

Chapter 4 Part II

The Making of the Zamfara and Kano State Sharia Penal Codes

*Ibrahim Na'iyā Sada**

Zamfara

When in June 1999, the Executive Governor of Zamfara State in the northwest of Nigeria appointed a committee to study the ways and means of “implementing Sharia” in the State, including the full scope of Islamic criminal law, little did he think that he was ushering in an event which is not only of national significance but something which is also of global interest. By the end of the year 2000, eleven other states in the Northern part of Nigeria had also adopted the application of the Sharia criminal law, differing only in approach and in various details.

Zamfara State’s first Sharia-related piece of legislation was its Sharia Courts (Administration of Justice and Certain Consequential Changes) Law, No. 5 of 1999, assented to by the Governor on 8th October, 1999.⁴⁵ This law established inferior Sharia Courts for Zamfara State with the power to determine both civil and criminal proceedings “in Islamic law” (§5(i)(a) and (b)). By section 5(i)(c) the House of Assembly was mandated to “establish offences and their punishments, and the procedure for trials in criminal matters”. Section 7(i) provided that:

The applicable laws and rules of procedure for the hearing and determination of all civil and criminal proceedings before the Sharia Courts shall be as prescribed under Islamic Law. For the avoidance of doubt, Islamic law comprises the following sources:⁴⁶

- (a) The Holy Qur'an;
- (b) The Hadith and Sunnah of Prophet Muhammad (SAW);
- (c) *Ijmāh*;
- (d) *Qiyās*;
- (e) *Masalahab-Mursala*
- (f) *Istihsan*;
- (g) *Istishab*;
- (h) *Al-Urf*;
- (i) *Mashabul-Sababi*; and
- (j) *Sbar'u Man Kablana*.

* Dr. Ibrahim Na'iyā Sada teaches in the Faculty of Law, Ahmadu Bello University, Zaria. From 2002-2006 he was the Director of the Centre for Islamic Legal Studies at ABU.

⁴⁵ Published in Zamfara State of Nigeria Gazette Vol. 1 No. 1, 15th June 2000, A1-A30.

⁴⁶ Strictly speaking, only the first two items on the following list, the Qur'an and Sunnah, can be considered as sources of Islamic law. The remaining eight items not only derive their authority from the first two but also can be referred to as rules of procedure on how to extract rules from the two basic sources. The Qur'an and Sunnah are also referred to as the divine component of the Sharia, while *ijma*, *qiyas*, etc. are referred to as the human component, involving the process of *ijtihad* which is strictly speaking human effort to understand and apply the divine component to the day-to-day affairs of the Muslim community.

The law also created a Council of Ulama for the State (§§9-13), with the power (among others) to “codify all the Islamic penal laws and their corresponding punishments, and the rules of criminal procedure and evidence as prescribed by the Qur’an, Hadith and Sunnah of the Prophet (SAW), *Ijmah*, *Qiyas* and other sources of Islamic Law”, and to advise on the enactment of the laws so codified (§7(vii) and (viii)).

It is interesting to observe that Zamfara’s very first law on Sharia implementation called for *codification* of Islamic criminal law. An alternative approach to the reinstatement of Islamic criminal law might have been simply to enact that in criminal matters the new Sharia Courts should apply Islamic criminal law as derived from the sources mentioned above and as articulated in detail in the books of *fiqh*. This was in fact the way the law was found and applied in the *alkalis*’ courts of Northern Nigeria right up to 1960 – with some limitations on punishments imposed by the British during the period of their rule. Some States which followed Zamfara in Sharia implementation – Katsina State, for example – in fact initially took this approach. Katsina’s Islamic Penal System (Adoption) Law, enacted in July 2000, provided in its two operative sections that:

3. (1) Notwithstanding any provision contained in the Penal Code and the Criminal Procedure Code, proceedings for the determination of any civil or criminal matter before any Sharia Court shall be governed in accordance with the primary sources of Islamic Law, that is to say: -
 - (a) Qur’an and
 - (b) Hadith⁴⁷
- (2) Subject to the provisions contained in the texts mentioned in subsection (1) of this section, a Sharia Court is empowered, in any proceedings before it to refer to an utilize the texts in the Maliki School of Law; Provided that they are in consonance with the Qur’an and Hadith.
4. Offences committed on or after the date of commencement of this Law shall be tried in accordance with the provisions of this Law.⁴⁸

This approach to the reinstatement of Islamic criminal law, also initially taken by Kano State,⁴⁹ might have had either or both of two motivations. One, which certainly existed, was the immense pressure – discussed further below – to do *something* – that built up in the northern States after Governor Sani so dramatically led the way: it was much simpler and quicker for State Governments and Houses of Assembly simply to tell the Sharia

⁴⁷ ‘Hadith’ and ‘Sunnah’ are used interchangeably and synonymously to mean the same thing.

