 of this Code is unknown or absent and the property is subject to speed and natural decay or if the court to which its seizure is reported is of opinion that its sale would be for the benefit of the owner, the court may at any time direct it to be sold and the provisions of section 325 and 326 of this Code shall as nearly as may be practicable apply to the net proceeds of such sale.

**CHAPTER XXIX – MISCELLANEOUS**

328. Subject to any rules made by the Grand Kadi<sup>422</sup> under section 337 of this Code any Sharia Court may if it thinks fit remit the fees for the issue and service of any witness summons and order payment on the part of the Government of the reasonable expenses of any complainant or witness attending for the purpose of any trial, inquiry or other proceeding before such court under this Sharia Criminal Procedure Code or before the Upper Sharia Court or where the witness is to be summoned under sections 162 and 203 of this Code.

329. (1) Whenever under any law in force for the time being a Sharia Court imposes a fine, the court may, when passing judgment, order that in addition to a fine a convicted person shall pay a sum:

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<sup>422</sup> CPC and Zamfara: “Chief Judge”. Borno: “Chief Judge on the recommendation by the Grand Khadi”.

- (a) in defraying expenses properly incurred in the prosecution;
  - (b) in compensation in whole or in part for the injury caused by the offence committed, where substantial compensation is in the opinion of the court recoverable by civil suit;
  - (c) in compensating an innocent purchaser of any property in respect of which the offence was committed who has been compelled to give it up;
  - (d) in defraying expenses incurred in medical treatment of any person injured by the accused in connection with the offence.
- (2) If the fine referred to in subsection (1) is imposed in a case which is subject to appeal, no such payment additional to the fine shall be made before the period allowed for presenting the appeal has elapsed or, if an appeal is presented, before the decision on the appeal.
330. At the time of awarding compensation in any subsequent civil suit relating to the same matter, the court shall take into consideration any sum paid or recovered as compensation under section 329 of this Code.
331. Any compensation adjudged to be payable under section 102 of the Sharia Penal Code and the payment of any money other than fine, payable by virtue of any order under this Sharia Criminal Procedure Code, may be enforced as if it were a fine.
332. (1) If any person affected by a judgment or order passed by a Sharia Court desires to have a copy of any order or deposition or other part of the record other than the judgment, he shall on application for such copy be furnished therewith.
- (2) An application under subsection (1) shall be made within a period of two years from the date of judgment or order affecting the applicant.
- (3) The applicant shall pay such fee, if any, for the copy as may be prescribed, unless the court or appellate court in any case on account of the poverty of the applicant or for some special reason directs that the copy be furnished without fee.
333. Any police officer may seize any property which may be alleged or suspected to have been stolen or which may be found in circumstances which create suspicion of the commission of any offence and such police officer, if subordinate to the officer in charge of a police station, shall forthwith report the seizure to that officer.
334. Any superior police officer may exercise the same powers throughout the local area to which he is appointed as may be exercised by an officer in charge of a police station within the limits of his station.
335. (1) When any person causes the arrest of another person and it appears to the court by which the case is inquired into or tried that there was no sufficient ground for causing such arrest, the court may in its discretion direct the person causing the arrest to pay to the arrested person or each of the arrested persons, if there are more than one, such compensation not exceeding five thousand naira<sup>423</sup> to each such person as the court thinks fit and may award a term of imprisonment not exceeding three

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<sup>423</sup> Borno, Gombe, Jigawa, Kebbi, Sokoto, Zamfara: “not exceeding five hundred naira”. Kaduna: “such compensation as the court thinks fit”.



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months in the aggregate in default of payment, and the provisions of section 98 of the Sharia Penal Code shall apply as if such compensation were a fine.<sup>424</sup>

- (2) Before making any direction under subsection (1) the court shall:
  - (a) record and consider any objection which the person causing the arrest, if present, may urge against the making of the direction; and
  - (b) state in writing its reasons for awarding the compensation.
- (3) Compensation awarded under this section may be recovered as if it were a fine.
- (4) Any person directed to make a payment of compensation under this section may appeal from the direction as if he had been convicted after trial by the court.

336. Nothing in this Sharia Criminal Procedure Code shall affect the use or validity of any special forms in respect of any procedure or offence specified under the provisions of any other written law nor the validity of any other procedure provided by any other written law.

