SHARI'AH CRIMINAL LAW IN NORTHERN NIGERIA

Implementation of Expanded Shari'ah Penal and Criminal Procedure Codes in Kano, Sokoto, and Zamfara States, 2017–2019

UNITED STATES COMMISSION ON INTERNATIONAL RELIGIOUS FREEDOM

On the cover: A veiled Muslim woman sits before Islamic judge Nuhu Mohammed Dumi during a court trial over a matrimonial dispute at Unguwar Alkali Upper Sharia Court in Bauchi, Northern Nigeria, on January 27, 2014.
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Implementation of Expanded Shari'ah Penal and Criminal Procedure Codes in Kano, Sokoto, and Zamfara States, 2017–2019

By Heather Bourbeau
with Dr. Muhammad Sani Umar and Peter Bauman

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INTRODUCTION BY USCIRF

For 20 years, the U.S. Commission on International Religious Freedom (USCIRF) has monitored and evaluated religious freedom conditions in Nigeria. This year also marks 20 years since Nigeria's return to democracy and the adoption of the 1999 Constitution, which outlines the federal system of government and the hybrid application of religious, customary, and civil laws. The Constitution provides that states shall have High Courts, and may also have Shari'ah and Customary courts of appeal where required. During the same time period, 12 northern Nigerian states have also re-integrated Islamic criminal law in various ways. While the Shari'ah laws are based on long-standing practices, receive widespread support from Muslims, and apply only to Muslims, state enforcement of religious laws presents serious challenges to fully respecting freedom of religion or belief.

The reintroduction of Islamic criminal law has contributed to inter-religious tensions in Nigeria, in particular in the early years of adoption. The impact of this expansion of a religious-based legal system on non-Muslims in particular has been a consistent question. In 2000, USCIRF Commissioners *wrote* to then President Clinton expressing concern over "a wave of violence between Christians and Muslims during recent months fostered by the attempts of several northern Nigerian states to adopt Islamic criminal law and impose it on non-Muslims." Fortunately, this concern has abated over the years, since non-Muslims cannot be taken to Shari'ah courts without their consent. At the same time, USCIRF remains concerned over the broader freedom of religion ramifications of the system. USCIRF has continued to receive reports of discrimination against atheists, Christians, Shi'a Muslims, and others who do not comply with the majority's religious practices. Northern states still use problematic laws and social standards to prohibit Muslims from *blasphemy* and *converting* from or renouncing Islam. As in central and southern states, there is also a trust gap between citizens and the complex array of security and justice providers.

In 2018, USCIRF contracted the consulting firm Bauman Global to compare the functioning of Islamic criminal law in three northern states on a technical level, including the involvement of police, hisbah, and other statutory bodies, and to examine its impact on freedom of religion or belief for all citizens. The research team, including Nigerian legal experts and practitioners, used various methods to review hundreds of documents including court cases and police records, and to interview a range of stakeholders in each state, which resulted in the collection of new data.

This report provides a detailed and updated picture of Kano, Sokoto, and Zamfara's Shari'ah systems. USCIRF is utilizing the information in this report and consulting with U.S. government agencies, in order to develop detailed policy recommendations on how the United States can support the improvement of the provision of justice and the respect for freedom of religion or belief in the context of this hybrid system. Like the rest of the Nigerian justice system, the Shari'ah institutions greatly need reform, which will require long-term, collaborative approaches customized to each state.

The authors are grateful to the field research team in Nigeria, including Muhammad Huwaila Ibrahim, Zainab Aliyu Bello, Ahmed Salisu Garba, and Aminat Baba Sanchi. We are also appreciative for the substantive input and review provided by Dr. Philip Ostein, Dr. Ruud Peters, Fr. Atta Barkindo Yammenso, Saudatu Mahdi, Aliyu Musa Yauri. Lastly, we are grateful to the interviewees and individuals who helped with collecting the documents used in this report.

The contents of this report are the views of the contractor and do not necessarily reflect the views or policies of the U.S. Commission on International Religious Freedom or the U.S. government.

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EXECUTIVE SUMMARY

The legal system of Nigeria is a hybrid of English common and statutory law, customary law, and Islamic law (Shari'ah). Since 1999, Shari'ah Penal Codes and Criminal Procedure Codes were reintroduced in 12 northern states. This report examines the implementation of Shari'ah Penal and Criminal Procedure Codes in three of these states: Kano, Sokoto, and Zamfara. Through interviews conducted, as well as the analysis of 173 cases from 2017, the research also explores the constitutional challenges to Shari'ah Penal Codes, the roles of hisbah organizations, and public perceptions.

Shari'ah law has been practiced for centuries among the Muslims of northern Nigeria (after independence in 1960, Shari'ah had been limited to personal law). Thus, for many Muslims, the re-introduction of Shari'ah Penal and Criminal Procedure Codes did not mark a grand shift. Rather, it reflected the greater cultural norm. Moreover, it was welcomed by many in the region as an alternative to a conventional court and justice system that is perceived as corrupt, expensive, biased, and inefficient. Although Shari'ah courts in the North are much quicker, cheaper, and in the local Hausa language, interviewees in all three states spoke of bribes and corruption in the Shari'ah courts as well. In addition, the transition to Shari'ah Penal and Criminal Procedure Codes was rushed, with many personnel, including judges, lacking the appropriate training for accurate and effective administration of the new laws and procedures.

While convicts are no longer receiving the harshest punishments such as death by stoning and amputation, flogging meted out by court officials is quite common and accepted (more common in Kano and Zamfara than in Sokoto). Cases and allegations of violations of human rights of accused persons exist within Shari'ah criminal courts, including a lack of fair trials, as well as little to no investigation into charges, coercion, and the allowance of confessions obtained through torture by federal security and police officers. Despite these issues, many Muslims interviewed for this report prefer Shari'ah courts, as do some Christians, particularly for civil cases involving inheritance and marital issues.

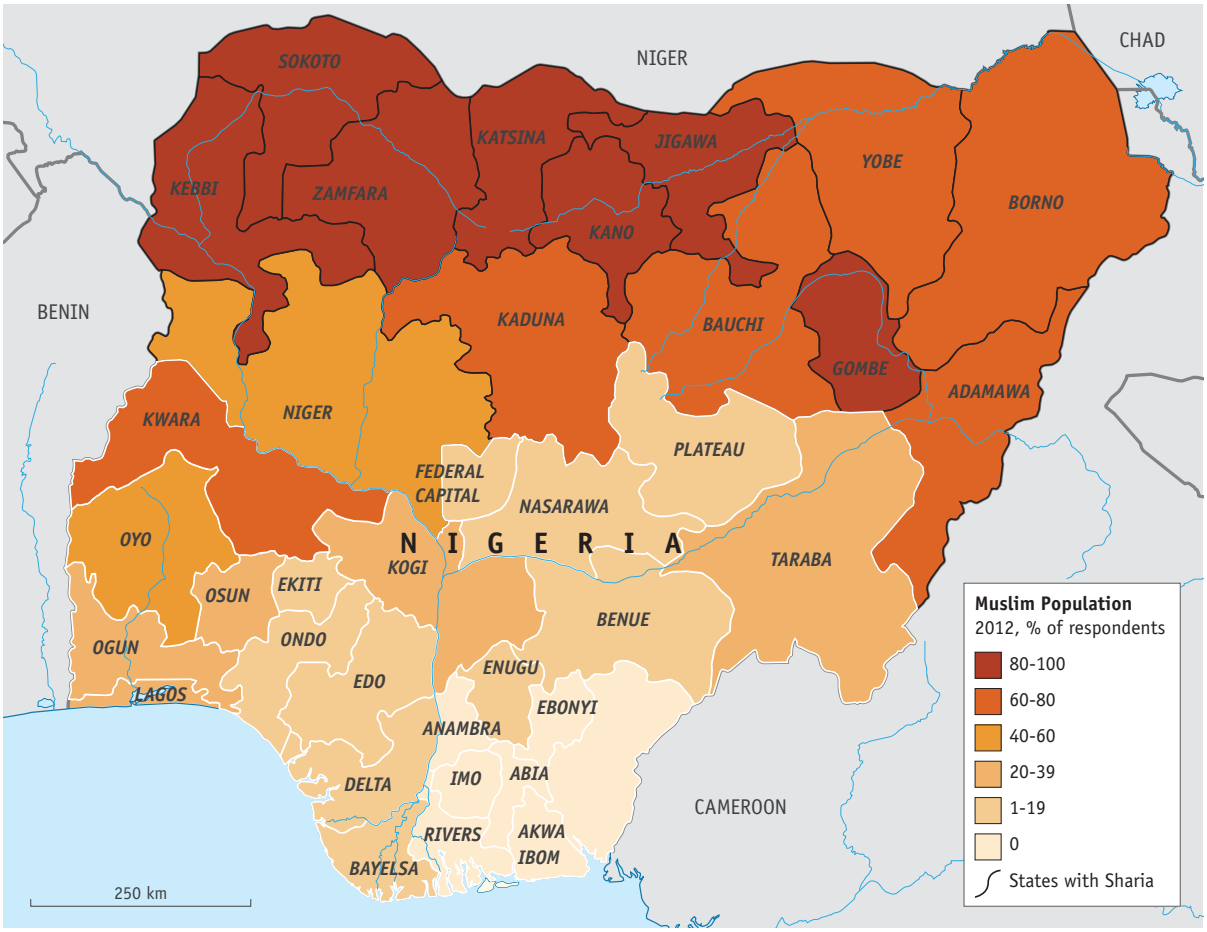
Tensions also remain over jurisdiction and conflicts with the federal constitution. For example, the constitution restricts the Shari'ah Court of Appeal to civil cases; however, sources stated that Zamfara still has criminal appeals from the lower Shari'ah courts going to the Shari'ah Court of Appeal.

Hisbah associations, organized to enforce Shari'ah, vary greatly between the states. While many interviewees said that the hisbah in all three states were "overzealous" and went beyond their stated mandates, more than half of all Muslims asked preferred hisbah to the police because of a deep distrust of the police.

Although non-Muslims are not subject to Shari'ah Penal Codes, they are subject to some of the statutory agencies such as the Kano State Censorship Board and hisbah—particularly in terms of enforcing the state-wide ban on the sale of alcohol. Discrimination around access to land also continues to be reported. Religious discrimination does not only impact Christians; Shi'a and atheists also experience injustice. Consequently, many Shi'a interviewed spoke of seeking alternative dispute resolutions to avoid potential discrimination.

We found a need for more education for those working within the Shari'ah court system and statutory agencies, as well as for the public who need to understand their rights. Most importantly, we saw a need for overall criminal justice reform in Nigeria, not just in the states that have expanded Shari'ah law.

Map[1]


NIGER
CHAD
BENIN
CAMEROON
SOKOTO
KEBBI
ZAMFARA
KATSINA
JIGAWA
YOBE
BORNO
KANO
KADUNA
BAUCHI
GOMBE
ADAMAWA
KWARA
NIGER
PLATEAU
FEDERAL CAPITAL
NASARAWA
N I G E R I A
OYO
KOGI
TARABA
OSUN
EKITI
BENUE
OGUN
ONDO
ENUGU
EDO
LAGOS
EBONYI
ANAMBRA
DELTA
IMO
ABIA
RIVERS
AKWA IBOM
BAYELSA
250 km
Muslim Population
2012, % of respondents
80-100
60-80
40-60
20-39
1-19
0
States with Sharia

KEY FINDINGS

1. Over three-quarters of Muslims who were asked by our researchers said they still prefer Shari'ah courts, as do some Christians, particularly for civil cases involving debt recovery, inheritance, and marital issues. This preference stems in part from Shari'ah courts being faster and cheaper than conventional courts, and they are conducted in Hausa.

2. Allegations of corruption (including allegations of judges taking bribes or well-placed individuals influencing court decisions) are common. Other allegations include a lack of fair trials, little to no investigation into charges, coercion, and, according to a few interviews and reports from Human Rights Watch and Amnesty International, the allowance of confessions obtained through torture by federal security and police officers.

3. Many court personnel, including judges, still lack the appropriate training for accurate and effective administration of the new laws and procedures, which has led to some problems and harsher punishments.

4. While convicts are no longer receiving the harshest punishments such as death by stoning and amputation, flogging is a quite common punishment for many crimes, particularly theft. Such punishment is more common in Kano and Zamfara than in Sokoto.

5. At least one man sentenced to amputation in Kano is still in prison after 15 years, and another man in Kano was sentenced to death by stoning but remains in prison. It is unlikely that these sentences will be carried out, as there is no political appetite for these punishments anymore. However, there is not a clear directive on what to do in such cases.

6. Although the constitution restricts the Shari'ah Court of Appeal to civil case appeals, Zamfara still has criminal appeals from the lower Shari'ah courts going to the Shari'ah Court of Appeal. This is despite multiple court rulings that the Shari'ah Court of Appeal does not have jurisdiction over criminal appeals. This reflects the tension over jurisdiction and conflicts with the federal constitution.

7. Although 80 percent of people who responded said that men and women were treated equally in Shari'ah courts, certain aspects of Shari'ah criminal law favor men. Under Kano's Shari'ah Penal Code, for instance, a man's testimony is more valuable than that of a woman. And in *qisas* cases, the perpetrator and victim must be the same gender for an equivalent retaliation; a wounded female victim may not claim to administer injury to a male perpetrator by retaliation. In addition, several interviewees noted that hisbah members were overly concerned with women's dress, perceived prostitution, and alleged lesbian acts or gatherings.

8. Hisbah associations, organized to enforce Shari'ah, vary greatly between the states, but Zamfara's has the most overarching authority. The state recently expanded the mandate of its hisbah to include powers to arrest, detain, and prosecute; and, in Sokoto there are two hisbah associations each of which asserts that it is the "official" hisbah but the state never formally constituted any hisbah, as legally required.

KEY FINDINGS (CONTINUED)

9. Hisbah associations in all three states at times go beyond their stated mandates, including arresting non-Muslims, using excessive force (including assaulting police officers and lawyers), and detaining people in cells for days before releasing them or taking them to a court. Nonetheless, more than half of all Muslims asked preferred hisbah associations to the police because the police and security forces are generally seen as corrupt. In Kano, 80 percent of Muslims who responded preferred the hisbah, and every Christian who responded preferred the police. However, more Muslims in Zamfara preferred the police to the hisbah, which recently expanded its powers.

10. Zamfara's Council of Ulama has greater authority than similar Councils of Ulama in other states. For example, they select and advise the appointments of judges of Zamfara's Shari'ah Courts. The Council also prescribes guidelines, conditions, and terms of employment. According to an interviewee, Zamfara's Council of Ulama can "instill fear even in the governor."

11. Although Christians are not subject to Shari'ah Penal Codes, they are subject to some of the statutory agencies, including hisbah associations. This has led to discrimination, such as the prohibition against teaching Christian religious studies in public schools (only Islamic religious studies are permitted), and the inability to obtain land for churches in Zamfara and Sokoto. All of the Christians interviewed for this report understood the Shari'ah Penal and Criminal Procedure Codes did not apply to them unless they consented to have their case heard in a Shari'ah court. A few Christians said they preferred to take certain civil matters to Shari'ah courts. And only one Muslim student in Sokoto believed that non-Muslims should be punished under Shari'ah.

12. Shi'a residents experience social and official discrimination by hisbah associations, police, and the public. For example, when the hisbah learns the residents are Shi'a, the association may rule against them or treat them harshly, and the Shari'ah Penal and Criminal Procedure Codes do not recognize the Shi'a interpretation of these laws. As a result, many Shi'a interviewed spoke of seeking alternative dispute resolutions to avoid potential issues.

*It is important to note that many of the issues stated above and throughout the report are symptoms of larger socio-political dynamics and systemic problems with all of Nigeria's justice and criminal systems.

Introduction

Since 1999, Shari'ah Penal Codes and Criminal Procedure Codes have been reintroduced in 12 northern states. This report examines the implementation of Shari'ah Penal and Criminal Procedure Codes, and how it differs in Kano, Sokoto, and Zamfara; the constitutional challenges to Shari'ah Penal Codes; issues in implementation; and public perceptions.

For this study, we conducted an extensive literature review and gathered 173 cases from Kano, Sokoto, and Zamfara, including at least 50 cases from each of the three states. We looked at transcripts of proceedings from lower Shari'ah courts, upper Shari'ah courts, and the High Court in each of the selected states; as well as records from Shari'ah statutory agencies.[2]

In addition, we conducted 147 interviews, including at least 40 interviews per state. We interviewed Shari'ah courts judges, public prosecutors, attorneys who have represented accused persons in Shari'ah criminal cases, administrative staff and record-keepers at the lower Shari'ah courts, individuals who have been tried and convicted or discharged, journalists who cover Shari'ah criminal court cases for various media organizations, civil rights organizations, legal experts, women's rights groups, prominent Christian and Shi'a leaders, and officials at the police, Ministries of Justice, and Shari'ah statutory agencies, as well as individual residents.

Background

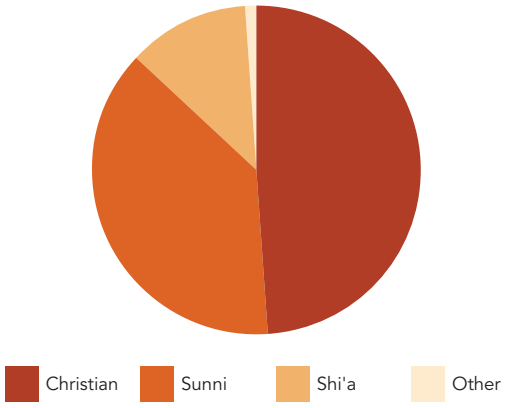
Shari'ah expansion amplified existing tensions (between Christians and Muslims and between Shi'a and Sunni), and the differences in its implementation across states speak to the history and heterogeneity of Nigeria as a whole and the north in particular.

History of Legal Pluralism in Nigeria

Nigeria's legal system is a hybrid of English common and statutory law, customary law, and Islamic law (Shari'ah). Judicial precedents, legislation, and the Nigerian constitution, which prohibits the establishment of a state religion and religious discrimination, also influence Nigeria's body of law and legal system.

No single system of courts exists throughout the country. Each state has conventional courts (that follow the English-derived statutory and common law), as well as customary courts and/or Shari'ah courts. People choose to use one court over another for various reasons, some of which are explored further in this report.

This legal plurality reflects the religious and cultural differences within, as well as the colonial legacy of, Nigeria. According to a 2012 survey[3], 49.3 percent of Nigerians identify as Christian and 48.8 percent as Muslim. A 2010 Pew Forum on Religion and Public Life report found 38 percent of the Muslim population self-identified as Sunni and 12 percent as Shi'a, with the remainder declining to answer or identifying as "something else" (5 percent) or "just a Muslim" (42 percent).[4]



Sunni Islam is divided into four schools of law: Hanafi, Shafi'i, Maliki, and Hanbali. Nigeria's Islamic legal system largely adheres to the Maliki School of Sunni Islam in all states.[5]

Democratic Federalism and Changes in Northern Nigeria

Prior to 1999, criminal cases were tried in customary courts or in conventional courts (or as they are called in the North, "area courts"), and certain punishments, such as amputation, were banned. However, in 1999, Nigeria was transformed from a dictatorship to a democratic system under President Olusegun Obasanjo, a Christian. Under the new constitution the country's 36 states gained greater autonomy. Consequently, nine Muslim-majority (Bauchi, Borno, Jigawa, Kano, Katsina, Kebbi, Sokoto, Yobe, and Zamfara) and three Muslim-plurality (Kaduna, Niger, and Gombe) northern states extended Shari'ah law to criminal matters.[6]

The Shari'ah implementation started in Zamfara in 1999 was viewed as restoration of "the full Shari'ah" that had prevailed in the Sokoto Caliphate before the imposition of British colonial rule when the criminal aspects of Islamic law were suspended. It was also, in part, a rejection of a legal system that had not functioned well under the dictatorship, particularly for the poor. Many northern Muslims felt disadvantaged by President Obasanjo's liberalizing of the economy, privatization of state industries, and restructuring of the banking system.[7] Several observers now see the passing of the first Shari'ah Act in Zamfara in November 1999 as political opportunism,[8] distinguishing the North from a political administration led by a Christian from the South and rousing support for a distinctly northern alternative.

By promoting Shari'ah expansion as a way to create a more just and inclusive economy, one that protected the human rights of Muslims, the northern governors also sanctioned the growth of a more conservative Islamism in much of their area of Nigeria. This contributed to the creation of other statutory agencies, including religious-based censorship boards, and changes in the states' religious preference in school curricula, relationships between state government and religious leaders, and state roles in issuing preaching permits.

These factors sparked violence between Muslims and Christians. Between 2000 and 2005, thousands were killed in riots stemming from protests both in favor of and in opposition to the implementation of Shari'ah Penal and Criminal Procedure Codes. Moreover, perceived offenses continue to incite mob violence resulting in deaths and destruction.

Shari'ah Penal Codes and Jurisdiction

The Nigerian constitution stipulates neither the federal government nor any state government shall establish a state religion. It also prohibits discrimination on religious grounds. Section 10 of the constitution explicitly states, "The Government of the Federation or of a State shall not adopt any religion as State Religion." In addition, Nigeria has no federal Shari'ah Court of Appeal. The country's highest court, the Supreme Court, has the authority to entertain appeals against earlier decisions from Shari'ah courts and hand down unappealable judgments.

The constitution also provides for freedom of thought, conscience, and religion, including the freedom to change religion and to manifest and propagate religion "in worship, teaching, practice, and observance," provided these rights are consistent with the interests of defense, public safety, order, morality, or health, and protecting the rights of others. In deference to this provision, the new Shari'ah Penal Codes do not make any provision against apostasy, which is otherwise an offense punishable by death in Islamic criminal law.