⁴⁸ Islamic Penal System (Adoption) Law, 2000, signed into law 31st July 2000, coming into operation 1st August 2000, Katsina State of Nigeria Gazette No. 5 Vol. 11, 10th August, 2000, Supplement Part A pp. A97-98, reproduced in full in Part V of this chapter, *infra*.

⁴⁹ In its Sharia and Islamic Administration of Justice Reform Law 2000, signed into law on 24th February 2000, gazetted as No. 2 of 2001, Kano State of Nigeria Gazette No. 3, Vol. 33, 15th November 2001, pp. A5-A11. The basic purpose of this Law was to establish new Sharia Courts for Kano State. Section 6(5) gave the Sharia Courts jurisdiction “to try all criminal cases under Islamic law where all the parties are Muslims.” The interpretation section provided that “‘Sharia law’ means Islamic law and practice as prescribed by the Holy Qur’an, Hadiths and consensus of Islamic jurists.” As is recounted below the law was repealed and replaced by a new Sharia Courts law in November 2000.

Courts just to apply Islamic criminal law as found in the classical sources, than to draft and enact entire new Sharia Penal and Criminal Procedure Codes. Another possible motivation might in some cases have been the view that any attempt to codify Sharia would misrepresent its character, by deciding and fixing in advance, in narrowly drafted code sections, a set of choices which the *fiqh* leaves open to discretion – choices, for example, about what to do with convicted thieves, and with politicians caught embezzling public funds. But §36(12) of the Nigerian Constitution requires that all criminal law be enacted by the Federal or a State legislature as written law in which all criminal offences are defined and the penalties therefor prescribed. This seems clearly to require codification of the criminal law; this view was taken by no less than the former Chief Justice of the Federation, Hon. Justice Mohammed Bello, himself a respected authority in the Muslim community.⁵⁰ Therefore, as long as it proposed to remain within the Nigerian Federation, Zamfara’s approach to the matter, i.e. codification of Islamic criminal law notwithstanding its somewhat theoretical drawbacks, was the correct one; and all Sharia States, including Kano and Katsina, have subsequently followed it. The other alternative would very likely have quickly been struck down by the courts.

Pursuant to its mandate under the initial Sharia Courts (Administration of Justice and Certain Consequential Changes) Law, Zamfara State’s House of Assembly proceeded to enact a Sharia Penal Code for the State. A draft was made apparently by the Legal Drafting Department of the State Ministry of Justice working in conjunction with the Council of Ulama. The draft bill was brought to the notice of the National Islamic Centre, Zaria (NIC), which was then mandated to go and make all the necessary consultations and come up with a final draft. The NIC immediately contacted some lecturers in law from the Centre for Islamic Legal Studies (CILS) and the Faculty of Law, Ahmadu Bello University, Zaria. It was this group of seven people – Dr. Ibrahim A. Aliyu, Dr. M.B. Uthman, Dr. Bashir Yusuf, Dr. M.S. Abubakar, Dr. Y.Y. Bambale, Bala Babaji and Abdullahi Shehu – that came up with the final draft of the Zamfara State Sharia Penal Code that was subsequently enacted by the House of Assembly as Law No. 10 of 2000 and signed into law by Governor Sani on 27th January 2000. The code came into force on that same day.