337. (1) The Grand Kadi with the approval of the Governor<sup>425</sup> may make rules of court for all or any of the following purposes:

- (a) prescribing fees or expenses to be charged for or in respect of any act or thing done under this Sharia Criminal Procedure Code;
- (b) prescribing the books and forms of account to be used in Sharia Courts and the keeping of the same;
- (c) requiring the making and forwarding of returns of cases decided in Sharia Courts to the Grand Kadi or any Kadi of the Sharia Court of Appeal and prescribing the forms of and terms of forwarding such returns;
- (d) prescribing the imposition of penalties on any person who fails to take any action required by a rule of court or who disobeys any rule of court;
- (e) prescribing forms for process, warrants, summons, orders of court, bonds, notices, certificates and receipts;
- (f) prescribing the conditions under which statements may be made to the police by accused and other persons and under which such statements may be admitted in evidence;
- (g) generally for the better carrying into effect of the provisions and objects and intentions of this Sharia Criminal Procedure Code.

(2) Rules of court made under this section shall apply to all proceedings by the State before Sharia Courts.

338. (1) No person shall try or sit as a member of the court which tries any case to or in which he is a party or personally interested.<sup>426</sup>

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<sup>424</sup> Kaduna omits the last clause.

<sup>425</sup> CPC, Zamfara: "The Chief Judge with the approval of the Governor". Borno: "The Chief Judge on the recommendation of the Grand Khadi with the approval of the Governor".

<sup>426</sup> CPC adds: "without the consent of the Chief Judge".

(2) A person shall not be deemed to be a party to or personally interested in any case within the meaning of this section by reason only that he is concerned therein in a public capacity or by reason only that he has viewed the place in which an offence is alleged to have been committed or any other place in which any other transaction material to the case is alleged to have occurred.

339. Subject to the provisions of section 338 any criminal proceeding by or against any officer of a court for any offence or matter cognisable by a court may be brought in any court having jurisdiction in respect of any particular proceeding.

340. A public servant having any duty to perform in connection with the sale of any property under this Sharia Criminal Procedure Code shall not purchase or bid for the property.

341. (1) No kadi of the Sharia Court of Appeal or Sharia Court alkali or member of a Sharia Court shall be liable for any act done or ordered to be done by him in the course of any proceeding before him whether or not within the limits of his jurisdiction *provided that* at the time he, in good faith, believed himself to have jurisdiction to do or order to be done the act complained of.

(2) No person required or bound to execute any warrant or order issued by a court shall be liable in any action for damages in respect of the execution of such warrant or order unless it be proved that he executed either in an unlawful manner.

\*\* [Section on “Governor’s powers when exercisable under the Sharia Criminal Procedure Code”]<sup>427</sup>

\*\* [Section on “Directions by native [subsequently Area] court to officer of Nigeria Police”]<sup>428</sup>

### CHAPTER XXX – IRREGULAR PROCEEDINGS

342. If any court or justice of the peace not empowered by law to do any of the following things, namely:

- (a) to issue a search warrant under section 73 of this Code;
- (b) to direct, under section 119 of this Code, the police to investigate an offence; and
- (c) to take cognizance of an offence under section 142 of this Code,

erroneously in good faith does any such thing, the proceedings shall not be set aside merely on the ground that the court or justice of the peace was not so empowered.

343. If any court or justice of the peace not being empowered by law in this behalf, does any of the following things, namely:

- (a) attaches and sells property under section 67 of this Code;
- (b) demands securities to keep the peace;

<sup>427</sup> Kaduna adds here a section as follows: “The powers conferred upon the Governor by this Sharia Criminal Procedure Code shall not be exercised unless in consultation with the Body of Islamic Jurists which shall be established by the Governor for the State.”

<sup>428</sup> CPC of 1960 has here a section on *Directions by native court to officer of Nigeria Police*. This section was deleted in 1971 in all the CPCs of the northern States, by identical edicts, on the ground that “[it] is no longer considered necessary following the re-organisation of Area Courts and this Edict therefore repeals that section.” Kano State Edict No. 9 of 1971. No SCPC includes the section in any form.

- (c) demands security for good behaviour;
- (d) discharges a person lawfully bound to be of good behaviour;
- (e) cancels a bond to keep the peace;
- (f) makes an order under section 103 of this Code as to public nuisance;
- (g) prohibits, under section 110 of this Code, the repetition or continuance of a public nuisance;
- (h) tries an offender;
- (i) decides an appeal,

such proceedings shall be void.

344. (1) No finding or sentence pronounced or passed shall be deemed invalid merely on the ground that no charge was framed, unless, in the opinion of an appeal court or reviewing authority a failure of justice has in fact been occasioned thereby.

(2) If an appeal court or reviewing authority thinks that a failure of justice has been occasioned by an omission to frame a charge, it may order that a charge be framed and that the trial be recommenced from the point at which the appeal court or reviewing authority considers the charge should have been framed.