In all states that have expanded Shari'ah law, the old 1960 Penal Code and Criminal Procedure Code are still applied to persons tried in the conventional courts, area courts in non-Shari'ah states, and customary courts in Kaduna, as well as to persons whose cases have moved from Shari'ah courts to the High Courts, the Court of Appeal, or the Supreme Court.[9]

Hudud (limits) are crimes considered to be against the rights of God and which have specific punishments laid out in the Qu'ran or Hadith. There are fixed punishments for theft (amputation of the hand), illicit sexual relations (death by stoning, or 100 lashes), making unproven accusations of illicit sex (80 lashes), drinking intoxicants (80 lashes), apostasy (death or banishment), and highway robbery (death).[10] Strict requirements also exist for conviction. For instance, for illicit sex punishable by stoning, four male eyewitnesses to the act are required. Hudud cannot be pardoned by the victim or the state and must be carried out in public. However, hudud punishments may be vacated, even at the point of execution, if the accused retracts an earlier confession of the offense.

Qisas (retribution) are crimes such as murder, voluntary manslaughter, involuntary killing, intentional physical injury, and unintentional physical injury. The victim or victim's next of kin may choose to forgo retribution (an eye for an eye or a life for a life) in exchange for financial compensation. The victim or victim's next of kin may also exercise forgiveness.

Ta'zir (chastisement) are crimes, the punishments for which are at the discretion of the judge. These crimes do not fall under either the narrow requirements of hudud punishments (though they may be of a similar nature) or those for which the Qu'ran does not indicate explicit punishments.

The Shari'ah Penal and Criminal Procedure Codes apply only to Muslims.[11] However, if they sign a consent form non-Muslims may choose to take their cases to a Shari'ah court, particularly if the civil or criminal case involves a Muslim. Shari'ah courts lack the authority to compel participation by non-Muslims. There has been one instance when a Sokoto Shari'ah court judge unlawfully heard a case against a Christian without the Christian's consent. That judge was found to have wrongly heard this case and was dismissed.

The three categories of offenses and punishments drawn from the classical manuals of Islamic law include: *hudud*, *qisas*, and *ta'zir*.

Hudud

Of these three categories of offenses and corresponding punishments, the hudud punishments are the most controversial. In fact, some penalties are included in the Penal Code of 1960; for example, Muslims who commit adultery and fornication, alcohol-related offenses, or defamation and injurious falsehoods, are "liable to the punishment of Haddi lashing as prescribed by Muslim law," in addition to the punishments otherwise specified (§68(2). Stoning to death and amputation, however, are not included in the Penal Code of 1960. Moreover, many of the states' Shari'ah Penal Codes include hudud-related offenses that are not explicitly in the Qu'ran or Hadith. Yet apostasy (the abandonment or renunciation of Islam by a Muslim), as already noted, is included in the Hadith, but *not* in the Shari'ah Penal Codes.

However, in Kano in 2015–2016, nine men, including cleric Abdulazeez Dauda (also known as Abdul Inyass) of the Tijaniyya Sufi order[12] and one woman, were sentenced to death by hanging for insulting the Prophet Muhammad. They were convicted for reportedly saying that Sheikh Ibrahim Niasse, the Senegalese leader of the Sufi Tijaniyya sect "was bigger than Prophet Muhammad,"[13] triggering violence, including during the trial. In the record of proceedings of the Upper Shari'ah Court, Rijiyar Lemu, Dauda said that the Sheikh deserved respect from everybody, including the Prophet of Medina. The crowd in the courtroom quickly became rowdy, and the unrest spread through the city of Kano. The Upper Shari'ah Court was set on fire, destroying all court records. Eventually, Dauda was sentenced to death. (No prosecutions were made involving those who participated in the violence.) This was the first time a death sentence was handed down for blasphemy.[14] They appealed to the High Court and won.[15]

Earlier in the implementation of Shari'ah, four cases gained worldwide attention and protest from women's and human rights activists and the greater international community, ultimately leading to a shift in the implementation of these types of sentences. The first was the 2000 case in which Buba Bello Jangebe was amputated for stealing a cow. One year later, Lawali Inchi Tara was found guilty of stealing bicycles in Zamfara and had his hand amputated. Somewhat in contrast, death-by-stoning, while in the Shari'ah penal codes, has never been carried out, despite two high-profile cases. In 2002, Safiya Hussaini became the first person to be sentenced to death by stoning for adultery under the new Shari'ah criminal codes in Sokoto. Also, in 2002, in Katsina, Amina Lawal was sentenced to be stoned to death for adultery.[16] International human rights groups and foreign governments voiced their concerns and local women's rights groups such as Women's Rights Advancement and Protection (WRAPA) and Boabab defended the women in court. Eventually, the Shari'ah courts acquitted both women of all charges.

Nigeria's President Obasanjo had said that the country's constitution would ultimately spare Lawal's life, and Justice Minister Kanu Agabi declared certain sentences under the Shari'ah system to be discriminatory and thus unconstitutional,[17] and the federal government asked the states to modify their laws.[18] That meant, however, that many people convicted and sentenced to amputation or stoning were left in prison with no clear punishment and limitless jail terms. A number of appeals resulted in sentence modifications or reversals of convictions. The more common mechanism for dealing with this has been the governors' "prerogative of mercy." Under the constitution, governors can reduce or remit punishments or grant pardons after consultation with their Advisory Councils on Prerogative of Mercy. Many persons sentenced to hudud punishments have been quietly released in this way after serving some time.[19]

Support for the legality of a punishment (i.e., it is prescribed by a text considered sacred) is different from support for meting out that punishment. The socio-political appetite is lacking for meting out the hudud punishments. Since 1999, in cases of someone receiving the sentence of death by stoning no such punishments have been carried out.[20] Apart from former Governor Ahmed Sani of Zamfara, no state governor has signed a warrant for the use of stoning-or-death sentences.

Partly this is the result of little political appetite for the constitutional challenges, and, for death penalties, a state's governor must sign off on all death warrants. Governors are less keen to push the political and legal boundaries. Instead, Shari'ah judges may choose to hear the case as a ta'zir offense, which provides them wider discretion over the punishment. For instance, they may choose to make the punishment 20 years in prison instead of execution. Flogging, however, is quite common (more so in Kano and Zamfara than in Sokoto). The number of lashes is fixed as hudud in the relevant sections of the Shari'ah Penal Codes, for example 80 lashes for defamation of character, and 100 for fornication. But in ta'zir offenses, the maximum number is stated (e.g., lashes up to 15, or 50, etc.) and the judge can stipulate whether the maximum or less will be administered. Sentences of up to 100 lashes (most were 6–30 lashes) were imposed in 40 percent of the cases we collected.

Statutory Agencies per State
Kano
Hisbah Board
Zakat Commission
Censorship Board
Public Complaint & Anti-Corruption Commission
Directorate of Social Reorientation
Sokoto
Arabic & Islamic Studies Board
Zakat Board
Zamfara
Hisbah Commission
Zakat Board
Council of the Ulama
Ministry of Religious Affairs
Preaching & Jumu' at Mosques Commission
Shari'ah Research & Development Commission
Public Complaint Commission
Anti-Corruption Commission
Qur'anic Recitation & Memorization Board
Arabic & Islmaic Education Board
Directorate of Qur'anic Schools & Islamic Organizations
Welfare Pilgrims Board

For example, in Kano a man was convicted of theft and sentenced to 6 months in prison and 50 lashes. Another man was convicted for possession of a stolen phone and sentenced to 20 lashes. In Zamfara, a man was convicted of causing injury and intimidation and was sentenced to one year in prison and 30 lashes. Another man was convicted for a drug offense and sentenced to 40 lashes.

In Sokoto, for example, we collected three cases – *COP v. Bilal Abubakar, COP v. Mubarak Shehu*, and *COP v. Basiru Kabiru*. In each case, the charges filed were for theft punishable by hadd, the singular of hudud (Section 147), but the judge ruled that prosecution did not meet the requirements for imposition of hadd. Still the judge found the accused in each case guilty of theft not punishable with hadd based on Section 150. Instead of amputation, the convicts received 12 months in prison, 6 months in prison, and 10 lashes, respectively.

Rise in Violent Extremism and Conflict

The upswell of violence in the North from violent extremists has had little to no impact on the implementation of Shari'ah Penal and Criminal Procedure Codes in that the impetus for expanding these codes did not stem from these insurgencies. These insurgencies, namely factions of Boko Haram, view the current implementation of Shari'ah Penal Codes as illegitimate because the implementation is limited in its scope and they believe it is politicized. However, they do not engage with the political leaders of the region to try to influence a stricter interpretation. Instead, they take the law into their own hands and operate extra-judicially, carrying out harsher sentences.

Shari'ah Court of Appeal

The graphic on page 10 illustrates the general court hierarchy in the states that have chosen to adopt and implement Shari'ah Penal and Criminal Procedure Codes.[21] While the graphic provides a brief description of each institution, it is important to discuss the Shari'ah Court of Appeal because this is where the bulk of the constitutional challenges have occurred. The Shari'ah Court of Appeal is, in theory, the highest Shari'ah court in each state. A Grand Kadi presides over the court with the assistance of other kadis.

Figure 1: Sokoto State, Shari'ah Court of Appeal

Before the implementation of the Shari'ah Penal and Criminal Procedure Codes, under the provisions of the federal constitution, the jurisdiction of the Shari'ah Courts of Appeal in all states was limited to questions of Islamic personal law. Section 262 of the constitution establishes a Shari'ah Court of Appeal in the Federal Capital Territory, the district encompassing Nigeria's capital, Abuja. Section 275 establishes a Shari'ah Court of Appeal in "any State that requires it." Section 277(1) provides: "The Shari'ah Court of Appeal shall*, in addition to such other jurisdiction as may be conferred upon it by the law of the State,* exercise such appellate and supervisory jurisdiction in civil proceedings involving questions of Islamic personal law."[22] Nonetheless, after some northern states adopted Shari'ah Penal and Criminal Procedure Codes, they directed all appeals—civil and criminal—from the Shari'ah courts to their Shari'ah Courts of Appeal, citing the italicized clause of Subsection 1 of Section 277 of the constitution, just quoted. In a series of rulings beginning in 2002, a number of state High Courts and divisions of the federal Court of Appeal held that Section 277 does *not* authorize states to expand the jurisdiction of Shari'ah Courts of Appeal beyond Islamic personal law. Appeals from the lower Shari'ah courts in all other matters must go to the state High Courts.

In 2016, the federal legislature considered a bill (House Bill 530, "A Bill for an Act to alter Sections 262 and 277 of the Constitution of the Federal Republic of Nigeria, 1999, to increase the jurisdiction of the Shari'ah Court of Appeal of the Federal Capital Territory and Shari'ah Court of Appeal of a State by including Criminal Matters and Hudud and Qisas and for other Related Matters") that would have extended Shari'ah Courts of Appeal jurisdiction to criminal cases, but the bill did not pass.

Shari'ah Courts of Appeal in the three states covered in this study are no longer supposed to entertain appeals in criminal cases. Nonetheless, according to some interviewees, some states, including Zamfara, still have criminal appeals from the lower Shari'ah courts going to the Shari'ah Courts of Appeal.

Court Structure

Supreme Court
Based in Abuja, this is Nigeria's highest court. Court of Appeal judgments can be appealed to the Supreme Court.

Court of Appeal
Based in Abuja with divisions throughout Nigeria, appeals on criminal cases from the high courts are heard here. Nigeria's multiple legal systems (English, customary, and Islamic) converge here. It is constitutionally required to include at least three judges versed in customary law and at least three judges versed in Islamic personal law.

Federal High Court
Based in Abuja with a division in each state.

State High Court
Highest conventional court in each state. Appeals cases from the upper Shari'ah courts are heard in the State High Court. Thus, they move from the Shari'ah system to a predominantly English legal system.

Magistrate / District Courts
Lower conventional courts are where many criminal proceedings start. Non-Muslims can use the conventional courts in each state. They may also opt to have their cases heard in Shari'ah courts or in customary courts.

Shari'ah Courts (Upper and Lower)
Most Shari'ah cases occur in the lower Shari'ah courts. One lower Shari'ah court is established in each Local Government Area (LGA,) but some LGAs may have more than one depending on population density. In Zamfara these are referred to as "Higher Shari'ah Courts." Lower Shari'ah courts located in different LGAs are grouped into a zone and placed under an upper Shari'ah court, which serves as the court of first appeal. Appeals of criminal cases from Upper Sharia courts will go first to the State High Court, and then to the Federal Courts. However, for civil cases appeals are taken to the Shari'ah Courts of Appeal.

**In Zamfara, lower Shari'ah courts are referred to as "higher Shari'ah courts."*

Customary Courts
Apply the customs and traditions accepted in particular ethnic communities. They vary from one state to another, and from one ethnic community to another, even within one state. Their jurisdictions are more extensive in civil cases, and in some states, the customary courts have limited jurisdiction in criminal cases specified by state law. In other states they do not have jurisdiction in criminal cases. Appeals from customary courts go to the State Customary Court of Appeal, then to the State High Court, and then to the Court of Appeal, and finally to the Supreme court.

Role of Statutory Agencies

Various actors, such as the state police command and other security forces; state judicial service commissions; state chief judge; Grand Kadi; as well as those involved in alternate dispute mechanisms, serve different roles and functions within the court structure (See Annex B for a description of each of these actors). For the purpose of this research, it was prudent to focus on the role of statutory agencies, particularly the role of hisbah groups.

Some states took the expansion of Shari'ah criminal courts as an opportunity to establish statutory agencies. These agencies were established to support the smooth implementation of Shari'ah. Each agency is given duties to perform in accordance with the norms and rules of Shari'ah. For instance, a Zakat Board has the official mandate to collect *zakat* from Muslims who are obligated to pay. The moneys are to be used for charitable and religious purposes. (Non-Muslims can receive proceeds of zakat as Islamic law allows non-Muslims to benefit from zakat.) States have different statutory agencies with specific powers laid out in law.

Role of Hisbah Groups

The Arabic term *hisbah*, mentioned in Qur'anic verses and in the Hadith, refers to an act performed for the common good or to receive a reward from Allah. In northern Nigeria, hisbah groups consist of mostly locally recruited young men who patrol neighborhoods to observe any violations of Shari'ah law. Of the three states, only in Zamfara does the Hisbah Establishment Law specifically connect the definition of hisbah to Shari'ah implementation, with about 80 percent of its functions directly connected to Shari'ah implementation.

The hisbah can also act as an alternative organization to settle family issues. Other times, depending on their jurisdiction, they may act as a *de facto* court, hear certain cases, and push for a settlement, as in Kano and Sokoto. For criminal offenses, hisbah groups sometimes instantly administer punishments on people suspected of an offense, according to Human Rights Watch (HRW).[23] Depending on protocol, at other times they will hand suspects over to the police or take them directly to a Shari'ah court. While people agree to be bound by the decision of these courts, the hisbahs' actions may be outside of the Shari'ah or conventional court contexts. Unlike in Shari'ah or conventional courts, recording the proceedings in hisbah "courts" is not required.

Hisbah members may be provided with uniforms and may carry whips or sticks, but usually not firearms.[24] Hisbah members can be called to testify if they were called to a crime scene. The hisbah establishment laws (in states that have established official hisbah boards or commissions) make provisions for a chairperson and commissioners who are appointed by the state governor from various agencies of state and federal governments, as well as different sectors from society. The establishment laws give the hisbah chair and commissioners the powers to set the policy and operational guidelines for hisbah agents and to exercise "disciplinary control" over hisbah staff and agents.

Hisbah establishment laws usually have a clause stipulating that the hisbah agency is "a corporate body" that can sue and be sued, but the laws shield individual hisbah agents from being sued for carrying out the duties specified in the establishment law. A hisbah commission may have its own legal representation. When they believe hisbah members have acted outside their mandated roles, people have the right to take their complaints against hisbah commissions to different state and federal agencies, such as the Ministries of Justice, the Public Complaints Commissions, and the National Human Rights Commission.

Figure 2: Sokoto State, Hisbah Commission

Hisbah and Conversion. The relevant hisbah establishment laws in Kano, Zamfara, and Sokoto do not impose the duty of conversion. However, in Zamfara and Sokoto the laws (Zamfara Hisbah Law 2003, sec 6.6; Sokoto Hisbah Law 2014, sec 9.6) do charge the hisbah commission/board with the responsibility "to take every measure to ensure proper conformity to the teachings of Sharia by the general public in matters of worship, dress code and social or business interactions and relationships"; and, in Kano, Hisbah Law 2003, sec 7.VI states that the hisbah are to "advise on moral counseling in the society which is in conformity with Islamic injunctions."

According to a Shari'ah scholar, "hisbah preach Islam to remote villages with small communities still practicing Hausa traditional religion. These communities, often called Maguzawa, are also approached by Christian missionaries seeking to convert them to Christianity. . . . After hisbah's preaching tours to such communities, some individuals or more rarely a whole community will come to hisbah and request to be converted to Islam. Occasionally, individuals even in metropolitan Kano may come to hisbah to convert to Islam." The scholar further noted that "there is no quota for the hisbah to convert a certain number of individuals or communities per month/year," and there has been no pushback from the communities or from state or federal authorities in relation to these conversions.

If an individual requests conversion, the formal process of converting to Islam is that the prospective convert will be asked to recite the Shahada, i.e., the declaration that 'I believe there is no deity worthy of worship except Almighty Allah, and that I also believe that Prophet Muhammad is the Messenger of Allah.' Once a person makes this declaration in the presence of at least three Muslims, he is deemed to have converted to Islam. The next step is to explain to the convert the obligation to pray five times daily; give zakat (alms) if the person has the stipulated minimum amount of money/wealth; observe the fast during the entire month of Ramadan; and, perform the pilgrimage to Mecca once in a lifetime if the person has the means to do so. Furthermore, the convert will be informed of Islamic rules governing daily life, which the convert is expected to learn and abide by. A convert may be invited to adopt a new Muslim name, but that is not necessary."

A hisbah representative in Bauchi State reaffirmed the scholar's points stating: "hisbah do not have a mandate to convert people to Islam. It is even against Islam to convert people to Islam. We can only preach to people about Islam. That is why no hisbah law contains a provision on conversion." He further stated that "even with people's wish, hisbah refer such cases to some other places. Some hisbah who act as imams in some mosques do come across such instances during Tafsir sessions. But they handle cases of conversion in their capacity as imams and not as hisbah."

Some observers have compared hisbah groups to vigilante groups, particularly in states that do not have an official hisbah association but where unofficial hisbah groups patrol. Traditional leaders or local governments recruit most hisbah members. For some LGAs, this is a way to employ young men, as the government may pay a small salary. Consequently, most members do not have an Islamic law background, let alone a high level of formal education. These members usually do not have training in law enforcement, suspect and victims' rights, or procedures for arrest, evidence gathering, and investigation in either the Shari'ah court or the conventional court context. Their levels of knowledge on rights, procedures, and Shari'ah law vary from state to state. Such lack of training can lead to violations of human rights.

Fifty-five percent of interviewees from Kano, Sokoto, and Zamfara when asked said that they preferred the police. However, when broken down by religion, the numbers change a bit. All but one Christian said they preferred the police, and 61 percent of Muslims who responded across the three states preferred hisbah.

In Bauchi, Jigawa, Kaduna, Kano, Niger, and Zamfara the state governments fund hisbah groups. These groups may operate with the full consent of the state government, but accountability mechanisms are not always clearly defined. Overall, interviewees generally concur that hisbah groups are less arbitrary and less "overzealous" than they were when Shari'ah Penal and Criminal Procedure Codes were first re-introduced. That said, some human rights observers believe the activities of several hisbah groups should be investigated for human rights violations.

While most members are men, women participate at every level of hisbah, including the hisbah boards. In fact, a study for the Nigeria Stability and Reconciliation Programme (NSRP)[25] found that representation of women among hisbah personnel was greater than in the court system.[26]

Focus on Zamfara, Sokoto, and Kano

This report focuses on three states: Zamfara, Sokoto, and Kano.

Zamfara was the first state to apply new Shari'ah criminal codes, and the Zamfara state government is committed to applying its new Shari'ah Penal Code. Consequently, Zamfara has created more institutions, including statutory agencies, surrounding Shari'ah than any other state in Nigeria. Moreover, Shari'ah implementation in Zamfara has received significant public support.

Sokoto and Zamfara share a great deal in common in terms of social composition, history, and religious and cultural orientation. Yet, the implementation of the Shari'ah Penal and Criminal Procedure Codes in Sokoto has been markedly different from that in Zamfara, largely due to the different attitude of the political elite in Sokoto toward religious issues in general and toward the application of Shari'ah criminal law in particular. Sokoto is the home of the Sultan of Sokoto, the current traditional ruler of the Sokoto Caliphate and the Spiritual Head of Muslims in Nigeria.

By contrast, Kano presents a case study of the importance of politics in the implementation of the Shari'ah Penal and Criminal Procedure Codes, particularly as it has a large Christian population, unlike Zamfara or Sokoto. Moreover, Kano has a very long history of political activism and political radicalism, which have led to political agitation and occasionally violence. It also had a number of highly publicized cases decided by the Shari'ah courts on issues that are culturally, religiously, and politically sensitive.

In addition, each of these three states embraces distinct approaches to Shari'ah statutory agencies, particularly hisbah associations.

History of New Shari'ah Law Implementation

Created out of the old Sokoto in 1996, Zamfara shares a great deal in common with Sokoto in terms of social composition, history, and cultural orientation. Both states have overwhelming Muslim majorities.

In October 1999, the governor of Zamfara, Alhaji Ahmad Sani, announced that Zamfara would be the first state to expand Shari'ah to include criminal law and statutory agencies. The Zamfara Shari'ah Penal Code was first enacted as Law Number 10 of 2000, but in 2005, it was replaced with the "harmonized" version produced in 2002 by the Center for Islamic Legal Studies, Ahmadu Bello University, Zaria.

Significant public support has been expressed for Shari'ah implementation in Zamfara. The state has created more statutory agencies surrounding Shari'ah than any other state in Nigeria, and local laws have changed to reflect a greater Islamic influence. For instance, all businesses must shut down during the five Muslim prayers each day, and Zamfara's state capital of Gusau imposes a midnight curfew.

The current Governor of Zamfara State is Muhammad Bello Matawallen Maradun (elected May 2019), and the current Chief Judge of Zamfara State is Justice Hajiya Kulu Aliyu Isah. All Shari'ah courts are under the control of the Chief Inspector of Shari'ah Courts, who answers to the Grand Kadi, the presiding judge in the Shari'ah Court of Appeal of Zamfara.