In approaching the Sharia Penal Code, the CILS group relied mainly on first, the classical books of Islamic jurisprudence (*fiqh*) and secondly on some earlier legislation passed by some Islamic states like the Sudan in their attempt to implement the Sharia. While all views from the various Sunni schools of law (*madhabib*, sing. *madhab*) were considered, in most cases issues were resolved in favour of the preponderant view in the Maliki *madhab*, which is the more widely known and practised in Northern Nigeria and in fact in the whole of the North-West African sub-region. Views of other *madhabib* were also used in resolving some cases. Due to the legal background of all the members of the group a lot of time was spent on attempts to make sure that at least substantial conformity with the provisions of the Nigerian Constitution of 1999 was achieved. The

⁵⁰ See Justice Bello’s paper on “Sharia and the Constitution” at pp. 5-13 in *The Sharia Issue: Working Papers for a Dialogue*, (Lagos: Committee of Concerned Citizens, n.d. but probably 2000), edited by the Committee of Concerned Citizens who included Justice Bello, Prof. Nwabueze, Chief Williams, Prof. Yadudu, Vice Admiral Nyako, and Dr. Adegbite all of whom have essays in the book.

work was tedious and the time short in view of the pressure the Government was exerting to get the code. This explains the errors and drafting mistakes in the Zamfara code, which subsequently found their way into the other codes that mostly copied from it.

The declaration of the implementation of Sharia in Zamfara State, done with fanfare and huge celebration at Gusau, obviously put all the other States with substantial Muslim populations on serious alert. The Gusau declaration was attended by prominent representatives of almost all Muslim organisations in Nigeria. All the leading *ulama* from all over the country were also in attendance. Speeches were delivered by the scholars and finally by the Governor, Ahmad Sani, ushering in a new era in the application of the Sharia in Nigeria. It must be appreciated that what Governor Sani did was a revolution hitherto unthinkable. What the colonial masters removed after intensive negotiations based on the reports of so many committees, Governor Ahmad Sani restored by a single simple declaration. The expectations of the people were high; the support was total and absolute in the belief that Sharia would quickly bring about the much-needed security, social and economic justice and morality that have eluded the society for too long. It was also firmly believed that corruption in all facets of life including nagging delays in judicial proceedings would soon come to an end. As to whether these expectations were realised, this is a subject for another study.

Despite pressure from all angles – politicians, Muslim organisations, the *ulama*, and the Muslim populace at large – the Governments of some States dragged the implementation of the Sharia up to the middle of 2001. This was perhaps due in some cases to reluctance on the part of the Governors to proceed with the implementation programme; it was also partly the result of appointment by the Governors of committees charged to study the situation and come up with suggestions and ideas including, in most cases, a draft Sharia Penal Code for the consideration of the Governments. The work of these committees necessarily took some time.

Kano

In Kano State Sharia implementation did not properly commence until November 2000 – over a year after the Gusau declaration. This seems to have been due to both of the factors just mentioned: apparent reluctance on the part of the Governor to proceed, and the time taken by committees to complete their work.

What was happening in Zamfara State was quickly known and enthusiastically embraced in Kano. Malam Faruk Chedi, for example, subsequently the Commander-General of the *bisbab* in Kano, stated his belief that what was happening was a confirmation of the hadith of the Prophet (peace be upon him) which stated that a *mujaddid* (reformer) for Islam will be raised up after every 100 years. Already on 10 August 1999 a meeting of the Kano *ulama* was convened to discuss how to realise the implementation of Sharia in the State; a resolution on resolving all differences (sectorial) was adopted and plans were made on how to proceed. Public lectures aimed at mobilising the general public were organised in the School for Arabic Studies, in the Aminu Kano College of Islamic Legal Studies, and elsewhere; these continued throughout the remainder of 1999. These had the desired effect of increasing pressure on the Government. For example, in December 1999 about 5,000 women, mobilised by

an organisation called Women in Islam, marched to Government House in Kano to protest the apparent foot-dragging on Sharia implementation and to demand action.⁵¹ In early February 2000, when there was still no movement, a group of prominent *ulama* paid a call on the Governor, Dr. Rabi'u Musa Kwankwaso, to urge that something be done. The *ulama* had already prepared a Sharia Penal Code bill of their own, which they planned to submit to the State House of Assembly if the Governor's response was not encouraging.

In response to all this pressure the State Government finally did do something: it secured the passage of the initial Sharia and Islamic Administration of Justice Reform Law 2000 that has already been referred to, signed by the Governor on 24th February 2000. This Law established Sharia Courts for Kano State – on paper at least – and instructed them to apply Islamic criminal law as found in the classical sources; this point was noted above. But these parts of the law remained a dead letter, and in fact the entire Sharia and Islamic Administration of Justice Reform Law was repealed and replaced by a new Sharia Courts Law – along with a new Sharia Penal Code to be applied in the Sharia Courts – later in the year. It was only thereafter that the Sharia Courts were actually established and made functional by the appointment of judges and other staff to them.

