

## Chapter 5 Part VIII

### Sections of the Criminal Procedure Code of 1960 Omitted in the CILS Harmonised Sharia Criminal Procedure Code

1. Summary. The Criminal Procedure Code of 1960 (CPC) is divided into 398 sections (including §§243A and 250A, added in 1964). Of these, 48 are omitted from the CILS Harmonised Sharia Criminal Procedure Code (HSCPC) outright (notably, by omission of all of CPC Chapter XVII on preliminary inquiry and commitment for trial to the High Court, and most of CPC Chapters XVIII and XXXIII, on trials in the High Courts and in the ex-Native Courts), and 4 more are left out by virtue of the collapsing of distinctions made in CPC but not in HSCPC. By this calculation 350 out of 398, or 87.9% of CPC sections are included in the HSCPC. If we exclude from the CPC section-count the 18 sections of Chapter XVII which were already deleted in the 1970s and 1980s, then 350 out of 380, or 92.1% of CPC sections are included in the HSCPC.

#### 2. CPC sections omitted outright from HSCPC.

A. Chapter XVII: Preliminary inquiry and commitment for trial to the High Court. This entire chapter was deleted from Kano State's CPC in 1977<sup>1</sup> and from the CPCs of at least two other States (Bauchi and Sokoto) in 1989.<sup>2</sup> Probably other northern States also deleted the chapter on preliminary inquiries in 1989, but our research has not confirmed this. In any case, from Kano came Jigawa (1991), from Bauchi came Gombe (1996) and from Sokoto came Kebbi (1991) and Zamfara (1996), all the offspring inheriting the statutes of their parents, so that when Sharia implementation started in 1999 at least seven of the twelve Sharia States had abolished preliminary inquiries. The Sharia Criminal Procedure Codes of all the Sharia States, and the CILS Harmonised Sharia Criminal Procedure Code, also omit this chapter and the apparently cumbersome and unnecessary procedure that it entailed. The following table gives only the section titles from the original CPC.

167. *Commitment*
168. *Taking of evidence produced*
169. *When accused to be discharged*
170. *Transformation of inquiry into trial*
171. *Procedure on transformation of inquiry into trial*
172. *Framing of charge*
173. *Charge to be explained and copy furnished to accused*
174. *List of witnesses for defence at trial*
175. *Power of magistrate to examine witnesses named in list given under section 174*
176. *Order of commitment*
177. *Summons to witnesses for defence when accused is committed*
178. *Bonds of complainants and witnesses*

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<sup>1</sup> Kano State Edict No. 13 of 1977.

<sup>2</sup> Bauchi State Edict No. 7 of 1989; Sokoto State Legal Notice No. 1 of 1989. The latter does not actually delete Chapter XVII and all its sections, but rather (in an order by the Chief Judge) abolishes the procedures thereby provided.

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179. *Detention in custody in cases of refusal to execute bond*
180. *Charge, etc. to be forwarded*
181. *Power of Attorney-General to amend or alter charge*
182. *Power to summon supplementary witnesses*
183. *Custody of accused pending trial*
184. *Continuation of inquiry by a different magistrate*

B. Chapter XVIII: Trials by the High Court. This chapter is omitted from HSCPC, except for two sections put in HSCPC Chapter XVI, "Trials and other judicial proceedings before Sharia Courts". Except for section 186 we give section titles only of the omitted chapter. The two sections shown in bold are the ones included in the HSCPC.

185. *Trial by High Court*
186. *Defence in capital cases:* Where a person is accused of an offence punishable with death if the accused is not defended by a legal practitioner the court shall assign a legal practitioner for his defence.
187. *Commencement of trial*
188. *Plea of not guilty or no plea*
189. *Presentation of case for prosecution*
190. *Examination of accused at inquiry to be read*
191. *Procedure after conclusion of evidence for prosecution*
192. *Defence*
193. *Right of accused as to examination and summoning of witnesses*
194. *Prosecutor's right of reply*
195. *Consideration of finding*
- 196. *Announcement of finding = HSCPC §168***
197. *Procedure on finding of guilty*
- 198. *Sentence = HSCPC §169***
199. *Recommendation to mercy*

C. Omitted from Chapter XIX [=HSCPC XVII]: Charges

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].

D. Omitted from Chapter XXI [= HSCPC XIX]: General provisions as to inquiries, trials and other judicial proceedings.

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.

E. Omitted from Chapter XXIV [= HSCPC XXII]: Execution

293. *Chapter not applicable to native courts.* [refers ahead to CPC Chapter XXXIII, “Trials in Native Courts”, omitted from HSCPC].