Beyond the establishment of the Shari'ah Penal Code, Zamfara also established several laws for Shari'ah implementation beyond the court system, including:

- The **Magistrate's Courts (Restriction of Powers) Law 2002**, prohibiting the magistrate courts from trying any criminal case where all of the accused are Muslims;
- **The Hisbah Commission (Establishment) Law 2003,** giving the Commission supervisory powers over the implementation of Shari'ah (amended in 2018 to expand the mandate of the Hisbah Commission to include the power of arrest and detention of people suspected of violating the Shari'ah laws of the state);
- The **Shari'ah Criminal Procedure Code (2005)**, spelling out the rules of procedure to be observed by the Shari'ah courts.

Figure 3: Zamfara State, Shari'ah Court of Appeal

Zamfara State Courts	# criminal cases introduced in 2017	# criminal cases introduced in 2018	# civil cases introduced in 2017	# civil cases introduced in 2018
Shari'ah courts 17 Upper 66 Higher The Shari'ah courts are divided into 4 divisions: Gusau Central Zone, Kauran Namoda Zone, Gumi Zone, and Talata Mafara Zone.	1,613 1,357 cases closed	5,038*	2,310	3,228
Conventional courts	82 57 cases closed	33	161	83

*The increase in number of criminal cases introduced in the Shari'ah courts is partly due to the increased insecurity in the state, which has impacted courts such that court administrators have had to temporarily shut down or relocate courts. The insecurity has also forced many people to relocate from villages to the capital city.

For this research, 72 cases were collected from 2017 to 2018 from three Upper Shari'ah Courts and three Higher Shari'ah Courts (lower Shari'ah Courts) in Zamfara. The majority of the cases involved theft; cheating and criminal breaches of trust; public disturbances; and, insults, abuse, and intimidation. One of these cases was dismissed for lack of proof, and one for lack of jurisdiction. In three cases, the accused was found not guilty, and three were withdrawn by the complainant.

Of the cases in which the accused persons were convicted, the penalties included flogging, fine, and imprisonment, or combinations of two penalties, as well as the option of fine or imprisonment. The majority of the cases (25 out of 37) in which a convict was sentenced to flogging involved theft or were theft-related. The average number of lashes was 37, with 20 and 30 lashes being the most common punishment (in 13 and 11 cases, respectively). Only one woman was sentenced to flogging (out of the 10 female defendants in the cases reviewed). The hudud penalty of amputation was not imposed in any of the 29 cases of theft offenses. It is worth noting that based on the collected cases, the judges in the Shari'ah courts remind all parties that they have the right to appeal within 30 days.

Types of Sentences and Variant Interpretations

The implementation of Shari'ah Penal Codes continues to adapt to socio-cultural norms and political appetite. For example, in 2000, Buba Bello Jangebe was the first Nigerian to have his sentence of amputation carried out since the reintroduction of Islamic law after he was found guilty in a Zamfara State Shari'ah court for stealing a cow. "The people were happy that the norms of Shari'ah were being carried out," a state government official was quoted as saying at the time by the BBC. According to HRW, Buba Bello Jangebe did not have legal representation. One year later, Lawali Inchi Tara was found guilty of stealing bicycles in Zamfara and had his hand amputated. Faced with a wave of negative publicity, however, the Zamfara state governor stopped ordering additional amputations, and the Medical Council reportedly suspended the doctor who carried out the amputation on Tara for two years.

The Zamfara commissioner of justice and attorney general told HRW, "We are aware of the concerns. When Buba Bello Jangebe was amputated we received a lot of letters from human rights groups. We realized the introduction of Shari'ah would generate controversy. . . . The system is gradually being improved. We correct mistakes as we go."[27]

Twelve others have been sentenced to amputation since 2001, but all those convicted have been released.[28] According to prison authorities in Gusau, the most recent amputation sentence was in 2016.[29] Some had their cases reviewed by the High Court and were released on the orders of the Chief Judge. Others had their cases reviewed by the Shari'ah Court of Appeal and were released. In contrast, the ta'zir sentences of caning or flogging are very common.

For example, in Zamfara in July 2000, one month after the state adopted its Shari'ah Penal Code, a teenage girl stated that three men had raped her. She was pregnant as a result. She produced seven witnesses who testified to her version of events, but no one had witnessed the event itself. She had no legal representation. She was convicted of *zina* and sentenced to 100 lashes because she was unmarried. Her rapists escaped charges, and no attempt was made to ascertain who the father was and charge him with zina as well.[30]

In 2005, a circular was released to reduce the number of judges handling qisas and hudud offenses. In theory, now only four Upper Shari'ah Court judges can hear hudud cases. Nonetheless, some other Shari'ah court judges still handle such cases.

A more recent case is testing the reach of the court. In *A.G. Zamfara State vs. Salisu Abdullahi Beka and Five Others* (CR/S/2018), the court convicted and sentenced some of the accused to death for desecration of the Qu'ran [under sections 116 (abetment), 123 (criminal conspiracy), 287 (incitement to breach/disturb the public peace), and 400–403 (offenses relating to religion) of the Zamfara State Shari'ah Penal Code].

The hisbah said that a boy inserted a Qu'ran into a pit toilet. The boy accused someone else of giving him instructions to do this. The accused denied knowing the boy. They were nevertheless charged and convicted, based on their confessions. Two of the accused were interviewed for this report and said that they confessed under torture. One said he had two of his teeth broken, sustained heavy injuries, and was threatened with death if he did not confess. He was also encouraged to implicate any top politician. He confessed and named a politician whom he claims he does not know personally.

None of the accused was represented by an attorney, and the police did not investigate the matter. In addition, for the offense of throwing the Qur'an into a latrine, which is not mentioned in the Shari'ah Penal Code, the Court relied on Zamfara Shari'ah Criminal Procedure Code Section 185 "a person charged with one offense may be convicted of another" and also the Zamfara Shari'ah Court Establishment Law No. 5 of 1999, sec 7, which authorizes Shari'ah courts to use classical sources of Islamic law (Qur'an, Hadith, Ijma'a, and Qiyas) in reaching a judgment in cases where the Shari'ah Penal and Criminal Procedure Codes do not have relevant provisions for a case.

Reportedly the Zamfara State Council of Ulama pressured the state government to prosecute and the Shari'ah court to convict. The accused were not granted bail. The public got so riled by the case, one interviewee said, "People would have burnt the court if the court had released the accused people." The Shari'ah court judge reportedly consulted the Ulama before giving his pronouncement. One of the convicted is appealing the decision to the Court of Appeal.

Public Perceptions

The adoption of Shari'ah Penal Codes is very popular in Zamfara. Shari'ah criminal courts, which are conducted in Hausa, work more quickly than conventional courts. Many interviewees also credited Shari'ah law with reducing criminality, particularly in terms of alcohol consumption and prostitution. They also credited the Shari'ah system with providing water;

construction of roads, markets, hospitals, and schools; and the overall moral improvement of society.

A public prosecutor in the conventional courts notes that sometimes Muslims prefer to go to Shari'ah courts for criminal cases as well. Although they may face lashings in Shari'ah courts, in the High Court they can be sent to prison and could remain there a long time without bail while awaiting their trial.

Roles within the Conventional and Shari'ah Judicial Systems

Role of the State Police Command

Across the three states, we found considerable distrust of the police. Repeatedly, interviewees described the police as "corrupt." As a Muslim official with a civil society organization in Zamfara said, "You cannot go to police and file a case and expect them to take it seriously without giving them anything."

Role of the State Ministry of Justice

When a criminal matter involves only Muslims, the Magistrate courts must transfer it to the Shari'ah courts. For the prosecution of cases taken to Shari'ah courts, Zamfara created the Shari'ah Prosecution Unit under the Ministry of Justice. These prosecutors are attached to various Shari'ah courts and are all licensed lawyers with an expertise in Shari'ah Penal and Criminal Procedure Codes. So although police may prosecute in rural areas, these prosecutors can take over a case at any time.

Role of the State Grand Kadi

In the beginning, confusion ensued about who oversaw the Shari'ah courts—the Chief Judge or the Grand Kadi. A clarifying law was passed that said anywhere the word "High Court Judge" is mentioned in the law that established the Shari'ah courts, it was referring to the Grand Kadi.

Role of the Ulama

The Council of Ulama is a statutory body with its powers regarding the Shari'ah courts conferred by statute. The Council of Ulama in Zamfara has greater authority than similar Councils of Ulama in other northern states. The council controls the recruitment of Shari'ah judges more than the State Judicial Service Commission. However, some interviewees alleged that the Ulama do not always understand the constitutional impediments to implementation.

The Council of Ulama selects and advises the appointments of judges of Zamfara's Shari'ah Courts, subject to confirmation by the state Judicial Service Commission. In theory, the council also prescribes guidelines, conditions, and terms of employment. However, it did not immediately issue guidelines, resulting in some judges not being trained in Islamic law. So in 2013, the Judicial Service Commission created a committee, which in turn recommended that the minimum qualification for a judgeship be a diploma in Shari'ah law with at least five years' post-qualification experience.

The Council of Ulama's undue influence means that many people are unwilling to challenge it. As one official at a Zamfara Upper Shari'ah Court said in relation to the Qu'ran desecration case (*A.G. Zamfara State vs. Salisu Abdullahi Beka and Five Others*), "They [the Ulama] instill fear in even the governor of the state and so the Ministry of Justice had no option but to quickly take steps to arraign the people."

Role of the Shari'ah Court of Appeal

The federal Court of Appeal has ruled that the Zamfara Shari'ah Court of Appeal does not have the jurisdiction to hear criminal appeals. In December 2012, in the case of *Alh. Salihu Haruna & ANR vs. Lawali Tambaya* (CA/S/104s/2011), the appeals court judges ruled that the Shari'ah Court of Appeal had no jurisdiction to entertain the appeal, saying, "It will be wrong to assume that Section 277 (1) of the constitution has

given the Zamfara House of Assembly additional powers to confer jurisdiction on the Shari'ah Court of Appeal in Zamfara State to hear appeals in all cases decided in accordance with Shari'ah Law by the Upper Shari'ah Court in the state."[31]

Despite multiple rulings, Zamfara's Shari'ah Court of Appeal still hears criminal appeals, according to interviews with court officials. But, interviews with officials in the Ministry of Justice indicate that out of court settlement is the preferred option for resolving appeals in Shari'ah criminal cases so that such cases do not reach the Court of Appeal.

Role of Hisbah Groups

Only in Zamfara does the Hisbah Establishment Law specifically connect the definition of hisbah to Shari'ah implementation, with about 80 percent of its functions directly connected to Shari'ah implementation.[32]

The Hisbah Commission is under the supervision of the Ministry of Justice and receives funding from the state. (The current Head of Zamfara's Hisbah is Mallam Sani Hamza Kaura.) The Hisbah Commission (Establishment) Law Number 17 of 2003 lays out all of the powers, including the following:

- to monitor the proper implementation and application of laws and bylaws made by the state or local government councils;
- to ensure proper compliance with the teachings of Shari'ah throughout the state;
- to monitor the daily proceedings of Shari'ah courts in order to ensure proper compliance with Shari'ah Penal and Criminal Procedure Codes and report on all actions likely to tamper with the proper dispensation of justice from any court official or any litigant;
- to take every measure necessary to sanitize the society of all social vices and whatever vice or crime is prohibited by Shari'ah; and
- to take every measure to ensure proper conformity to the teachings of Shari'ah by the general public in matters of worship, dress code, and social or business interactions and relationships.

In 2018, the Zamfara State Hisbah Establishment Law was amended by Law No. 2 of 2018 to expand the mandate of the Hisbah Commission to include powers to arrest, detain, and prosecute people suspected of violating Zamfara Shari'ah laws. In addition, the new law imposes:

- restriction on filing a lawsuit against the hisbah;
- a fine of ₦10,000 or imprisonment for two months on "any person who assaults, obstructs, or resists any hisbah officer in the execution of his duties"; and
- a fine up to ₦5000 or imprisonment for three weeks on any person "found guilty on summary conviction" of refusing to assist a hisbah officer in the execution of his duties when the person is called upon to do so.

It also explicitly states that, "Nothing in this law shall be construed to exempt any hisbah officer from being proceeded [sic] against by the ordinary course of the law when accused of any offence [sic] punishable under this law or other enactments."

The Zamfara State Hisbah Commission Annual Report for 2017 reveals the following:

- Patrols were dispatched to various places, including 127 times to hotels and guesthouses, 206 times to residencies, and 147 times to learning institutions.
- A total of 455 complaints were heard, of which 357 were settled by the commission and the other 98 transferred to Shari'ah courts. Most involved marital disputes.
- Mediated disputes involving various sums totaled ₦7,042,970.

Figure 4: Zamfara State Government Hisbah Commission

People's perception of the hisbah is generally unfavorable. Interestingly, more Muslims in Zamfara preferred the police to the hisbah, which just expanded their powers. Interviewees repeatedly said hisbah groups are "overzealous." For example, hisbah members allegedly did not follow due process and are biased against certain individuals; hisbah members were allegedly not well trained; and one interviewee alleged that some politicians use the hisbah to settle political scores. Even Shari'ah court officials said that the police were better trained, particularly with regard to rights protected under the Nigerian constitution. One Shari'ah court official noted, "The [hisbah] have no respect for the presumption of innocence under the constitution. To them, once you are arrested, it is the same as you are guilty."

One Shi'a resident of Zamfara said, "Hisbah are overzealous in their operations. They feel they are the most pious Muslims. They are not trained, and most of them are not educated even in the religion. They respect the Ulama in the state more than any other person."

Role of Other Shari'ah Statutory Agencies

When the state expanded Shari'ah law and created the Hisbah Commission and the Council of the Ulama, Zamfara public officials also created several other Shari'ah-related statutory agencies, including a Ministry of Religious Affairs, a State Zakat Board, a State Shari'ah Research and Development Commission, a State Public Complaint Commission, and a State Anti-Corruption Commission.

These statutory agencies are designed to help with larger goals such as eradicating poverty, improving health, and strengthening the economy.[33] The Zamfara State Public Complaint Commission and Anti-Corruption Commission, in particular, help settle civil disputes (mostly debt recovery, matrimonial, probate, and contract cases), saving court time and resources.

Issues

Concerns persist concerning the Shari'ah courts in Zamfara, including poor record keeping, corruption, the control by the Council of Ulama, and inconsistent treatment from judges.

One Shari'ah court official interviewed alleged that Shari'ah judges would hide their record books to prevent people from appealing their judgments. Other judges allegedly do not make any record of their cases, preferring to handle matters off the record. Another interviewee said that the Shari'ah judges charge exorbitant amounts of money, and as a result, sometimes litigants abandon their cases. Nonetheless, as one interviewee noted, "As a Muslim, I will prefer to go to Shari'ah court. Solely on religious basis, even though some of the *alkalis* are corrupt."

There have been trainings of judges and staff to try to rectify some of these issues, including trainings by Center for Islamic Legal Studies at Ahmadu Bello University, Zaria and the National Judicial Institute, as well as an in-house training for Shari'ah court registrars on record keeping in August 2015. Efforts are ongoing to organize another one for bailiffs, clerks, and messengers.

Vigilante Justice

Sometimes perceived offenses will not be tried in courts, but rather by mob justice. For example, in 2016, a student of Abdu Gusau Polytechnic allegedly made a blasphemous statement regarding the Prophet Muhammad. In the ensuing row, a mob set fire to a house and killed eight people (although it is not clear whether the student accused of blasphemy was inside the house at the time). No court action was taken, but Nigerian President Buhari condemned the mob killings.[34]

Religious Freedom

There is a strong belief in the constitutional right to religious freedom even when it is not borne out. Yet this is not always practiced. For instance, Shi'a in Zamfara generally avoid the courts for fear of victimization based on religious belief. Shi'a are not included in Shari'ah agencies, including the Council of Ulama, because of the differences in their ideology from the prevailing Sunni ideology. One official in a Shari'ah statutory agency noted that, "In Zamfara the composition of Shari'ah agencies reflects the religious diversity in the state. We have members of Izala, Dariqa, and many other religious groups, with exception of the Shi'a. We don't work with them here. But in court, they will get justice."

For the Christian minority, discrimination is more evident. Christian leaders complain that they can no longer obtain land for churches in Zamfara. Christian religious studies are not taught in public schools, only Islamic religious studies. One Christian university student said, "Christian students are complaining because they don't have a place of worship [on her campus that has a mosque], so there is no equality." Christians can only go to Magistrate courts and the state's High Court divisions, unless they consent to go to a Shari'ah court. While an evangelist in Zamfara reported that "Even where a Christian bought land with his own money, the government will not approve the transaction if they know that the Christian intends to build a church on the land. And there is no customary court in the state to address Christian personal law matters as you have in places like Kaduna State. Christians can only go to Magistrate and state High Courts for their issues."

History of New Shari'ah Law Implementation

Sokoto followed Zamfara closely, adopting in 2000 the Sokoto State Shari'ah Penal Code Law and the Sokoto State Shari'ah Criminal Procedure Code Law. In Sokoto, the Magistrate courts have been preserved for non-Muslims. However, as in Zamfara, the area courts were abolished in 2000 and replaced with Shari'ah courts for all Muslims and non-Muslims who consent.

The current governor of Sokoto State is Aminu Waziri Tambuwal (first elected in 2015, and re-elected in 2019), and the current Chief Judge of Sokoto State is Justice Mohammed Saidu Sifawa, appointed on January 1, 2019.

For this research, 50 cases were collected from 2017 to 2018 from three Upper Shari'ah Courts and two Lower Shari'ah Courts in Sokoto. The majority of the cases involved theft; criminal conspiracy, intimidation, and insults; criminal breaches of trust and cheating; and assault and causing hurt. Thirty-eight of the cases carry penalties of imprisonment and/or fine, and six have a penalty of lashes. The average number of lashes was 13, with ten lashes being the most common punishment (in three of the cases). No woman was sentenced to flogging (out of the three female defendants in the cases reviewed). Flogging is done by court clerks or police prosecutors on court premises. Prison officials are not involved, and no medical attention is given to those receiving the lashes. If a person sentenced to lashes is observed to be sick, the flogging will not be carried out.

Types of Sentences and Variant Interpretations

Similar to Zamfara, the implementation of Shari'ah Penal Codes continues to adapt to socio-cultural norms and political appetite. In the beginning, the Shari'ah courts made some controversial judgments. At least 13 sentences of amputation for theft were handed down between 2000 and 2004, and one was carried out.[35] Also, in 2002, Safiya Hussaini Tungar Tudu, a Sokoto woman, became the first person to be sentenced to death by stoning for adultery under the state's new SPC. Hussaini had a child out of wedlock with a married neighbor. She had originally confessed to the crime, but she was acquitted on appeal. Her confession was deemed inadmissible because she was not fully informed about the severity of the charges against her. Since then, no one has been sentenced to death by stoning in Sokoto. Flogging is also less common than in Kano and Zamfara.

Sokoto State Courts	# criminal cases (completed) 2017	# criminal cases (completed) 2018	# civil cases 2017	# civil cases 2018
Shari'ah courts 9 Upper 48 Lower *Shari'ah Court of Appeal is divided into 2 divisions with 7 total judges	1,330	1,960	N/A	N/A
Conventional courts *There are 30 conventional courts including 25 Magistrate courts and 5 divisions of the High Court.	935	855	N/A	N/A

Figure 5: Sokoto State, Upper Shari'ah Court 1

Public Perceptions

As elsewhere in the North, there is a preference for Shari'ah courts for marital and other family matters. And for the most part, there has been a positive reaction to the extension of Shari'ah courts to criminal cases. Despite this, many interviewees allege a lack of fair trials, including little to no investigation into charges; coercion; a lack of opportunity to defend one's self; and corruption throughout the judicial system, including Shari'ah court judges taking bribes. As one resident said, "Some Shari'ah court judges infringe on the human rights of some citizens. … Some Shari'ah judges are very corrupt.… [Nonetheless,] I would prefer to go to a Shari'ah court. Shari'ah regulates the entire life. Equal justice will be determined in Shari'ah court."

Roles within the Conventional and Shari'ah Judicial Systems

Role of the State Police Command and Other Security Forces

The Nigeria Police and National Security and Civil Defense Corps prosecute in Sokoto's Shari'ah courts. There are trainings with new staff and prosecutors to orient them on the principles of Shari'ah, so that, as one official with the National Security and Civil Defense Corps states, "they don't go in excess of Shari'ah." Nonetheless, not all members of these security forces are well versed in the Shari'ah Penal Code or the procedures for Shari'ah courts.

Exacerbating this, according to an official with the National Security and Civil Defense Corps, the Shari'ah Penal and Shari'ah Criminal Procedure Codes are not readily available to their prosecutors, and when they are available, they are not in Hausa. He noted that sometimes the First Information Report is in English and the proceedings are in Hausa, making it more difficult for all parties to follow and understand everything.

As in Zamfara and Kano, interviewees in Sokoto spoke about corruption or perceived corruption within the police force. Christian residents echoed these sentiments. One Christian in Sokoto, who said he preferred to go to hisbah, said, "My experience with security agencies [including the police] always has to do with money, unlike hisbah." Another Christian resident said, "The police and any security agency in Nigeria are all about bribes to delay justice."

Role of the Sultan of Sokoto

The sultan is considered the spiritual head of Muslims in Nigeria. He wields substantial influence not only in Sokoto State, but also in Nigeria as a whole.

While he does not have any formal role in Shari'ah implementation, his palace receives complaints on a wide variety of issues and problems. These complaints are usually transferred to appropriate government agencies for action. If the parties to a dispute request mediation/arbitration, the sultan can arrange for *sulhu*, a negotiated agreement between the two parties with the assistance of a third party, to resolve the problems.

