

Chapter 5 Part V  
Kano State Criminal Procedure Code Cap. 37  
(Amendment) Law 2000 Annotated<sup>1</sup>

**Arrangement of sections:**<sup>2</sup>

1. Citation and commencement.
2. Interpretation.
3. Amendment of the principal law Cap. 37 1991.

**CHAPTER XXXIII**

385. Initiation of criminal proceeding.
386. Every complaint shall disclose a cause of action.<sup>3</sup>
387. Court to ascertain from the complaint details of the complaint.
388. Particulars of the offence to be read over to the accused.
389. Court can convict on the confession of the accused.
390. Court to hear evidence against the accused if he denies or if he refuses to admit or deny.
391. Name of witnesses to be ascertained from the complainant.
392. Witness to state his name and address.
393. Court may test the trustworthiness of a witness.
394. Accused may impeach any witness.  
[subsection (2): accused may question any witness]
395. Accused to be discharged if prima facie case is not established against him.
396. Accused person to defend himself when prima facie case is established against him.
397. Accused can call as many witnesses as he can for his defence.
398. Prosecution at liberty to impeach defence witnesses.  
[subsection (2): prosecutor/complainant may question any witness]
399. Court to compel the attendance of any witness.  
[subsection (2): commission to take evidence]
400. Accused to be given a chance to say anything he deems fit before the court adjourns for judgment.
401. Court to record the names of two persons as witnesses to the accused's reply.
402. Court to retire for judgment after exhausting all defence witnesses.
403. Finding/judgment to be announced in open court.

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<sup>1</sup> Signed into law on 27 November 2000, gazetted as No. 6 of 2001, Kano State of Nigeria Gazette No. 8, Vol. 33, 27<sup>th</sup> December, 2001 Supplement Part A pp. A39-A51. The annotations show variations between the provisions of the new Chapter XXXIII of the Kano Criminal Procedure Code brought into force by this law, and the Bauchi State Sharia Criminal Procedure Code, assented to by the Governor of Bauchi State on 15<sup>th</sup> February 2002, still not gazetted as of July 2006.

<sup>2</sup> This list of sections has been extracted from the section titles contained in the law as gazetted; in order to save space, the section titles have then been omitted from the text of the law printed here. Where several different matters are dealt with in a single section, we have shown in indented brackets what the other matters are, beyond that indicated in the section title, e.g. §394. We have supplied a title in brackets for §407.

<sup>3</sup> Here and elsewhere both the Kano and Bauchi laws have "course of action".

404. Accused to be discharged and acquitted if found not guilty.
405. Sentence to be pronounced if the accused is found guilty.  
[proviso: court to invite complainant or deceased's relatives to express their wishes as to retaliation or *diyab* in *qisas* cases and shall be bound by wishes so expressed]
406. In death [or amputation] sentence court to send the record of proceedings to the Governor.
407. [When no appeal is taken.]
408. Governor to order for execution after exhausting avenues for appeal.  
[subsections (2) and (3): when woman sentenced to death is alleged to be pregnant]  
[subsection (4): mode of executing death sentence]
409. Payment of *diyab*.
410. Sharia Court to be guided by the CPC.
411. Sharia Court to be bound by the provisions of [this Chapter XXXIII].
412. Jurisdiction and powers [of Sharia Courts].
413. Record of proceedings.

**KANO STATE CRIMINAL PROCEDURE CODE  
CAP. 37 (AMENDMENT) LAW 2000**

A law to provide for the Amendment of the Criminal Procedure Code Law Cap. 37 Laws of Kano State.

**BE IT ENACTED** by the State House of Assembly as follows:

1. This Law may be cited as the Criminal Procedure Code (Amendment) Law 2000 and shall come into operation on 1<sup>st</sup> day of Ramadan, 2000 (27<sup>th</sup> November 2000).
2. In this Law unless the context otherwise requires:  
“Principal Law” means the Criminal Procedure Code Law Cap. 37 Laws of Kano State.
3. Chapter XXXIII covering sections 385-396 of the Principal Law is hereby amended by:
  - (a) Repealing the whole chapter and
  - (b) Substituting it with the following new Chapter XXXIII:

**CHAPTER XXXIII: TRIALS BY SHARIA COURTS**

385. A person shall be tried by the Sharia Court if:
  - (a) a written complaint is made against him by the Attorney-General, or
  - (b) upon the receipt of complaint of fact which constitutes an offence by a victim of crime or his representative when the Attorney-General's consent is sought and obtained.  
*Provided that* where the Attorney-General refuses to give his consent the victim of crime or his representative can institute an action by direct complaint to the court.<sup>4</sup>
  - (c) Upon receiving a First Information Report under section 118 of the Criminal Procedure Code.