Besides Sharia Courts, the Sharia and Islamic Administration of Justice Reform Law also established – on paper – a Sharia Implementation Advisory Committee (SIAC) for Kano State. Under section 13 of the Law the SIAC was charged to:

- a. review all laws in force in the State with a view to conforming them with all relevant rules, principles and norms of Sharia;
- b. advise on the training of relevant personnel for the various courts established under this Law;
- c. advise the Government on ways of creating a conducive socio-economic environment for comprehensive implementation of reforms;
- d. advise the Government on the appropriate date for the commencement of this Law.

But the last subsection made the position clear: nothing would actually happen until the SIAC had made its report – whenever that might be. Before the SIAC was even appointed, therefore, the Sharia Penal Code that had already been drafted by the *ulama* was introduced in the House of Assembly as a private bill. The Speaker welcomed the bill and proceeded to work on it. It went up to the second reading. Before the third and final reading, the Governor, fearing the political implication of being left out of the process as anti-Sharia, called a meeting of all key figures in Kano – including the Emir, Alhaji Ado Bayero, Malam Isyaka Rabi'u, Alhaji Aminu Dantata, and others – to discuss Sharia implementation in the State. That same day two committees were set up by the Governor: a Technical Committee to be headed by Prof. A.H. Yadudu, and the SIAC under the chairmanship of Sheikh Isa Waziri, the *Wazirin* Kano. After studying the matter Prof. Yadudu's committee recommended that the private bill be withdrawn and another Sharia Penal Code be prepared and submitted as an Executive Bill to

⁵¹ Reported in *Guardian*, 13 December 1999 p. 6.

“irrevocably commit Kano State Government to the implementation of the Sharia” in the State. This was subsequently done.

Meanwhile the country had witnessed the terrible fighting and destruction in Kaduna State triggered off by rival groups of Muslims and Christians marching and demonstrating for and against the implementation of Sharia in that State. In the wake of that episode, in March 2000, a meeting was called by the Vice President, Atiku Abubakar, at the State House in Abuja, to discuss the Sharia issue now gaining momentum in all the Northern States. People invited to the meeting included Malam Faruq Chedi, Sheikh Karibullahi Nasiru Kabara, Sheikh Aminuddeen Abubakar, Sheikh Ahmad Lemu, Justice Bashir Sambo, Malam Abubakar Jibril, Sheikh Sanusi Gumbi, Sheikh Sambo Rigachukun, Malam Ibrahim Sulaiman, Sheikh Sheriff Ibrahim Saleh and Sheikh Dahiru Usman Bauchi and others. It was a gathering of all major *ulama* in Nigeria. At the meeting, the Vice President spoke of the likely problems the Sharia implementation may bring to the corporate existence of Nigeria. He referred to the general weaknesses of the North particularly in economy and other social infrastructures, and urged for caution and a gradual approach in introducing the Sharia. After a lengthy discussion with speeches from many of the scholars like Sheikh Sheriff Ibrahim Saleh, Malam Ibrahim Umar Kabo, Bashir Sambo and Faruk Chedi, the *ulama* remained adamant that Sharia must be introduced and that it would not affect the corporate existence of Nigeria. They also promised to do all in their power to avoid any further conflict with non-Muslims.

In Kano the call for the implementation of Sharia was gaining ground. Meetings and consultations were taking place organised by various groups. It became known that Malam Ibrahim Shekarau, who was then a Permanent Secretary in the Kano State Government, had attended one of the meetings at Rumfa College. Because of this, Governor Kwankwaso caused a query to be issued to Malam Shekarau: as a government official, he was not supposed to attend “political” meetings called by private non-governmental organisations. Despite pleas from various people, Governor Kwankwaso refused to withdraw the query, which ultimately led to the termination of Malam Shekarau’s appointment. During the remaining Kwankwaso years, Malam Shekarau, who had the sympathy of all Sharia-loving people and was seen as having been unfairly treated by Kwankwaso, gained in popularity. Eventually he decided to run for Governor himself, using the Independent Sharia Committee for his grassroots campaign. When Shekarau succeeded in winning the election in 2003, he reinvigorated the drive for Sharia implementation, among other things by establishing new Sharia and Hisbah Commissions and a Directorate for Public Complaints and Anti-Corruption founded on Islamic principles.