State Shari'ah Court of Appeal

The Shari'ah Court of Appeal in Sokoto does not hear criminal appeals, unlike in Zamfara. Nor in the course of research for this report did we hear of any criminal cases on appeal going to the Shari'ah Court of Appeal.[36] In 2007, the Court of Appeal ruled against the Shari'ah Court of Appeals jurisdiction beyond personal law in *Bashir Gidan Kanawa vs. Alhaji Sani Maikaset* (CA/K/173/S/2003). The case was actually a land matter and the jurisdiction of Shari'ah Court of Appeal on civil matters outside Islamic personal laws was challenged. The Court of Appeal declared that Section 5 of the Sokoto State Shari'ah Court Law, 2000 (which expanded Shari'ah Court of Appeal jurisdiction to all matters, civil and criminal, decided in the lower Shari'ah Courts) was unconstitutional.[37]

Role of Hisbah Groups

The hisbah in Sokoto is more complicated than in Kano and Zamfara in that two associations are operating as the "official" hisbah association – one hisbah group led by Dr. Adamu Bello Kasarawa and the other led by Abubakar Danmalam. Prior to 2014, Sokoto State did not have a law establishing hisbah as an agency of the Sokoto State Government. Instead, the hisbah was a voluntary association organized by individuals under the name "Hisbah Association of Nigeria" and registered with the Corporate Affairs Commission, the agency of the federal government responsible for registering voluntary associations.

The Hisbah Association of Nigeria fractured under a leadership dispute, leading to a lawsuit. The Sokoto State High Court declared Abubakar Danmalam was the Commandant of the Hisbah Association, and the Court of Appeal affirmed the High Court's decision. However, that decision is being appealed to the Supreme Court.

When the Sokoto State Law No. 7 of 2014 established the Hisbah Commission, the Sokoto State Government never formally constituted the Hisbah Commission as stipulated in the law. (Section 5 states that the Hisbah Commission "shall consist of the following members [a Chairman and 15 members] to be appointed by the Governor.") Neither a chairman nor any members have ever been appointed.

Despite the court ruling and the lack of appointments by the governor, the two factions continue to operate as the Hisbah Commission, one led by Dr. Adamu Bello Kasarawa and one led by Abubakar Danmalam. Despite its lack of legal standing, Kasarawa's organization still sees itself as operating as a government agency and continues to detain people, settle disputes, and conduct other activities, including organizing anti-drug workshops for youth, staging Qur'an memorization classes for children aged five to 15, providing free medical services in rural areas on a quarterly basis, and providing security at mosques and Islamic gatherings.

Hisbah Activity in Sokoto (Kasarawa-led association)	2017	2018
Marriage conflicts	49,000	29,220
Rape and child abuse / assault	289	263
Public disturbances	245	303
Brothels	61	11
"Other prohibited places, e.g., clubs, hotels, mini-markets"	154	202

The hisbah association led by Dr. Kasarawa claims to train the members in Shari'ah implementation, jurisdiction, and hisbah's powers, including investigation, making a case before the courts, and arrest, which they have no legal authority to do. In addition, they have 12 departments, including an intelligence department.

According to an official interviewed, about five percent of the cases they turn over to Shari'ah courts involve non-Muslims. An official with Danmalam's hisbah organization also admits to arresting non-Muslims. "We will not leave him simply because he is not a Muslim. Whatever crime he committed affects everybody." He also said they take non-Muslims to the police and let the police handle the case.

As a result of the confusion and acts outside prescribed roles, the public opinion of all hisbah associations in Sokoto is generally negative. (In interviews, most lawyers and residents did not make a distinction between the different hisbah associations.)

No hisbah association in Sokoto has the power to arrest, prosecute, or detain people. Yet interviewees alleged several violations by hisbah members, including detention for several days, use of excessive force, assaulting police officers and lawyers, denying those detained the right to have legal counsel present during interrogations. Hisbah members are generally seen as dangerously uninformed about Shari'ah law and procedures, and there are multiple legal cases against hisbah members.

"Hisbah does not treat everybody fairly. In this law firm, we have four cases currently before different courts, all in respect of clients who are seeking for enforcement of their fundamental rights against hisbah," said one Sokoto-based lawyer. "The hisbah agents harassed one of our clients and detained her. Even though they don't have powers of arrest, they do detain people in their cells for two-to-three days."

Many called for greater clarity, including defining roles and responsibilities for hisbah members. One interviewee went so far as to say there is no need for hisbah groups at all. "[Hisbah] are perceived as a sect of unreligious criminals that are using religion to commit atrocities all over the state.... They are not religious. Their conduct does not represent Islam."

Role of Other Shari'ah Statutory Agencies

In Sokoto, there are far fewer statutory agencies than in Zamfara. The government created a Zakat Board and an Arabic and Islamic Studies Board. The Zakat Board has the official mandate to collect zakat from Muslims in the state. Non-Muslims are not obligated to contribute. (However, non-Muslims can receive proceeds of zakat because Islamic law allows non-Muslims to benefit from zakat.) The Arabic and Islamic Studies Board is charged with the responsibility of regulating and supervising Islamic education in Sokoto State. In addition, the administration expanded funding for mosque building and the conversion of "anti-Islamic enterprises," like cinema houses, into Islamic spaces.

Human Rights

As in other states, there are allegations of human rights violations, including indefinite or extensive detention without bail, a lack of fair hearings, and corrupt or incompetent Shari'ah court judges. One private attorney noted, "For instance, a case of theft that is a bailable offense, the Shari'ah court judges can, without a trial, remand an accused person in prison custody without granting him bail." Another private attorney said, "Some cases constitute violation of human rights, especially when it comes to fair hearing. They usually convict an accused person on confession even where he did not confess."

Religious Freedom

Muslims

Two Muslim groups, the Jama'atul Islahuddin (Islahuddin Association) and Shi'a, have experienced discrimination. Shi'a are viewed by some Muslims as non-believers, rather than as another sect of Islam. Security services have also arrested them for conducting religious processions. In 2017, 18 were charged for conspiracy and unlawful assembly in the lower Shari'ah court. The Ministry of Justice applied to take over the cases and eventually the cases were dismissed for lack of evidence. One lawyer said there was a case in a Shari'ah civil court where a mother was denied custody of her child because the mother is Shi'a.

In 2007, Nigerian security forces destroyed the Islamic Movement of Nigeria's (IMN) Sokoto headquarters after clashes between Sunni and Shi'a groups erupted following the assassination of a popular Sunni cleric, who was well known for his sermons against Shi'a. Politicians, including the previous state governor, have also been accused of instrumentalizing anti-Shi'a attitudes in Sokoto in their election campaigns, which has also been suggested as the reason for the eventual enactment of the hisbah law in June 2014, when campaigns for the May 2015 general elections started.

Meanwhile, the Islahuddin do not observe Eid on the same day as the Sultan of Sokoto. So, according to a lawyer interviewed, when they have observed their Eid, they have been arrested and brought to court.

Christians

As in other states, Christians in Sokoto have difficulty obtaining land and building permits for churches, an issue that predates the implementation of Shari'ah. There are also issues with hisbah members arresting Christians, contrary to the law. As an official from the hisbah association led by Dr. Kasarawa said in an interview, "During our patrol operations, especially night operations, we arrest whether Muslims or non-Muslims, but when we come here during our investigation, we realize so and so number of suspects accused are non-Muslims. We invite the Chairman of the Christian Association of Nigeria to present them so that they listen to what actually happened, and what they are been accused for [sic], and we resolve the issues with them. ...Sometimes it cannot be resolved, and it has to be presented to Shari'ah court."

In one instance a Sokoto Shari'ah court judge unlawfully heard a case against a Christian without the Christian's consent. According to an official with the Ministry of Justice, the Christian wrote a petition against the judge, and the governor asked for an investigation. The judge was found to have wrongly heard this case and was dismissed. A Ministry of Justice official stated, "That incident actually has taught a lot of others some lessons. Shari'ah court judges are very cautious, and they are very observant as to whether they have jurisdiction to try someone before their courts."

History of New Shari'ah Law Implementation

Following the push from other states and due to public pressure, in June 2000 the governor Rabiu Kwankwaso announced the expansion of Shari'ah criminal law.[38] The process of drafting the state's Shari'ah penal code was, by most accounts, quick and haphazard.[39] It led to confusion among not just the public, but also among people in charge of enforcing and prosecuting under the new codes. Initially, many of the Shari'ah court judges did not have formal legal training, and consequently, their early decisions were often overturned on appeal.

Most offenses were codified in the existing state penal code. For instance, the prohibition on intoxicants is an offense for Muslims under the state's pre-existing penal code and the Shari'ah penal code. Yet, under the pre-existing penal code, manufacturing, transporting, and dealing in alcohol are not prohibited, while under the Shari'ah Penal Code, alcohol consumption, manufacturing, transport, and sales are prohibited for everyone.

The current Governor of Kano State is Alhaji Abdullahi Umar Ganduje (re-elected in 2019), and the current Chief Judge of Kano is Justice Nura Sagir, sworn-in on May 8, 2019.

For this research, 51 cases were collected from 2017 to 2018 from four Upper Shari'ah Courts and two Lower Shari'ah Courts in Kano. The cases involved theft and related offenses; disturbance of public peace; criminal breaches of trust and cheating; sexual offenses including sodomy; grievous hurt, intimidation and harassment; and wandering. In 40 of the cases, the person was convicted and sentenced to time in prison and/or a fine. In 27 cases, lashes, sometimes together with fine, imprisonment, and payment of compensation were imposed. The average number of lashes was 31, with 20 lashes being the most common punishment (in 11 of the cases). Only one woman was sentenced to lashes (out of the nine women defendants in the cases we reviewed). Lashes are carried out in public, on the court premises by a court-appointed official. There is no medical care for those receiving lashes.

Kano State Courts	# criminal cases introduced in 2017	# criminal cases introduced in 2018	Average # civil cases introduced annually
Shari'ah courts 18 Upper 69 Lower	8,619 **8,102 cases closed* **From January 2017 until December 2018, seven cases went from the Upper Shari'ah courts to the Kano High Court*	N/A	41,000
30 conventional courts, including 25 Magistrate courts and 5 divisions of the High Court.	256	295	N/A

Figure 6: Upper Shari'ah Court, Kofar Kudu

Types of Sentences and Variant Interpretations

Similar to the other states, the implementation of Shari'ah Penal Codes continues to adapt to socio-cultural norms and political appetite. Although there are hudud offenses in the Kano Shari'ah Penal Code, there is little appetite to sentence people to the most severe hudud punishments. As in Zamfara and Sokoto, Kano's Shari'ah Penal Code provides that if the high evidentiary requirements for the hudud offenses are not met, but there is enough circumstantial evidence, the judge may convict the accused person of the lesser form of the offense but cannot impose the fixed hudud penalties.[40]

There are offenses called "hudud-related." In the traditional formulations of Islamic criminal law, these offenses are not considered as part of hudud offenses with fixed penalties mentioned in the Qu'ran. In Kano, these include rape, sodomy, incest, lesbianism, bestiality, gross indecency, defamation, criminal misappropriation, criminal breach of trust, receiving stolen property, cheating, and criminal trespass.

For example, in *Abdurrashid Sa`id vs. COP* (Case No. CR/48/2017) involving zina, the hadd punishment of stoning was averted because the accused claimed he was not in control of his senses when he committed the offense due to the side effects of the medication he was taking. So instead of stoning, the accused was sentenced to the lower punishment of 100 lashes and one year in prison, as provided in the Kano Shari'ah Penal Code.

From 2000 to 2004, there were at least nine sentences of amputation. Eight of those prisoners were released on bail after serving some time, by the governor's Prerogative of Mercy, or on appeal.[41] According to interviews, the ninth man sentenced to amputation is still in prison after 15 years. Stoning was a sentence handed down in two different cases, one that was commuted by the state governor into imprisonment for life; the other convict is still in prison. While it does not include apostasy in its list of offenses, Kano's Shari'ah Penal Code does have a subsection that states, "Whoever by any means publicly insults by using word or expression in written or verbal [oral] means of gesture which shows or demonstrates any form of contempt or abuse against the Holy Qu'ran or any Prophet shall on conviction be liable to death."

Figure 7: Upper Shari'ah Court in Kofar Kudu, Kano State

Public Perceptions

People interviewed often gave credit to the expansion of Shari'ah law for closing brothels and bars in the state. In addition, many Muslims, and even some Christians, prefer to take their cases, particularly civil cases, to the Shari'ah courts because they

are conducted in Hausa, reflect more the local traditions, and are generally quicker than the conventional courts.

However, some Muslim residents are unhappy with how Shari'ah is implemented. They see it as a political statement, only partially implemented, with too heavy a reliance on the oath, and not necessarily in line with religious doctrine.

Figure 8: Shari'ah Court, Kano

"Most of the laws I feel are inadequate to address the issues we have at hand, e.g., the issues of domestic violence and maintenance," said one official at a civil society organization. "My understanding is that the implementation of Shari'ah is more of a political statement, but the political will and commitment is not there at all." An official at a different civil society organization noted, "I am not happy because the Shari`ah Penal Code is not implemented the way it should be. For example, in a criminal case like adultery, where the witnesses are supposed to see the culprits committing the act, if they are arraigned before the court and four witnesses are not present to testify, most of the courts resort to make the culprits swear with the Holy Qur'an and discharge them."

Moreover, not everyone is pleased with how all criminal cases are handled. Several times interviewees said that rape cases were unfairly handled in Shari'ah courts, particularly since perpetrators can swear on a Qu'ran that they did not rape the victim and be let go. There is the added issue that in Shari'ah courts direct evidence is required, including eye witnesses, while in conventional courts, circumstantial evidence, if well corroborated, can secure a conviction.

Roles within the Conventional and Shari'ah Judicial Systems

Role of the State Police Command

Trust in the federal police and other security forces is limited, and there are differing opinions about how well they have been trained in Shari'ah law. They are generally seen as corrupt and not well informed on what is needed to secure convictions in Shari'ah courts.

The police do not have jurisdiction to file cases in the state's High Court. However, there are police prosecutors in both the conventional and the Shari'ah courts. One police official noted, "We received and disposed of about 850 cases of sexual offenses between 2017 and 2018. We generally take our cases to the Magistrate courts though we have police prosecutors in the Shari'ah courts, but sometimes the cases will be transferred to a Shari'ah court."

Role of the State Shari'ah Court of Appeal

The Kano State Shari'ah Court of Appeal does not have the jurisdiction to hear criminal appeals, only those involving personal law. However, the higher federal courts ruled that Kano's High Court could apply the Shari'ah Penal Codes in appeals stemming from Shari'ah courts.

Normally, when appeals go from the lower Shari'ah courts to the High Court, the conventional penal code becomes the prevailing legal system. In the ruling on *Kano State v. Lami Adamu* (Suit No. K/42C/2010), it was established that the High Court of Kano could apply the state's Shari'ah Penal Code in criminal cases stemming from Shari'ah courts. In this case, the Attorney General of Kano State chose

to charge the defendant with homicide under the state's Shari'ah Penal Code in the High Court. The respondent challenged the jurisdiction of the High Court, but the Court held that it was competent to apply the Shari'ah Penal Code. This is the only case in which this is known to have happened.

Role of the Hisbah

Prior to 2000, Kano had hisbah groups, but they were volunteers primarily promoting Islamic practice in Kano. In 2000, a Hisbah Committee was formed, and in 2003, the Kano House of Assembly passed a law regulating the Kano State Hisbah Command (Hisbah Board Law of 2003), with a board comprised of representatives from the main security agencies to oversee the affairs of the Board.

The 2003 law established the hisbah as a statutory agency of Kano State, which can sue and be sued in that capacity. The Board has a lawyer from the Ministry of Justice who is a representative of the Attorney General attached to the Hisbah Board. Kano's Hisbah Boards attempt to resolve religious disputes between Muslims. They wear state-issued uniforms, but do not carry firearms.

While Kano's hisbah does not have the power to arrest, detain, or prosecute, its responsibility of assisting the police and security agencies has been stretched to include arrest and detention. They have been known to arrest and take people to court directly or refer cases to the Ministry of Justice.

According to a police official, this is not entirely bad. "Hisbah helps a lot, especially when it comes to the investigation in rape cases. They arrest the suspect, take the victim to the hospital, and do all the necessary inquiries before bringing the case to us. The only problem we usually encounter with them is the lack of a compelling case diary. But they do the right thing in going about their work, and we have a very good working relationship with them."

Kano's hisbah is explicitly charged with 13 responsibilities, including:

- assisting the police and other security agencies in crime prevention, investigation of criminal activities, and reporting places where criminal activities take place;
- encouraging Muslims to work together for ensuring justice and equality and commanding virtue and preventing vice;
- ensuring good conduct at places and occasions of worship, such as mosques, fasting during the month of Ramadan, pilgrimage to Mecca, and at public places of social gatherings;
- providing/encouraging assistance to those who need it, especially by giving zakat;
- providing reconciliation/mediation to individuals and organizations that consent to it;
- assisting people to obey traffic regulations; and
- providing emergency assistance.

Beginning in 2012, Kano's Hisbah Boards began organizing mass marriages for men and women, particularly divorcées, unable to secure the financial resources to begin married life on their own. Kano has one of the highest divorce rates in Nigeria, and under this marriage project, the state government pays the bride price and provides furniture and household supplies for the couple. If a couple chooses to get married through this program, they can only divorce with the consent of hisbah and the state government; a man cannot unilaterally divorce his wife.[42]

The hisbah members regularly confiscate and destroy alcohol publicly. For instance, in January 2019, the Kano Hisbah Boards destroyed 30 truckloads of beer. In one of the largest crackdowns on "immoral" behavior, in November 2013, they made a public ceremony of destroying 240,000 bottles of beer confiscated from trucks coming into the city.[43]

The current Director-General of the Kano State Hisbah Board is Dr. Aliyu Musa Aliyu, appointed June 15, 2019. According to the Kano State Hisbah Board Annual Report for 2017, hisbah members carried out 27,503 activities in all the 44 LGAs within the state, including the following:

Hisbah Activity in Kano

Activity	Total	Men	Women	Comment
# of arrests in hisbah operations[44]	888	297	591	169 were taken to court by hisbah and 650 were resolved by hisbah reaching an agreement with those involved.
# outings to stop street begging	274			Hisbah go on street patrol of places frequented by beggars, such as markets and motor parks. People assessed to be criminals are handed over to the police; others are given financial and other assistance.
# arrested during anti-begging patrols	2,131	1,533	598	93 of these cases were taken to court and 2,038 were resolved by hisbah reaching an agreement with those involved.
# instances of prevention of women from riding on commercial motorcycles	49			
# complaints about marital issues received	10,204			
# people converted to Islam by hisbah	971			
# instances of sulhu (reconciliation and mediation led by hisbah)	16,636			

Kano's Hisbah Boards receive training from other government agencies and donor organizations, but some people interviewed believed more training on Kano's Shari'ah Penal Code and Criminal Procedure Codes is needed.

While provision of community services and promotion of religious virtue make the hisbah attractive to many, their quasi-law enforcement functions are a source of frustration and concern. The hisbah members reportedly take it upon themselves to act as mediators, including allegedly in cases involving criminal acts such as rape. One hisbah member stated, "Most of [the cases we see] are marital issues, which we resort to reconciliation. In the event the couple refuses to reconcile, we take them to court. But in criminal cases, we normally refer them to police for proper investigation and proceeding to court."

Nonetheless, one poll from NSRP in 2016 showed that the vast majority (91.9 percent) of those polled believed hisbah members were more trustworthy and less corrupt than the police, and less than five percent believed the hisbah should be disbanded. Nearly 85 percent believed the Hisbah Boards follow Shari'ah law. However, only 58 percent felt that hisbah treated Christians fairly.[45] Our research echoes this. We found 80 percent of Muslims who responded preferred hisbah, and every Christian who responded preferred the police.

It is estimated that in Kano 70 percent of the disputes being mediated by hisbah are family and matrimonial cases brought by women. In Kano, women are fairly represented among the hisbah officials themselves. The responses to perception survey questions on hisbah show that 80 percent in Kano think that the hisbah treats women fairly and equitably.[46]

In 2006, the federal government tried to ban the Kano hisbah by jailing its commissioner and his deputy and accusing them of running an illegal organization. The result was a series of lawsuits, some dismissed and others clear victories for Kano. Hisbah is now legal for all states that officially sanction and administer them. Nevertheless, Kano's hisbah members say they still face challenges such as inadequate facilities.

Nigeria Police Force officers have arrested active-duty hisbah officers following complaints from local residents about their zeal in breaking up "unlawful activities." One example of this comes from a hisbah member interviewed for this report. "Before now we have houses in Sabon Gari [the predominantly Christian area], where you find young girls and boys all partying with local drummers. We go very late in the night when every responsible non-Muslim is asleep. The reason for going there is we find out that most people caught there are either from neighboring cities or young girls who ran away from their families and boys," said the hisbah member.

As recently as December 2018, Kano State Hisbah Command arrested 11 women in the Sabon Gari of Fagge LGA for allegedly conducting a same-sex marriage (which would also be illegal under Nigerian federal law).

Role of Other Shari'ah Statutory Agencies

Kano State authorities took the expansion of Shari'ah into criminal law as an opportunity to create and expand other statutory agencies that drew from Islamic traditions, including a Zakat Commission, a Censorship Board, a Public Complaint and Anti-Corruption Commission, and a Directorate of Social Reorientation, which is tasked with reforming public morality. The Directorate aims to instill traditional Muslim values and has programs, such as subsidizing motorized tricycles that are exclusively for women as an alternative to the motorcycle taxis driven by men.

Founded in 2001, the Kano State Censorship Board (KSCB), whose motto is "morality is measurable," drew attention after its crackdown on Kannywood, the Hausa-language film industry. The KSCB's main function is to censor films to be released in Kano State, made by Muslims or non-Muslims. The board had a "mobile court" located near the Kano airport, and in 2007, it halted all film production in the state for six months while its court imprisoned two prominent directors for three months each. In more recent years, singers have been detained and tried for releasing songs before receiving approval from the Kano State Censorship Board. As recently as June 2019, Mohammed Yusuf, a singer, was sentenced to two years for releasing a song and a video without obtaining the KSCB's approval and for defaming the character of Kano's governor.[47]

Human Rights

As in Sokoto and Zamfara, while a couple of people we interviewed in Kano believed that human rights have improved under Shari'ah Penal and Criminal Procedure Codes because "the application of Shari'ah has facilitated the spread of public awareness [about Islamic laws]." On the other hand, there are a number of troubling allegations and evidence of human rights abuses, including insufficient investigation into crimes and insufficient evidence against accused persons, and most alarmingly allegations of torture by federal security agencies and the allowance of confessions under torture as evidence.