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<sup>4</sup> Bauchi: “Upon the receipt of complaint of fact which constitutes an offence by a victim of crime or his representative if the court has reason to believe or suspect that an offence has been committed.”

386. Every complaint shall disclose a cause of action, in this respect it is sufficient for a complaint to 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.

387. Upon the receipt of a complaint the court shall ascertain the details thereof and if the court is satisfied that it discloses a cause of action it shall ensure the attendance of the accused.<sup>5</sup>

388. When an accused person<sup>6</sup> appears or is brought before the court, the particulars/details of the offence of which he is being accused shall be read over to him by the court in a language he understands, and upon the court's satisfaction that the accused understands the accusation against him he shall be asked to make a plea.

389. (1) If the accused confesses before the court to the commission of an offence which he is accused of, his confession shall be recorded as nearly as possible in the words used by him, and the court may convict and sentence him accordingly.<sup>7</sup>

*Provided that* the court is satisfied that the accused has clearly understood the meaning of the accusation against him and the effect of his confession.

(2) Notwithstanding the provision of subsection (1) of this section where an accused person retracts from his confession he shall not be convicted but the court shall proceed to hear the evidence as may be produced by the prosecutor.<sup>8</sup>

390. If the accused denies the accusation against him, or if he refuses to admit or deny, the court shall proceed to hear the accusation against him and take all such evidence as may be produced in support of the accusation against him.<sup>9</sup>

391. The court shall ascertain from the complainant the name of any person or persons likely to give evidence for the complainant/prosecution and [shall procure the attendance of] such of them as the court deems necessary.

392. When a witness appears before the court, each one of them is to be questioned as to his name, religion, age, occupation and residence, and to his connection<sup>10</sup> with the party if any.

393. After a witness has given evidence for the complainant or prosecutor, the court may put such questions to him as it may deem necessary.

394. (1) The accused is at liberty to impeach any witness that testifies against him.

(2) Notwithstanding the provision of sub-section (1) of this section the accused may put any question to the witness which he deems necessary, but if the court considers any of the questions irrelevant it shall refuse to put such question, the question and the court's refusal shall however be entered into the court's record.<sup>11</sup>

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<sup>5</sup> Bauchi: "of the suspect".

<sup>6</sup> Bauchi uses "suspect/defendant" instead of "accused person" or "accused" in this section.

<sup>7</sup> Bauchi adds: "if the confession satisfies conditions laid down by Sharia".

<sup>8</sup> Bauchi: "complainant/prosecution".

<sup>9</sup> Bauchi adds: "in accordance with Islamic law".

<sup>10</sup> Bauchi: "relationship with the party if any".

<sup>11</sup> Bauchi adds a subsection (3): "Evidence of bad character shall not be given against the accused person before conviction or verdict."

395. (1) If the court after exhausting all witnesses for the prosecution/complainant comes to the conclusion that a prima facie case is not established against the accused, or if the evidence against the accused is not sufficient to justify the continuation of the trial for any other offence, the court shall after administering an oath of denial on the accused discharge him.<sup>12</sup>
- (2) A discharge under subsection (1) of this section shall not be a bar to further proceedings against the accused in respect of the same offence.<sup>13</sup>
396. After taking at least 4 unimpeached witnesses in the case of offences under SS ... to ...<sup>14</sup> and at least 2 witnesses in other offences,<sup>15</sup> if court is satisfied that a prima facie case has been established by the prosecution/complainant, the court shall call upon the accused person to enter his defence.
397. The accused is at liberty to call as many witnesses as he can in his defence.<sup>16</sup>
398. (1) Defence witnesses shall be examined one after the other and the prosecutor/complainant will be at liberty to impeach witnesses brought by the accused.
- (2) Notwithstanding the provision of subsection (1) of this section, the prosecutor/complainant may put any question to the witness, which he deems necessary. But if the court considers any of the questions irrelevant it shall refuse to put such question. The question and the answer shall however enter into the court's record.
399. (1) The court shall compel the attendance of any witness of the accused who may likely give factual evidence for the defence.
- (2) Whenever in the course of any trial 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 will be unreasonable, such court may dispense with his evidence and may issue a commission to any court within the local limits of whose jurisdiction such witness resides to take his evidence.
400. (1) After exhausting all witnesses for the defence the court shall give the accused person a chance to say whether or not he has anything to say before the court adjourns for judgment.
- (2) If the accused raises any point that merits consideration the court shall proceed to determine all the issues raised by the accused.