345. Subject to the provisions hereinbefore contained, no finding, sentence or order passed by a court of competent jurisdiction shall be reversed or altered on appeal or review on account of any error, omission or irregularity in the complaint, summons, warrant, charge, public summons, order, judgment or other proceedings before or during trial or in any inquiry or other proceedings under this Sharia Criminal Procedure Code unless the appeal court or reviewing authority thinks that a failure of justice has in fact been occasioned by such error, omission or irregularity.<sup>429</sup>

346. A summons, warrant or other process under any written law shall not be invalidated by reason of the person who signed the same dying or ceasing to hold office or have jurisdiction.

347. A court may at any time amend any defect in substance or in form in any order or warrant issued by such court, and no omission or error as to time and place, and no defect in form in any order or warrant given under this Sharia Criminal Procedure Code, shall be held to render void or unlawful any act done or intended to be done by virtue of such order or warrant, when it is therein mentioned, or may be inferred there from, that it is founded on conviction or judgment, and there is a valid conviction or judgment to sustain the same.

**[Chapter entitled GENERAL]<sup>430</sup>**

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<sup>429</sup> CPC has an explanation after this section, omitted in all SCPCs.

<sup>430</sup> Kebbi and Sokoto add to their SCPCs a final Chapter XXXI entitled GENERAL. In Sokoto this consists of one section, entitled "Jurisdiction in abetments, attempts and conspiracy", which is also included in Kebbi; Kebbi adds a second section, not included in Sokoto, entitled "Procedure under Maliki School of jurisprudence". Here are the two sections: "*Jurisdiction in abetments, attempts and conspiracy*. (1) Except as otherwise provide by this Sharia Criminal Procedure Code and subject to Appendix A, any court that has jurisdiction to try an offence shall also have jurisdiction to try: (a) abetment; (b) attempt; and (c) criminal conspiracy to commit such offences. (2) Any court that has power to issue a warrant or other court process shall also have power to issue the same in respect of abetment, attempt and criminal conspiracy." "*Procedure under Maliki School of jurisprudence*."

[Chapter on TRIALS IN NATIVE COURTS]<sup>431</sup>

APPENDICES

[Ed. note: This Code and CPC both conclude with three appendices, which we omit here.

- **Appendix A** is in both cases a “Tabular Statement of Offences”, described more fully in the first note to §12 above.
- **Appendix B** in both cases consists of two “Forms of Charges”, one for a single charge and one for two or more charges (referring back to Chapter XVII in the case of this Code).
- **Appendix C**, in the CPC, lists “Offences Which May be Compounded”. In this Code it lists “Non-Compoundable Offences” as follows: *zina*, rape, sodomy, incest, lesbianism, bestiality, witchcraft, *qadhf*, defamation, theft, alcoholism, *hirabah*, blasphemy and cannibalism, giving the numbers of the sections dealing with these crimes. Cf. §299 above.

Of the Sharia Criminal Procedure Codes here annotated, Borno, Kebbi, Sokoto and Zamfara include Appendices A and B, although Kebbi and Sokoto have much modified and abbreviated their “Tabular Statements of Offences”; Kaduna includes only Appendix A; Gombe and Jigawa refer to Appendices A and B in the texts of their Codes but omit them in the enacted versions; and Bauchi omits the appendices altogether.]

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Notwithstanding any of the provisions contained in this Law the Sharia Courts may, wherever it deems fit, apply such rules of Islamic Procedure as are contained in such books of authority of the Maliki School of Jurisprudence.”

<sup>431</sup> The final chapter of CPC, Chapter XXXIII, is entitled TRIALS IN NATIVE [subsequently Area] COURTS. In Kano, this chapter was repealed in 1979 and Chapter XVI, on SUMMARY TRIALS, was made to apply without qualification to trials in both magistrates’ and area courts (Kano No. 4 of 1979). The chapter is also omitted here except that five sections from it (§§391, 392, 393, 395, and 396) have been adapted for use in Chapter XIX of this code on GENERAL PROVISIONS AS TO TRIALS AND OTHER JUDICIAL PROCEEDINGS IN SHARIA COURTS (= §§165, 166, 169, 170 and 171 above).

And note that Kano State, instead of adopting a whole separate Sharia Criminal Procedure Code as part of its programme of Sharia implementation, instead simply added back a substantially altered Chapter XXXIII to its Criminal Procedure Code, calling it now TRIALS BY SHARIA COURTS. Kano’s new Chapter XXXIII is printed following this code.