Two convicts interviewed spoke of being tortured by police. One interviewee recounted their torture by the Federal Special Anti-Robbery Squad (SARS), a unit of the Nigerian police force. SARS units are notorious across the country for allegations of corruption and human rights abuses. "It has been a terrible experience all throughout we were seriously tortured at the SARS [police unit]. The other two people died in police custody; I am the only survivor

from the suspects and now I have been convicted. I was convicted on robbery charges and was sentenced with the alternate amputation of hand and feet [i.e., the right hand and left foot or the left hand and right foot]. There was no single witness that testified against me, and the complainants told the court that they have never seen me until at the police station."

Another man convicted of rape said, "I never admitted to committing the offense at any stage of investigation and trial. It was my co-accused who admitted to committing the offence and told them we did it when he was tortured. Throughout the trial we were not represented by lawyers and there were no complainants in the court. We were convicted with death by stoning. I have been in prison for 13 years now. The governor has turned my punishment to life imprisonment now.... My co-accused was tortured in police custody and he admitted to committing the offence. The court ought to have used his statement to convict him alone not both of us, as I denied the same and there was no witness to testify against me."

Other interviewees spoke of unfair hearings, including closed-door sessions where people choose judges they know personally and can influence the judgment. A convict interviewed spoke about irregularities and corruption, "When we went to court for the trial, the complainant admitted that his goods were worth ₦300,000 and he agreed for me to pay him ₦200,000, which I and my family did. But the court still asked me to pay a compensation of ₦300,000 and a fine of ₦30,000."

Religious Freedom

Prior to this push for Shari'ah expansion, the city of Kano had a violent history of religious-based riots.

Shi'a

Shi'a interviewed for this report cited broad issues of discrimination. One interviewee said, "Here people in the community take the Shi'a to court to stop worshiping in their places of worship as they are seen as agents of disturbance, destruction, and sometimes seen as a nuisance in the community." He went on to say that because of harsh treatment from hisbah and other agencies, the Shi'a he knows file their cases in court rather than opt for arbitration or conciliation.

Christians

Interviewees said that sometimes Christians were taken wrongly to Shari'ah courts. For example, in October 2007, a Shari'ah court convicted Sani Kabili, a Christian, to three years in prison for "blasphemy" against Islam and the Prophet Muhammad. In February 2009, an appeal court overturned the conviction.[48] His lawyer noted that as a Christian, he should never have been tried in a Shari'ah court without his consent.

An interview with a Christian leader and with an expert on Kano's implementation of Shari'ah said that the relationship between hisbah and the Christian community in Kano has improved, in so much as now when hisbah conducts a raid, they call upon the Christian Association of Nigeria to take custody of any Christians that may have been arrested.

More concerning, however, are the vigilante justice killings, including the September 2007 rioting in Kano that resulted in the deaths of 10 Christians and the destruction of at least nine churches. At least 60 people were injured and more than 500 displaced. The rioting started after Muslim students from a public high school claimed that a Christian student

had drawn a cartoon of the Prophet Muhammad on the wall of the school's mosque.[49]

In June 2016, Bridget Agbahime, wife of a pastor, was killed by a mob for allegedly blaspheming the Prophet Muhammad. Reportedly, she had a disagreement with a man who was doing his ablutions in front of her shop. She asked him to leave, and he yelled that she had blasphemed the Prophet. Traders in the market became angry and a mob lynched her. Nigeria President Muhammadu Buhari described the killing as "sad and regrettable" in a statement issued by his Special Adviser on Media and Publicity, Femi Adesina. Suspects were arrested and later released at the directive of the Kano State Attorney-General and Commissioner for Justice, who told the court that they have no case against the suspects.[50]

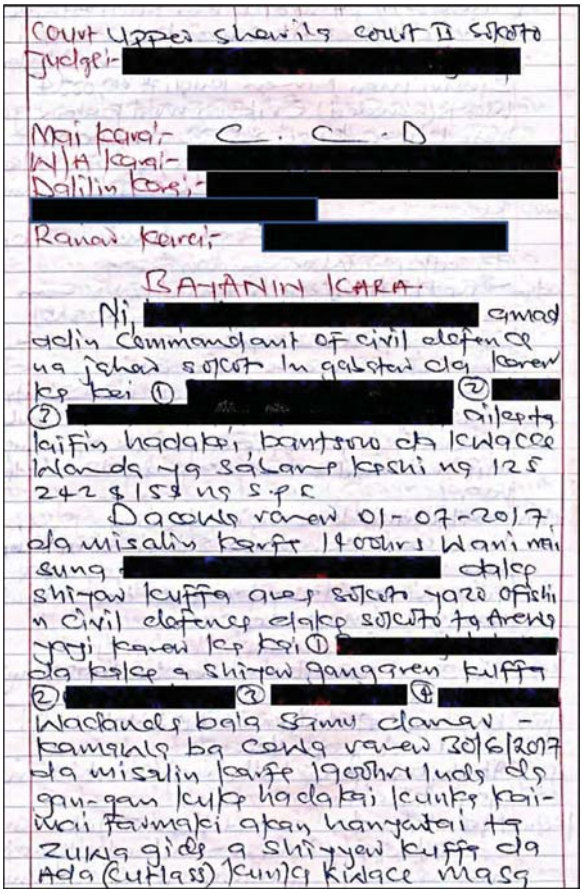
These killings are not restricted to Christians. For example, in August 2008, a mob in Kano beat to death a 50-year-old Muslim man who was accused of blaspheming the Prophet Muhammad. A witness told the *Daily Trust* that the man was beaten with sticks and other weapons and was left "in the pool of his own blood."[51]

There is incredible distrust of the judicial systems in Nigeria. The conventional courts are expensive (due to filing fees and often bribes to be paid), and pose language barriers as most people are not fluent in English, let alone legal English. Moreover, cases take a considerable amount of time; in fact, some cases get abandoned because they take so long. While Shari'ah courts are much quicker and cheaper, and conducted in Hausa, they are not immune to allegations of bribes and corruption. Shari'ah court transcripts are handwritten and often not logged into a computer system. Only one state, Jigawa, has digitized the Shari'ah court proceedings. This lack of digital records may contribute to a lack of transparency and accountability.

The 2016 study for the NSRP found that Shari'ah courts were "generally working to the satisfaction of the people they served." Yet, problems were noted including, most strikingly, a lack of knowledge on the part of defendants about their basic rights, as well as poor administration, poor record keeping, and poor data collection.[52]

This study reiterated earlier reports from other observers including HRW, which also noted a lack of access to legal representation for defendants, a failure of Shari'ah court judges to inform defendants of their rights, and inadequate training of Shari'ah court judges.[53] In addition, HRW called attention to the practice of convicting defendants based solely on confessions. In Islamic law, confession before a judge is recognized and treated as the most reliable form of evidence. HRW highlights, however, that some of those confessions were obtained through torture.[54]

It should be noted that despite Section 28 of the Nigerian Evidence Act of 2011 prohibiting the use of information gained from an accused person by means of inducement, threat, or promise, conventional courts throughout the country have also allowed confessions under torture. According to research conducted by Amnesty International in 2014, "many people are being convicted largely based on their 'confession' made to the police under torture."[55] As such, these allegations are not just about the Shari'ah courts, but also the entire process, including police detention and investigation.


Court Upper Shari'a Court II Sokoto
Judge:-
Mai Karar:- C. C. D
W/A Karar:-
Dalilin Karar:-
Ranar Karar:-
BAYANIN KARA
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adlin Commandant of civil defence
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ka kai ① ②
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laifin hadaka, bantsoro da kwace
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242 & 158 na S.P.C
Daga ranar 01-07-2017,
da misalin karfe 14 cikin wani mai
sung dalka
shigar kuffa ace sokoto yaze ofishi
n civil defence dake sokoto ta Arewa
yaji karar ka kai ①
da kake a shigar gangaren kuffa
② ③ ④
Wadanda bala samu damar -
kamanta ba canza ranar 30/6/2017
da misalin karfe 19cikin lada da
gan-gan kuka hadakai kunka kai-
wai farmaki akan hanyatai ta
Zuma gida a shiyyar kuffa da
Ada (cutlass) kunka kwace masa

Figure 9: Court transcript in Hausa

Lack of Legal Representation

Legal representation by counsel, both as a concept and a practice, has not been part of Shari'ah. *Wakala/wikala* (agency) and *niyaba* (deputization/representation) are the two Shari'ah concepts that come close to the common law concept of representation by counsel. Wakala/wikala means giving authority to a *wakil* (agent) to act on behalf of a principal (*muwakil*) in legal transactions in accordance with specific instructions. Niyaba is

sometimes considered as a synonym for wakala, but it tends to be used in the sense of a deputy, as in *na'ib al-imam,* which means deputy imam. The Nigerian Bar Association has raised the problem that Shari'ah court judges insist that a lawyer is just a wakil (representative), and as such, he or she must produce two witnesses, or take an oath on the Qu'ran that he is the true representative of the accused who may also be present in the court.

When the British introduced the concept of representation by counsel, Shari'ah court judges did not accept it because they considered counselors as biased for their client, and the testimonies of counsel as hearsay since a counsel is rarely an eyewitness to the events in a case before the court. Hence legal representation remained unavailable in Shari'ah courts throughout the colonial period and even after the legal reforms embodied in the Criminal Code and Criminal Procedure Code of 1960. When the 1979 constitution made legal representation a constitutional right, however, Shari'ah courts had to make it available. Nowadays, legal representation is available for all cases in Shari'ah courts, though it is not mandatory.

Legal and judicial authorities are not required to advise accused persons of their right to be represented by counsel, and most people cannot afford to hire a lawyer. In the conventional High Courts, judges can appoint private lawyers in serious cases at state expense, and in capital cases they are required to do so. The same is *not* true in the Shari'ah courts, where someone can be tried for a hudud offense without the assistance of counsel.

We estimate that less than 40 percent of defendants in criminal cases in the Shari'ah courts in northern Nigeria have any legal representation. And while legal representation for defendants in all cases is not expected, as it is in the United States, it is concerning that defendants charged with the most serious offenses are not provided representation. As one man convicted of raping a 16-year-old girl in Kano said, "I never admitted to committing the offense at any stage of investigation and trial. It was my co-accused who admitted to committing the offense and told them we did it when he was tortured. Throughout the trial, we were not represented by lawyers, and there were no complainants in the court."

The Legal Aid Council of Nigeria (LACON), under the Federal Ministry of Justice, provides representation for persons who cannot otherwise afford it. LACON has branches in all state capitals, but due to underfunding and other issues, these branches are involved in only a small number of cases. Some civil society organizations, including branches of the Nigerian Bar Association, also provide pro-bono legal representation.

Corruption

Interviewees spoke frequently about judicial corruption. Many observers and residents noted an overall issue of corruption in the nation's conventional and Shari'ah courts. For instance, the wealthy in the region are rarely taken to Shari'ah courts. As one academic wrote about Shari'ah in Zamfara, "The hands of those who stole cows and donkeys worth 20,000 naira or less were cut off, while those who stole millions of naira from the state's treasury escaped the punishment on the legal technicality in court."[56]

Some interviewees alleged that the police are colluding with officials in the Shari'ah courts to collect bribes. For instance, a resident in Sokoto said, "Police prosecute cases before Shari'ah courts, and they often collect money for Shari'ah court judges to support the police." Another Sokoto resident said, "Police are friends and officers of the court. They prosecute the offenders. They benefit from collecting

bribes from the nominal complainants, the accused person, and his relatives, and share the bribes with the judges of Shari'ah courts."

Other interviewees spoke of unfair hearings, including closed-door sessions where people choose judges they know personally and can influence the judgment.

Lack of Knowledge

When the Shari'ah penal codes were introduced, it was with little to no preparation¾not only for the public, but also for the judges, attorneys, police, and religious leaders. Part of the issue stems from the swiftness with which Shari'ah Penal and Criminal Procedure Codes were initially implemented. Some observers have accused the politicians of using expediency over efficacy in their approach to Shari'ah implementation. Penal codes were not fully agreed upon or procedures finalized before court decisions were handed down. Moreover, judicial actors and police were not immediately trained in the new codes and procedures.

Criminal sentences were being carried out in Katsina and Sokoto between the announcement of Shari'ah criminal law and the codification, according to an EU-commissioned study. For example, in Sokoto, one man who stole a goat had his right hand amputated and was fined ₦6000.[57] Many believe—and the appeals of several high-profile cases have supported the belief—that the earlier harsher sentences, such as amputation and stoning, were the direct result of a lack of full understanding on the part of defendants and judges of the rights of defendants and due process under SPCs and SCPCs.[58]

In addition, inconsistencies exist in the penal codes and procedures, with key terms undefined and a lack of sentencing guidelines.[59] The Center for Islamic Legal Studies of Ahmadu Bello University, Zaria attempted to harmonize the various penal codes. Yet thus far, only Zamfara has adopted the harmonized version.[60]

Shari'ah penal codes are not included in all formal legal training at universities, even in the states that have implemented parts of that code. In general, if judges meet the stated requirements, their state's government can sponsor them to study and earn additional qualifications (including law degrees in universities), and further professional training for certification and license at the Nigerian Law School, a federal agency responsible for training and certification of legal practitioners in the country. Shari'ah court judges can also be sponsored to attend various professional development courses lasting a couple of months at the Center for Islamic Legal Studies of Ahmadu Bello University, as well as at various "Schools of Islamic Legal Studies." Moreover, the National Judicial Institute, a federal agency in Abuja, regularly conducts seminars and workshops for judges of all courts.

Human Rights

As previously stated, since 1999 no sentences of death by stoning have been carried out, and since 2001 this also holds true for amputation sentences. And while people may still be sentenced to the harsher hudud punishments, these punishments are no longer being carried out. Nonetheless, there are other troubling cases of violations of human rights of accused persons in the Shari'ah courts and overall justice system, including the allowance of confessions made under torture. In addition, the rights of the LGBTQ persons are infringed upon, but it is complicated by the fact that homosexuality is illegal in all of Nigeria, punishable by up to 14 years in prison in the conventional court system.

Women's Rights

The NSRP study found that women were major users of Shari'ah courts, but not for criminal matters. They went to Shari'ah courts mainly to resolve interpersonal, marital, and family disputes. The study found that in some courts 70 percent of the complainants were women. The limited surveys that have been conducted in relation to some Shari'ah courts showed women's user satisfaction levels ranging from 52 to 89 percent over a period of five years.[61]

Our research found that 80 percent of people who responded said that men and women were treated equally in Shari'ah courts. Nonetheless, certain aspects of Shari'ah criminal law favor men. Regarding criminal law, in Kano (as well as Niger and Kebbi), the Shari'ah penal codes specify that a man's testimony is more valuable than that of a woman. However, just because the other Shari'ah penal codes do not explicitly mention women having an inferior testimonial value than men does not mean that this rule is not observed. According to the Qur'an (2:282), the testimony of one man equals the testimony of two women.[62]

Qisas (retaliation) can be applied regardless of gender, but the perpetrator and victim must be the same gender for an equivalent retaliation. A wounded female victim may not claim to administer injury to a male perpetrator by retaliation. However, if qisas cannot be applied, the victim or the victim's next of kin (in cases of death) can demand *diya*. Diya (monetary compensation in cases of hurt) to be paid to a Muslim man is higher than that to a Muslim woman who accepts to receive this remedy instead of a sentence being carried out. On the other hand, one punishment is harsher for men than for women: a man who has never married and is convicted of zina (unlawful sexual intercourse) can face lashes and one year in prison (a never-married woman would face lashing alone).

One of the most prominent examples of how Shari'ah penal codes negatively impact women involves zina, or illicit sexual intercourse. Under Shari'ah, rape is considered zina. Therefore, if someone reports he or she is a victim of a rape, that person is confessing to zina. Moreover, a victim must have two witnesses or the confession from the rapist to prove a rape. Since neither of these is likely, the person reporting the rape would then be subject to punishment for zina (as they have, in essence, confessed to illicit sex) and for false witness.[63] Moreover, in the absence of other forms of evidence (thereby creating "grave doubt"), a man accused of committing rape can be invited to take an oath on the Qu'ran as sufficient proof that he did not commit rape. This is called the oath of innocence. Socio-cultural stigmas of being raped also prevent some women from pursuing charges of rape through the courts. As a result, many women do not report being raped, or they take their case to conventional courts.

Take, for example, *A.G. Zamfara vs. Adam Ibrahim* (Case No. CR/67/2018), which was heard in Zamfara's Higher Shari'ah Court Kanwuri Gusau. Officials at the Zamfara State Ministry of Justice said they faced challenges in prosecuting charges of rape against under-aged boys and girls because parents are not willing to expose their children to the additional stigma resulting from cases in which the victim must testify (and therefore can be identified). Instead of rape charges, for which the victim has to testify in court, prosecutors plea-bargain and get the accused to confess to "defiling," which does not rise to the level of sexual penetration. In this case, the defendant was convicted of defiling a minor girl and sentenced to a ₦1000 fine and 25 lashes.

Several high-profile non-governmental organizations try to bring attention to violations of women's rights in the implementation of Shari'ah

Penal and Criminal Procedure Codes. One of the most compelling arguments is that that the current legal system seems either overtly targeted or disproportionately applied to women's behavior.[64] In its 2003 report, "Shari'ah Implementation in Nigeria: The Journey So Far," the Nigerian BAOBAB for Women's Human Rights reported that hisbah attack women in public spaces who do not wear head coverings, and judges make decisions that favor men over women, using their interpretations of correct procedures as their justification and ignoring rules that might favor women on trial.[65] This first criticism was echoed in interviews with several people who noted that hisbah members were overly concerned with women's dress, perceived prostitution, and alleged lesbian acts or gatherings.

Another criticism of the implementation of Shari'ah law is the dearth of women employed throughout the process. An NSRP study found that in Kano and Jigawa less than three percent of the staff of Shari'ah courts were female, and no women have been appointed as Shari'ah court judges in any of the states where Shari'ah penal codes were reintroduced.[66] This is changing, albeit slowly, as the number of female Islamic teachers is increasing and more women are participating in public debates about the meaning and application of Shari'ah.

Civil society organizations such as the Managing Conflict in Nigeria Programme and Green Horizon and WRAPA have made efforts to address some of these issues. For instance, WRAPA's Islamic Family Law Project focuses on educating women, judges, and policy makers on Islamic legal protections for women through seminars, public dialogues, and radio programming. WRAPA created modules around forced marriages justified by faith, protection of women from domestic violence, and a woman's right to full maintenance by husbands, including medical care. They also developed and shared marriage contract formats, practice reforms in alternative arbitration for settling disputes between spouses, and documentation of mutually agreed conditions.[67]

Religious Freedom

Article 38 of the Nigerian constitution protects freedom of religion: "Every person shall be entitled to freedom of thought, conscience and religion, including freedom to change his religion or belief, and freedom (either alone or in community with others, and in public or in private) to manifest and propagate his religion or belief in worship, teaching, practice and observance."

In practice, however, this freedom is restricted. In general, Shari'ah law prohibits desecrating the Qu'ran, insulting the prophet, or impugning the integrity of religious beliefs and practices; and, if one is Muslim, committing the hadd offense of apostasy (renouncing one's faith or converting to another faith). Nonetheless, although the classical manual of the Maliki School of law has apostasy as a prohibited offence punishable by the death penalty, the new Shari'ah Penal Codes do not include apostasy. It has been left out largely because it conflicts with Article 38 of the constitution. Yet, sections of the Harmonized Penal Code for Offenses Relating to Religion include "insulting or exciting contempt of religious creed, injuring or defiling place of worship, disturbing religious assembly, committing trespass on place of worship or burial, and blasphemous act, utterances, etc."

These offenses can be quite subjective concerning the definition of what is considered insulting. The prescribed punishment for publicly insulting "any religion" is imprisonment for up to two years or a fine and possibly up to 30 lashes.[68] In Gombe, Kebbi, Sokoto, Yobe, and Zamfara, the punishment is two years in prison, a fine, or both. In Kano it is one year in prison, a ₦20,000 fine, or both.

In Kaduna, it is a ta'zir offense with punishment at the judge's discretion.

Nonetheless, if a decision of apostasy is appealed to the High Court, it is likely to be dismissed because under the constitution, people have the right to change their religion. Scarcely do these cases go into the courts, because community interventions like emirate councils are not likely to take people to court. Instead, according to many interviewees, the accused may be encouraged to move to another state, abandon their initial renouncement, and agree not to influence others to leave Islam.

Muslims

Although the Shi'a presence is limited, especially in Zamfara, widespread antipathy toward the most widely known Shi'a organization, the Islamic Movement of Nigeria (IMN), exists in all three states. Violence between Shi'a and security forces (and between Sunni and Shi'a) has occasionally erupted in Kano and Sokoto. And while the Shari'ah courts do not ask individuals about their religious identity beyond whether they are Muslim, Shi'a in Zamfara generally try to stay away from statutory agencies, e.g., the hisbah, for fear of discrimination based on their religious belief.

"Hisbah treats Shi'a very harshly. For example, whenever there is a dispute between parties where one of them is Shi'a and the case is reported to hisbah, the Shi'a automatically loses the case. So, most of the time we have to file our cases in court directly rather opting for arbitration or conciliation at other agencies," said a Shi'a resident of Kano.

Shi'a are not included in Zamfara's Shari'ah agencies, including the Council of Ulama, because of the differences in their ideology from the prevailing Sunni ideology. The Shari'ah Penal and Criminal Procedure Codes, moreover, do not recognize the Shi'a interpretation of these laws.

As one Shi'a leader in Zamfara said, "Generally, however, we do not have any experience of unequal treatment in the state because the courts do not make enquiries about the religious ideology of people. However, Shari'ah criminal laws do not recognize Shi'a interpretation and to that extent, we may be forced to accept interpretations different from what we know. But we cannot do anything about this because we are too small in number."