F. Omitted from Chapter XXVI [= HSCPC XXIV]: Persons of unsound mind. [Note: this section deals with preliminary inquiries under Chapter XVII of CPC, all of which is omitted from HSCPC, see A above.]

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.

G. Omitted from Chapter XXXI [XXIX]: Miscellaneous.

378. *Directions by native court to officer of Nigeria Police.* Notwithstanding the provisions of sections 120 [= HSCPC §119: Power of court on receiving First Information Report], 130 [= HSCPC §129: Procedure when police consider investigation should be terminated without trial], 144 [= HSCPC §143: Power of court to give directions] and 148 [= HSCPC §147: Power of court to order further investigation] nothing in this Criminal Procedure Code shall be deemed to empower a native court to give any direction to a police officer of the Nigeria Police Force except for the purpose of arranging for the time and place of the trial in a case brought

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before such court by a police officer of the Nigeria Police Force.

H. Chapter XXXIII: Trials in Native Courts: this entire chapter omitted from HSCPC, except for five sections put in HSCPC Chapter XVI, "Trials and other judicial proceedings before Sharia Courts". The five sections shown in bold are the ones included in the HSCPC.

385. *Definitions for chapter XXXIII.* [defining 'Minister' and 'Provincial Commissioner'].
386. *Native courts to be guided by Criminal Procedure Code.* (1) In any matter of a criminal nature a native court shall be guided in regard to practice and procedure by the provisions of this Criminal Procedure Code other than those provisions which relate only to any court other than a native court.  
(2) Notwithstanding the provisions of subsection (1) all native courts shall be bound by the provisions of sections 388, 389, 390, 391, 392, 393, 394 and 395 [i.e., this chapter].  
(3) The fact that a native court has not been guided or properly guided by the provisions of this Criminal Procedure Code shall not entitle any person to be acquitted or any order of the court to be set aside.  
(4) Where a native 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 [= HSCPC §255: appellate court not to send back judgment for technical error in procedure] and 382 [= HSCPC 345: finding or sentence when reversible by reason of error or omission in charge or other proceedings] of this Criminal Procedure Code and the provisions of the Native Courts Law.
387. *Formal charge not necessary in native courts.* Notwithstanding the provisions of this Criminal Procedure Code, it shall be sufficient in any trial before a native court to have, instead of a formal charge, a statement of the offence complained of with the date and place, and when material, the value of the property in respect of which the offence has been committed.
388. *Procedure on conviction in native courts when no formal charge made.* Where a native court charges an accused person in the manner provided in section 387 then in the case of a conviction the offence proved shall be stated with a reference to the appropriate section of the Penal Code or other Act or Law under which in the opinion of the court an offence has been committed and a brief statement of the reasons for conviction shall be given.
389. *Right of accused to state case and adduce evidence.* Upon charging an accused person a native court shall call upon him to state his defence and to inform the court of the names and whereabouts of any witnesses whom he intends to call in his defence and the court shall procure the attendance of such witnesses and hear their evidence in like manner in all respects as a magistrate acting under section 163.
390. *Counsel not admitted to native court.* No legal practitioner shall be permitted to appear to act for or to assist any party before a native court.
- 391. Examination of witnesses, cf. HSCPC §166**
- 392. Making of findings = HSCPC §167**
- 393. Court to record wishes of deceased's relatives in capital cases, cf. HSCPC §170: Court to record wishes of complainant or deceased's relatives in qisas cases.**
394. *Procedure in capital cases.* Cf. CPC §§294-95, HSCPC §§260-61.

395. *Records in native court* = HSCPC §171

396. *Duties of justice of the peace* = HSCPC §172

3. CPC sections omitted from HSCPC by virtue of collapsing of distinctions made in CPC but not HSCPC. In sum: same territory covered, but in fewer sections

A. Jurisdiction of various grades of judges. CPC §§14-18 on jurisdiction of 5 grades of judges, from High Court to magistrate grade 2. HSCPC §§14-16 on jurisdiction of 3 grades of Sharia Court *alkalis*. Net of 2 sections omitted from HSCPC.

B. Appeals. CPC §§278 and 279 treat appeals from Native Courts and from Magistrate Courts. HSCPC §247 treats appeals from Sharia Courts. Net of 1 section omitted from HSCPC.

C. Execution of sentences of lashing or caning. CPC §§307 and 308 deal separately with *haddi* lashing and caning; HSCPC §273 deals with all together. Net of 1 section omitted from HSCPC.