But let us return to the year 2000 and the drafting of the Kano State Sharia Penal Code by the Sharia Implementation Advisory Committee, the SIAC.

The SIAC had about 50 members, some *ex officio* and some appointed by the Governor. It included virtually all the people who mattered in Kano, ranging from renowned *ulama* to representatives of the Emirate Council, legal practitioners and Islamic scholars. Subcommittees were appointed to work on various aspects of the Committee’s remit. A subcommittee headed by Muzammil S. Hanga was responsible for preparation of the draft Sharia Penal Code. Hanga is a lawyer by training. It was the Hanga

subcommittee's draft code that was ultimately submitted to the Kano State House of Assembly as an Executive Bill and enacted after revisions as described below.

The draft Sharia Penal Code prepared by the Hanga subcommittee was in Hausa. As it would have to be submitted to the House of Assembly and enacted in English, a translation of it into English was made by the State Ministry of Justice. The SIAC finally submitted this draft Sharia Penal Code, in Hausa and English versions, to the Governor in early November 2000, along with other draft legislation, including the new Sharia Courts Law and a Criminal Procedure Code (Amendment) Law which would lay down rules governing trials of criminal cases under the new Sharia Penal Code in the new Sharia Courts.

All this draft legislation was coming just in time, for the Governor was under intense pressure to make progress with Sharia implementation. Because of so many delays, he was perceived as anti-Sharia and was booed and stoned wherever he passed around Kano City. Even though the Deputy Governor, Ganduje, was perceived as more supportive of Sharia, because of the perception of the Government as anti-Sharia he was also booed and pelted with stones when he attended *maulud* celebrations at the Eid Ground, Kofan Mata. The tension had almost reached a boiling point. To defuse the situation the Governor had promised that full Sharia would commence, with all necessary legislation in place, by the 1st day of Ramadan 2000 – i.e. on 26th November. In fact both the new Sharia Courts Law and the new Sharia Penal Code were signed into law on 25th November and came into operation on 26th November, as promised; the Criminal Procedure Code (Amendment) Law was signed on 27th November and came into operation the same day; and the Grand Kadi executed the establishment of Sharia Courts and promulgated Rules of Civil Procedure for them also on the same day.⁵² But this did not happen before a great deal of further work was done in a very short time on the draft Sharia Penal Code which the Hanga subcommittee had prepared.

Upon the receipt of the draft Sharia Penal Code from the SIAC, in early November, Governor Kwankwaso saw a need to set up a Review Committee charged with the following responsibilities:

- (a) To study and review the draft Sharia Penal Code.

⁵² Sharia Courts Law 2000, assented to 25th November, 2000, gazetted as No. 6 of 2002 in Kano State Gazette No. 3, Vol. 34, 28th Feb. 2002, pp. A31-A44; Sharia Penal Code Law 2000, signed into law on 25th November 2000, coming into operation on 26th November 2000, no gazette information available; printed and published by Kano Printing Corporation; Criminal Procedure Code Cap. 37 (Amendment) Law 2000, gazetted as No. 6 of 2001 in Kano State Gazette No. 8 vol. 33, 27 Dec. 2001 pp. 39-46; Sharia Courts (Establishment and Territorial Jurisdiction) Order 2000, issued by the Grand Kadi under the Sharia Courts Law on 27th November, 2000, gazetted as Kano State Legal Notice No. 1 of 2002, Kano State Gazette No. 3, Vol. 34, 28th Feb. 2002, pp. B1-B6; Sharia Courts (Civil Procedure) Rules 2000, assented to by the Grand Kadi 27th Nov. 2000 and effective the same date, ungazetted copy in possession of the author; Upper Sharia Court (Appeals) Rules 2000, assented to by the Grand Kadi 27th Nov. 2000 and effective the same date, ungazetted copy in possession of the author.

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- (b) To identify and rectify any contradictions in the draft code and harmonise the code where necessary with other existing laws in Nigeria, while ensuring its full Islamic essence.
- (c) To make appropriate recommendations to the Government.