Some Sunni Muslims view Shi'a as non-believers, rather than as followers of a different sect of Islam. Nigerian security forces have also repeatedly arrested and shot at Shi'a followers during religious processions. For example, in 2016, police in Kano fired tear gas and bullets, killing eight members of the IMN, the largest Shi'a group in the country, during its annual Ashura procession.[69] Complicating this, however, is the fact that the Nigerian government regards the IMN as a radical political group, while those within the IMN see themselves as a minority religious organization. The federal government continues to detain Sheikh Ibraheem El-Zakzaky, leader of the IMN, despite a court order that he be released by January 2017. Clashes between IMN supporters and the federal security forces continue as IMN supporters demand the release of El-Zakzaky, including demonstrations in Abuja in July 2019 in which at least 20 IMN members were killed. In late July, the federal government banned the group, calling it a "terrorist organization."[70]

Christians

Religious discrimination against Christians is not seen as much in terms of the implementation of Shari'ah Penal and Criminal Procedure Codes, but more in the myriad ways the states have imposed discriminatory policies in civic matters. However, it should be noted that discrimination against Christians in the North is not directly related to the implementation of Shari'ah. Christians in the North have claimed discrimination and restricted access to

land and government positions since colonial times. For example, in 1979, Borno politicians stopped issuing certificates of occupancy for churches, and, a few years later, the governor tried to destroy churches around the secretariat. In some states, many Christians are not considered "indigene" or native, even if Christians from certain ethnic groups have been present for generations. As a result, they are not included in certain census counts or invited into public discourse on key political and social issues.[71] This also works against Muslims in other states whose families may have been there for generations but are not considered natives and face discrimination.

When Shari'ah Penal Codes were first re-introduced in the 12 northern states, many in the Christian population felt anxiety that the laws and punishments would apply to them as well. Consequently, many Christians are said to have moved to non-Shari'ah states, and those who stayed often self-segregated.

Yet, Shari'ah law is not supposed to apply to non-Muslims, and in states with larger non-Muslim populations such as Kaduna and Gombe, the governors mediated "between pro-Shari'ah pressure groups and the forces against the implementation of Islamic criminal law."[72] As a result, not all aspects of the Shari'ah Penal Code were introduced or enforced. An NSRP study found that Islamic criminal law was not being imposed on non-Muslims against their will, and many Christians seem to understand that.[73] Both Muslims and Christians interviewed for this report understood that Shari'ah Penal and Criminal Procedure Codes only applied to Muslims and non-Muslims who explicitly consented. A few Christians said they preferred to take certain civil matters to Shari'ah courts. And only one Muslim, a student in Sokoto, believed that non-Muslims should be punished under Shari'ah.

In many states with Shari'ah Penal Codes, non-Muslims can choose to go to a Shari'ah court, and some do. While this may seem counter-intuitive given the issues with discrimination and mob violence, a large number of Nigerians are disillusioned with the secular state's legal and criminal justice systems. A Christian resident of Zamfara highlighted the nuances in court preferences, "I have helped Christian women to recover debts in the Shari'ah courts. This has been wonderful. If you take Muslims to the Shari'ah courts, you get your money easily." Another Christian in Zamfara agreed on the value of Shari'ah courts in addressing financial disputes, "I would prefer the conventional courts, but it depends on the case. In most cases, Christians prefer not to go to court. But for the division of an estate, I would prefer to go to Shari'ah court."

Theoretically, Shari'ah-free zones exist in most states—places where non-Muslims can be bothered less, where alcohol is tacitly permitted, and where women are, in theory, less harassed about their attire. In Kano, an area known as "Sabon Gari" (or "stranger's quarters" or "new town" in Hausa) is comprised mostly of non-Muslim, non-indigene residents. These residents are often people with family roots in southern Nigeria, even if they have lived in the North for generations. In these districts, alcohol, gambling, and prostitution are not explicitly legal but are often overlooked because Christians and other non-Muslims are not subject to Shari'ah criminal codes unless they consent to be. In addition, barracks for federal security services are under federal, not state laws.

Some Christian groups have conflated the violent actions of Boko Haram and other extremist groups with the formal state implementation of Shari'ah law. However, no evidence was identified to back up claims of abductions, other than the widely reported abductions of girls by Boko Haram.[74]

Atheists

In addition to discrimination based on religion, there is evidence of discrimination against atheists. For example, in 2014 in Kano, Mubarak Bala was forcibly committed to a psychiatric institution and drugged for 18 days for saying he was an atheist.[75] In cases involving atheists, conversions, perceived insults, or other perceived offenses against religion, often the family, community, or a mob will take matters into their own hands and never bring the case to a formal court. Parents may also hide or shield their children, including adult children, who have become atheist, converted, or renounced Islam as their personal religion. Families have reportedly taken family members who declare themselves atheists to mental hospitals to avoid court. Other people may move out of the state because they feel that their lives were threatened not by a potential court case, but by their family or community/mob.

Vigilante Justice/Sectarian Violence

Vigilantism is fairly common for cases concerning religious offenses in the North and does seem to target Christians, although not always.[76] Some Muslims accused of blaspheming the Prophet have suffered at the hands of mobs. By no means is this violence restricted to the states that have expanded Shari'ah law, nor did it begin in 1999.[77] Very few convictions result from these cases, despite many Muslims and Christians having been identified as perpetrators. It should be reiterated that religious violence occurs in other parts of Nigeria, not only the North. Thus, implementation of Shari'ah Penal Codes may only serve as a secondary factor, if at all.

CONCLUSIONS

The expansion of Shari'ah law and institutions in northern Nigeria has reflected the heterogeneity of the North, with different approaches and penal codes in each state. However, the expansion was pushed quickly without much planning or training, and as a result there were not only mistakes but also gross overreaches by judges, hisbah members, and others working in the new system. Nonetheless, Shari'ah courts are popular among Muslims in Kano, Sokoto, and Zamfara, satisfying a need for a more efficient, more accessible, and cheaper judicial system, particularly for civil cases. Christians will also sometimes choose to take civil cases to Shari'ah courts.

Over time, there have been many improvements: trainings for judges and court staff; hisbah commissions are seen as less overzealous than they were at the outset; and there is a clearer understanding about a lack of jurisdiction over non-Muslims. All of the Christians interviewed for this report understood the Shari'ah Penal and Criminal Procedure Codes do not apply to them unless they consented to have their case heard in a Shari'ah court.

In addition, there is little appetite to challenge the federal constitution or the larger public's opinion by imposing the harshest hudud sentences of amputation and death by stoning. There is, however, an acceptance in the three states of flogging as a punishment for certain crimes. Moreover, the people sentenced to harsher hudud punishments no longer carried out, such as the men sentenced to amputation and death by stoning in Kano, are languishing in prison. Such individuals need to be sentenced under another category or another crime so that they can know their punishment and serve their time and pay their fine/restitution, if any.

Other issues could also be ameliorated. Notably, more education is needed for those working within the Shari'ah court system and statutory agencies, as well as for the public who need to understand their rights, including but not limited to representation. Record keeping and data collection methods need to be upgraded, digitized, and made more accessible to allow for transparency and accountability. And there needs to be consistency in jurisdiction, as stated by some interviewees, the Shari'ah Court of Appeal in Zamfara is still hearing criminal appeals brought from the lower Shari'ah courts.

Hisbah associations need to have clearly defined duties that are understood and accepted by hisbah members, the public, and state and federal authorities. The expanded powers of hisbah in Zamfara raise concern, particularly as Zamfara's hisbah is already alleged to not follow due process and to be not well trained.

Most importantly, there is a need for overall criminal justice reform in Nigeria, not just in the northern states that have expanded Shari'ah law. Corruption, bribery, overstepping, use of torture to extract confessions, and the allowance of those confessions as evidence are serious concerns that plague Nigeria's criminal justice systems.

RECOMMENDATIONS FOR FUTURE RESEARCH

Given that many of the issues involved with the implementation of the Shari'ah Penal and Criminal Procedure Codes are pervasive throughout Nigeria and the Nigerian criminal justice system, we recommend for future research:

1. A deep examination and comparison of all court systems in Nigeria in terms of human rights issues, due process, and public perceptions.
2. An in-depth look into allegations of torture and corruption in all the country's criminal justice systems.
3. An examination of the rights of and discriminations against Muslims in the southern courts and justice systems vis-à-vis those rights and discriminations against Christians in the North.
4. An investigation into violations of human rights and religious freedom in the conventional courts, particularly in the South.
5. An examination of how often women take cases, particularly criminal cases, to court; how women are treated within the conventional, customary, and Shari'ah court systems; and what protections women have within each system.
6. A larger-scale perception survey than this study on attitudes toward Shari'ah, hisbah, and religious freedoms across all states that have adopted the Shari'ah Penal and Criminal Procedure Codes.

ANNEX A: GLOSSARY

Alkali (Hausa word for "kadi"): A Shari'ah court judge.

Apostasy: The abandonment or renunciation of a religious or political belief. Although the Qur'an does not make apostasy a punishable offense, it is still considered an offense punishable with death based on Hadith.

Dispose (Nigeria legal): To close a case.

Diya: In Islamic law, it is the financial compensation paid to a victim or heirs of a victim in the cases of murder, bodily harm, or property damage.

Hadd: A punishment fixed in the Qu'ran and hadith for specific crimes. The singular of "hudud" (see below).

Hadith: A collection of the traditions of the Prophet Muhammad. It is second to the Qur'an as the two primary sources of Islamic law and guidance for Muslims.

Hisbah: The Arabic term *hisbah* refers to an act performed for the common good or to receive a reward from God. It is mentioned in Qur'anic verses and in the Hadith. In Northern Nigeria, hisbah groups consist mostly of locally recruited young men who patrol neighborhoods to see if anyone is violating Shari'ah law. They also sometimes act as an alternative place to settle family issues.

Hudud: In Arabic, *hudud* means "borders," "boundaries," or "limits". Hudud crimes cannot be pardoned by the victim or by the state, and the punishments must be carried out in public.

Indigene: In Nigeria, the population of each state and local government area are divided into "indigene" or "host" and "non-indigene" or "settler." Theoretically, indigene people can trace their origins to the original inhabitants of a place. So even if someone's family has lived in an area for multiple generations, they may not be considered of that place or "indigene."

Kadi: A judge in Islamic law.

Qisas: An Islamic legal term meaning "retaliation in kind" or retributive justice. These are crimes such as murder, voluntary manslaughter, involuntary killing, intentional physical injury, and unintentional physical injury. The victim or victim's next of kin may choose to forgo retribution (an eye for an eye or a life for a life) in exchange for financial compensation. The victim or victim's next of kin may also exercise forgiveness.

Qu'ran: The Islamic holy book.

Sulhu: Is an alternative dispute resolution in Islam. A *sulh* is a negotiated agreement, like a settlement, between the two parties with the assistance of a third party, like a Kadi, family leader, or community leaders.

Ta'zir: A category of crimes, the punishment for which is at the discretion of the judge. These crimes either do not fall under the narrow requirements of hudud punishments (though they may be of a similar nature) or there are no explicit punishments in the Qu'ran.

Ulama: A body of Islamic scholars recognized as having specialist knowledge of Islamic sacred law and theology.

Zakat: In Islamic law, it is an obligatory payment, or tithing, made annually on certain kinds of property and used for charitable and religious purposes.

Zina: An Islamic legal term referring to unlawful sexual intercourse.

ANNEX B: ROLE OF KEY ACTORS

State Police Command and Other Security Forces: The Nigerian Police Force, a federal body, arrests, charges, and prosecutes most criminal cases, including in states with Shari'ah Penal and Criminal Procedure Codes. The police have their own legal teams who will investigate and prosecute on behalf of the Commissioner of Police for lesser criminal offenses. More serious crimes, such as murder, will be investigated by the police and then moved to the Ministry of Justice to be prosecuted by the Attorney General and his or her lawyers. The Nigeria Security and Civil Defense Corps' primary function is to protect lives and properties in conjunction with Nigerian police. This includes any form of attack against or disaster in the country. Like the police, the Nigeria Security and Civil Defense Corps can institute legal proceedings against any person or persons suspected to have committed an offense. All can choose to which court they want to take a suspect initially. Formal charges against accused persons come directly from reports of police investigations of criminal complaints ("First Information Reports"), which are cited in the written judgments of the Shari'ah courts. If a Shari'ah court issues a warrant for the arrest of a suspect, the police execute the warrant.

State Judicial Service Commissions: State Judicial Service Commissions are established and governed by the Nigerian constitution. They advise the National Judicial Service Commission on nominations for Chief Judge of the State and the Grand Kadi of the State Shari'ah Court of Appeal, as well as other high-ranking judicial officers. In Zamfara, the Council of the Ulama has greater influence in the appointment of Shari'ah court judges. (For more detailed information, see the chapter on Zamfara.) The commissions also appoint, dismiss, and exercise disciplinary control over Chief Registrars of the High Court, Shari'ah Court of Appeal, and Customary Court of Appeal, as well as judges of all their lower conventional, Shari'ah, and customary courts, and other members of the staff of the judicial service of the state not otherwise specified in the constitution. State Chief Judges serve as chairpeople of each state commission.

State Chief Judge: The State Chief Judge formulates rules to guide the operations of the lower courts in each state.

Grand Kadi: The Grand Kadi is another office established by the Nigerian constitution with powers and functions over Shari'ah courts that are similar to those exercised by the Chief Judge. The Grand Kadi serves as the Chief Judge of the Shari'ah courts. The Grand Kadi hears petitions from parties disputing the conduct or attitude of a Shari'ah court judge or other court employees like a registrar, clerk, or bailiff in a particular case, e.g., claims of bias or corruption. If the Grand Kadi agrees with the complainant, he may transfer the case to another judge or choose to resolve the issue himself.

Alternative Dispute Resolutions: People frustrated with the conventional courts and the Shari'ah courts may turn to alternative dispute resolutions, including negotiation, mediation, and arbitration. The conventional legal process can be costly and drawn out, and perpetrators may receive a harsher punishment than in alternative mechanisms that avoid litigation. Alternative services are generally free of charge and are conducted in the local language, free of legal technicalities. Although these mechanisms allow disputing parties to have more control over the process and the resolution, third parties may or may not be involved. The overarching goals of these alternatives are to preserve social harmony and relationships. Borno, Kano, and Katsina created "Multi-Door Court Houses" (MDC) connected to the High Courts. [78]These MDCs have trained mediators and dispute resolution specialists to assist with early neutral evaluation, mediation, and arbitration. The Ministry of Justice in Zamfara and Sokoto also operate alternative dispute resolution programs. In addition, traditional leaders, such as the emir, sultan, or palace-appointed community district and ward heads, will often hear disputes and provide alternative dispute resolutions. Women, in particular, are frequent users of alternative dispute resolutions especially for family matters.[79] In the North, women often turn to *sulh*, which is an agreement between two parties that acts like a settlement negotiated between the parties with the assistance of a third party, either a kadi, family leader, or community leader.[80] When a settlement cannot be reached, parties may be referred to a more senior traditional leader or to a formal legal court.

ANNEX C: BRIEF OVERVIEW OF NEW SHARI'AH LAWS IN THE 12 NORTHERN STATES

Bauchi	In Bauchi State, application of the new Shari'ah Penal Code has continued steadily, with the imposition of sentences of amputation and stoning more than in the other Shari'ah-implementing states. There has been increasing popular demand for sulhu (the out of court arbitration conducted by the Bauchi State Shari'ah Commission) in civil cases, especially marital disputes and debt-recovery. Criminal cases are not presented for sulhu.
Borno	Although Borno State enacted a new Shari'ah criminal code, it has never been implemented, and no Shari'ah statutory agencies are operational in the state. As a result, there have not been significant changes in the application of Shari'ah law since 1999-2000. Borno State has been devastated by the Boko Haram insurgency fighting to create a caliphate. For many years, Boko Haram insurgents controlled much of the territories of Borno State, where they applied their more draconian interpretation of Shari'ah.
Gombe	Gombe State has enacted a new Shari'ah criminal code and Shari'ah courts establishment law, but both have never been implemented. Gombe State has been the least interested in the wave of changes in Shari'ah law. Additionally, Muslims are a simple majority in the state, which has a substantial number of Christians. This has made it necessary to be more cautious in the implementation of Shari'ah Penal and Criminal Procedure Codes.
Jigawa	Jigawa State was created out of the old Kano State in 1996, and the two states share a great deal in common, particularly culturally, linguistically, politically, socially, and religiously. At least 90 percent of the population is Hausa-Fulani and Muslim. Apart from enacting a new Shari'ah criminal code and Shari'ah criminal procedure code, Jigawa State has also created and supported several Shari'ah statutory agencies that have been fairly functional without attracting too much media attention. It is the only state to digitize its Shari'ah court system.
Kaduna	Muslims are a simple majority in Kaduna State. They reside mostly in the north, while substantial numbers of Christians live in the south. The state has a history of violent clashes between Muslims and Christians, and it is one of the few states that has experienced violent opposition to the new Shari'ah codes, forcing the state to follow a unique path of introducing Shari'ah criminal codes. Shari'ah Penal Code and Shari'ah Criminal Procedure Code are applied in Shari'ah courts in cases involving Muslims, while cases involving non-Muslims are handled in the conventional or customary courts.
Kano	As already noted, Kano State is similar to Jigawa State in some important respects. But a major difference is that Kano has a very long history of political activism and even political radicalism, which has often led to political agitation and occasionally to political violence. Thus, it is not surprising that it took grass-root mobilization to force a reluctant state governor to endorse the enactment of the new Shari'ah Penal Code in 2000. Since then, Kano State has had a number of highly publicized cases decided by the Shari'ah courts on issues that are sensitive culturally, religiously, and politically. Kano State was the second state to apply Shari'ah.
Katsina	Katsina State was not too keen to embrace the new Shari'ah Penal Code in the beginning. Nonetheless, the state enacted a new Shari'ah Penal Code, which is being applied in the state's Shari'ah courts. A Katsina lower Shari'ah court sentenced someone to death by stoning in 2002. The judgment was subsequently overturned by the Katsina State Shari'ah Court of Appeal in 2003.
Kebbi	Kebbi State has maintained a muted approach to the implementation of the new Shari'ah criminal code. A little-known feature of Kebbi State is the ethnic, linguistic, and religious diversity of its population. The state has the historical legacy of resisting the 19th century Islamic Empire of the Sokoto Caliphate. Like Gombe State, Kebbi may have joined the trend of enacting the new Shari'ah criminal code because that was the current wave across the sister states in the north. Similarly, the religious demography in the state (comprising of Christians, Muslims, and followers of indigenous African religions) may be a factor in Kebbi State's approach to the implementation of the new Shari'ah code. Kebbi State enacted the new Shari'ah Penal Code and Criminal Procedure Codes, both of which are being applied Shari'ah courts in the state. Until 2004, there were six sentences to amputation and one case of stoning to death. However, none of these were carried out.

Niger	During the initial stages in the early 2000s, the state's governor was one of the most enthusiastic supporters of Shari'ah implementation. He ensured the passage of several enabling laws, but they were haphazard and never carefully thought through. The next state governor was never keen to implement Shari'ah law. And when Niger State was confronted with the case of a Muslim super-polygamist with some 80 wives, the state could not find the law to prosecute him for violating the limit of four wives allowed by Shari'ah, thereby exposing the loopholes in the state's approach to implementing the new Shari'ah criminal code. In the aftermath, Niger State had to amend its Shari'ah Penal Code in 2015.
Sokoto	A lower Shari'ah court in Sokoto State condemned Safiya Hussaini Tungar Tudu to death by stoning for illicit sex. The sentence was later overturned. Sokoto Shari'ah courts also sentenced at least 13 people to amputation before 2004. However, since then, the implementation of the new Shari'ah criminal code in Sokoto State has been rather routine without attracting any major media attention for any unusual cases. An important factor in this may be the status of Sokoto Town, the state capital, as the hometown of the Sultan of Sokoto, the current traditional ruler of the Sokoto Caliphate and the Spiritual Head of Muslims in Nigeria, with a longstanding tradition of accommodating Islamic traditions with modern challenges since the advent of British colonialism in 1903.
Yobe	Yobe State was created out of the old Borno State in 1996, and the two states share a historical legacy of being the areas where Islam was first introduced in the present-day Nigeria in the 11th century. While Borno State has a substantial Christian minority and different ethnic groups in its southern parts, Yobe is more homogenous ethnically and religiously. As in Borno State, Yobe has not implemented its Shari'ah Penal Code; its Shari'ah courts are handling civil matters only. Yobe has also created more functional Shari'ah statutory agencies. Although Yobe State is also afflicted by the Boko Haram insurgency, the state has managed to stay its course of implementing its new Shari'ah codes and keeping its Shari'ah statutory agencies functional.
Zamfara	Zamfara was the first state to apply new Shari'ah criminal codes in 1999/2000, and the Zamfara State Government is committed to applying the new Zamfara State Shari'ah Penal Code. As a result, Zamfara has created more institutions surrounding Shari'ah than any other state in Nigeria. Moreover, there has been significant public support for Shari'ah implementation in Zamfara. For instance, all businesses must shut down during the five Muslim prayers each day, and in Zamfara's state capital of Gusau, there is a midnight curfew.