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<sup>12</sup> Bauchi: "the court shall without calling the accused to enter his defence discharge him."

<sup>13</sup> Bauchi adds: "if within six months the complainant is able to bring credible evidence that can warrant reopening of the case."

<sup>14</sup> Sic. The intended references are probably to the sections of Kano's Sharia Penal Code dealing with *zina* and perhaps related offences.

<sup>15</sup> Bauchi: "After taking the evidence of witnesses if the court is satisfied . . .".

<sup>16</sup> Bauchi: "Without prejudice to the right of the accused person of making statement from the dock, the accused is at liberty to call his witness in his defence. *Provided that* an accused person cannot give evidence in the witness box in his own behalf in any trial whether he is accused solely or jointly with others, but he can give evidence against a co-accused."

CHAPTER 5: THE SHARIA CRIMINAL PROCEDURE CODES

401. Where the accused says he has nothing to say his answer shall be recorded in his own [words] and the court shall record the name of 2 persons who were in the court when the accused said he has nothing to say.

402. After concluding the case for the prosecution and defence,<sup>17</sup> the court may retire or adjourn for judgment.

403. (1) Judgment in every trial shall be in writing and its content shall be explained to the accused in a language he understands.

(2) If the accused is in custody he shall be brought up to hear the judgment; if he is not in custody he shall be made to attend to hear the judgment.

404. Where the court finds the accused not guilty he shall be discharged and acquitted.

405. If the court finds the accused guilty the court shall pronounce the accused guilty and shall pass its sentence accordingly.

*Provided that* in cases under sections 142 to 147 Sharia P.C., the court shall invite the blood relations of the deceased or the complainant as the case may be to express their wishes as to whether retaliation should be carried out or *diyyah* should be paid and the court shall be bound by the wishes so expressed.<sup>18</sup>

406. In cases falling under sections 124-134 Sharia P.C., where death sentence or amputation of hand is passed the court shall as soon as possible after passing such sentence send to the Governor through the Attorney-General a report upon the case together with all documents (record of proceedings) in respect of the case and the sentence shall not be carried out unless it is confirmed by the Governor, within the period of 90 days.<sup>19</sup>

407. In any criminal matter where the person convicted in the Sharia Court fails to appeal to an appropriate court the conviction of the Sharia Court shall stand.<sup>20</sup>

408. (1) After exhausting all avenues of appeal if utilised by the convict the Governor shall make an order for the execution of any sentence falling under subsection 406 of this Law.

*Provided that* no [such?] sentence shall be imposed on a person under the age of poverty [sic: puberty] but such an offender shall be punished in strict accordance with Islamic law by sending him to a place of custody for juveniles for a duration of time as the court deems fit.<sup>21</sup>

(2) Where a woman convicted of an offence punishable with death, alleges that she is pregnant, the court shall before execution of the said sentence determine the question whether or not she is pregnant.

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<sup>17</sup> Bauchi adds: "including addresses by the parties or their counsel".

<sup>18</sup> Compare CPC §393: "A native [area] court . . . 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."

<sup>19</sup> Bauchi puts these provisions into two subsections, the first dealing with death sentences, the second with "sentences for amputation of the hand or retaliation (*qisas*)". The reporting requirements are the same as those in Kano in both cases.

<sup>20</sup> Bauchi omits this section.

<sup>21</sup> Bauchi omits the proviso.