The Review Committee consisted of ten people, with the then State Solicitor-General, Barrister Rilwanu Muhammad Aikawa, as its Secretary, and members as follows:

1) Dr. Ibrahim Na'iyā Sada	-	Chairman
2) Dr. Muhammad Tabi'u	-	Member
3) Sheikh Dr. Aminuddeen Abubakar	-	”
4) Sheikh Ja'afar Mahmud Adam	-	”
5) Sheikh Karibullah Nasiru Kabara	-	”
6) Alh. Mahe Bashir Wali, mni (<i>Walim</i> Kano)	-	”
7) Sheikh Tijjani Bala Kalarawi	-	”
8) Sheikh Ibrahim Umar Kabo	-	”
9) Sheikh Isma'ila Khalifa	-	”
10) Sheikh Mahmud Salga	-	”

This Committee was inaugurated on the 13th November 2000. Because the 1st Ramadan was less than two weeks away, and because the code, after vetting by the Review Committee, would still have to pass through the House of Assembly, the Review Committee was given only one week to do its work.

The Committee in the discharge of its assignment adopted two methods: to study the draft submitted to it alongside other existing laws, and to proffer amendments where necessary. The Committee resolved to work on both the Hausa version and the English translation that had been made by the State Ministry of Justice. The Committee further observed that in view of the intensive work needed to bring the draft to the level required for presentation to the State House of Assembly as a bill, the one-week period given to it was grossly inadequate. The Committee, however, recognised the sense of urgency in the State on the matter and resolved to hold intensive long sessions day and night to meet the time limit given to it.

The English and Hausa versions of the draft code were studied along with other existing laws, primarily:

- 1) the Constitution of the Federal Republic of Nigeria 1999;
- 2) the Corrupt Practices and other Related Offences Act 2000;
- 3) the Legal Practitioners Act; and
- 4) the Penal Code of 1960 as amended and made part of the revised Laws of Kano State 1991.

In the course of its examination of the draft, the Committee observed that certain provisions tended to conflict with the Constitution of the Federal Republic of Nigeria or existing Federal Laws. The Committee accordingly amended or deleted those provisions. Examples of such sections were:

- i) Section 92 of the draft. This reproduced §92 of the Zamfara Sharia Penal Code, which criminalises “Any act or omission which is not specifically mentioned in this Sharia Penal Code but is otherwise declared to be an offence under the

Qur'an, Sunnah, and *ijtihad* of the Maliki school of Islamic thought". The Review Committee felt that this was inconsistent with Section 36(12) of the Constitution requiring definition of offences in a written Law. Deletion of Section 92 was accordingly recommended by the Committee.

- ii) Section 142 of the draft. Section 142 provided in part that the testimony of a person convicted of *qadhf* "shall not be accepted thereafter unless he repents before the court". This was felt to be in conflict with the 1999 Constitution and the Legal Practitioners Act and was deleted.

The Committee further amended the penalties for offences relating to receiving gratification by public servants to bring them into harmony with the Corrupt Practices and Other Related Offences Act of 2000. The Committee proffered significant changes in the draft by adjusting some of the punishments, harmonising various sections, synchronising the English and the Hausa versions and improving the clarity of the language.

One section received especially intense scrutiny. This was the section which in the Penal Code is captioned "Criminal Breach of Trust by Public Servant or by Banker, Merchant or Agent" (PC §315). Instead of essentially copying the Penal Code section on this subject and putting it in the Sharia Penal Code chapter on TA'AZIR OFFENCES, where all the other Sharia Penal Codes have it, the Hanga subcommittee had redrafted the section and put it in the chapter on HUDUD AND HUDUD-RELATED OFFENCES. Here is the new section as translated by the Ministry of Justice:

Whoever is a public servant or a staff of a private sector including bank or company connives with somebody or some other people or himself and stole public funds or property under his care or somebody under his jurisdiction he shall be punished with amputation of his right hand wrist and sentence of imprisonment of not less than five years and stolen wealth shall be confiscated. If the money or properties stolen are mixed with another different wealth it will all be confiscated until all monies and other properties belonging to the public are recovered. If the confiscated amount and stolen properties are not up to the amount the whole wealth shall be confiscated and he will be left with some amount to sustain himself.