ANNEX D: SHARI'AH PENAL CODES OF KANO, SOKOTO, AND ZAMFARA[81]

Offenses Under the **Zamfara State** (Harmonized) Shari'ah Penal Code	Offenses Under the **Sokoto State** Shari'ah Penal Code Law 2000	Offenses Under the **Kano State** Shari'ah Penal Code Law 2000
Hudud Offenses	**Hudud and Hudud-Related Offenses**	**Hudud and Hudud-Related Offenses**
Zina (Adultery or Fornication)	Zina	Zina
Rape	Rape	Rape
Sodomy (Liwat)	Sodomy (Liwat)	Sodomy (Liwat)
Incest	Incest	Incest
Lesbianism (Sihaq)	Lesbianism (Sihaq)	Lesbianism (Sihaq)
Bestiality (Wat al-Bahima)	Bestiality (Wat-al-Bahima)	Bestiality (Wat-al-Bahima)
Gross Indecency	Gross Indecency	Gross Indecency
False Accusation of Zina (Qadhf)	False accusation of Zina (Qadhf)	False accusation of Zina (Qadhf)
Defamation	Defamation	Defamation
Theft (Sariqah)	Theft (Sariqah)	Theft (Sariqah)
Drinking Alcoholic Drink (Shurb al-Khamr)	Drinking Alcoholic Drink (Shurb al-Khamr)	Drinking Alcoholic Drink (Shurb al-Khamr)
Robbery (Hirabah)	Robbery (Hirabah)	Robbery (Hirabah)
Extortion	Criminal Misappropriation	Criminal Misappropriation
Criminal Misappropriation	Criminal Breach of Trust	Criminal Breach of Trust
Criminal Breach of Trust	Receiving Stolen Property	Receiving Stolen Property
Receiving Stolen Property	Cheating	Cheating
Cheating	Criminal Trespass	Criminal Trespass
Criminal Trespass		
Qisas and Related Offenses	**Qisas and Qisas Related Offenses**	**Qisas and Qisas Related Offenses**
Homicide	Homicide	Homicide
Causing Miscarriage, etc.	Causing Miscarriage	Causing Miscarriage
Hurt	Abandonment of Child Under Fifteen Years	Abandonment of Child Under Fifteen Years
Criminal Force and Assault	Cruelty to Children	Cruelty to Children
Kidnapping, Abduction, and Forced Labor	Concealment of Birth	Concealment of Birth
	Hurt	Hurt
	Criminal Force and Assault	Criminal Force and Assault
	Kidnapping, Abduction, and Forced Labor	Kidnapping, Abduction and Forced Labor

Ta'zir Offenses	Ta'zir Offenses	Ta'zir Offenses
Criminal Intimidation	Criminal Intimidation	Criminal Intimidation
Wrongful Restraint and Wrongful Confinement	Wrongful Restraint and Wrongful Confinement	Vagabonds
Forgery	Forgery	Wrongful Restraint and Wrongful Confinement
Property and Other Marks	Property and Other Marks	Forgery
Criminal Breach of Contract of Service	Criminal Breach of Contract of Service	Property and Other Marks
Breach of Official Trust	Contempt of Lawful Authority of Public Servant	Contempt of Lawful Authority of Public Servant
Offenses against the Public Peace	False Evidence and Offenses Relating to Administration of Justice	False Evidence and Offenses Relating to Administration of Justice
Offense by or Relating to Public Servants	Vagabonds	Lotteries and Gaming Houses
Contempt of Lawful Authority of Public Servants	Lotteries and Gaming Houses	Cruelty to Animals
False Evidence and Offenses Relating to the Administration of Justice	Cruelty to Animals	Criminal Breach of Contract of Service
Screening of Offenders	Offenses Relating to Ordeal, Witchcraft, and Juju	Offenses Relating to Ordeal, Witchcraft, and Juju
Resistance to Arrest and Escape		
Fraudulent Dealings with Property		
Miscellaneous		
Public Nuisance		
Lotteries and Gaming Houses		
Cruelty to Animals		
Offenses Relating to Religion		
Offenses Relating to Ordeal, Witchcraft, and Juju		

ANNEX E: THREE MODELS OF SHARI'AH CRIMINAL LAW

Initially, as Mohammed Ladan[82] and Daniel Plang[83] have identified, three different models of Islamic law implementation and organization co-existed in Nigeria's 12 states: the Kaduna/ Gombe Model, the Niger Model, and the Zamfara Model. Over the years, changes in key features have blurred distinctions among the different models.

Kaduna/Gombe Model	Niger Model	The Zamfara Model
▪ In Kaduna, the preexisting area courts were abolished and replaced with Shari'ah courts for Muslims and customary courts for non-Muslims. Both states have substantial Christian populations. ▪ Gombe State enacted all the relevant legislation, but never implemented it. ▪ Muslims can consent to customary court and non-Muslims can consent to Shari'ah court. ▪ Proceedings in customary courts are governed by customary law even if one or more of the parties are Muslims, and proceedings in Shari'ah courts are governed by Islamic law even if one or more of the parties are non-Muslims, except in criminal cases, when the customary courts apply the state's penal code to all parties and the Shari'ah courts apply the state's Shari'ah Penal Code to all parties. ▪ Conventional courts provide another alternative for Muslims and non-Muslims. In criminal cases, the High and Magistrate courts apply the state's penal code to all parties regardless of religion.	▪ Initially in Niger, the area courts were retained. However, subsequently this state enacted a Shari'ah Courts Law much like that in Zamfara. ▪ Jurisdiction for Shari'ah courts is limited to Muslims and to non-Muslims who consent to be tried under their jurisdiction. ▪ Muslims are governed by Shari'ah courts but can also resort to the High or Magistrate courts. ▪ At first, Niger merely amended its pre-Shari'ah penal code, adding hudud or qisas punishments for certain crimes in cases of Muslim defendants, rather than enact a new substantive Shari'ah penal code. ▪ In 2009, the state government established a "Law Reform Committee" to review all the Shari'ah-related legislation. This committee's work led to new a Shari'ah Penal Code and Sharia Criminal Procedure Code for Niger, both enacted in 2014. Now, the Niger court system is more in line with the Zamfara Model.	▪ The remaining states that have adopted Shari'ah criminal code follow the Zamfara Model. ▪ Zamfara abolished area courts and replaced them with Shari'ah courts for all Muslims and non-Muslims who consent. ▪ Magistrate courts have been preserved for non-Muslims.

ANNEX F: KEY COURT CHALLENGES

Validity of Shari'ah Penal Codes

CA/J/194S/2003

Zarami Maina vs. Ya Mairam Wakil and Wakil Fannami (2004)

Court of Appeal

Were the Shari'ah courts of Borno State duly established and existent in law? **Decision**: They were.

This issue arose when a judgment of the Borno State Shari'ah Court of Appeal involving a case decided in a lower Shari'ah Court and appealed to an Upper Shari'ah Court that "summarily disposed of the appeal by striking it out on the ground that is had no jurisdiction to hear appeals from courts that do not exist in law." This reflected disputes between the Chief Judge of the High Court and the Grand Kadi of the Shari'ah Court of Appeal over control of the new inferior Shari'ah courts, which were converted from the area courts, which had been under the control of the Chief Judge who refused to hand over control to the Grand Kadi. The Court of Appeal ruled that the Borno State Sharia Administration of Justice Law (No. 11) of 2000 established the Shari'ah administration. However, the lower court denied the appellant his right to a fair hearing and the lower court made an error "amounting to substantial or gross miscarriage of justice in its decision." The appeal case was remitted for a rehearing before the Upper Shari'ah Court.

Jurisdiction of the High Court in Shari'ah Cases

K/42C/2010

Kano State vs. Lami Adamu (2010)

Could the High Court of Kano State could apply the state's Shari'ah Penal Code Law? **Decision:** It could.

Magistrate courts and the High Court apply the old penal code and not the Shari'ah Penal Codes. However, in this case the Attorney General of Kano State chose to charge the defendant with homicide under the state's Shari'ah Penal Code in the High Court. The respondent challenged the jurisdiction of the High Court, but it was decided that High Court was competent to apply the Shari'ah Penal Code.

NSHC/MN/6A/2003

Haruna Ibrahim Kuta vs. Ahmadu Galadima (2004)

Niger State High Court

Do the new legal provisions allow criminal appeals from the Upper Shari'ah Courts to go to the Shari'ah Court of Appeal and not the High Court? **Decision:** The Niger State High Court has jurisdiction to hear appeals from Shari'ah courts.

The appeal in this case came in the aftermath the "Niger State Sharia (Administration of Justice) Law 2001," which came into effect November 5, 2002. There were issues surrounding the jurisdiction of the High Court to entertain appeals from the state's Shari'ah courts.

Jurisdiction of the Shari'ah Courts of Appeal

In a series of rulings that began in 2002, a number of state High Courts and divisions of the federal Court of Appeals held that Section 277 does *not* authorize states to expand the jurisdiction of Shari'ah Courts of Appeal.

CA/S/24S/2016

Dauda Adamu Helende vs. Samaila Musa & Three Others (2018)

Court of Appeal

Does the Kebbi State Shari'ah Court of Appeal have jurisdiction to entertain appeals against the judgment of Upper Shari'ah Court Argungu in a dispute over inherited farmland? **Decision:** They do not.

The judgment of the Court of Appeal affirms the judgments delivered by both the Upper Shari'ah Court and the Shari'ah Court of Appeal, based on section

277 of the 1999 Constitution of Nigeria. The Court of Appeal states, "The Shari'ah Court of Appeal of Kebbi State does not only have jurisdiction in this matter, but indeed has an exclusive jurisdiction." An important point to note is that in previous judgments, the Court of Appeal has ruled that the Shari'ah Court of Appeal does not have jurisdiction to entertain cases involving land disputes. But the judgment in this case is that if the land in contention is part of an inherited estate of a deceased Muslim, then the Shari'ah Court of Appeal has the jurisdiction to entertain the case.

CA/S/79S/2013

Alhaji Keri & Two Others vs. Bafashi Azuga Makada and Meri Azuga Makada (2018)

Court of Appeal

Does Kebbi State Shari'ah Court of Appeal have jurisdiction to "hear and determine Suit No. USC/ZUR/CV/167/2009, which is in respect of a declaration of title to land, and not issue of Shari'ah Personal Law"? **Decision:** It does not.

An interesting argument raised in this case is submission by "Learned counsel for the respondents, Garba Abubakar Shehu, Esq. conceded that by the strict construction of Section 277 of the 1999 Constitution, the Shari'ah Court of Appeal does not have the requisite jurisdiction to entertain an action for the recovery of land. He, however, submitted that where the House of Assembly exercises its powers to confer additional jurisdiction on the Shari'ah Court of Appeal, the Court will certainly be competent to entertain appeal on title to land. In further argument, learned counsel referred to Section 4 (7) as well as Subsection (1) of Section 277 of the 1999 Constitution in contending that Kebbi State House of Assembly had conferred additional jurisdiction on the Shari'ah Court of Appeal vide Shari'ah (Administration of Justice) Law 2000 wherein Sections 12 & 14 thereof gave the Shari'ah Court of Appeal jurisdiction to entertain appeal in civil matters decided by Upper Shari'ah Courts involving questions of Shari'ah Law. He therefore submitted that by the combined effect of Section 277 (1) of the 1999 Constitution and Sections 12 and 14 of the Kebbi State (Administration of Justice) Law 2000, the Shari'ah Court of Appeal has additional jurisdiction on other civil matters not mentioned in Section 277 (2) of the 1999 Constitution."

The Court of Appeal ruled that a claim of title to land simpliciter is outside the scope of the jurisdiction of the lower court, that the provision of Sections 12 and 14 of the Kebbi State Shari'ah (Administration of Justice) Law 2000 is beyond the legal legislative competence of the Kebbi State House of Assembly, and that the judgment of the lower court is therefore "struck out while the appeal against the judgment of the Upper Shari'ah Court Zuru in Suit No. USC/ZR/CV/169/09 is remitted back to the appellate Section of the High Court of Kebbi State being the proper forum for hearing the said appeal."

Case No: CA/S/31s/2017

Alhaji Sa'adu Garba and Umaru Garba vs. Alhaji Yunusa Saminu and Lawal Mande (2018)

Court of Appeal, Sokoto Judicial Division

Does the Shari'ah Court of Appeal have jurisdiction to entertain appeals connected to a statutory grant? **Decision:** They do not.

The Court of Appeal ruled that the Zamfara State Shari'ah Court of Appeal does not have jurisdiction to try a case involving a land dispute, because land matters are not within the issues on which the Shari'ah Court of Appeal has jurisdiction, as provided in section 277 (2 a-e) of the 1999 Constitution of Nigeria. The lower court was outside its jurisdiction. The judgment of the Court of Appeal observes that "there are plethora of judicial decisions that the jurisdiction of lower court [Shari'ah Court of Appeal] is restricted to and confined to civil proceedings involving questions of Islamic Personal law, which invariably includes validity or dissolution of marriage, family

relationships or guardianship of an infant, waqf [charitable endowment], gift, will or succession, where the endower, donor, testator or deceased is a Muslim" (pp. 7-8).

CA/S/76S/2016
Alhaji Dakake vs. Sani Abdullahi Udoba (2017)
Court of Appeal
Was the Court right, when it affirmed the decision of the Upper Shari'ah Court Wasagu, which overturned the decision of the Shari'ah Court Kanya when the said decision did not occasion a Miscarriage of Justice? And does the Shari'ah Court of Appeal, Kebbi State have the requisite jurisdiction to hear and determine the appeal? **Decision:** *Court of Appeal dismissed the first issue for the failure of the appellant's counsel to "to show special circumstances that could warrant upturning those two concurrent findings." On the second issue,* ***the Court ruled the Lower Court acted without jurisdiction.***

CA/S/99S/2015
Alhaji Hashimu Magizawa vs. Sarkin Fawa Magizawa (2017)
Court of Appeal
Does the Shari'ah Court of Appeal, Zamfara have the appellate jurisdiction to hear and determine this appeal? And was the lower Court right in affirming the conviction and sentence of the Appellant? **Decision:** The Shari'ah Court of Appeal Zamfara State had no jurisdiction to have heard and to have determined this case.
"Consequently, this Appeal succeeds and it is accordingly allowed and the judgment of the lower Court, that is the Shari'ah Court of Appeal, Zamfara State, delivered on the 6-5-2013 in Appeal No: SCA/KN/H/2/2012 is hereby struck out. However, the Appeal against the correctness or otherwise of the judgment of the Upper Shari'ah Court, Kaura Namoda in case No.: CF/F1/35/2011 decided on the 4-1-2011 is hereby transferred to the Appellate Division of the Zamfara State High Court for determination."

CA/S/71/2014
Malam Kasimu Muhammad Umar and 111 others and Commissioner of Police, Sokoto State (2015)
Court of Appeal
The Attorney General of Sokoto challenged the jurisdiction of the state's High Court to hear an appeal, citing the Shari'ah Court Law, 2000, which says Shari'ah criminal appeals are to be heard by the Shari'ah Court of Appeal. The case was referred to the federal Court of Appeal, which declared that ***the High Court has jurisdiction.***

CA/S/8s/2011
Alhaji Aminu Haruna and Alhaji Yusuf Dan Hausa vs. Umar Suleiman and Attorney General Zamfara State (2014)
Court of Appeal
Does the Shari'ah Court of Appeal have jurisdiction to entertain an appeal outside the contemplation of section 277 of the 1999 Constitution? And was it proper the Shari'ah Court, Zamfara State proceeded with hearing the appeal in the absence of the appellants? **Decision:** The Shari'ah Court did not have jurisdiction.
The Court of Appeal ruled that the effect of Sections [42 and 43] of the Zamfara State Shari'ah Courts (Establishment) Law 1999 is to amend the provision of the constitution, which is clearly outside the legal authority of the Zamfara State House of Assembly. The court held that the provisions of Sections 42 and 43 of the Zamfara State Shari'ah Courts (Establishment) Law 1999 are inconsistent with the provisions of Section 277(1) and (2) of the constitution.

Case No CA/S/104s/2011
Alhaji Salihu Haruna & ANR vs. Lawali Tambaya (2012)
Court of Appeal, Sokoto Judicial Division
Does the Shari'ah Court of Appeal have jurisdiction to entertain a land dispute case? Specifically, do sections 277(1) and 277(2) of the 1999 Constitution of Nigeria give a State House of Assembly the power "to make laws to give additional jurisdiction to the Shari'ah Court of a state as has been done in the Shari'ah Court of Appeal Law Cap 133 (amendment) Law 2000 to give the State Shari'ah Court of Appeal, Zamfara State additional jurisdiction to hear appeals in all cases decided according to Shari'ah law by the Upper Shari'ah Courts"? **Decision:** They do not.
The Court of Appeal ruled, "It will be wrong to assume that section 277 (1) of the Constitution has given the Zamfara State House of Assembly powers to confer jurisdiction on the Shari'ah Court of Appeal in Zamfara State to hear appeals in all cases decided in accordance with Shari'ah law by the Upper Shari'ah Court in the state (original italics)." Furthermore, the Court of Appeal ruled that the Shari'ah Court of Appeal has no jurisdiction to entertain the appeal, "involving questions other than those of Islamic Personal Law and in criminal proceedings outside the provisions of Section 277(1) and (2) of the Constitution."

CA/K/173/S/2003
Bashir Gidan Kanawa vs. Alhaji Sani Maikaset (2007)
The case was actually a land matter and the jurisdiction of Shari'ah Court of Appeal on civil matters outside Islamic personal laws was challenged. The Court of Appeal declared the Section 5 of the Shari'ah Court Law, 2000 of Sokoto State unconstitutional. It is this section that conferred criminal appeal jurisdiction on the Shari'ah Court of Appeal.

BOM/5A/2002 1
Mai Tangaram V. Mai Taxi (2002)
High Court, Borno State, unreported
Do the High Courts in Shari'ah states still have jurisdiction to entertain appeals from Shari'ah Courts, notwithstanding the new statutes directing all appeals from Shari'ah Courts to Shari'ah Courts of Appeal? And in any event, could the Shari'ah states by statute expand the jurisdiction of their Shari'ah Courts of Appeal, beyond questions of Islamic personal law only, to all questions decided in their Sharia Courts under Islamic law? **Decision:** They cannot. The State House of Assembly did not add and in cannot add to the jurisdiction of the Shari'ah Court of Appeal.
The Borno State High Court ruled that, "the State House of Assembly cannot enact a law and confer an appellate jurisdiction in criminal matters on the Shari'ah Court of Appeal. When it comes to civil matters the Shari'ah Court of Appeal in exercising its appellate jurisdiction cannot go outside section 277(2) of the 1999 Constitution. There is no law which empowers it to do that. So viewed in that light we come to the conclusion that section 8(3) of the Shari'ah Administration of Justice Law 2000 is void and therefore of no effect as it is in conflict with the provisions of section 272 and 277 of the 1999 Constitution."

ANNEX G: METHODOLOGY

In our research, we drew on qualitative and quantitative methods, including a literature review, observations, and interviews.

Literature Review/ Records Collection

We reviewed two types of legal research: 1.) classical doctrinal legal research that focuses largely on the substance of the law and the operation of courts in the application of the provisions of the law, and 2.) socio-legal research that focuses mainly on the interface between law and society, as well as the broader legal order and institutions beyond the courts.

Our sources included classical Islamic law textbooks, transcripts of proceedings from upper and lower Shari'ah courts, and the Shari'ah Court of Appeal in each of the selected states; the Shari'ah Law Reports journal (which publishes case-law materials, including some written judgments from Shari'ah courts); and Shari'ah statutory agencies. Periodic reports compiled by the Shari'ah statutory agencies in the selected states were the sources for understanding their interface with Shari'ah courts, and their various roles in the implementation of Shari'ah penal codes. These reports provide details and figures of cases handled by the statutory agency issuing the report and the final disposition of the cases, including cases taken to the Shari'ah courts for prosecution under the new Shari'ah penal codes.

We also looked at the academic works of leading scholars, such as Philip Ostien, Jamila M. Nasir, Franz Kogelman, and the Shari'ah Source at Harvard Law School, as well as previous work by team member Dr. Muhammad Sani Umar and media coverage of the implementation of Shari'ah laws.

Please note: Record keeping at the Shari'ah courts varies from court-to-court for several reasons, including a lack of sufficiently trained personnel and inadequate funding. Only Jigawa State has digitized its Shari'ah court records. Shari'ah court documents, including court proceedings, in the 11 other states are handwritten in Hausa, are often not legible, and do not necessarily capture everything said during a proceeding.

In addition, court records involving cases that are politically sensitive, especially those involving gender, sexuality, religious dissent, apostasy, and blasphemy, will likely be incomplete and not provide comprehensive information.

Observations

Field observations of court sessions, Ministries of Justice, and the activities of the Shari'ah statutory agencies provided data on the workings of Shari'ah courts in their natural settings. Field observations revealed subtle influences, differences in day-to-day proceedings of the Shari'ah courts and statutory agencies, and the dynamic interactions between, on the one hand, Shari'ah law and its actors and institutions, and on the other hand, the forces and actors from diverse sectors of society.

Interviews

Face-to-face interviews were critical to a broader understanding of how Shari'ah is implemented in these states. To ensure as much consistency as possible, we developed interview questionnaires and a thorough training for all field and home-based staff so that the same questions were asked of all sources and the same methods used. Responses to these interviews were added to a spreadsheet so that answers could be quantified (for instance, the number of positive responses to a particular yes/no question).

Interviewees included:

- Shari'ah courts judges
- Attorneys who have represented accused persons in Shari'ah criminal cases
- Individuals who have been tried and convicted or discharged
- Journalists who cover Shari'ah criminal court cases for various media organizations
- Administrative staff and record-keepers at the lower Shari'ah courts
- Public prosecutors in the selected states
- Officials at civil rights organizations
- Legal practitioners and experts
- Women's rights groups
- Members of prominent Christian and Shi'a groups
- Police and other security bodies
- Officials of the Ministries of Justice in the selected states
- Officials of Shari'ah statutory agencies
- Individual men and women residents in the selected states

Sources for obtaining data are listed in the following table in order of their priority:

1. Shari'ah Courts	**a.** Based on information from the State Ministry of Justice and the Inspectorate of Shari'ah Courts at the State Shari'ah Court of Appeal, the two lower Shari'ah courts located outside the state capital with the highest caseloads in the region were visited for available data. **b.** Three upper Shari'ah courts with the highest caseloads were visited to collect data on criminal cases. **c.** At least one of the upper Shari'ah courts was located outside the state capital. **d.** A minimum of five Shari'ah courts were visited in each state, and at least two of the courts were located outside of the state capital. **e.** Written judgments on criminal cases handed down by the alkalis of Shari'ah courts were collected wherever they are available. **f.** Interviews were conducted with the alkali and the registrar/secretary of each Shari'ah court visited who consented to be interviewed. **g.** Criminal cases that have been appealed to the State Shari'ah Court of Appeal were followed-up when possible. Cases taken on further appeal to the State High Court were noted when possible, as well as cases reaching the Federal Court of Appeal and the Supreme Court. **h.** Some retired Shari'ah court judges were also interviewed.
3. State Ministry of Justice	**a.** Records on Shari'ah courts in the state were collected. **b.** Interviews were conducted with the State Attorney General, the State Solicitor General, and public prosecutors, with particular attention to policy guidelines on handling criminal cases that fall within the jurisdiction of the newly enacted Shari'ah codes in the state.
4. State Hisbah Agencies	**a.** All available records were collected, with particular attention to criminal cases handled by the agency. **b.** Interviews were conducted with the administrators of hisbah.