(3) Where the court is satisfied that the convict is pregnant, it shall postpone the execution pending the time she delivers and upon the completion of breast-feeding her baby, when no one [else] can breast-feed the baby.<sup>22</sup>

[(4)] The mode of executing any death sentence shall be expressly stated in the judgment and it shall be in accordance with Sharia.<sup>23</sup>

409. (1) In cases falling under section 145 Sharia Penal Code where payment of *diyab* is ordered as per the wishes of blood relations or victim of crime as the case may be, the court shall order payment of such *diyab* on the close relations of the convict.<sup>24</sup>

(2) Where the court is satisfied that the close relations are not available or where they are not financially capable of making such payments the court shall make an order for the full payment of the *diyab* on the convict.

*Provided that* in both circumstances under subsections (1) and (2) of this section where the court is satisfied that the close relations, and the convict are not in position to effect payment of *diyab* because of their financial incapability the court shall make an order that State Government take over the responsibility of settling such *diyab*.

(3) The Government before effecting payment pursuant to the provision above shall make thorough investigations with a view to determining the true financial position of the convict and that of his relations.

(4) Where it is discovered that either the convict or his relations are capable of effecting payment of *diyab* in toto or any part thereof, the Government may refuse to pay anything at all or may pay any amount it deems necessary. Reference to the State Government under the provision above includes Local Government Council of the convict.<sup>25</sup>

410. (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 a Sharia Court has not been guided by the provisions of the Criminal Procedure Code in any criminal trial shall not entitle any person to be acquitted or any order of the court to be set aside.<sup>26</sup>

411. Notwithstanding the provision of subsection (1) of this section [sic: section 410, of which this section was probably supposed to be subsection (3)], the Sharia Courts shall be bound by the provisions of Chapter XXXIII [sections] 385 to 413 of the CPC.<sup>27</sup>

412. The jurisdiction and powers of the Sharia Courts shall be as contained in the schedule to the Sharia Court Law 2000.

413. (1) In all criminal proceedings a Sharia Court shall make a record of proceedings which shall include the following:

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<sup>22</sup> Bauchi omits “when no one [else] can breast-feed the baby”.

<sup>23</sup> Bauchi: “in accordance with Islamic law”.

<sup>24</sup> Bauchi: “on the convict and his relations”.

<sup>25</sup> Bauchi omits subsections (3) and (4).

<sup>26</sup> This section and the next are essentially the same as CPC §386 (1), (3) and (2), respectively. CPC §386(4) adds: “Where a native [area] court has not been guided or properly guided by the provisions of this Criminal Procedure Code an appellate court or reviewing authority shall apply to the case the principles contained in sections 288 and 382 of this Criminal Procedure Code and the provisions of the Native Court Law.”

<sup>27</sup> Bauchi omits this section.

## CHAPTER 5: THE SHARIA CRIMINAL PROCEDURE CODES

- a. The serial number of the case;
  - b. Name, religion, occupation and age of the accused;
  - c. Name, religion, occupation and age of complainant;
  - d. Offence complained of;
  - e. Date and place of commission of the offence;
  - f. Date of complaint before the court;
  - g. Name of witnesses for the prosecution/complainant and the accused;<sup>28</sup>
  - h. The plea of the accused person;
  - i. Finding with reasons;
  - j. Sentence or other final order and date;
  - k. Date on which proceedings terminated.
- (2) The judge of the court shall sign the record.<sup>29</sup>

### **AUTHENTICATION BY THE CLERK TO THE HOUSE**

This printed impression has been carefully compared by me with the Bill which has passed the House of Assembly and found by me to be a true and correctly printed copy of the said Bill.

Yazid M. Zubair  
*Clerk to the House of Assembly*

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<sup>28</sup> Bauchi: “Name, age, occupation and religion of witnesses for the prosecutor/complainant, and the accused.”

<sup>29</sup> Bauchi adds three further subsections: “(3) Where this Code is silent on any procedure in a case before a judge recourse may be made to any relevant provision in the Criminal Procedure Code Law of Bauchi State of Nigeria Cap 38, 1991 provided that such provision under reference shall not in any manner contravene the Sharia. (4) A judge is at liberty to resort to any Arabic text of recognised Islamic jurists on any procedure notwithstanding the provisions of this Code if the text to be referred to is more in conformity with the primary sources of Sharia as defined in the Sharia Penal Code Law. (5) The provisions of the Qur’an, Sunnah and Ijma being the primary sources of Sharia are supreme, accordingly any provision in this Code that is inconsistent with any of the provisions of the said primary sources shall, to the extent of the inconsistency be void.”