The Review Committee had an exhaustive discussion about this and finally resolved to amend the draft by re-designating it as an offence attracting *ta'azir* punishment and not a *hadd* attracting the *hadd* of *siraqah* as provided in the draft. It is interesting to note that the Kano State House of Assembly, in the bill it finally enacted, restored the original draft position, as above, and made theft of public funds by public servants etc. an offence attracting the maximum punishment of amputation of the hand as provided for ordinary theft (*siraqah*). This section now appears as §134B of the Kano State Sharia Penal Code.

The Review Committee, finally, in submitting the corrected draft of the Sharia Penal Code in both English and Hausa made the following recommendations:

- 1) The process of establishing Sharia and bringing society in harmony with its provisions is a continuous one. The Government should keep reviewing the

Code and the other laws of the State from time to time to bring them in further conformity with the Sharia.

- 2) The Government may also consider putting in place Islamic social welfare policies and measures which will provide a conducive framework for successful implementation of the Sharia, such as the collection and management of *zakat*, poverty alleviation and economic empowerment measures, and rehabilitation of the destitute as well as persons of easy virtue like *karumai* (prostitutes), *'yan daudu* (transvestites) and *kawalai* (pimps).
- 3) The Government may also consider establishing an appropriate organ or institution to facilitate the realisation of the suggested policies in 2 above.
- 4) Government should consider organising orientation for all prosecutors in the State prior to the date the Sharia Penal Code comes into operation.
- 5) That if the Bill is eventually passed into law, a public enlightenment campaign should be vigorously pursued.

Immediately after receiving the Review Committee report, the Governor there and then passed the copy of the draft Sharia Penal Code, as amended by the Review Committee, to the Speaker of the State House of Assembly. This was necessary if the target of 1st Ramadan 2000 was to be met. The Governor sent the reviewed draft to the House of Assembly as an Executive Bill.

Executive Bills are usually moved by the Majority Leader, and the first reading amounts simply to reading the long title of the Bill. This procedure was followed in this case. The House of Assembly then committed the Bill to the House Committee on Judiciary and Justice, which studied the Bill, then brought it out for consideration by the full House. There were debates during the third reading, particularly on the issue of theft of public funds by public servants. Some *ulama* were contacted and invited to advise the House. Sheikh Umar Sani Fagge went to the House of Assembly chamber and addressed the members there. Sheikh Ja'afar M. Adam was contacted on phone. These *ulama* gave *fatwa* that the punishment should be amputation of the hand as provided for ordinary *siraqah*. Hence §134B of the enacted Bill.

The members of the House of Assembly were enthusiastic in passing the Bill. Sheikh Umar Sani Fagge made a touching speech at the House Chamber where he implored the members to view the task of passing the Bill as a lifetime contribution to Islam, which would guarantee them Paradise.

The timeframe in which the House of Assembly considered and passed the Bill was very short. It barely had a week to pass the Bill. However, each and every section was scrutinized and where necessary debated.

There was rush on the part of the State Sharia Implementation Advisory Committee in making the initial draft, there was another rush in the review of the draft entrusted to the Review Committee, and certainly more rush in the work of the House of Assembly who barely had one week to process the Bill and pass it for the Governor's signature before 1st Ramadan. The consequence of all this haste is obvious if one takes a very

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critical look at the Kano Sharia Penal Code. It is very clear that it was made and passed in haste.

The same was true of the making and passing of all the Sharia Penal Codes of all the States; all the Sharia Criminal Procedure Codes; the Sharia Courts Laws; and all the other Sharia-related legislation that was passed in 1999-2001: all was done quickly and in most cases without due care for the careful, scrupulous draftsmanship and subsequent publication of the texts that should be exercised in the case of such serious legislation. These texts are full of typists' errors which those who should have proof-read them failed to correct – to say nothing of the drafting errors. These are problems that should be corrected, partly through creation of more professional, competent, and careful legal drafting departments in the legislative assemblies and the Ministries of Justice. That will be done in time we hope and expect, but in the meantime it is a very significant accomplishment for the Muslims of Nigeria's Sharia States that the laws under which they live have been brought back into so much closer conformity with Islamic Sharia than they were before. The larger problem now is more serious enforcement, inside Government and outside, of the laws that have been enacted, not correcting their grammar.