Data Analysis

The collected data was reiteratively analyzed, each time focusing on a specific theme, and charting the relationship of that specific theme to all other themes. This technique of data analysis ensures thorough coverage of each of the themes of interest in the research and the intricate linkages among all themes. We also strove to triangulate all data to best validate and corroborate findings. Triangulation makes it possible to rank findings based on their frequencies in the various types of data collected. It reveals broad patterns and commonalities, as well as uniqueness or exceptionality of research findings.

ANNEX H: BIBLIOGRAPHY

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ENDNOTES

1 Map from the *Economist* and Afrobarometer, February 5, 2015. https://www.economist.com/middle-east-and-africa/2015/02/05/bad-luck-for-nigeria

2 **Please note:** Record keeping at the Shari'ah courts varies from court-to-court for several reasons, including a lack of sufficiently trained personnel and inadequate funding. Only Jigawa State has digitized its Shari'ah court records. Shari'ah court documents, including court proceedings, in the 11 other states are handwritten in Hausa, are often not legible, and do not necessarily capture everything said during a proceeding.

3 Pew Research Center. "The Global Religious Landscape." (Washington, DC: Pew Research Center's Forum on Religion and Public Life, December 18, 2012).

4 Pew-Templeton. *Global Religious Futures Project* (database). (Washington, DC: Pew Research Center, 2010).

5 Sunni Islam is divided into four schools of law: Hanafi, Shafi'i, Maliki, and Hanbali. Hanafis, based mostly in the Indian subcontinent, Iraq, Turkey, and the Western world, is considered the most flexible and liberal in Islamic jurisprudence. The Shafi'is emphasize ijma (consensus). Mostly in North and West Africa, Malikis lay great emphasis on juristic deduction, (i.e., in matters that have not been provided for by a Quranic text or *Hadith* nor determined by consensus of opinion, the law may be deduced from what has been provided by any of these authorities). The Hanbalis are the most rigid and follow the Sunnah literally. Nigeria's Shari'ah court judges have been trained primarily in the Maliki tradition. (The Sunnah is the body of literature that prescribes and discusses traditional social and legal customs and practices of the Islamic community.)

6 Historical legacies, Islamic political and legal traditions, and geopolitical changes are relevant for understanding contemporary implementation of Shari'ah in northern Nigeria (which consists of 19 states grouped into three geopolitical zones: Northcentral, Northeast, and Northwest.) Of the 19 northern states, only 12 have expanded Shari'ah to include Islamic criminal law. Ten of the 12 Shari'ah - implementing states (Bauchi and Gombe in the Northeast, and Jigawa, Kaduna, Kano, Katsina, Kebbi, Niger, Sokoto and Zamfara in the Northwest) were parts of the Sokoto Caliphate, the 19th-century Islamic polity governed by Shari'ah law. Borno and Yobe (in the Northeast) used to be part of the Kanem-Bornu Empire, which had Islamic political and legal traditions different from those of the Sokoto Caliphate.

7 The United States war on terror also increased the North's defensiveness, according to Paul Lubeck, Interim Director at Johns Hopkins SAIS. [Paul M. Lubeck, "Nigeria: Mapping the Shari`a Restorationist Movement." In *Shari'a Politics: Islamic Law and Society in the Modern World*, edited by Robert W. Hefner (Bloomington: Indiana University Press, 2011), 244–279.]

8 Ayesha M. Imam, "Women, Muslim Laws and Human Rights in Nigeria." Wilson Center, September 17, 2003.

9 In the ruling on *Kano State v. Lami Adamu* (Suit No. K/42C/2010), it was established that the High Court of Kano could also apply the state's Shari'ah Penal Code in criminal cases stemming from Shari'ah courts. This is the only case in which this is known to have happened. This is examined in more detail in later sections.

10 *The Oxford Dictionary of Islam*, edited by John Esposito. (Oxford, UK: Oxford University Press, 2003).

11 A careful comparison of the newer Shari'ah Penal Codes and Criminal Procedure Codes (SPCs and SCPCs) and the older penal and criminal procedure codes (PCs and CPCs) by legal scholar Philip Ostien shows that about 90 percent of PC sections and 88 percent of CPC sections have been copied "more or less verbatim" into the recently enacted Shari'ah Penal and Criminal Procedure Codes. [Philip Ostein, *Sharia Implementation in Nigeria 1999-2006: A Sourcebook, Vol. IV* (Ibadan, Nigeria: Spectrum Books, 2005), 145-168; 325-343.]

12 According to a Pew Survey conducted in 2010, 19 percent of Nigerian Muslims identified themselves as followers of Tijaniyya, and 9 percent as followers of Qadiriyya, while 56 percent did not identify with any Sufi order. [Pew Research Center, "The World's Muslims: Unity and Diversity." (Washington, DC: Pew Research Center's Forum on Religion and Public Life, August 9, 2012).]

13 British Broadcasting Corporation, "Nigeria Court in Kano Sentences Nine People to Death for Blasphemy." *BBC News* (online), June 26, 2015.

14 British Broadcasting Corporation, "Nigeria Court in Kano Sentences Nine People to Death for Blasphemy." .

15 Musa Usman Abubakar, "Nigeria's Blasphemy Laws and the Competing Rights: Taming the Self-appointed God Avengers through Judicial Process" in *Religion, Law and Security in Africa*, edited by M. Christian Green, T. Jeremy Gunn, and Mark Hill (Stellenbosch: African Sun Media/Conference-RAP, 2018), 61.

[16] Lawal confessed to having a child while divorced, with a man she identified as the child's father. The man denied the charge, swore on the Qu'ran, and was judged innocent by the trial court. Lawal was to be executed as soon as her child was weaned. International outcry was swift and loud: human rights groups condemned her sentence as a violation of international treaties against torture, which Nigeria had signed. The defense was headed by Women's Rights Advancement and Protection Alternative (WRAPA) and BAOBAB for Women's Human Rights, two Nigerian NGOs. In 2003, she was acquitted by the Katsina Shari'ah Court of Appeal, largely due to technicalities in the application of Islamic law. The court found that the lower courts had been wrong not to allow Lawal to retract her earlier confession. Moreover, the court ruled, the first confession was invalid because it was uttered only once, instead of four times, as required by Shari'ah law, and only one judge presided over the first trial, instead of the requisite three. The police officers who arrested Lawal failed to produce witnesses to fornication, the court said. The court also gave a nod to what defense lawyers had called the ''sleeping embryo" theory: under some interpretations of Shari'ah, an embryo can be in gestation for up to five years, meaning that Lawal's baby could have been fathered by her former husband.

[17] "Nigeria in Crisis over Sharia Law," *BBC News* (online) March 26, 2002.

[18] Karen MacGregor, "Spread of Sharia Law Does Not Threaten Nigeria, Says President," The Independent. May 21, 2002.

[19] Philip Ostien, Ahmed Garba, and Musa Abubakar, "Nigeria's Sharia Courts," Chapter 2 of *Sharia Implementation in Northern Nigeria Twenty Years On: Six Research Reports and an Overview*, edited by M. Tabiu, A.R. Mustapha, and P. Ostien (Forthcoming).

[20] For instance, in Bauchi from 2000 to 2004, 28 sentences of amputation and six of stoning to death were rendered. [Gunnar J. Weimann, *Islamic Criminal Law in Northern Nigeria: Politics, Religion, Judicial Practice*. (Amsterdam: Amsterdam University Press, 2010).] In addition, at least three others were sentenced to stoning since 2004. None of these sentences has been carried out. [Philip Ostein, Ahmed Garba, and Musa Abubakar, "Nigeria's Sharia Courts," Chapter 2 of *Sharia Implementation in Northern Nigeria Twenty Years On: Six Research Reports and an Overview*, edited by M. Tabiu, A.R. Mustapha, and P. Ostien, Forthcoming). 61–63.]

[21] Although a Shari'ah courts law and Shari'ah Penal and Criminal Procedure Codes were enacted in 2001 in Gombe State, these have never been implemented. Therefore, there are no Shari'ah courts in Gombe State.

[22] Section 262(1) contains similar language.

[23] Human Rights Watch, "'Political Sharia'? Human Rights and Islamic Law in Northern Nigeria."

[24] Human Rights Watch.

[25] The study was conducted by the Development, Research and Projects Centre and Nigerian Research Network at the Oxford Department of International Development.

[26] Nigeria Stability and Reconciliation Programme (managed by the British Council), "Sharia Implementation in Northern Nigeria over 15 Years, Policy Brief No. 2: The Case of Hisbah," British Council, 2016.

That same study found that residents' attitudes toward hisbah varied from state to state. In Niger, only 19.7 percent believed that hisbah was more trustworthy than the police, compared with 84.3 percent in Kano. Only 18.8 percent of respondents in Niger felt they treated women fairly, compared with 88.4 percent in Kano. Moreover, in Kano, an estimated 70 percent of the disputes being mediated by hisbah were family and matrimonial cases brought by women. [Nigeria Stability and Reconciliation Programme, "Sharia Implementation in Northern Nigeria over 15 Years, Policy Brief No. 2: The Case of Hisbah."]

[27] Human Rights Watch, "'Political Sharia'? Human Rights and Islamic Law in Northern Nigeria."

[28] Weimann. *Islamic Criminal Law in Northern Nigeria: Politics, Religion, Judicial Practice*.

[29] Ostien, Garba, and Abubakar, "Nigeria's Sharia Courts."

[30] Rhoda Howard-Hassmann, "The Flogging of Bariya Magazu: Nigerian Politics, Canadian Pressures, and Women's and Children's Rights," *Journal of Human Rights* 3, no. 1, (March 2004).

[31] This principle was reaffirmed in 2014, when the Court of Appeal again ruled in *Haruna Haruna & Anr vs. Suleiman & Attorney General Zamfara State* (CA/S/8s/2011) that the Zamfara State Shari'ah Court of Appeal lacked the jurisdiction and competency to entertain the appeal. And in 2018, the court again ruled against Zamfara's Shari'ah Court of Appeal in *Alhaji Sa'adu Garba and Umaru Garba vs. Alhaji Yunusa Saminu and Lawal Mande* (CA/S/31s/2017). This time the ruling found that the Shari'ah Court of Appeal lacks jurisdiction to entertain appeals connected to a statutory grant, and that the lower court was outside its jurisdiction.

[32] Nigeria Stability and Reconciliation Programme," Sharia Implementation in Northern Nigeria over 15 Years, Policy Brief No. 2: The Case of Hisbah."

[33] According to the proposed "Zamfara State Policy on the Shari'ah Implementation Program" from the Zamfara Shari'ah Research and Development Commission.

[34] Conor Gaffey, "Nigeria's Buhari Condemns 'Blasphemy' Killings in Zamfara," *Newsweek*, August 23, 2016.

[35] Weimann, *Islamic Criminal law in Northern Nigeria: Politics, Religion, Judicial Practice*, 33–34.

[36] This is in line with the constitution and earlier decisions by higher courts.

[37] Another challenge came in *Commissioner of Police vs. Malam Kasimu Umar and 111 Others* (CA/S/71/2014), the Attorney General of Sokoto challenged the jurisdiction of the state's High Court to hear an appeal from a lower Shari'ah Court, citing Section 5 of the Shari'ah Court Law, 2000. The case was referred to the federal Court of Appeal, which declared that the High Court has jurisdiction.

[38] The codes and procedures were adopted in November 2000 (Kano State Shari'ah Penal Code Law of 2000 and Kano State Criminal Procedure (Amendment) Law of 2000).

[39] Ibrahim Na'iya Sada, "The Making of the Zamfara and Kano State Sharia Penal Codes." *Sharia Implementation in Northern Nigeria 1999-2006: A Sourcebook, Vol. 4.*, edited by Philip Ostien (Ibadan, Nigeria: Spectrum Books, 2007), 22–32.

[40] Section 146 of the Kano Shari'ah Penal Code lists nine circumstances that can make a theft not punishable with hadd, with the various penalties specified. Section 147 imposes "imprisonment for a term which may extend to one year and shall also be liable to caning which may extend to fifty lashes" as the penalty for theft not punishable with hadd, instead of amputation under hudud offenses.

[41] Weimann, *Islamic Criminal law in Northern Nigeria: Politics, Religion, Judicial Practice*, 40.

[42] Mohammed Adow, Nigeria's Kano Shakes off Divorce Capital Tag," Al Jazeera (online). July 16, 2012.

[43] Agence France Presse, "Sharia Police Smash 240,000 Bottles of Beer in Kano," *Vanguard Newspapers*, November 27, 2013.

[44] The report does not specify the offenses for which people were arrested nor successful arbitration.

[45] Nigeria Stability and Reconciliation Programme, "Sharia Implementation in Northern Nigeria over 15 Years, Policy Brief No. 2: The Case of Hisbah.".

[46] Nigeria Stability and Reconciliation Programme.

[47] Wale Odunsi, "Musician Sent to Prison over Song Mocking Ganduje's Election, Dollar Saga, New Kano Emirates," *The Daily Post*, June 23, 2019.

[48] Daniel Blake, "Nigerian Christian Freed after False Imprisonment for 'Blasphemy,'" *Christian Today*, February 16, 2009.

[49] United States Commission on International Religious Freedom, "USCIRF Annual Report 2008 – Nigeria," May 1, 2008.

[50] "Update: Nigeria: Suspects in Blasphemy Case Released," *World Watch Monitor*, November 4, 2016.

[51] Yusha'u A. Ibrahim, "Nigeria: Mob Kills 50-Year-Old Man for 'Blasphemy,'" *Daily Trust*, August 11, 2008.

[52] Nigeria Stability and Reconciliation Programme (managed by the British Council), "Sharia Implementation in Northern Nigeria over 15 Years, Policy Brief No. 1: The Sharia Courts," British Council, 2016.

[53] Human Rights Watch, "'Political Sharia'? Human Rights and Islamic Law in Northern Nigeria."

[54] Abdul Raufu Mustapha and Aminu Gamawa, in their paper "Challenges of Legal Pluralism: Sharia Law and Its Aftermath," highlighted many procedural concerns "that could lead to a miscarriage of justice." These problems include due process of law violations in Shari'ah courts, including a lack of access to legal representation, failure to inform defendants of their rights, and inadequate training for lawyers and judges. [Abdul Raufu Mustapha and Aminu Gamawa, "Challenges of Legal Pluralism: Sharia Law and Its Aftermath," in *Creed & Grievance: Muslim-Christian Relations & Conflict Resolution in Northern Nigeria*, edited by Abdul Raufu Mustapha and David Ehrhardt (Woodbridge, Suffolk: Boydell and Brewer, 2018), 147.]

[55] Amnesty International, *'Welcome to Hell Fire': Torture and Other Ill Treatment in Nigeria* (London, UK: Amnesty International, 2014), 30.

[56] Yushau Sodiq, *A History of the Application of Islamic Law in Nigeria* (London, UK: Palgrave Macmillan, 2017).

[57] Rudolph Peters, *The Reintroduction of Islamic Criminal Law in Northern Nigeria: A Study Conducted on Behalf of the European Commission* (Lagos, Nigeria: European Commission, 2001).

[58] Human Rights Watch, "'Political Sharia'? Human Rights and Islamic Law in Northern Nigeria." .

[59] Brandon Kendhammer, *Muslims Talking Politics: Framing Islam, Democracy, and Law in Northern Nigeria* (Chicago: University of Chicago Press, 2016), 128.

[60] This effort was financially supported by the governor of Zamfara. As indicated in its title, *Harmonized Shari'ah Penal Code Law* (2002), the revised version took the various Shari'ah Penal Codes enacted by the different states, reconciled their differences, and produced a model system that can replace all the other codes.

[61] Nigeria Stability and Reconciliation Programme, "Sharia Implementation in Northern Nigeria over 15 Years, Policy Brief No. 1: The Sharia Courts."

[62] Peters, *Crime and punishment in Islamic Law*, 12–13.

[63] Imam, "Women, Muslim Laws and Human Rights in Nigeria."

[64] Ayesha M. Imam, "Fighting the Political (Ab)use of Religion in Nigeria: BAOBAB for Women's Human Rights, Allies, and Others," Women Living Under Muslim Laws (WLUML), 2004.

[65] BAOBAB for Women's Human Rights, *Sharia in Nigeria: The Journey So Far* (Lagos, Nigeria: BAOBAB, 2003).

[66] Nigeria Stability and Reconciliation Programme, "Sharia Implementation in Northern Nigeria over 15 Years, Policy Brief No. 1: The Sharia Courts."

[67] https://wrapanigeria.org/

[68] Ostien, *Sharia Implementation in Nigeria 1999-2006: A Sourcebook*, 33.

[69] "Nigerian Police, Shi'ite Muslims Clash in Kano State, at Least 9 Dead," Voice of America, November 14. 2016.

[70] Abu-Bakarr Jalloh, "Nigeria's Ban of Shiite Muslim Group Risks Boko Haram Repeat," Deutsche Welle, July 29, 2019.

[71] "Nigeria: Kebbi Christians Face Latent Pressure to Abandon Faith," *World Watch Monitor*, December 13, 2016.

[72] Frieder Ludwig, "Christian-Muslim Relations in Northern Nigeria since the Introduction of Sharia in 1999," *Journal of the American Academy of Religion* 76, no. 3 (2008): 632.

[73] Nigeria Stability and Reconciliation Programme, "Sharia Implementation in Northern Nigeria over 15 Years, Policy Brief No. 1: The Sharia Courts."

[74] The Christian Association of Nigeria (CAN) and other Christian leaders allege that young Christian girls had been arrested and molested by hisbah groups in Zamfara and Kano. They also allege that Christian girls as young as 14 are being kidnapped and forced into marriages with Muslim men and sexually abused. We repeatedly asked interviewees for proof and tried to find news and human rights organizations' reports. However, no evidence was identified to back up these latter claims, other than the widely reported abductions of girls by Boko Haram. The largest single abduction occurred in April 2014, when members of Boko Haram kidnapped 276 female students, some of whom were Muslim, from their school in Chibok.

[75] "Nigeria Atheist Bala 'Deemed Mentally Ill' in Kano State," BBC News (online), June 25, 2014.

[76] Following are two examples: The first occurred in November 2002, when Muslim and Christian mobs rampaged in the cities of Kaduna and Abuja, killing hundreds of people. The rampage began when, in response to Muslim protests against the Miss World pageant to take place in Abuja, a daily newspaper, *This Day*, ran an article suggesting that Muhammed would have approved of the pageant. This Day columnist Isioma Daniel wrote that Muhammed would probably have chosen a wife from among the contestants. Muslim mobs accused the newspaper of blasphemy and burned its office. Then the mobs attacked churches and properties owned by Christians. Christian mobs confronted the Muslim mobs, and security forces intervened. In the end, more than 200 people died and 20,000 were left homeless. The Committee to Protect Journalists and Amnesty International helped Daniel to find exile in Europe. ["The 'Miss World Riots': Continued Impunity for Killings in Kaduna," Human Rights Watch, July 23, 2003.] The second example occurred from February to May 2004, involving a series of related incidents of mob violence between Muslims and Christians in Yelwa, Plateau, and Kano that killed nearly 1,000 people. In February, armed Muslims killed more than 75 Christians in Yelwa, of whom at least 48 were killed while worshipping inside a church compound. In May, local Christians responded by attacking Muslims. As a result, more than 600 people were killed, and tens of thousands of people were displaced. One week later, Muslims in Kano (which is several hundred miles away) took revenge on Christians, killing more than 200. ["Revenge in the Name of Religion," Human Rights Watch, May 25, 2005.]

[77] Research done for the Council on Foreign Relations' Nigeria Security Tracker shows that sectarian violence from 2011 to 2018 was concentrated in Benue, Plateau, Taraba, Kaduna, Nasarawa, Zamfara, and Adamawa. Only two of the 14 states studied had expanded Shari'ah law since 1999. [Asch Harwood for John Campbell, "The Numbers behind Sectarian Violence in Nigeria," Nigeria Security Tracker, Council on Foreign Relations, 2018.]

[78] Ostien, Garba, and Abubakar, "Nigeria's Sharia Courts.".

[79] Emilia Onyema and Monalisa Odibo, "How Alternative Dispute Resolution Made a Comeback in Nigeria's Courts," Africa Research Institute, June 23, 2017.

[80] Idris Abdullahi Haroon, "The Use of Alternative Dispute Resolution (Sulh) in Sharia Cases," presented at The National Workshop for Area/Sharia/Customary Court Judges/Directors and Inspectors of Area/Sharia/Customary Courts, Abuja, April 3–5, 2017.

[81] These are the broad headings of the crimes, and each heading has subsections that address associated crimes.

[82] Muhammed Tawfiq Ladan, "Legal Pluralism and the Development of the Rule of Law of Nigeria: Issues and Challenges in the Development and Application of the Sharia," in *Sharia Penal and Family Laws in Nigeria and in the Muslim World: Rights-based Approach*, edited by Jibrin Ibrahim, 57–113 (Zaria, Nigeria: Ahmadu Bello University Press, 2004).

[83] Danladi Plang, "Sharia Penal Laws in Northern Nigeria: A Review," in *Human Rights and Sharia Penal Code in Northern Nigeria*, edited by E.E.O. Alemika and Festus Okoye, 69–136 (Kaduna, Nigeria: Human Rights Monitor, 2005).

732 N. Capitol Street, NW
Suite A714
Washington, DC 20401
(202) 523-3240

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